

By the Committees on Rules; and 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. 924.07, F.S.; authorizing the state to
45 appeal from a sentence on the grounds that it resulted
46 from the failure of the circuit court to comply with
47 specified sentencing procedure requirements; amending
48 ss. 921.137 and 921.141, F.S.; conforming provisions
49 to changes made by the act; providing an effective
50 date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Paragraph (a) of subsection (2) of section
55 794.011, Florida Statutes, is amended, and paragraph (c) of
56 subsection (8) of that section is republished, to read:

57 794.011 Sexual battery.—

58 (2) (a) A person 18 years of age or older who commits sexual

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59 battery upon, or in an attempt to commit sexual battery injures
60 the sexual organs of, a person less than 12 years of age commits
61 a capital felony, punishable as provided in ss. 775.082 and
62 921.1425. In all capital felony cases under this section, the
63 procedure set forth in s. 921.1425 must be followed in order to
64 determine a sentence of death or life imprisonment without the
65 possibility of parole. If the prosecutor intends to seek the
66 death penalty, the prosecutor must give notice to the defendant
67 and file the notice with the court within 45 days after
68 arraignment. The notice must contain a list of the aggravating
69 factors the state intends to prove and has reason to believe it
70 can prove beyond a reasonable doubt. The court may allow the
71 prosecutor to amend the notice upon a showing of good cause ~~ss.~~
72 ~~775.082 and 921.141.~~

73 (8) Without regard to the willingness or consent of the
74 victim, which is not a defense to prosecution under this
75 subsection, a person who is in a position of familial or
76 custodial authority to a person less than 18 years of age and
77 who:

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

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

85 921.1425 Sentence of death or life imprisonment for capital
86 sexual battery; further proceedings to determine sentence.-

87 (1) LEGISLATIVE FINDINGS AND INTENT.-

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88 (a) The Legislature finds that a person who commits a
89 sexual battery upon, or in an attempt to commit sexual battery
90 injures the sexual organs of, a person less than 12 years of age
91 carries a great risk of death and danger to vulnerable members
92 of this state. Such crimes destroy the innocence of a young
93 child and violate all standards of decency held by civilized
94 society. The Legislature further finds that *Buford v. State of*
95 *Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, and
96 that *Kennedy v. Louisiana*, 554 U.S. 407, (2008), was wrongly
97 decided, and that such cases are an egregious infringement of
98 the states' power to punish the most heinous of crimes.

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

103 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon
104 conviction or adjudication of guilt of a defendant of a capital
105 felony under s. 794.011, the court must conduct a separate
106 sentencing proceeding to determine whether the defendant should
107 be sentenced to death or life imprisonment as authorized by s.
108 775.082. The proceeding must be conducted by the trial judge
109 before the trial jury as soon as practicable. If, through
110 impossibility or inability, the trial jury is unable to
111 reconvene for a hearing on the issue of penalty, having
112 determined the guilt of the accused, the trial judge may summon
113 a special juror or jurors as provided in chapter 913 to
114 determine the issue of the imposition of the penalty. If the
115 trial jury has been waived, or if the defendant pleads guilty,
116 the sentencing proceeding shall be conducted before a jury

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117 impaneled for that purpose, unless waived by the defendant. In
118 the proceeding, evidence may be presented as to any matter that
119 the court deems relevant to the nature of the crime and the
120 character of the defendant and must include matters relating to
121 any of the aggravating factors enumerated in subsection (7) and
122 for which notice has been provided pursuant to s. 794.011(2)(a)
123 or relating to any of the mitigating circumstances enumerated in
124 subsection (8). Any such evidence that the court deems to have
125 probative value may be received, regardless of its admissibility
126 under the exclusionary rules of evidence, provided the defendant
127 is accorded a fair opportunity to rebut any hearsay statements.
128 However, this subsection may not be construed to authorize the
129 introduction of any evidence secured in violation of the United
130 States Constitution or the State Constitution. The state and the
131 defendant or the defendant's counsel must be permitted to
132 present arguments for or against a sentence of death.

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

136 (a) After hearing all of the evidence presented regarding
137 aggravating factors and mitigating circumstances, the jury must
138 deliberate and determine if the state has proven, beyond a
139 reasonable doubt, the existence of at least two aggravating
140 factors set forth in subsection (7).

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

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

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146 2. Unanimously finds at least two aggravating factors, the
147 defendant is eligible for a sentence of death and the jury must
148 make a recommendation to the court as to whether the defendant
149 must be sentenced to life imprisonment without the possibility
150 of parole or to death. The recommendation must be based on a
151 weighing of all of the following:

152 a. Whether sufficient aggravating factors exist.

153 b. Whether aggravating factors exist which outweigh the
154 mitigating circumstances found to exist.

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

158 (c) If at least eight jurors determine that the defendant
159 should be sentenced to death, the jury's recommendation to the
160 court must be a sentence of death. If fewer than eight jurors
161 determine that the defendant should be sentenced to death, the
162 jury's recommendation to the court must be a sentence of life
163 imprisonment without the possibility of parole.

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

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

166 1. Life imprisonment without the possibility of parole, the
167 court must impose the recommended sentence of life imprisonment
168 without the possibility of parole.

