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LEGISLATIVE ACTION

Senate

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House

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03/02/2016 10:49 AM

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Senator Clemens moved the following:

Senate Amendment (with title amendment)

Delete lines 155 - 389

and insert:

(c) If a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If the jury is not unanimous in determining that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

(3) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.-



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12 (a) If the jury has recommended a sentence of:

13 1. Life imprisonment without the possibility of parole, the
14 court shall impose the recommended sentence.

15 2. Death, the court, after considering each aggravating
16 factor found by the jury and all mitigating circumstances, may
17 impose a sentence of life imprisonment without the possibility
18 of parole or a sentence of death. The court may consider only an
19 aggravating factor that was unanimously found to exist by the
20 jury.

21 (b) If the defendant waived his or her right to a
22 sentencing proceeding by a jury, the court, after considering
23 all aggravating factors and mitigating circumstances, may impose
24 a sentence of life imprisonment without the possibility of
25 parole or a sentence of death. The court may impose a sentence
26 of death only if the court finds that at least one aggravating
27 factor has been proven to exist beyond a reasonable doubt.

28 (4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—In
29 each case in which the court imposes a sentence of death, the
30 court shall, considering the records of the trial and the
31 sentencing proceedings, enter a written order addressing the
32 aggravating factors set forth in subsection (6) found to exist,
33 the mitigating circumstances in subsection (7) reasonably
34 established by the evidence, whether there are sufficient
35 aggravating factors to warrant the death penalty, and whether
36 the aggravating factors outweigh the mitigating circumstances
37 reasonably established by the evidence. If the court does not
38 issue its order requiring the death sentence within 30 days
39 after the rendition of the judgment and sentence, the court
40 shall impose a sentence of life imprisonment without the



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41 possibility of parole in accordance with s. 775.082.

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

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

47 ~~(b) Whether sufficient mitigating circumstances exist which~~
48 ~~outweigh the aggravating circumstances found to exist; and~~

49 ~~(c) Based on these considerations, whether the defendant~~
50 ~~should be sentenced to life imprisonment or death.~~

51 ~~(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—~~

52 ~~Notwithstanding the recommendation of a majority of the jury,~~
53 ~~the court, after weighing the aggravating and mitigating~~
54 ~~circumstances, shall enter a sentence of life imprisonment or~~
55 ~~death, but if the court imposes a sentence of death, it shall~~
56 ~~set forth in writing its findings upon which the sentence of~~
57 ~~death is based as to the facts:~~

58 ~~(a) That sufficient aggravating circumstances exist as~~
59 ~~enumerated in subsection (5), and~~

60 ~~(b) That there are insufficient mitigating circumstances to~~
61 ~~outweigh the aggravating circumstances.~~

62

63 ~~In each case in which the court imposes the death sentence, the~~
64 ~~determination of the court shall be supported by specific~~
65 ~~written findings of fact based upon the circumstances in~~
66 ~~subsections (5) and (6) and upon the records of the trial and~~
67 ~~the sentencing proceedings. If the court does not make the~~
68 ~~findings requiring the death sentence within 30 days after the~~
69 ~~rendition of the judgment and sentence, the court shall impose~~



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70 ~~sentence of life imprisonment in accordance with s. 775.082.~~

71 (5)~~(4)~~ REVIEW OF JUDGMENT AND SENTENCE.—The judgment of
72 conviction and sentence of death shall be subject to automatic
73 review by the Supreme Court of Florida and disposition rendered
74 within 2 years after the filing of a notice of appeal. Such
75 review by the Supreme Court shall have priority over all other
76 cases and shall be heard in accordance with rules adopted
77 ~~promulgated~~ by the Supreme Court.

78 (6)~~(5)~~ AGGRAVATING FACTORS ~~CIRCUMSTANCES~~.—Aggravating
79 factors ~~circumstances~~ shall be limited to the following:

80 (a) The capital felony was committed by a person previously
81 convicted of a felony and under sentence of imprisonment or
82 placed on community control or on felony probation.

