

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 965 Sentencing/Capital Cases
SPONSOR(S): Gelber
TIED BILLS: None **IDEN./SIM. BILLS:** SB 120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Billmeier	Havlicak
2) Public Safety and Crime Prevention			
3) Public Safety App.			
4) Appropriations			
5)			

SUMMARY ANALYSIS

Section 921.141, F.S., provides for the procedure of imposition of a death sentence in Florida. Current law provides that the jury makes a sentencing recommendation and the trial judge imposes a sentence notwithstanding the jury's recommendation. HB 965 amends s. 921.141, F.S., to make a jury's recommendation of life imprisonment mandatory. It removes the ability of the trial judge to override the jury and impose a death sentence in cases when the jury recommends life imprisonment. This bill also removes the requirement that the trial judge enter specific written findings when the trial judge imposes the death sentence.

HB 965 permits a trial judge to enter a sentence of life imprisonment in cases where the jury recommends a death sentence. This is permitted under current law. If the trial judge overrides a jury in that situation, the trial judge must enter written findings explaining why the override took place. This is not currently required.

This bill takes effect on October 1, 2003.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0965.ju.doc
DATE: April 3, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Florida's Death Penalty Statute

Section 921.141, F.S., is Florida's death penalty statute. The statute requires the court to hold a separate proceeding in a capital case to determine whether the defendant should be sentenced to death or to life in prison.¹ This proceeding is typically held before the jury that determined the defendant's guilt.² The jury may hear any relevant evidence and must hear evidence relating to aggravating and mitigating factors.³ The aggravating factors that may be considered are limited by statute. Section 921.141(5), F.S., provides:

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

(a) The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.

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

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

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

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

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

¹ See s. 921.141(1), F.S.

² Id.

³ Id.

- (g) The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- (h) The capital felony was especially heinous, atrocious, or cruel.
- (i) The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- (j) The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- (k) The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- (l) The victim of the capital felony was a person less than 12 years of age.
- (m) The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- (n) The capital felony was committed by a criminal street gang member, as defined in s. 874.03.

Mitigating factors are not limited by statute but may include:

- (a) The defendant has no significant history of prior criminal activity.
- (b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- (c) The victim was a participant in the defendant's conduct or consented to the act.
- (d) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- (e) The defendant acted under extreme duress or under the substantial domination of another person.
- (f) The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- (g) The age of the defendant at the time of the crime.
- (h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.⁴

After hearing all the evidence, the jury is required to provide an advisory sentence, based upon the following matters:

- (a) Whether sufficient aggravating circumstances exist;

⁴ s. 91.141(6), F.S.

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

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

Juries are instructed that aggravating circumstances must be found beyond a reasonable doubt while mitigating circumstance do not need to be established beyond a reasonable doubt.⁶ The Standard Jury Instructions require that a jury be only “reasonably convinced” that a mitigating circumstance exists.⁷

Once the jury has made a recommendation, the trial judge determines the sentence. The trial court can impose a sentence of death or of life in prison notwithstanding the jury’s recommendation. If the court imposes a death sentence, it must enter a written order finding that sufficient aggravating circumstances exist and that there are insufficient mitigating circumstances to outweigh the aggravating circumstances.⁸ If a defendant receives a death sentence, the defendant’s conviction and death sentence are reviewed by the Florida Supreme Court.⁹ If a defendant receives a life sentence, the conviction is reviewed by the appropriate District Court of Appeal.

Florida’s death penalty statute has been repeatedly held constitutional by the United States Supreme Court.¹⁰

Questions Regarding Florida’s Statute After Ring v. Arizona

In Ring v. Arizona,¹¹ the United States Supreme Court held that the Sixth Amendment right to a trial by jury does not permit a trial judge to find aggravating factors necessary to impose a death sentence. Such aggravating factors must be found by a jury.¹² Accordingly, the court declared that Arizona’s statute, which requires the judge to determine aggravating factors without input from a jury, was unconstitutional.

