

By Senator Martin

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1 A bill to be entitled
2 An act relating to capital sexual battery; amending s.
3 794.011, F.S.; revising how certain capital felonies
4 are punished; requiring that specified procedures be
5 followed to determine a sentence of death or life
6 imprisonment without the possibility of parole in
7 specified capital felony cases; requiring a prosecutor
8 to give certain notice if he or she intends to seek
9 the death penalty; providing notice requirements;
10 creating s. 921.1425, F.S.; providing legislative
11 findings and intent; requiring a court to conduct a
12 separate sentencing proceeding to determine whether a
13 defendant should be sentenced to death or life
14 imprisonment without the possibility of parole upon
15 the defendant's conviction or adjudication of guilt
16 for a capital felony; providing proceeding
17 requirements; authorizing the presentation of certain
18 evidence during such proceedings; requiring a jury to
19 make specified determinations, findings, and
20 recommendations; requiring a recommendation to the
21 court of a sentence of death if at least eight jurors
22 determine that the defendant should be sentenced to
23 death; requiring a recommendation to the court of a
24 sentence of life imprisonment without the possibility
25 of parole if fewer than eight jurors determine that
26 the defendant should be sentenced to death; requiring
27 the court to impose the jury's recommended sentence;
28 requiring a finding of unanimity on at least one
29 aggravating factor beyond a reasonable doubt for a

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30 court to impose a sentence of death; requiring a
31 court, if a defendant waives his or her right to a
32 sentencing proceeding by a jury and the court imposes
33 a sentence of death, to enter a written order
34 addressing specified information; specifying that a
35 judgment of conviction and sentence of death is
36 subject to automatic review by the Florida Supreme
37 Court; specifying aggravating factors; specifying
38 mitigating circumstances; authorizing the prosecution
39 to introduce and argue victim impact evidence to the
40 jury; providing construction; providing applicability;
41 amending s. 921.141, F.S.; conforming a provision to
42 changes made by the act; providing an effective date.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Paragraph (a) of subsection (2) of section
47 794.011, Florida Statutes, is amended, and paragraph (c) of
48 subsection (8) of that section is republished, to read:

49 794.011 Sexual battery.—

50 (2) (a) A person 18 years of age or older who commits sexual
51 battery upon, or in an attempt to commit sexual battery injures
52 the sexual organs of, a person less than 12 years of age commits
53 a capital felony, punishable as provided in ss. 775.082 and
54 921.1425. In all capital felony cases under this section, the
55 procedure set forth in s. 921.1425 must be followed in order to
56 determine a sentence of death or life imprisonment without the
57 possibility of parole. If the prosecutor intends to seek the
58 death penalty, the prosecutor must give notice to the defendant

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59 and file the notice with the court within 45 days after
60 arraignment. The notice must contain a list of the aggravating
61 factors the state intends to prove and has reason to believe it
62 can prove beyond a reasonable doubt. The court may allow the
63 prosecutor to amend the notice upon a showing of good cause ~~ss.~~
64 775.082 and 921.141.

65 (8) Without regard to the willingness or consent of the
66 victim, which is not a defense to prosecution under this
67 subsection, a person who is in a position of familial or
68 custodial authority to a person less than 18 years of age and
69 who:

70 (c) Engages in any act with that person while the person is
71 less than 12 years of age which constitutes sexual battery, or
72 in an attempt to commit sexual battery injures the sexual organs
73 of such person commits a capital or life felony, punishable
74 pursuant to subsection (2).

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

77 921.1425 Sentence of death or life imprisonment for capital
78 sexual battery; further proceedings to determine sentence.-

79 (1) LEGISLATIVE FINDINGS AND INTENT.-

80 (a) The Legislature finds that a person who commits a
81 sexual battery upon, or in an attempt to commit sexual battery
82 injures the sexual organs of, a person less than 12 years of age
83 carries a great risk of death and danger to vulnerable members
84 of this state. Such crimes destroy the innocence of a young
85 child and violate all standards of decency held by civilized
86 society. The Legislature further finds that *Buford v. State of*
87 *Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, and

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88 that *Kennedy v. Louisiana*, 554 U.S. 407, (2008), was wrongly
89 decided, and that such cases are an egregious infringement of
90 the states' power to punish the most heinous of crimes.