169 2. Death, the court, after considering each aggravating
170 factor found by the jury and all mitigating circumstances, may
171 impose a sentence of life imprisonment without the possibility
172 of parole or a sentence of death. The court may consider only an
173 aggravating factor that was unanimously found to exist by the
174 jury. The court may impose a sentence of death only if the jury

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175 unanimously finds at least two aggravating factors beyond a
176 reasonable doubt.

177 (b) If the defendant waives his or her right to a
178 sentencing proceeding by a jury, the court, after considering
179 all aggravating factors and mitigating circumstances, may impose
180 a sentence of life imprisonment without the possibility of
181 parole or a sentence of death. The court may impose a sentence
182 of death only if the court finds that at least two aggravating
183 factors have been proven to exist beyond a reasonable doubt.

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

201 (6) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of
202 conviction and sentence of death shall be subject to automatic
203 review by the Florida Supreme Court and disposition rendered

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204 within 2 years after the filing of a notice of appeal. Such
205 review by the Florida Supreme Court must have priority over all
206 other cases and must be heard in accordance with rules adopted
207 by the Florida Supreme Court.

208 (7) AGGRAVATING FACTORS.—Aggravating factors are limited to
209 the following:

210 (a) The capital felony was committed by a person who was
211 previously convicted of a felony violation of s. 794.011, and
212 was under a sentence of imprisonment or was placed on community
213 control or on felony probation.

214 (b) The defendant was previously convicted of another
215 capital felony or of a felony involving the use or threat of
216 violence.

217 (c) The capital felony was committed by a person designated
218 as a sexual predator pursuant to s. 775.21 or a person
219 previously designated as a sexual predator who had the sexual
220 predator designation removed.

221 (d) The capital felony was committed by a sexual offender
222 who is required to register pursuant to s. 943.0435 or a person
223 previously required to register as a sexual offender who had
224 such requirement removed.

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

228 (f) The defendant used a firearm or knowingly directed,
229 advised, authorized, or assisted another to use a firearm to
230 threaten, intimidate, assault, or injure a person in committing
231 the offense or in furtherance of the offense.

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

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233 (h) The capital felony was especially heinous, atrocious,
234 or cruel.

235 (i) The victim of the capital felony was particularly
236 vulnerable due to age or disability, or because the defendant
237 was in a position of familial or custodial authority in relation
238 to the victim.

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

245 (k) The victim of the capital felony sustained serious
246 bodily injury.

247 (8) MITIGATING CIRCUMSTANCES.—Mitigating circumstances are
248 the following:

249 (a) The defendant has no significant history of prior
250 criminal activity.

251 (b) The capital felony was committed while the defendant
252 was under the influence of extreme mental or emotional
253 disturbance.

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

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

259 (e) The capacity of the defendant to appreciate the
260 criminality of his or her conduct or to conform his or her
261 conduct to the requirements of law was substantially impaired.

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

263 (g) The existence of any other factors in the defendant's
264 background that would mitigate against imposition of the death
265 penalty.

266 (9) VICTIM IMPACT EVIDENCE.—Once the prosecution has
267 provided evidence of the existence of two or more aggravating
268 factors as described in subsection (7), the prosecution may
269 introduce, and subsequently argue, victim impact evidence to the
270 jury. Such evidence must be designed to demonstrate the victim's
271 uniqueness as an individual human being and the physical and
272 psychological harm to the victim. Characterizations and opinions
273 about the crime, the defendant, and the appropriate sentence may
274 not be permitted as a part of victim impact evidence.

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

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

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292 Section 3. Paragraph (n) is added to subsection (1) of
293 section 924.07, Florida Statutes, to read:

294 924.07 Appeal by state.—

295 (1) The state may appeal from:

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

302 Section 4. Subsection (4) of section 921.137, Florida
303 Statutes, is amended to read:

304 921.137 Imposition of the death sentence upon an
305 intellectually disabled defendant prohibited.—

306 (4) After a defendant who has given notice of his or her
307 intention to raise intellectual disability as a bar to the death
308 sentence is convicted of a capital felony and an advisory jury
309 has returned a recommended sentence of death, the defendant may
310 file a motion to determine whether the defendant is
311 intellectually disabled. Upon receipt of the motion, the court
312 shall appoint two experts in the field of intellectual
313 disabilities who shall evaluate the defendant and report their
314 findings to the court and all interested parties prior to the
315 final sentencing hearing. Notwithstanding s. 921.141, ~~or~~ s.
316 921.142, or s. 921.1425, the final sentencing hearing shall be
317 held without a jury. At the final sentencing hearing, the court
318 shall consider the findings of the court-appointed experts and
319 consider the findings of any other expert which is offered by

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320 the state or the defense on the issue of whether the defendant
321 has an intellectual disability. If the court finds, by clear and
322 convincing evidence, that the defendant has an intellectual
323 disability as defined in subsection (1), the court may not
324 impose a sentence of death and shall enter a written order that
325 sets forth with specificity the findings in support of the
326 determination.

327 Section 5. Subsection (9) of section 921.141, Florida
328 Statutes, is amended to read:

329 921.141 Sentence of death or life imprisonment for capital
330 felonies; further proceedings to determine sentence.—

331 (9) APPLICABILITY.—This section does not apply to a person
332 convicted or adjudicated guilty of a capital sexual battery
333 offense under s. 794.011 or a capital drug trafficking felony
334 under s. 893.135.

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