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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2023	.	
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The Committee on Rules (Martin) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 262 - 294  
and insert:  
provided evidence of the existence of two or more aggravating factors as described in subsection (7), the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence must be designed to demonstrate the victim's uniqueness as an individual human being and the physical and psychological harm to the victim. Characterizations and opinions about the crime, the defendant, and the appropriate sentence may



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12 not be permitted as a part of victim impact evidence.

13 (10) CONSTITUTIONALITY.—Notwithstanding s. 775.082(2), s.  
14 775.15, or any other provision of law, a sentence of death must  
15 be imposed under this section notwithstanding existing case law  
16 that holds such a sentence to be unconstitutional under the  
17 United States Constitution or the State Constitution. In any  
18 case for which the Florida Supreme Court or the United States  
19 Supreme Court reviews a sentence of death imposed pursuant to  
20 this section, and in making such a review reconsiders the prior  
21 holdings in *Buford v. State* and *Kennedy v. Louisiana*, and  
22 determines a sentence of death remains unconstitutional, the  
23 court having jurisdiction over the person previously sentenced  
24 to death must cause such person to be brought before the court,  
25 and the court must sentence such person to life imprisonment  
26 without the possibility of parole as provided in s. 775.082(1).

27 (11) APPLICABILITY.—This section applies to any capital  
28 felony under s. 794.011 that is committed on or after October 1,  
29 2023.

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

32 921.137 Imposition of the death sentence upon an  
33 intellectually disabled defendant prohibited.—

34 (4) After a defendant who has given notice of his or her  
35 intention to raise intellectual disability as a bar to the death  
36 sentence is convicted of a capital felony and an advisory jury  
37 has returned a recommended sentence of death, the defendant may  
38 file a motion to determine whether the defendant is  
39 intellectually disabled. Upon receipt of the motion, the court  
40 shall appoint two experts in the field of intellectual



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41 disabilities who shall evaluate the defendant and report their  
42 findings to the court and all interested parties prior to the  
43 final sentencing hearing. Notwithstanding s. 921.141, ~~or~~ s.  
44 921.142, or s. 921.1425, the final sentencing hearing shall be  
45 held without a jury. At the final sentencing hearing, the court  
46 shall consider the findings of the court-appointed experts and  
47 consider the findings of any other expert which is offered by  
48 the state or the defense on the issue of whether the defendant  
49 has an intellectual disability. If the court finds, by clear and  
50 convincing evidence, that the defendant has an intellectual  
51 disability as defined in subsection (1), the court may not  
52 impose a sentence of death and shall enter a written order that  
53 sets forth with specificity the findings in support of the  
54 determination.

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

57 921.141 Sentence of death or life imprisonment for capital  
58 felonies; further proceedings to determine sentence.—

59 (9) APPLICABILITY.—This section does not apply to a person  
60 convicted or adjudicated guilty of a capital sexual battery  
61 offense under s. 794.011 or a capital drug trafficking felony  
62 under s. 893.135.

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

65 924.07 Appeal by state.—

66 (1) The state may appeal from:

67 (n) The sentence in a case of capital sexual battery on the  
68 ground that it resulted from the circuit court's failure to  
69 comply with sentencing procedures under s. 921.1425, including



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70 by striking a notice of intent to seek the death penalty,  
71 refusing to impanel a capital jury, or otherwise granting relief  
72 that prevents the state from seeking a sentence of death.

73

74 ===== T I T L E A M E N D M E N T =====

75 And the title is amended as follows:

76 Delete lines 44 - 45

77 and insert:

78 amending ss. 921.137 and 921.141, F.S.; conforming  
79 provisions to changes made by the act; amending s.  
80 924.07, F.S.; authorizing the state to appeal from a  
81 sentence on the grounds that it resulted from the  
82 failure of the circuit court to comply with specified  
83 sentencing procedure requirements; providing an  
84 effective date.