Ring has caused extensive litigation in Florida. The United States Supreme Court stayed Linroy Bottoson’s execution in Florida while Ring was pending¹³ and lifted the stay soon after Ring was issued.¹⁴ The Florida Supreme Court rejected Bottoson’s Ring claims in Bottoson v. Moore.¹⁵ While there was not a majority opinion in that case, the court plurality found that the United States Supreme Court reserves for itself the right to overrule its own case law, that the United States Supreme Court had held Florida’s statute constitutional on numerous occasions, and that it did not overrule those opinions in Ring.¹⁶ Accordingly, it denied relief. Bottoson was executed on December 9, 2002.¹⁷ It can be argued that Ring does not render the Florida death penalty statute unconstitutional for a number of reasons:

(1) In Florida, unlike the Arizona statute at issue in Ring, the trial judge alone does not determine aggravating factors. A Florida jury is instructed on aggravating factors and is instructed it must find

⁵ See s. 921.141(2), F.S.

⁶ See Fla. Std. Jury Instr. (Crim.) Penalty Proceedings – Capital Cases F.S. 921.141

⁷ Id.

⁸ See s. 921.141

⁹ See s. 921.141(4), F.S.; Art. V, s. 3(b)(1), Fla. Const.

¹⁰ See Hildwin v. Florida, 490 U.S. 638 (1989); Spaziano v. Florida, 468 U.S. 447 (1984); Barclay v. Florida, 463 U.S. 939 (1983); Proffitt v. Florida, 428 U.S. 242 (1976).

¹¹ 536 U.S. 584 (2002), 122 S.Ct. 2428 (2002).

¹² See Ring, 122 S.Ct. at 2432.

¹³ See Bottoson v. Florida, 534 U.S. 1121 (2002).

¹⁴ See Bottoson v. Florida, ___ U.S. ___, 122 S.Ct. 2670 (2002).

¹⁵ 833 So. 2d 693 (2002).

¹⁶ See Bottoson, 833 So. 2d at 694-95.

¹⁷ <http://www.dc.state.fl.us/oth/deathrow/execlist.html> (accessed on April 6, 2003).

those factors beyond a reasonable doubt. Before a jury can recommend a death sentence, it must find at least one aggravating factor. Accordingly, it can be argued that Florida's statute includes the jury fact-finding required by Ring because a jury must, before recommending death, find at least one aggravating factor beyond a reasonable doubt;

- (2) An aggravating factor found in a number of cases is a prior conviction of a violent felony. This aggravating factor does not have to be found by a jury.¹⁸ Accordingly, it can be argued Ring does not apply in any case where there is a prior violent felony aggravator;
- (3) Ring does not require jury sentencing. Under Ring, a trial judge is still permitted to determine whether the death sentence is appropriate.¹⁹

However, members of the Florida Supreme Court have raised a number of questions regarding Florida's statute, in light of Ring:

- (1) whether a trial judge is still permitted to "override" a jury's recommendation of life imprisonment and impose a death sentence;^{20,21}
- (2) whether Florida's system of allowing a majority of jurors to recommend a death sentence, rather than requiring a unanimous recommendation, is still permissible;²² and
- (3) whether Florida's standard jury instructions are adequate in light of Ring.²³

HB 965

HB 965 amends Florida's death penalty statute to make a jury's recommendation of life imprisonment mandatory. It removes the ability of the trial judge to override the jury in cases when the jury recommends life. This bill also removes the requirement that the trial judge enter specific written findings when the trial judge imposes the death sentence.

HB 965 permits a trial judge to enter a sentence of life imprisonment in cases where the jury recommends a death sentence. If the trial judge overrides a jury in that situation, the trial judge must enter written findings explaining why the override took place.

C. SECTION DIRECTORY:

Section 1. Amends s. 921.141, F.S., relating to the death penalty.