83 (b) The defendant was previously convicted of another
84 capital felony or of a felony involving the use or threat of
85 violence to the person.

86 (c) The defendant knowingly created a great risk of death
87 to many persons.

88 (d) The capital felony was committed while the defendant
89 was engaged, or was an accomplice, in the commission of, or an
90 attempt to commit, or flight after committing or attempting to
91 commit, any: robbery; sexual battery; aggravated child abuse;
92 abuse of an elderly person or disabled adult resulting in great
93 bodily harm, permanent disability, or permanent disfigurement;
94 arson; burglary; kidnapping; aircraft piracy; or unlawful
95 throwing, placing, or discharging of a destructive device or
96 bomb.

97 (e) The capital felony was committed for the purpose of
98 avoiding or preventing a lawful arrest or effecting an escape



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99 from custody.

100 (f) The capital felony was committed for pecuniary gain.

101 (g) The capital felony was committed to disrupt or hinder
102 the lawful exercise of any governmental function or the
103 enforcement of laws.

104 (h) The capital felony was especially heinous, atrocious,
105 or cruel.

106 (i) The capital felony was a homicide and was committed in
107 a cold, calculated, and premeditated manner without any pretense
108 of moral or legal justification.

109 (j) The victim of the capital felony was a law enforcement
110 officer engaged in the performance of his or her official
111 duties.

112 (k) The victim of the capital felony was an elected or
113 appointed public official engaged in the performance of his or
114 her official duties if the motive for the capital felony was
115 related, in whole or in part, to the victim's official capacity.

116 (l) The victim of the capital felony was a person less than
117 12 years of age.

118 (m) The victim of the capital felony was particularly
119 vulnerable due to advanced age or disability, or because the
120 defendant stood in a position of familial or custodial authority
121 over the victim.

122 (n) The capital felony was committed by a criminal gang
123 member, as defined in s. 874.03.

124 (o) The capital felony was committed by a person designated
125 as a sexual predator pursuant to s. 775.21 or a person
126 previously designated as a sexual predator who had the sexual
127 predator designation removed.



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128 (p) The capital felony was committed by a person subject to
129 an injunction issued pursuant to s. 741.30 or s. 784.046, or a
130 foreign protection order accorded full faith and credit pursuant
131 to s. 741.315, and was committed against the petitioner who
132 obtained the injunction or protection order or any spouse,
133 child, sibling, or parent of the petitioner.

134 (7)~~(6)~~ MITIGATING CIRCUMSTANCES.—Mitigating circumstances
135 shall be the following:

136 (a) The defendant has no significant history of prior
137 criminal activity.

138 (b) The capital felony was committed while the defendant
139 was under the influence of extreme mental or emotional
140 disturbance.

141 (c) The victim was a participant in the defendant's conduct
142 or consented to the act.

143 (d) The defendant was an accomplice in the capital felony
144 committed by another person and his or her participation was
145 relatively minor.

146 (e) The defendant acted under extreme duress or under the
147 substantial domination of another person.

148 (f) The capacity of the defendant to appreciate the
149 criminality of his or her conduct or to conform his or her
150 conduct to the requirements of law was substantially impaired.

151 (g) The age of the defendant at the time of the crime.

152 (h) The existence of any other factors in the defendant's
153 background that would mitigate against imposition of the death
154 penalty.

155 (8)~~(7)~~ VICTIM IMPACT EVIDENCE.—Once the prosecution has
156 provided evidence of the existence of one or more aggravating



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157 ~~circumstances~~ as described in subsection (6) ~~(5)~~, the
158 prosecution may introduce, and subsequently argue, victim impact
159 evidence to the jury. Such evidence shall be designed to
160 demonstrate the victim's uniqueness as an individual human being
161 and the resultant loss to the community's members by the
162 victim's death. Characterizations and opinions about the crime,
163 the defendant, and the appropriate sentence shall not be
164 permitted as a part of victim impact evidence.

165 (9) ~~(8)~~ APPLICABILITY.—This section does not apply to a
166 person convicted or adjudicated guilty of a capital drug
167 trafficking felony under s. 893.135.