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

95 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon
96 conviction or adjudication of guilt of a defendant of a capital
97 felony under s. 794.011, the court must conduct a separate
98 sentencing proceeding to determine whether the defendant should
99 be sentenced to death or life imprisonment as authorized by s.
100 775.082. The proceeding must be conducted by the trial judge
101 before the trial jury as soon as practicable. If, through
102 impossibility or inability, the trial jury is unable to
103 reconvene for a hearing on the issue of penalty, having
104 determined the guilt of the accused, the trial judge may summon
105 a special juror or jurors as provided in chapter 913 to
106 determine the issue of the imposition of the penalty. If the
107 trial jury has been waived, or if the defendant pleads guilty,
108 the sentencing proceeding shall be conducted before a jury
109 impaneled for that purpose, unless waived by the defendant. In
110 the proceeding, evidence may be presented as to any matter that
111 the court deems relevant to the nature of the crime and the
112 character of the defendant and must include matters relating to
113 any of the aggravating factors enumerated in subsection (7) and
114 for which notice has been provided pursuant to s. 794.011(2) (a)
115 or relating to any of the mitigating circumstances enumerated in
116 subsection (8). Any such evidence that the court deems to have

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117 probative value may be received, regardless of its admissibility
118 under the exclusionary rules of evidence, provided the defendant
119 is accorded a fair opportunity to rebut any hearsay statements.
120 However, this subsection may not be construed to authorize the
121 introduction of any evidence secured in violation of the United
122 States Constitution or the State Constitution. The state and the
123 defendant or the defendant's counsel must be permitted to
124 present arguments for or against a sentence of death.

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

128 (a) After hearing all of the evidence presented regarding
129 aggravating factors and mitigating circumstances, the jury must
130 deliberate and determine if the state has proven, beyond a
131 reasonable doubt, the existence of at least one aggravating
132 factor set forth in subsection (7).

133 (b) The jury must return findings identifying each
134 aggravating factor found to exist. A finding that an aggravating
135 factor exists must be unanimous. If the jury:

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

138 2. Unanimously finds at least one aggravating factor, the
139 defendant is eligible for a sentence of death and the jury must
140 make a recommendation to the court as to whether the defendant
141 must be sentenced to life imprisonment without the possibility
142 of parole or to death. The recommendation must be based on a
143 weighing of all of the following:

144 a. Whether sufficient aggravating factors exist.

145 b. Whether aggravating factors exist which outweigh the

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146 mitigating circumstances found to exist.

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

150 (c) If at least eight jurors determine that the defendant
151 should be sentenced to death, the jury's recommendation to the
152 court must be a sentence of death. If fewer than eight jurors
153 determine that the defendant should be sentenced to death, the
154 jury's recommendation to the court must be a sentence of life
155 imprisonment without the possibility of parole.

156 (4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—

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

158 1. Life imprisonment without the possibility of parole, the
159 court must impose the recommended sentence of life imprisonment
160 without the possibility of parole.

161 2. Death, the court must impose the recommended sentence of
162 death. The court may impose a sentence of death only if the jury
163 unanimously found at least one aggravating factor to have been
164 proven beyond a reasonable doubt.

165 (b) If the defendant waives his or her right to a
166 sentencing proceeding by a jury, the court, after considering
167 all aggravating factors and mitigating circumstances, may impose
168 a sentence of life imprisonment without the possibility of
169 parole or a sentence of death. The court may impose a sentence
170 of death only if the court finds that at least one aggravating
171 factor has been proven to exist beyond a reasonable doubt.

172 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—If
173 a defendant waives his or her right to a sentencing proceeding
174 by a jury and the court imposes a sentence of death under

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175 paragraph (4) (b), the court must, considering the records of the
176 trial and the sentencing proceedings, enter a written order
177 addressing the aggravating factors set forth in subsection (7)
178 found to exist, the mitigating circumstances in subsection (8)
179 reasonably established by the evidence, whether there are
180 sufficient aggravating factors to warrant the death penalty, and
181 whether the aggravating factors outweigh the mitigating
182 circumstances reasonably established by the evidence. If the
183 court does not issue its order requiring a sentence of death
184 within 30 days after the rendition of the judgment and sentence,
185 the court must impose a sentence of life imprisonment without
186 the possibility of parole in accordance with s. 775.082.

