

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

In May of 2003, the University of Florida awarded its first ever posthumous medical degree to Caroline Cody, 22, a resident of Jacksonville. On May 9, 2000, Donald G. Fair murdered first-year medical student Caroline in her apartment. Fair was found guilty of capital murder. During the jury portion of the sentencing phase, the circuit judge refused to admit victim impact evidence, but did allow testimony about how Fair was abused and neglected as a child. On May 25, 2004, the jury recommended a life sentence over death, and the trial court judge immediately adopted the jury's recommendation and sentenced Fair to life imprisonment.

A capital case is one in which death is an available punishment. In a trial of a capital case, there is first a trial segment, which establishes whether the defendant is guilty or not guilty. If the defendant is found guilty, two sentencing hearings are conducted. In the first, the jury determines a recommendation as to sentence, either death or life imprisonment. The jury is excused, the judge conducts a hearing to hear arguments regarding the jury recommendation, and then the judge determines the sentence.

Section 921.141(7), F.S., provides that victim impact evidence is evidence produced in the sentencing phase of a capital case "designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death." Such evidence is limited, and may not include characterizations and opinions about the crime, the defendant, nor the appropriate sentence.

In *Payne v. Tennessee*, 501 U.S. 808 (1991), the United States Supreme Court reversed prior precedent and ruled that victim impact evidence may be presented **to the jury** in the sentencing phase of a capital trial, saying:

We are now of the view that a State may properly conclude that for **the jury** to assess meaningfully the defendant's moral culpability and blameworthiness, it should have before it at the sentencing phase evidence of the specific harm caused by the defendant. "[T]he State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family." *Booth*, 482 U.S., at 517 (WHITE, J., dissenting) (citation omitted). By turning the victim into a "faceless stranger at the penalty phase of a capital trial," *Gathers*, 490 U.S., at 821 (O'CONNOR, J., dissenting), *Booth* deprives the State of the full moral force of its evidence and may prevent **the jury** from having before it all the information necessary to determine the proper punishment for a first-degree murder.

Payne at 825 (bold emphasis added).¹ Florida cases decided since the ruling in *Payne* have discussed how victim evidence is presented to the jury, but none has questioned or even mentioned that victim impact evidence is to be presented in any manner other than to the jury in the sentencing phase.²

¹ The court explained why admitting victim impact evidence is appropriate: "It is an affront to the civilized members of the human race to say that at sentencing in a capital case, a parade of witnesses may praise the background, character and good deeds of Defendant (as was done in this case), without limitation as to relevancy, but nothing may be said that bears

Effect of Bill

This bill reflects current law regarding victim impact evidence. It amends s. 921.141, F.S., to add a clarifying reference that states that victim impact evidence is presented to the jury. This addition emphasizes the proper use of such evidence in the sentencing phase of a capital trial.

C. SECTION DIRECTORY:

Section 1 provides a popular name.

Section 2 amends s. 921.141, F.S., regarding the sentencing phase of a death penalty case.

Section 3 provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

upon the character of, or the harm imposed, upon the victims." *Payne* at 826, quoting the lower court opinion of the Tennessee Supreme Court.

² See, e.g., *Windom v. State*, 656 So.2d 432 (Fla. 1995); *Huggins v. State*, 29 Fla.L.Weekly S752 (Fla. Sup.Ct. 2004).

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None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

n/a