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CS/CS/HB 1297

2023 Legislature

1
 2 An act relating to capital sexual battery; amending s.
 3 794.011, F.S.; providing for death sentences for
 4 certain child sexual offenders; creating s. 921.1425,
 5 F.S.; providing legislative intent concerning capital
 6 punishment for certain child sexual offenders;
 7 providing for separate death penalty proceedings in
 8 such cases; providing for findings and recommended
 9 sentences by a jury; providing for imposition of
 10 sentence of life imprisonment or death; providing
 11 requirements for a court order in support of a death
 12 sentence; providing for automatic review of sentences
 13 of death; specifying aggravating factors and
 14 mitigating circumstances; providing for victim impact
 15 evidence; providing for resentencing if provisions are
 16 found to be unconstitutional; providing applicability;
 17 amending ss. 921.137 and 921.141, F.S.; conforming
 18 provisions to changes made by the act; amending s.
 19 924.07, F.S.; authorizing the state to appeal from a
 20 sentence on the grounds that it resulted from the
 21 failure of the circuit court to comply with specified
 22 sentencing procedure requirements; providing an
 23 effective date.

24
 25 Be It Enacted by the Legislature of the State of Florida:

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Section 1. Paragraph (a) of subsection (2) of section 794.011, Florida Statutes, is amended to read:

794.011 Sexual battery.—

(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.1425. In all capital cases under this section, the procedure set forth in s. 921.1425 shall be followed in order to determine a sentence of death or life imprisonment. If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court within 45 days after arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause ~~921.141~~.

Section 2. Section 921.1425, Florida Statutes, is created to read:

921.1425 Sentence of death or life imprisonment for capital sexual battery; further proceedings to determine sentence.—

(1) INTENT.—

(a) The Legislature finds that a person who commits a

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51 sexual battery upon, or in an attempt to commit sexual battery
52 injures the sexual organs of, a person less than 12 years of age
53 carries a great risk of death and danger to vulnerable members
54 of this state. Such crimes destroy the innocence of a young
55 child and violate all standards of decency held by civilized
56 society. The Legislature further finds that *Buford v. State of*
57 *Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, and
58 that *Kennedy v. Louisiana*, 554 U.S. 407, (2008), was wrongly
59 decided and an egregious infringement of the states' power to
60 punish the most heinous of crimes.

61 (b) It is the intent of the Legislature that the procedure
62 set forth in this section shall be followed, and a prosecutor
63 must file notice, as provided in s. 794.011(2)(a), if he or she
64 intends to seek the death penalty.

65 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon
66 conviction or adjudication of guilt of a defendant of a capital
67 felony under s. 794.011, the court shall conduct a separate
68 sentencing proceeding to determine whether the defendant should
69 be sentenced to death or life imprisonment as authorized by s.
70 775.082. The proceeding shall be conducted by the trial judge
71 before the trial jury as soon as practicable. If, through
72 impossibility or inability, the trial jury is unable to
73 reconvene for a hearing on the issue of penalty, having
74 determined the guilt of the accused, the trial judge may summon
75 a special juror or jurors as provided in chapter 913 to

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76 determine the issue of the imposition of the penalty. If the
 77 trial jury has been waived, or if the defendant pleaded guilty,
 78 the sentencing proceeding shall be conducted before a jury
 79 impaneled for that purpose, unless waived by the defendant. In
 80 the proceeding, evidence may be presented as to any matter that
 81 the court deems relevant to the nature of the crime and the
 82 character of the defendant and shall include matters relating to
 83 any of the aggravating factors enumerated in subsection (7) and
 84 for which notice has been provided pursuant to s. 794.011(2) (a)
 85 or mitigating circumstances enumerated in subsection (8). Any
 86 such evidence that the court deems to have probative value may
 87 be received, regardless of its admissibility under the
 88 exclusionary rules of evidence, provided the defendant is
 89 accorded a fair opportunity to rebut any hearsay statements.
 90 However, this subsection shall not be construed to authorize the
 91 introduction of any evidence secured in violation of the United
 92 States Constitution or the Florida Constitution. The state and
 93 the defendant or the defendant's counsel shall be permitted to
 94 present argument for or against a sentence of death.

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

98 (a) After hearing all of the evidence presented regarding
 99 aggravating factors and mitigating circumstances, the jury shall
 100 deliberate and determine if the state has proven, beyond a

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101 reasonable doubt, the existence of at least two aggravating
102 factors set forth in subsection (7).

103 (b) The jury shall return findings identifying each
104 aggravating factor found to exist. A finding that at least two
105 aggravating factors exist must be unanimous. If the jury:

106 1. Does not unanimously find at least two aggravating
107 factors, the defendant is ineligible for a sentence of death.

