



## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any House principles.

#### B. EFFECT OF PROPOSED CHANGES:

In 2001, the legislature created section 921.137, F.S. which prohibited the imposition of a death sentence upon a mentally retarded defendant. Specifically, the section provides that a sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined, in accordance with the section, that the defendant has mental retardation.<sup>1</sup> After a defendant who has been given notice of his or her intention to raise mental retardation as a bar to a death sentence is convicted of a capital felony and the jury has recommended a sentence of death, the defendant may file a motion to determine whether the defendant has mental retardation. The judge then must appoint two experts in the field of mental retardation to evaluate the defendant. At the final sentencing hearing, the court must consider the findings of the experts and the findings of any other expert which is offered by the state or defense on the issue of whether the defendant has mental retardation. If the court finds by clear and convincing evidence that the defendant has mental retardation, the court may not impose a sentence of death and must enter a written order that sets forth the findings in support of the determination. The bill specified that the section does not apply to a defendant who was sentenced to death before the effective date of the act.

After this law was enacted, the United States Supreme Court ruled that the execution of a mentally retarded criminal is prohibited by the Eighth Amendment of the United States constitution which bars cruel and unusual punishment.<sup>2</sup> The court did not provide guidance as to how the term mentally retarded should be defined and left it up to the individual states to establish their own methods of determining whether an offender is mentally retarded.

In 2003, the Criminal Procedure Rules Committee of the Florida Bar proposed a new rule of criminal procedure to the Florida Supreme Court to implement section 921.137, F.S. The Criminal Court Steering Committee submitted proposed alternative rules. These proposed rules differed from the statute adopted by the legislature in two primary respects. First, the statute requires that the court find by *clear and convincing evidence* that the defendant has mental retardation. The proposed rule did not reference the necessary burden of proof. Second, the statute required that the hearing on whether a defendant was mentally retarded take place after the defendant is found guilty and the jury has recommended a sentence of death. The proposed rule required that the hearing be conducted before the trial commenced.

Several members of the House of Representatives [Representatives Kottkamp, Barreiro, and Kyle] filed comments in the case in opposition to the conflicting parts of the proposed rule and asserted that the legislature and not the court has the authority to set policy. The Attorney General's office filed comments that objected to aspects of the proposed rule and specifically objected on several grounds to the rule's requirement that the hearing be held pre-trial. The brief stated that "[t]here is neither authority

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<sup>1</sup>The section defines the term "mental retardation" to mean significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Department of Children and Family Services. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community.

<sup>2</sup> Atkins v. Virginia, 122 S.Ct. 2242 (2002)

nor justification for the Court to substitute its judgment for the clearly-expressed intent of the legislature regarding this substantive right.”<sup>3</sup>

In May of 2004, the Florida Supreme Court adopted the Rule of Criminal Procedure 3.203 which contained the provisions which are in conflict with the statute passed by the legislature.<sup>4</sup> The opinion acknowledged that under the Atkins decision “individual states are free to establish their own methods for determining which offenders are mentally retarded”.<sup>5</sup> The majority opinion of the court did not suggest that the statute was constitutionally inform or give any reasons for adopting a rule which is in conflict with the statute. A concurring opinion indicated that the provision “allowing the determination to be made before trial promotes the most efficient use of increasingly scarce judicial and legal resources.”

The Florida Constitution provides that “[t]he supreme court shall adopt rules for the practice and procedure in all courts”. Art. V. Section 2(a), Fla. Const. According to the constitution, a rule of court “may be repealed by general law enacted by two-thirds vote of the membership of each house of the legislature.”

This bill repeals Rule of Criminal Procedure 3.203.<sup>6</sup>

C. SECTION DIRECTORY:

Section 1. Repeals Rule of Criminal Procedure 3.203.

Section 2. Provides effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

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<sup>3</sup> See comments filed on August 10, 2004.

<sup>4</sup> Amendments to Florida Rules of Criminal Procedure and Florida Rules of Appellate Procedure, 875 So.2d 563 (Fla. 2004).

<sup>5</sup> Id. at 565.

<sup>6</sup> The bill contains the following “whereas” clauses:

WHEREAS, in 2001 section 921.137, Florida Statutes, was created to establish the public policy for the State of Florida exempting mentally retarded persons convicted of capital crimes from the death penalty, and

WHEREAS, section 921.137, Florida Statutes, is a current and validly enacted law, and

WHEREAS, it is the public policy of this state that all persons charged by indictment of a capital crime shall be tried before a death-qualified jury, and that hearings for the determination of mental retardation shall be conducted as prescribed in section 921.137, Florida Statutes, and

WHEREAS, the Florida Supreme Court in Amendments to the Florida Rules of Criminal Procedure and Rules of Appellate Procedure, 875 So.2d 563 (Fla. 2004) adopted Rule 3.203, which contradicts and conflicts with the express provisions of section 921.137, Florida Statutes, and

WHEREAS, the United States Supreme Court said in Atkins v. Virginia, 536 U.S. 304 (2002), that it “. . . found no reason to disagree with the judgment of the legislatures which have recently addressed the matter and concluded that death is not a suitable punishment for a mentally retarded criminal,” and

WHEREAS, all nine justices of the United States Supreme Court in Atkins agreed that the “clearest and most reliable objective evidence of contemporary values is the legislation enacted by this country’s legislatures,”

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

This bill does not appear to have any fiscal impact on the state or local government or the private sector.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES