

By the Committee on Criminal Justice; and Senators Martin and Book

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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 if
28 the recommendation is for a sentence of life
29 imprisonment without the possibility of parole;

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30 authorizing the court to impose a sentence of life
31 imprisonment without the possibility of parole or a
32 sentence of death if the recommended sentence is for
33 death; authorizing the court to impose a sentence of
34 death only if the jury unanimously finds at least two
35 aggravating factors beyond a reasonable doubt;
36 requiring a court to enter a written order addressing
37 specified information; specifying that a judgment of
38 conviction and sentence of death is subject to
39 automatic review by the Florida Supreme Court;
40 specifying aggravating factors; specifying mitigating
41 circumstances; authorizing the prosecution to
42 introduce and argue victim impact evidence to the
43 jury; providing construction; providing applicability;
44 amending s. 921.141, F.S.; conforming a provision to
45 changes made by the act; providing an effective date.
46

47 Be It Enacted by the Legislature of the State of Florida:
48

49 Section 1. Paragraph (a) of subsection (2) of section
50 794.011, Florida Statutes, is amended, and paragraph (c) of
51 subsection (8) of that section is republished, to read:

52 794.011 Sexual battery.—

53 (2) (a) A person 18 years of age or older who commits sexual
54 battery upon, or in an attempt to commit sexual battery injures
55 the sexual organs of, a person less than 12 years of age commits
56 a capital felony, punishable as provided in ss. 775.082 and
57 921.1425. In all capital felony cases under this section, the
58 procedure set forth in s. 921.1425 must be followed in order to

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59 determine a sentence of death or life imprisonment without the
60 possibility of parole. If the prosecutor intends to seek the
61 death penalty, the prosecutor must give notice to the defendant
62 and file the notice with the court within 45 days after
63 arraignment. The notice must contain a list of the aggravating
64 factors the state intends to prove and has reason to believe it
65 can prove beyond a reasonable doubt. The court may allow the
66 prosecutor to amend the notice upon a showing of good cause ~~ss-~~
67 775.082 and 921.141.

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

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

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

80 921.1425 Sentence of death or life imprisonment for capital
81 sexual battery; further proceedings to determine sentence.-

82 (1) LEGISLATIVE FINDINGS AND INTENT.-

83 (a) The Legislature finds that a person who commits a
84 sexual battery upon, or in an attempt to commit sexual battery
85 injures the sexual organs of, a person less than 12 years of age
86 carries a great risk of death and danger to vulnerable members
87 of this state. Such crimes destroy the innocence of a young

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88 child and violate all standards of decency held by civilized
89 society. The Legislature further finds that *Buford v. State of*
90 *Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, and
91 that *Kennedy v. Louisiana*, 554 U.S. 407, (2008), was wrongly
92 decided, and that such cases are an egregious infringement of
93 the states' power to punish the most heinous of crimes.

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

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

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117 for which notice has been provided pursuant to s. 794.011(2)(a)
118 or relating to any of the mitigating circumstances enumerated in
119 subsection (8). Any such evidence that the court deems to have
120 probative value may be received, regardless of its admissibility
121 under the exclusionary rules of evidence, provided the defendant
122 is accorded a fair opportunity to rebut any hearsay statements.
123 However, this subsection may not be construed to authorize the
124 introduction of any evidence secured in violation of the United
125 States Constitution or the State Constitution. The state and the
126 defendant or the defendant's counsel must be permitted to
127 present arguments for or against a sentence of death.

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

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

136 (b) The jury must return findings identifying each
137 aggravating factor found to exist. A finding that two
138 aggravating factors exist must be unanimous. If the jury:

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

141 2. Unanimously finds at least two aggravating factors, the
142 defendant is eligible for a sentence of death and the jury must
143 make a recommendation to the court as to whether the defendant
144 must be sentenced to life imprisonment without the possibility
145 of parole or to death. The recommendation must be based on a

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146 weighing of all of the following:

147 a. Whether sufficient aggravating factors exist.

148 b. Whether aggravating factors exist which outweigh the
149 mitigating circumstances found to exist.

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

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

159 (4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.-

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

161 1. Life imprisonment without the possibility of parole, the
162 court must impose the recommended sentence of life imprisonment
163 without the possibility of parole.

164 2. Death, the court, after considering each aggravating
165 factor found by the jury and all mitigating circumstances, may
166 impose a sentence of life imprisonment without the possibility
167 of parole or a sentence of death. The court may consider only an
168 aggravating factor that was unanimously found to exist by the
169 jury. The court may impose a sentence of death only if the jury
170 unanimously finds at least two aggravating factors beyond a
171 reasonable doubt.

172 (b) If the defendant waives his or her right to a
173 sentencing proceeding by a jury, the court, after considering
174 all aggravating factors and mitigating circumstances, may impose

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175 a sentence of life imprisonment without the possibility of
176 parole or a sentence of death. The court may impose a sentence
177 of death only if the court finds that at least two aggravating
178 factors have been proven to exist beyond a reasonable doubt.