108 2. Unanimously finds at least two aggravating factors, the
109 defendant is eligible for a sentence of death and the jury shall
110 make a recommendation to the court as to whether the defendant
111 shall be sentenced to life imprisonment without the possibility
112 of parole or to death. The recommendation shall be based on a
113 weighing of all of the following:

114 a. Whether sufficient aggravating factors exist.

115 b. Whether aggravating factors exist which outweigh the
116 mitigating circumstances found to exist.

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

120 (c) If at least eight jurors determine that the defendant
121 should be sentenced to death, the jury's recommendation to the
122 court shall be a sentence of death. If fewer than eight jurors
123 determine that the defendant should be sentenced to death, the
124 jury's recommendation to the court shall be a sentence of life
125 imprisonment without the possibility of parole.

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126 (4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—
 127 (a) If the jury has recommended a sentence of:
 128 1. Life imprisonment without the possibility of parole,
 129 the court shall impose the recommended sentence of life
 130 imprisonment without the possibility of parole.
 131 2. Death, the court, after considering each aggravating
 132 factor found by the jury and all mitigating circumstances, may
 133 impose a sentence of life imprisonment without the possibility
 134 of parole or a sentence of death. The court may consider only an
 135 aggravating factor that was unanimously found to exist by the
 136 jury. The court may impose a sentence of death only if the jury
 137 unanimously found at least two aggravating factors beyond a
 138 reasonable doubt.
 139 (b) If the defendant waived his or her right to a
 140 sentencing proceeding by a jury, the court, after considering
 141 all aggravating factors and mitigating circumstances, may impose
 142 a sentence of life imprisonment without the possibility of
 143 parole or a sentence of death. The court may impose a sentence
 144 of death only if the court finds that at least two aggravating
 145 factors have been proven to exist beyond a reasonable doubt.
 146 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE
 147 IMPRISONMENT OR DEATH.—In each case in which the court imposes a
 148 sentence of life imprisonment without the possibility of parole
 149 or death, the court shall, considering the records of the trial
 150 and the sentencing proceedings, enter a written order addressing

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151 the aggravating factors set forth in subsection (7) found to
 152 exist, the mitigating circumstances in subsection (8) reasonably
 153 established by the evidence, whether there are sufficient
 154 aggravating factors to warrant the death penalty, and whether
 155 the aggravating factors outweigh the mitigating circumstances
 156 reasonably established by the evidence. The court shall include
 157 in its written order the reasons for not accepting the jury's
 158 recommended sentence, if applicable. If the court does not issue
 159 its order requiring the death sentence within 30 days after the
 160 rendition of the judgment and sentence, the court shall impose a
 161 sentence of life imprisonment without the possibility of parole
 162 in accordance with s. 775.082.

163 (6) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of
 164 conviction and sentence of death shall be subject to automatic
 165 review by the Supreme Court and disposition rendered within 2
 166 years after the filing of a notice of appeal. Such review by the
 167 Supreme Court shall have priority over all other cases and shall
 168 be heard in accordance with rules adopted by the Supreme Court.

169 (7) AGGRAVATING FACTORS.—Aggravating factors shall be
 170 limited to the following:

171 (a) The capital felony was committed by a person
 172 previously convicted of a felony violation of s. 794.011, and
 173 under sentence of imprisonment or placed on community control or
 174 on felony probation.

175 (b) The defendant was previously convicted of another

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176 capital felony or of a felony involving the use or threat of
 177 violence to the person.

178 (c) The capital felony was committed by a person
 179 designated as a sexual predator pursuant to s. 775.21 or a
 180 person previously designated as a sexual predator who had the
 181 sexual predator designation removed.

182 (d) The capital felony was committed by a sexual offender
 183 who is required to register pursuant to s. 943.0435 or a person
 184 previously required to register as a sexual offender who had
 185 such requirement removed.

186 (e) The defendant knowingly created a great risk of death
 187 to one or more persons such that participation in the offense
 188 constituted reckless indifference or disregard for human life.

189 (f) The defendant used a firearm or knowingly directed,
 190 advised, authorized, or assisted another to use a firearm to
 191 threaten, intimidate, assault, or injure a person in committing
 192 the offense or in furtherance of the offense.

193 (g) The capital felony was committed for pecuniary gain.

194 (h) The capital felony was especially heinous, atrocious,
 195 or cruel.

196 (i) The victim of the capital felony was particularly
 197 vulnerable due to age or disability, or because the defendant
 198 stood in a position of familial or custodial authority over the
 199 victim.

200 (j) The capital felony was committed by a person subject

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201 to an injunction issued pursuant to s. 741.30 or s. 784.046, or
 202 a foreign protection order accorded full faith and credit
 203 pursuant to s. 741.315, and was committed against the petitioner
 204 who obtained the injunction or protection order or any spouse,
 205 child, sibling, or parent of the petitioner.

