

By Senator Crist

13-711-01

1 A bill to be entitled
2 An act relating to capital sentencing
3 proceedings; amending s. 921.141, F.S.;
4 providing that the defendant may not waive a
5 sentencing proceeding conducted before a jury
6 in a capital case unless the state concurs in
7 the waiver; providing additional aggravating
8 circumstances that may be considered by a jury
9 in determining whether to recommend that the
10 defendant be sentenced to life imprisonment or
11 sentenced to death; providing an effective
12 date.

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14 Be It Enacted by the Legislature of the State of Florida:

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16 Section 1. Section 921.141, Florida Statutes, is
17 amended to read:18 921.141 Sentence of death or life imprisonment for
19 capital felonies; further proceedings to determine sentence.--

20 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.--Upon
21 conviction or adjudication of guilt of a defendant of a
22 capital felony, the court shall conduct a separate sentencing
23 proceeding to determine whether the defendant should be
24 sentenced to death or life imprisonment as authorized by s.
25 775.082. The proceeding shall be conducted by the trial judge
26 before the trial jury as soon as practicable. If, through
27 impossibility or inability, the trial jury is unable to
28 reconvene for a hearing on the issue of penalty, having
29 determined the guilt of the accused, the trial judge may
30 summon a special juror or jurors as provided in chapter 913 to
31 determine the issue of the imposition of the penalty. If the

1 trial jury has been waived, or if the defendant pleaded
2 guilty, the sentencing proceeding shall be conducted before a
3 jury impaneled for that purpose, unless waived by the
4 defendant with the concurrence of the state. In the
5 proceeding, evidence may be presented as to any matter that
6 the court deems relevant to the nature of the crime and the
7 character of the defendant and shall include matters relating
8 to any of the aggravating or mitigating circumstances
9 enumerated in subsections (5) and (6). Any such evidence which
10 the court deems to have probative value may be received,
11 regardless of its admissibility under the exclusionary rules
12 of evidence, provided the defendant is accorded a fair
13 opportunity to rebut any hearsay statements. However, this
14 subsection shall not be construed to authorize the
15 introduction of any evidence secured in violation of the
16 Constitution of the United States or the Constitution of the
17 State of Florida. The state and the defendant or the
18 defendant's counsel shall be permitted to present argument for
19 or against sentence of death. The defendant may not waive a
20 sentencing proceeding conducted before a jury without the
21 concurrence of the state.

22 (2) ADVISORY SENTENCE BY THE JURY.--After hearing all
23 the evidence, the jury shall deliberate and render an advisory
24 sentence to the court, based upon the following matters:

25 (a) Whether sufficient aggravating circumstances exist
26 as enumerated in subsection (5);

27 (b) Whether sufficient mitigating circumstances exist
28 which outweigh the aggravating circumstances found to exist;
29 and

30 (c) Based on these considerations, whether the
31 defendant should be sentenced to life imprisonment or death.

1 (3) FINDINGS IN SUPPORT OF SENTENCE OF

2 DEATH.--Notwithstanding the recommendation of a majority of
3 the jury, the court, after weighing the aggravating and
4 mitigating circumstances, shall enter a sentence of life
5 imprisonment or death, but if the court imposes a sentence of
6 death, it shall set forth in writing its findings upon which
7 the sentence of death is based as to the facts:

8 (a) That sufficient aggravating circumstances exist as
9 enumerated in subsection (5), and

10 (b) That there are insufficient mitigating
11 circumstances to outweigh the aggravating circumstances.

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13 In each case in which the court imposes the death sentence,
14 the determination of the court shall be supported by specific
15 written findings of fact based upon the circumstances in
16 subsections (5) and (6) and upon the records of the trial and
17 the sentencing proceedings. If the court does not make the
18 findings requiring the death sentence within 30 days after the
19 rendition of the judgment and sentence, the court shall impose
20 sentence of life imprisonment in accordance with s. 775.082.

21 (4) REVIEW OF JUDGMENT AND SENTENCE.--The judgment of
22 conviction and sentence of death shall be subject to automatic
23 review by the Supreme Court of Florida and disposition
24 rendered within 2 years after the filing of a notice of
25 appeal. Such review by the Supreme Court shall have priority
26 over all other cases and shall be heard in accordance with
27 rules promulgated by the Supreme Court.

28 (5) AGGRAVATING CIRCUMSTANCES.--Aggravating
29 circumstances shall be limited to the following:

30 (a) The capital felony was committed by a person
31 previously convicted of a felony and under sentence of

1 imprisonment or placed on community control or on felony
2 probation.

3 (b) The defendant was previously convicted of another
4 capital felony or of a felony involving the use or threat of
5 violence to the person.

