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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/13/2010	.	
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	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1481 - 1566
and insert:

Section 38. Section 921.137, Florida Statutes, is amended to read:

921.137 Imposition of the death sentence upon an intellectually disabled a defendant ~~with mental retardation~~ prohibited.-

(1) As used in this section, the term "intellectually disabled" or "intellectual disability" ~~"mental retardation"~~ means significantly subaverage general intellectual functioning



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13 existing concurrently with deficits in adaptive behavior and
14 manifested during the period from conception to age 18. The term
15 "significantly subaverage general intellectual functioning," for
16 the purpose of this section, means performance that is two or
17 more standard deviations from the mean score on a standardized
18 intelligence test specified in the rules of the Agency for
19 Persons with Disabilities. The term "adaptive behavior," for the
20 purpose of this definition, means the effectiveness or degree
21 with which an individual meets the standards of personal
22 independence and social responsibility expected of his or her
23 age, cultural group, and community. The Agency for Persons with
24 Disabilities shall adopt rules to specify the standardized
25 intelligence tests as provided in this subsection.

26 (2) A sentence of death may not be imposed upon a defendant
27 convicted of a capital felony if it is determined in accordance
28 with this section that the defendant is intellectually disabled
29 ~~has mental retardation~~.

30 (3) A defendant charged with a capital felony who intends
31 to raise intellectual disability ~~mental retardation~~ as a bar to
32 the death sentence must give notice of such intention in
33 accordance with the rules of court governing notices of intent
34 to offer expert testimony regarding mental health mitigation
35 during the penalty phase of a capital trial.

36 (4) After a defendant who has given notice of his or her
37 intention to raise intellectual disability ~~mental retardation~~ as
38 a bar to the death sentence is convicted of a capital felony and
39 an advisory jury has returned a recommended sentence of death,
40 the defendant may file a motion to determine whether the
41 defendant is intellectually disabled ~~has mental retardation~~.



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42 Upon receipt of the motion, the court shall appoint two experts
43 in the field of intellectual disabilities ~~mental retardation~~ who
44 shall evaluate the defendant and report their findings to the
45 court and all interested parties prior to the final sentencing
46 hearing. Notwithstanding s. 921.141 or s. 921.142, the final
47 sentencing hearing shall be held without a jury. At the final
48 sentencing hearing, the court shall consider the findings of the
49 court-appointed experts and consider the findings of any other
50 expert which is offered by the state or the defense on the issue
51 of whether the defendant has an intellectual disability ~~mental~~
52 ~~retardation~~. If the court finds, by clear and convincing
53 evidence, that the defendant has an intellectual disability
54 ~~mental retardation~~ as defined in subsection (1), the court may
55 not impose a sentence of death and shall enter a written order
56 that sets forth with specificity the findings in support of the
57 determination.

58 (5) If a defendant waives his or her right to a recommended
59 sentence by an advisory jury following a plea of guilt or nolo
60 contendere to a capital felony and adjudication of guilt by the
61 court, or following a jury finding of guilt of a capital felony,
62 upon acceptance of the waiver by the court, a defendant who has
63 given notice as required in subsection (3) may file a motion for
64 a determination of intellectual disability ~~mental retardation~~.
65 Upon granting the motion, the court shall proceed as provided in
66 subsection (4).

67 (6) If, following a recommendation by an advisory jury that
68 the defendant be sentenced to life imprisonment, the state
69 intends to request the court to order that the defendant be
70 sentenced to death, the state must inform the defendant of such



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71 request if the defendant has notified the court of his or her
72 intent to raise intellectual disability ~~mental retardation~~ as a
73 bar to the death sentence. After receipt of the notice from the
74 state, the defendant may file a motion requesting a
75 determination by the court of whether the defendant is
76 intellectually disabled ~~has mental retardation~~. Upon granting
77 the motion, the court shall proceed as provided in subsection
78 (4).

79 (7) Pursuant to s. 924.07, the state may appeal, ~~pursuant~~
80 ~~to s. 924.07~~, a determination of intellectual disability ~~mental~~
81 ~~retardation~~ made under subsection (4).

82 (8) This section does not apply to a defendant who was
83 sentenced to death before June 12, 2001 ~~prior to the effective~~
84 ~~date of this act~~.

85 (9) For purposes of the application of the criminal laws
86 and procedural rules of this state to any matters relating to
87 the imposition and execution of the death penalty, the terms
88 "intellectual disability" or "intellectually disabled" are
89 interchangeable with and have the same meaning as the terms
90 "mental retardation," or "retardation" and "mentally retarded"
91 as defined prior to July 1, 2010.

92
93
94 ===== T I T L E A M E N D M E N T =====

95 And the title is amended as follows:

96 Between lines 33 and 34
97 insert:

98 clarifying in s. 921.137 that the terms "intellectual
99 disability" or "intellectually disabled" are interchangeable



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100 with and have the same meaning as the terms "mental
101 retardation," or "retardation" and "mentally retarded" as
102 defined prior to the effective date of this act;
103