Section 2. Provides an effective date of October 1, 2003.

¹⁸ See Apprendi v. New Jersey, 530 U.S. 466, 490 (2000) ("Other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.").

¹⁹ See Ring, 122 S.Ct. at 2445 (Scalia, J., concurring) ("Those States that leave the ultimate life-or-death decision to the judge may continue to do so—by requiring a prior jury finding of aggravating factor in the sentencing phase or, more simply, by placing the aggravating-factor determination (where it logically belongs anyway) in the guilt phase.").

²⁰ See Bottoson v. Moore, 833 So. 2d at 701-02 (Quince, J., specially concurring); Bottoson, 833 So. 2d at 709-09 (Anstead, C.J., concurring in result only); Bottoson, 833 So. 2d at 723-25 (Pariente, J., concurring in result only); Bottoson, 833 So. 2d at 725-26 (Lewis, J., concurring in result only).

²¹ The trial judge did not override the jury's recommendation in Bottoson. See Bottoson, 833 So. 2d at 702 (Quince, J., specially concurring). According to the Office of the Attorney General, there is only one case pending on direct appeal where the trial judge imposed a death sentence when the jury recommended a life sentence.

²² See Bottoson, 833 So. 2d at 709-10 (Anstead, C.J., concurring in result only); Bottoson, 833 So. 2d at 714-15 (Shaw, J., concurring in result only); Bottoson, 833 So. 2d at 723-26 (Pariente, J., concurring in result only).

²³ See Bottoson, 833 So. 2d at 702 (Quince, J., specially concurring); Bottoson, 833 So. 2d at 710-18 (Shaw, J., concurring in result only); Bottoson, 833 So. 2d at 723-25 (Pariente, J., concurring in result only); Bottoson, 833 So. 2d at 726-34 (Lewis, J., concurring in result only).

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This bill does not appear to impact state government revenues.

2. Expenditures:

This bill does not appear to impact state government expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill does not appear to impact state government revenues.

2. Expenditures:

This bill does not appear to impact state government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not appear to have a direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Written Findings When a Life Sentence is Imposed

The bill requires a trial judge to enter written findings explaining a life sentence in situations where the jury recommends a death sentence but the trial judge imposes a life sentence. It is not clear why such findings would be necessary. Currently, one of the reasons that the trial judge enters written findings in support of a death sentence is to facilitate appellate review. See Mann v. State, 420 So. 2d 578, 581 (Fla. 1982) (“The trial judge's findings in regard to the death sentence should be of unmistakable clarity so that we can properly review them and not speculate as to what he found; this

case does not meet that test.”); Proffitt v. Florida, 428 U.S. 242, 259-60 (1976)(“If a death sentence is imposed, the sentencing authority articulates in writing the statutory reasons that led to its decision. Those reasons, and the evidence supporting them, are conscientiously reviewed by a court which, because of its statewide jurisdiction, can assure consistency, fairness, and rationality in the evenhanded operation of the state law.”). Section 924.07, F.S., provides for appeals by the State in criminal cases but does not provide for an appeal when a jury recommends a death sentence but the trial judge imposes a life sentence. If the purpose of this language is to permit the State to appeal in situations where the jury recommends death but the trial court imposes life, the statute creating the state right to appeal should be reviewed.

Further, under current law, judgments imposing a life sentence do not require written findings. This bill would create a requirement of written findings in situations that where a jury recommends death and a trial judge imposes life but not require findings in situations where a jury recommends life and the trial judge imposes life or in cases where the death penalty is not sought but a life sentence is imposed.

Elimination of the Requirement of Written Findings When the Trial Judge Imposes Death

This bill eliminates the requirement that the trial judge make written findings in support of a death sentence. Elimination of this requirement might make appellate review more difficult. Under current law, the Florida Supreme Court only has to review aggravating factors found in the trial judge’s sentencing order. This bill could require the court to review all potential aggravators sought by the State.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

N/A