6 (c) The defendant knowingly created a great risk of
7 death to many persons.

8 (d) The capital felony was committed while the
9 defendant was engaged, or was an accomplice, in the commission
10 of, or an attempt to commit, or flight after committing or
11 attempting to commit, any: robbery; sexual battery; aggravated
12 child abuse; abuse of an elderly person or disabled adult
13 resulting in great bodily harm, permanent disability, or
14 permanent disfigurement; arson; burglary; kidnapping; aircraft
15 piracy; or unlawful throwing, placing, or discharging of a
16 destructive device or bomb.

17 (e) The capital felony was committed for the purpose
18 of avoiding or preventing a lawful arrest or effecting an
19 escape from custody.

20 (f) The capital felony was committed for pecuniary
21 gain.

22 (g) The capital felony was committed to disrupt or
23 hinder the lawful exercise of any governmental function or the
24 enforcement of laws.

25 (h) The capital felony was especially heinous,
26 atrocious, or cruel.

27 (i) The capital felony was a homicide and was
28 committed in a cold, calculated, and premeditated manner
29 without any pretense of moral or legal justification.

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1 (j) During the course of committing the capital
2 felony, the defendant inflicted multiple physical injuries
3 upon the victim.

4 (k) During the course of or after committing the
5 capital felony, the defendant mutilated or dismembered the
6 victim's dead body or sexually or grossly abused the victim's
7 dead body.

8 ~~(l)(j)~~ The victim of the capital felony was a law
9 enforcement officer engaged in the performance of his or her
10 official duties.

11 ~~(m)(k)~~ The victim of the capital felony was an elected
12 or appointed public official engaged in the performance of his
13 or her official duties if the motive for the capital felony
14 was related, in whole or in part, to the victim's official
15 capacity.

16 ~~(n)(i)~~ The victim of the capital felony was a person
17 less than 12 years of age.

18 ~~(o)(m)~~ The victim of the capital felony was
19 particularly vulnerable due to advanced age or disability, or
20 because the defendant stood in a position of familial or
21 custodial authority over the victim.

22 (p) The victim had an injunction for protection
23 against domestic violence or for protection against repeat
24 violence in effect against the defendant when the capital
25 felony was committed.

26 (q) The victim was aware of the impending homicide and
27 asked that his or her life be spared or otherwise requested
28 that the homicide not occur.

29 ~~(r)(n)~~ The capital felony was committed by a criminal
30 street gang member, as defined in s. 874.03.

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1 (6) MITIGATING CIRCUMSTANCES.--Mitigating
2 circumstances shall be the following:

3 (a) The defendant has no significant history of prior
4 criminal activity.

5 (b) The capital felony was committed while the
6 defendant was under the influence of extreme mental or
7 emotional disturbance.

8 (c) The victim was a participant in the defendant's
9 conduct or consented to the act.

10 (d) The defendant was an accomplice in the capital
11 felony committed by another person and his or her
12 participation was relatively minor.

13 (e) The defendant acted under extreme duress or under
14 the substantial domination of another person.

15 (f) The capacity of the defendant to appreciate the
16 criminality of his or her conduct or to conform his or her
17 conduct to the requirements of law was substantially impaired.

18 (g) The age of the defendant at the time of the crime.

19 (h) The existence of any other factors in the
20 defendant's background that would mitigate against imposition
21 of the death penalty.

22 (7) VICTIM IMPACT EVIDENCE.--Once the prosecution has
23 provided evidence of the existence of one or more aggravating
24 circumstances as described in subsection (5), the prosecution
25 may introduce, and subsequently argue, victim impact evidence.
26 Such evidence shall be designed to demonstrate the victim's
27 uniqueness as an individual human being and the resultant loss
28 to the community's members by the victim's death.
29 Characterizations and opinions about the crime, the defendant,
30 and the appropriate sentence shall not be permitted as a part
31 of victim impact evidence.

1 (8) APPLICABILITY.--This section does not apply to a
2 person convicted or adjudicated guilty of a capital drug
3 trafficking felony under s. 893.135.

4 Section 2. This act shall take effect July 1, 2001.

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7 SENATE SUMMARY

8 Prohibits a defendant in a capital case from waiving a
9 sentencing proceeding conducted before a jury unless the
10 state concurs in the waiver. Provides that a jury may
11 consider as an aggravating circumstance in a capital case
12 any physical injuries, dismemberment, or sexual or gross
13 abuse inflicted on the victim by the defendant; an
14 injunction for protection in effect against the
15 defendant; or a request by the victim that the defendant
16 not commit the homicide.
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