

By Senator Smith

14-10-03

1                                   A bill to be entitled  
2           An act relating to sentencing in capital cases;  
3           amending s. 921.141, F.S.; providing for the  
4           sentence rendered by a jury in a capital case  
5           to be a mandatory sentence rather than an  
6           advisory sentence; authorizing the court to  
7           review a sentence of death by the jury;  
8           providing for the court to sentence the  
9           defendant to life imprisonment notwithstanding  
10          a sentence of death by the jury if there are  
11          insufficient aggravating circumstances and  
12          sufficient mitigating circumstances; amending  
13          s. 921.137, F.S., relating to the prohibition  
14          on sentencing a mentally retarded defendant to  
15          death; conforming provisions to changes made by  
16          the act; providing an effective date.

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

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20           Section 1. Subsections (2) and (3) of section 921.141,  
21 Florida Statutes, are amended to read:

22           2921.141 Sentence of death or life imprisonment for  
23 capital felonies; further proceedings to determine sentence.--

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

28           (a) Whether sufficient aggravating circumstances exist  
29 as enumerated in subsection (5);

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1 (b) Whether sufficient mitigating circumstances exist  
2 which outweigh the aggravating circumstances found to exist;  
3 and

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

6 (3) FINDINGS IN SUPPORT OF SENTENCE OF LIFE  
7 IMPRISONMENT ~~DEATH~~.--Notwithstanding a sentence of death by  
8 ~~the recommendation of~~ a majority of the jury, the court, after  
9 weighing the aggravating and mitigating circumstances, may  
10 ~~shall~~ enter a sentence of life imprisonment or death, but if  
11 the court imposes a sentence of life imprisonment ~~death~~, it  
12 must ~~shall~~ set forth in writing its findings upon which the  
13 sentence of life imprisonment ~~death~~ is based as to the facts:

14 (a) That insufficient ~~sufficient~~ aggravating  
15 circumstances exist as enumerated in subsection (5); ~~and~~

16 (b) That there are sufficient ~~insufficient~~ mitigating  
17 circumstances to outweigh the aggravating circumstances.

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

27 Section 2. Subsections (4), (5), (6), (7), and (8) of  
28 section 921.137, Florida Statutes, are amended to read:

29 921.137 Imposition of the death sentence upon a  
30 mentally retarded defendant prohibited.--

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1           (4) After a defendant who has given notice of his or  
2 her intention to raise mental retardation as a bar to the  
3 death sentence is convicted of a capital felony and a ~~an~~  
4 ~~advisory~~ jury has returned a ~~recommended~~ sentence of death,  
5 the defendant may file a motion to determine whether the  
6 defendant has mental retardation. Upon receipt of the motion,  
7 the court shall appoint two experts in the field of mental  
8 retardation who shall evaluate the defendant and report their  
9 findings to the court and all interested parties prior to the  
10 final sentencing hearing. Notwithstanding s. 921.141 or s.  
11 921.142, the final sentencing hearing shall be held without a  
12 jury. At the final sentencing hearing, the court shall  
13 consider the findings of the court-appointed experts and  
14 consider the findings of any other expert which is offered by  
15 the state or the defense on the issue of whether the defendant  
16 has mental retardation. If the court finds, by clear and  
17 convincing evidence, that the defendant has mental retardation  
18 as defined in subsection (1), the court may not impose a  
19 sentence of death and shall enter a written order that sets  
20 forth with specificity the findings in support of the  
21 determination.

22           (5) If a defendant waives his or her right to a  
23 ~~recommended~~ sentence by a ~~an~~ ~~advisory~~ jury following a plea of  
24 guilt or nolo contendere to a capital felony and adjudication  
25 of guilt by the court, or following a jury finding of guilt of  
26 a capital felony, upon acceptance of the waiver by the court,  
27 a defendant who has given notice as required in subsection (3)  
28 may file a motion for a determination of mental retardation.  
29 Upon granting the motion, the court shall proceed as provided  
30 in subsection (4).

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1           ~~(6) If, following a recommendation by an advisory jury~~  
2 ~~that the defendant be sentenced to life imprisonment, the~~  
3 ~~state intends to request the court to order that the defendant~~  
4 ~~be sentenced to death, the state must inform the defendant of~~  
5 ~~such request if the defendant has notified the court of his or~~  
6 ~~her intent to raise mental retardation as a bar to the death~~  
7 ~~sentence. After receipt of the notice from the state, the~~  
8 ~~defendant may file a motion requesting a determination by the~~  
9 ~~court of whether the defendant has mental retardation. Upon~~  
10 ~~granting the motion, the court shall proceed as provided in~~  
11 ~~subsection (4).~~

12           (6)(7) The state may appeal, pursuant to s. 924.07, a  
13 determination of mental retardation made under subsection (4).

14           (7)(8) This section does not apply to a defendant who  
15 was sentenced to death prior to the effective date of this  
16 act.

17           Section 3. This act shall take effect October 1, 2003.

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SENATE SUMMARY

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Deletes provisions that require the jury to render an  
advisory sentence in capital cases. Provides for the  
court to review a sentence of death imposed by a jury.  
Notwithstanding a sentence of death by the jury,  
authorizes the court to impose a sentence of life  
imprisonment if there are insufficient aggravating  
circumstances and sufficient mitigating circumstances.  
(See bill for details.)

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