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A bill to be entitled
 An act relating to sentencing in capital cases; amending
 s. 921.141, F.S.; providing for the sentence rendered by a
 jury in a capital case to be a mandatory sentence rather
 than an advisory sentence; authorizing the court to review
 a sentence of death by the jury; providing for the court
 to sentence the defendant to life imprisonment
 notwithstanding a sentence of death by the jury if there
 are insufficient aggravating circumstances and sufficient
 mitigating circumstances; amending s. 921.137, F.S.,
 relating to the prohibition on sentencing a mentally
 retarded defendant to death; conforming provisions to
 changes made by the act; providing an effective date.

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

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

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

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

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

(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.



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30 (3) FINDINGS IN SUPPORT OF SENTENCE OF LIFE IMPRISONMENT
 31 ~~DEATH~~.--Notwithstanding a sentence of death by the
 32 ~~recommendation of~~ a majority of the jury, the court, after
 33 weighing the aggravating and mitigating circumstances, may ~~shall~~
 34 enter a sentence of life imprisonment . ~~or death, but~~ If the
 35 court imposes a sentence of life imprisonment ~~death~~, it must
 36 ~~shall~~ set forth in writing its findings upon which the sentence
 37 of life imprisonment ~~death~~ is based as to the facts:

38 (a) That insufficient ~~sufficient~~ aggravating circumstances
 39 exist as enumerated in subsection (5);⁷ and

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

42
 43 ~~In each case in which the court imposes the death sentence, the~~
 44 ~~determination of the court shall be supported by specific~~
 45 ~~written findings of fact based upon the circumstances in~~
 46 ~~subsections (5) and (6) and upon the records of the trial and~~
 47 ~~the sentencing proceedings. If the court does not make the~~
 48 ~~findings requiring the death sentence within 30 days after the~~
 49 ~~rendition of the judgment and sentence, the court shall impose~~
 50 ~~sentence of life imprisonment in accordance with s. 775.082.~~

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

53 921.137 Imposition of the death sentence upon a mentally
 54 retarded defendant prohibited.--

55 (4) After a defendant who has given notice of his or her
 56 intention to raise mental retardation as a bar to the death
 57 sentence is convicted of a capital felony and a ~~an~~ advisory jury
 58 has returned a ~~recommended~~ sentence of death, the defendant may
 59 file a motion to determine whether the defendant has mental



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60 retardation. Upon receipt of the motion, the court shall appoint
61 two experts in the field of mental retardation who shall
62 evaluate the defendant and report their findings to the court
63 and all interested parties prior to the final sentencing
64 hearing. Notwithstanding s. 921.141 or s. 921.142, the final
65 sentencing hearing shall be held without a jury. At the final
66 sentencing hearing, the court shall consider the findings of the
67 court-appointed experts and consider the findings of any other
68 expert which is offered by the state or the defense on the issue
69 of whether the defendant has mental retardation. If the court
70 finds, by clear and convincing evidence, that the defendant has
71 mental retardation as defined in subsection (1), the court may
72 not impose a sentence of death and shall enter a written order
73 that sets forth with specificity the findings in support of the
74 determination.

75 (5) If a defendant waives his or her right to a
76 ~~recommended~~ sentence by a ~~an advisory~~ jury following a plea of
77 guilt or nolo contendere to a capital felony and adjudication of
78 guilt by the court, or following a jury finding of guilt of a
79 capital felony, upon acceptance of the waiver by the court, a
80 defendant who has given notice as required in subsection (3) may
81 file a motion for a determination of mental retardation. Upon
82 granting the motion, the court shall proceed as provided in
83 subsection (4).

84 ~~(6) If, following a recommendation by an advisory jury~~
85 ~~that the defendant be sentenced to life imprisonment, the state~~
86 ~~intends to request the court to order that the defendant be~~
87 ~~sentenced to death, the state must inform the defendant of such~~
88 ~~request if the defendant has notified the court of his or her~~
89 ~~intent to raise mental retardation as a bar to the death~~



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90 ~~sentence. After receipt of the notice from the state, the~~
91 ~~defendant may file a motion requesting a determination by the~~
92 ~~court of whether the defendant has mental retardation. Upon~~
93 ~~granting the motion, the court shall proceed as provided in~~
94 ~~subsection (4).~~

95 (6)~~(7)~~ The state may appeal, pursuant to s. 924.07, a
96 determination of mental retardation made under subsection (4).

97 (7)~~(8)~~ This section does not apply to a defendant who was
98 sentenced to death prior to the effective date of this act.

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