

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Criminal Justice Committee

BILL: SB 538

SPONSOR: Senator Smith

SUBJECT: Sentencing Proceeding for Capital Cases - Victim Impact Evidence

DATE: March 8, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Cannon	CJ	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 538 clarifies that the State may introduce and subsequently argue victim impact evidence to the jury during the sentencing phase of a capital trial, once it has provided evidence of the existence of one or more aggravating circumstances.

This bill substantially amends section 921.141, Florida Statutes.

II. Present Situation:

Capital Case Sentencing Proceedings

Section 921.141, F.S., sets forth the proceedings for the determination of a life or death sentence in capital cases. A separate sentencing proceeding is required, after a finding of guilt.

Subsection (1) states that: “ In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating or mitigating circumstances enumerated in subsections (5) and (6).” s. 921.141(1), F.S.

Aggravating circumstances as set forth in s. 921.141(5), F.S., are:

- (a) The capital felony was committed by a person *under a sentence of imprisonment, community control, or felony probation.*
- (b) The defendant was *previously convicted of another capital felony or of a felony involving the use of or threat of violence.*
- (c) The defendant knowingly created *great risk of death to many persons.*

- (d) The capital felony was *committed while the defendant was engaged in, an accomplice in, or attempting to commit, or fleeing after committing or attempting to commit any of the following*: 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*.
- (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 was related, in whole or in part, to the victim's official capacity*.
- (l) The *victim* of the capital felony was *less than 12 years of age*.
- (m) The *victim was particularly vulnerable* due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority.
- (n) The capital felony was committed by a criminal street gang member as defined in s. 874.03, F.S.

Mitigating circumstances as set forth in s. 921.141(6), F.S., are:

- (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*, and the defendant's *participation was relatively minor*.
- (e) The defendant was *under extreme duress or under the substantial domination of another person*.
- (f) The *capacity* of the defendant *to appreciate the criminality of her or his conduct* or to conform her or his conduct to the requirements of law *was substantially impaired*.
- (g) The *age of the defendant* at the time of the offense.
- (h) The existence of *any other factors* in the defendant's background that would mitigate against imposition of the death penalty.

After hearing the evidence and argument by counsel, the jury (unless the jury is waived by the defendant) then makes a sentencing recommendation to the court of either life or death. The recommendation is decided by a majority vote. Subsection (2) requires that the advisory sentence be based upon “(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.” s. 921.141(2), F.S.

The judge may or may not follow the recommendation of the jury. Subsection (3) states: “Findings in Support of Sentence of Death. – Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence is based as to the facts: (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.” s. 921.141(3), F.S.

Victim Impact Evidence in Capital Cases

Subsection (7) of s. 921.141, F.S. states: “Once the prosecution has provided evidence of the existence of one or more aggravating circumstances as described in subsection (5), the prosecution may introduce, and subsequently argue, victim impact evidence. Such evidence shall be 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. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.”

This particular subsection was enacted by the Legislature in 1992, after the U.S. Supreme Court decision in *Payne v. Tennessee*, 501 U.S. 808, 111 S. Ct. 2597 (1991).

Case Law on Victim Impact Evidence in Capital Cases

In 1991 the U.S. Supreme Court reversed its holdings in two previous cases. In *Booth v. Maryland*, 482 U.S. 496, 107 S.Ct. 2529 (1987) and *South Carolina v. Gathers*, 490 U.S. 805, 109 S.Ct. 2207 (1989), the Court had ruled that the Eighth Amendment barred the admission and the argument of victim impact evidence during the penalty phase of capital trials.

The *Payne* court, reconsidering that precedent, stated:

“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. ‘The 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, 107 S.Ct. at 2540 (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, 109 S.Ct. at 2216 (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.” *Id.* at 825.

It should be noted that the Court refers to the Payne, Booth, and Gathers juries as the “sentencing jury,” indicating that the jury hearing the evidence and argument at the sentencing phase of the trial actually decided the appropriate sentence, unlike in Florida where the jury makes a sentencing recommendation to the judge who ultimately decides the sentence.

In two recent Florida cases convicted capital defendants objected to the admission and argument of victim impact evidence. In both cases, the Florida Supreme Court declined to vacate the death sentence. In *Kearse v. State*, 770 So.2d 1119 (Fla. 2000), the defendant objected to a special jury instruction designed to explain to the jury that victim impact evidence was not to be considered as an aggravating circumstance. The Florida Supreme Court found that the trial court did not err in giving the instruction. *Id.* at 1133.

In *Card v. State*, 803 So.2d 613 (Fla. 2001), defense counsel objected to the prosecutor’s argument in which it appears that he was about to explain the “weight” to be given the victim impact evidence presented. The trial court denied a defense motion for mistrial, and directed the prosecutor not to imply that the jurors should “weigh” victim impact evidence. The Florida Supreme Court found no abuse of the trial court’s discretion. The Court, however, stated in a footnote: “Victim impact evidence is not listed as an aggravating circumstance under section 921.141(5) that may be *considered* and weighed by juries.” *Id.* at 622 (emphasis added). This comment may lead to confusion at the trial court level as to whether juries in Florida capital cases can consider victim impact evidence *at all*.

III. Effect of Proposed Changes:

This bill clarifies, by amending subsection (7) of s. 921.141, F.S., that the State may not only introduce victim impact evidence during the sentencing phase of a capital trial, but introduce it and argue it to the jury.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

VIII. Summary of Amendments:

None.

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