187 (6) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of
188 conviction and sentence of death shall be subject to automatic
189 review by the Florida Supreme Court and disposition rendered
190 within 2 years after the filing of a notice of appeal. Such
191 review by the Florida Supreme Court must have priority over all
192 other cases and must be heard in accordance with rules adopted
193 by the Florida Supreme Court.

194 (7) AGGRAVATING FACTORS.—Aggravating factors are limited to
195 the following:

196 (a) The capital felony was committed by a person who was
197 previously convicted of a felony violation of s. 794.011, and
198 was under a sentence of imprisonment or was placed on community
199 control or on felony probation.

200 (b) The defendant was previously convicted of another
201 capital felony or of a felony involving the use or threat of
202 violence.

203 (c) The capital felony was committed by a person designated

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204 as a sexual predator pursuant to s. 775.21 or a person
205 previously designated as a sexual predator who had the sexual
206 predator designation removed.

207 (d) The capital felony was committed by a sexual offender
208 who is required to register pursuant to s. 943.0435 or a person
209 previously required to register as a sexual offender who had
210 such requirement removed.

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

214 (f) The defendant used a firearm or knowingly directed,
215 advised, authorized, or assisted another to use a firearm to
216 threaten, intimidate, assault, or injure a person in committing
217 the offense or in furtherance of the offense.

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

219 (h) The capital felony was especially heinous, atrocious,
220 or cruel.

221 (i) The victim of the capital felony was particularly
222 vulnerable due to age or disability, or because the defendant
223 was in a position of familial or custodial authority in relation
224 to the victim.

225 (j) The capital felony was committed by a person subject to
226 an injunction issued pursuant to s. 741.30 or s. 784.046, or a
227 foreign protection order accorded full faith and credit pursuant
228 to s. 741.315, and was committed against the petitioner who
229 obtained the injunction or protection order or any spouse,
230 child, sibling, or parent of the petitioner.

231 (k) The victim of the capital felony sustained serious
232 bodily injury.

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233 (8) MITIGATING CIRCUMSTANCES.—Mitigating circumstances are
234 the following:

235 (a) The defendant has no significant history of prior
236 criminal activity.

237 (b) The capital felony was committed while the defendant
238 was under the influence of extreme mental or emotional
239 disturbance.

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

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

245 (e) The capacity of the defendant to appreciate the
246 criminality of his or her conduct or to conform his or her
247 conduct to the requirements of law was substantially impaired.

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

249 (g) The existence of any other factors in the defendant's
250 background that would mitigate against imposition of the death
251 penalty.

252 (9) VICTIM IMPACT EVIDENCE.—Once the prosecution has
253 provided evidence of the existence of one or more aggravating
254 factors as described in subsection (7), the prosecution may
255 introduce, and subsequently argue, victim impact evidence to the
256 jury. Such evidence must be designed to demonstrate the victim's
257 uniqueness as an individual human being and the physical and
258 psychological harm to the victim. Characterizations and opinions
259 about the crime, the defendant, and the appropriate sentence may
260 not be permitted as a part of victim impact evidence.

261 (10) CONSTITUTIONALITY.—Notwithstanding s. 775.082(2), s.

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262 775.15, or any other provision of law, a sentence of death must
263 be imposed under this section notwithstanding existing case law
264 that holds such a sentence to be unconstitutional under the
265 United States Constitution or the State Constitution. In any
266 case for which the Florida Supreme Court or the United States
267 Supreme Court reviews a sentence of death imposed pursuant to
268 this section, and in making such a review reconsiders the prior
269 holdings in *Buford v. State* and *Kennedy v. Louisiana*, and
270 determines a sentence of death remains unconstitutional, the
271 court having jurisdiction over the person previously sentenced
272 to death must cause such person to be brought before the court,
273 and the court must sentence such person to life imprisonment
274 without the possibility of parole as provided in s. 775.082(1).

275 (11) APPLICABILITY.—This section applies to any capital
276 felony under s. 794.011 that is committed on or after October 1,
277 2023.

278 Section 3. Subsection (9) of section 921.141, Florida
279 Statutes, is amended to read:

280 921.141 Sentence of death or life imprisonment for capital
281 felonies; further proceedings to determine sentence.—

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

286 Section 4. This act shall take effect October 1, 2023.