179 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE
180 IMPRISONMENT OR DEATH.—In each case in which the court imposes a
181 sentence of life imprisonment without the possibility of parole
182 or death, the court must, considering the records of the trial
183 and the sentencing proceedings, enter a written order addressing
184 the aggravating factors set forth in subsection (7) found to
185 exist, the mitigating circumstances in subsection (8) reasonably
186 established by the evidence, whether there are sufficient
187 aggravating factors to warrant the death penalty, and whether
188 the aggravating factors outweigh the mitigating circumstances
189 reasonably established by the evidence. The court must include
190 in its written order the reasons for not accepting the jury's
191 recommended sentence, if applicable. If the court does not issue
192 its order requiring a sentence of death within 30 days after the
193 rendition of the judgment and sentence, the court must impose a
194 sentence of life imprisonment without the possibility of parole
195 in accordance with s. 775.082.

196 (6) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of
197 conviction and sentence of death shall be subject to automatic
198 review by the Florida Supreme Court and disposition rendered
199 within 2 years after the filing of a notice of appeal. Such
200 review by the Florida Supreme Court must have priority over all
201 other cases and must be heard in accordance with rules adopted
202 by the Florida Supreme Court.

203 (7) AGGRAVATING FACTORS.—Aggravating factors are limited to

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204 the following:

205 (a) The capital felony was committed by a person who was
206 previously convicted of a felony violation of s. 794.011, and
207 was under a sentence of imprisonment or was placed on community
208 control or on felony probation.

209 (b) The defendant was previously convicted of another
210 capital felony or of a felony involving the use or threat of
211 violence.

212 (c) The capital felony was committed by a person designated
213 as a sexual predator pursuant to s. 775.21 or a person
214 previously designated as a sexual predator who had the sexual
215 predator designation removed.

216 (d) The capital felony was committed by a sexual offender
217 who is required to register pursuant to s. 943.0435 or a person
218 previously required to register as a sexual offender who had
219 such requirement removed.

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

223 (f) The defendant used a firearm or knowingly directed,
224 advised, authorized, or assisted another to use a firearm to
225 threaten, intimidate, assault, or injure a person in committing
226 the offense or in furtherance of the offense.

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

228 (h) The capital felony was especially heinous, atrocious,
229 or cruel.

230 (i) The victim of the capital felony was particularly
231 vulnerable due to age or disability, or because the defendant
232 was in a position of familial or custodial authority in relation

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233 to the victim.

234 (j) The capital felony was committed by a person subject to
235 an injunction issued pursuant to s. 741.30 or s. 784.046, or a
236 foreign protection order accorded full faith and credit pursuant
237 to s. 741.315, and was committed against the petitioner who
238 obtained the injunction or protection order or any spouse,
239 child, sibling, or parent of the petitioner.

240 (k) The victim of the capital felony sustained serious
241 bodily injury.

242 (8) MITIGATING CIRCUMSTANCES.—Mitigating circumstances are
243 the following:

244 (a) The defendant has no significant history of prior
245 criminal activity.

246 (b) The capital felony was committed while the defendant
247 was under the influence of extreme mental or emotional
248 disturbance.

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

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

254 (e) The capacity of the defendant to appreciate the
255 criminality of his or her conduct or to conform his or her
256 conduct to the requirements of law was substantially impaired.

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

258 (g) The existence of any other factors in the defendant's
259 background that would mitigate against imposition of the death
260 penalty.

261 (9) VICTIM IMPACT EVIDENCE.—Once the prosecution has

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262 provided evidence of the existence of one or more aggravating
263 factors as described in subsection (7), the prosecution may
264 introduce, and subsequently argue, victim impact evidence to the
265 jury. Such evidence must be designed to demonstrate the victim's
266 uniqueness as an individual human being and the physical and
267 psychological harm to the victim. Characterizations and opinions
268 about the crime, the defendant, and the appropriate sentence may
269 not be permitted as a part of victim impact evidence.

270 (10) CONSTITUTIONALITY.—Notwithstanding s. 775.082(2), s.
271 775.15, or any other provision of law, a sentence of death must
272 be imposed under this section notwithstanding existing case law
273 that holds such a sentence to be unconstitutional under the
274 United States Constitution or the State Constitution. In any
275 case for which the Florida Supreme Court or the United States
276 Supreme Court reviews a sentence of death imposed pursuant to
277 this section, and in making such a review reconsiders the prior
278 holdings in *Buford v. State* and *Kennedy v. Louisiana*, and
279 determines a sentence of death remains unconstitutional, the
280 court having jurisdiction over the person previously sentenced
281 to death must cause such person to be brought before the court,
282 and the court must sentence such person to life imprisonment
283 without the possibility of parole as provided in s. 775.082(1).

284 (11) APPLICABILITY.—This section applies to any capital
285 felony under s. 794.011 that is committed on or after October 1,
286 2023.

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

289 921.141 Sentence of death or life imprisonment for capital
290 felonies; further proceedings to determine sentence.—

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291 (9) APPLICABILITY.—This section does not apply to a person
292 convicted or adjudicated guilty of a capital sexual battery
293 offense under s. 794.011 or a capital drug trafficking felony
294 under s. 893.135.

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