168 Section 4. Section 921.142, Florida Statutes, is amended to
169 read:

170 921.142 Sentence of death or life imprisonment for capital
171 drug trafficking felonies; further proceedings to determine
172 sentence.—

173 (1) FINDINGS.—The Legislature finds that trafficking in
174 cocaine or opiates carries a grave risk of death or danger to
175 the public; that a reckless disregard for human life is implicit
176 in knowingly trafficking in cocaine or opiates; and that persons
177 who traffic in cocaine or opiates may be determined by the trier
178 of fact to have a culpable mental state of reckless indifference
179 or disregard for human life.

180 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon
181 conviction or adjudication of guilt of a defendant of a capital
182 felony under s. 893.135, the court shall conduct a separate
183 sentencing proceeding to determine whether the defendant should
184 be sentenced to death or life imprisonment as authorized by s.
185 775.082. The proceeding shall be conducted by the trial judge



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186 before the trial jury as soon as practicable. If, through
187 impossibility or inability, the trial jury is unable to
188 reconvene for a hearing on the issue of penalty, having
189 determined the guilt of the accused, the trial judge may summon
190 a special juror or jurors as provided in chapter 913 to
191 determine the issue of the imposition of the penalty. If the
192 trial jury has been waived, or if the defendant pleaded guilty,
193 the sentencing proceeding shall be conducted before a jury
194 impaneled for that purpose, unless waived by the defendant. In
195 the proceeding, evidence may be presented as to any matter that
196 the court deems relevant to the nature of the crime and the
197 character of the defendant and shall include matters relating to
198 any of the aggravating factors enumerated in subsection (7) and
199 for which notice has been provided pursuant to s. 782.04(1)(b)
200 or mitigating circumstances enumerated in subsection (8)
201 ~~subsections (6) and (7)~~. Any such evidence that ~~which~~ the court
202 deems to have probative value may be received, regardless of its
203 admissibility under the exclusionary rules of evidence, provided
204 the defendant is accorded a fair opportunity to rebut any
205 hearsay statements. However, this subsection shall not be
206 construed to authorize the introduction of any evidence secured
207 in violation of the Constitution of the United States or the
208 Constitution of the State of Florida. The state and the
209 defendant or the defendant's counsel shall be permitted to
210 present argument for or against sentence of death.

211 (3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—This
212 subsection applies only if the defendant has not waived his or
213 her right to a sentencing proceeding by a jury.

214 (a) After hearing all of the evidence presented regarding



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215 aggravating factors and mitigating circumstances, the jury shall
216 deliberate and determine if the state has proven, beyond a
217 reasonable doubt, the existence of at least one aggravating
218 factor set forth in subsection (7).

219 (b) The jury shall return findings identifying each
220 aggravating factor found to exist. A finding that an aggravating
221 factor exists must be unanimous. If the jury:

222 1. Does not unanimously find at least one aggravating
223 factor, the defendant is ineligible for a sentence of death.

224 2. Unanimously finds at least one aggravating factor, the
225 defendant is eligible for a sentence of death and the jury shall
226 make a recommendation to the court as to whether the defendant
227 shall be sentenced to life imprisonment without the possibility
228 of parole or to death. The recommendation shall be based on a
229 weighing of all of the following:

230 a. Whether sufficient aggravating factors exist.

231 b. Whether aggravating factors exist which outweigh the
232 mitigating circumstances found to exist.

233 c. Based on the considerations in sub-subparagraphs a. and
234 b., whether the defendant should be sentenced to life
235 imprisonment without the possibility of parole or to death.

236 (c) If a unanimous jury determines that the defendant
237 should be sentenced to death, the jury's recommendation to the
238 court shall be a sentence of death. If the jury is not unanimous
239 in determining that the defendant should be sentenced to death,
240 the

241
242 ===== T I T L E A M E N D M E N T =====

243 And the title is amended as follows:



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244 Delete lines 16 - 17
245 and insert:
246 such a recommendation; requiring a unanimous jury to
247 support a