206 (k) The victim of the capital felony sustained serious
 207 bodily injury.

208 (8) MITIGATING CIRCUMSTANCES.—Mitigating circumstances
 209 shall be the following:

210 (a) The defendant has no significant history of prior
 211 criminal activity.

212 (b) The capital felony was committed while the defendant
 213 was under the influence of extreme mental or emotional
 214 disturbance.

215 (c) The defendant was an accomplice in the capital felony
 216 committed by another person and his or her participation was
 217 relatively minor.

218 (d) The defendant acted under extreme duress or under the
 219 substantial domination of another person.

220 (e) The capacity of the defendant to appreciate the
 221 criminality of his or her conduct or to conform his or her
 222 conduct to the requirements of law was substantially impaired.

223 (f) The age of the defendant at the time of the crime.

224 (g) The existence of any other factors in the defendant's
 225 background that would mitigate against imposition of the death

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226 penalty.

227 (9) VICTIM IMPACT EVIDENCE.—Once the prosecution has
228 provided evidence of the existence of two or more aggravating
229 factors as described in subsection (7), the prosecution may
230 introduce, and subsequently argue, victim impact evidence to the
231 jury. Such evidence shall be designed to demonstrate the
232 victim's uniqueness as an individual human being and the
233 physical and psychological harm to the victim. Characterizations
234 and opinions about the crime, the defendant, and the appropriate
235 sentence shall not be permitted as a part of victim impact
236 evidence.

237 (10) CONSTITUTIONALITY.—Notwithstanding s. 775.082(2) or
238 s. 775.15, or any other provision of law, a sentence of death
239 shall be imposed under this section notwithstanding existing
240 case law which holds such a sentence is unconstitutional under
241 the Florida Constitution and the United States Constitution. In
242 any case for which the Florida Supreme Court or the United
243 States Supreme Court reviews a sentence of death imposed
244 pursuant to this section, and in making such a review
245 reconsiders the prior holdings in *Buford v. State* and *Kennedy v.*
246 *Louisiana*, and determines a sentence of death remains
247 unconstitutional, the court having jurisdiction over the person
248 previously sentenced to death shall cause such person to be
249 brought before the court, and the court shall sentence such
250 person to life imprisonment as provided in s. 775.082(1).

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251 (11) APPLICABILITY.—This section applies to any capital
 252 felony under s. 794.011, that is committed on or after October
 253 1, 2023.

254 Section 3. Subsection (4) of section 921.137, Florida
 255 Statutes, is amended to read:

256 921.137 Imposition of the death sentence upon an
 257 intellectually disabled defendant prohibited.—

258 (4) After a defendant who has given notice of his or her
 259 intention to raise intellectual disability as a bar to the death
 260 sentence is convicted of a capital felony and an advisory jury
 261 has returned a recommended sentence of death, the defendant may
 262 file a motion to determine whether the defendant is
 263 intellectually disabled. Upon receipt of the motion, the court
 264 shall appoint two experts in the field of intellectual
 265 disabilities who shall evaluate the defendant and report their
 266 findings to the court and all interested parties prior to the
 267 final sentencing hearing. Notwithstanding s. 921.141, ~~or~~ s.
 268 921.142, or s. 921.1425, the final sentencing hearing shall be
 269 held without a jury. At the final sentencing hearing, the court
 270 shall consider the findings of the court-appointed experts and
 271 consider the findings of any other expert which is offered by
 272 the state or the defense on the issue of whether the defendant
 273 has an intellectual disability. If the court finds, by clear and
 274 convincing evidence, that the defendant has an intellectual
 275 disability as defined in subsection (1), the court may not

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276 impose a sentence of death and shall enter a written order that
 277 sets forth with specificity the findings in support of the
 278 determination.

279 Section 4. Subsection (9) of section 921.141, Florida
 280 Statutes, is amended to read:

281 921.141 Sentence of death or life imprisonment for capital
 282 felonies; further proceedings to determine sentence.—

283 (9) APPLICABILITY.—This section does not apply to a person
 284 convicted or adjudicated guilty of a capital sexual battery
 285 under s. 794.011 or a capital drug trafficking felony under s.
 286 893.135.

287 Section 5. Paragraph (n) is added to subsection (1) of
 288 section 924.07, Florida Statutes, to read:

289 924.07 Appeal by state.—

290 (1) The state may appeal from:

291 (n) The sentence in a case of capital sexual battery on
 292 the ground that it resulted from the circuit court's failure to
 293 comply with sentencing procedures under s. 921.1425, including
 294 by striking a notice of intent to seek the death penalty,
 295 refusing to impanel a capital jury, or otherwise granting relief
 296 that prevents the state from seeking a sentence of death.

297 Section 6. This act shall take effect October 1, 2023.