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LEGISLATIVE ACTION

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| Senate     | . | House |
| Comm: RCS  | . |       |
| 03/06/2023 | . |       |
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The Committee on Criminal Justice (Ingoglia) recommended the following:

1           **Senate Amendment to Amendment (613564) (with title**  
2 **amendment)**

3  
4           Delete lines 45 - 145  
5 and insert:

6           2. Death, and if at least ten jurors recommend a sentence  
7 of death, the court must impose the recommended sentence of  
8 death. The court may impose a sentence of death only if the jury  
9 unanimously finds at least one aggravating factor beyond a  
10 reasonable doubt.



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11           3. Death, and either eight or nine jurors recommend a  
12 sentence of death, the court, after considering each aggravating  
13 factor found by the jury and all mitigating circumstances, may  
14 impose a sentence of life imprisonment without the possibility  
15 of parole or a sentence of death. The court may consider only an  
16 aggravating factor that was unanimously found to exist by the  
17 jury. The court may impose a sentence of death only if the jury  
18 unanimously finds at least one aggravating factor beyond a  
19 reasonable doubt.

20           (b) If the defendant waived his or her right to a  
21 sentencing proceeding by a jury, the court, after considering  
22 all aggravating factors and mitigating circumstances, may impose  
23 a sentence of life imprisonment without the possibility of  
24 parole or a sentence of death. The court may impose a sentence  
25 of death only if the court finds that at least one aggravating  
26 factor has been proven to exist beyond a reasonable doubt.

27           (4) ORDER OF THE COURT IN SUPPORT OF LIFE  
28 IMPRISONMENT OR DEATH.— In each case in which the court imposes  
29 a sentence of life imprisonment without the possibility of  
30 parole or death, the court shall, considering the records of the  
31 trial and the sentencing proceedings, enter a written order  
32 addressing the aggravating factors set forth in subsection (6)  
33 found to exist, the mitigating circumstances in subsection (7)  
34 reasonably established by the evidence, whether there are  
35 sufficient aggravating factors to warrant the death penalty, and  
36 whether the aggravating factors outweigh the mitigating  
37 circumstances reasonably established by the evidence. The court  
38 must include in its written order the reasons for not accepting  
39 the jury's recommended sentence, if applicable. If the court



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40 does not issue its order requiring the death sentence within 30  
41 days after the rendition of the judgment and sentence, the court  
42 shall impose a sentence of life imprisonment without the  
43 possibility of parole in accordance with s. 775.082.

44 Section 2. Subsections (3), (4), and (5) of section  
45 921.142, Florida Statutes, are amended to read:

46 921.142 Sentence of death or life imprisonment for capital  
47 drug trafficking felonies; further proceedings to determine  
48 sentence.—

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

52 (a) After hearing all of the evidence presented regarding  
53 aggravating factors and mitigating circumstances, the jury shall  
54 deliberate and determine if the state has proven, beyond a  
55 reasonable doubt, the existence of at least one aggravating  
56 factor set forth in subsection (7).

57 (b) The jury shall return findings identifying each  
58 aggravating factor found to exist. A finding that an aggravating  
59 factor exists must be unanimous. If the jury:

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

62 2. Unanimously finds at least one aggravating factor, the  
63 defendant is eligible for a sentence of death and the jury shall  
64 make a recommendation to the court as to whether the defendant  
65 shall be sentenced to life imprisonment without the possibility  
66 of parole or to death. The recommendation shall be based on a  
67 weighing of all of the following:

68 a. Whether sufficient aggravating factors exist.



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69           b. Whether aggravating factors exist which outweigh the  
70 mitigating circumstances found to exist.

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

74           (c) If at least eight jurors determine ~~a unanimous jury~~  
75 ~~determines~~ that the defendant should be sentenced to death, the  
76 jury's recommendation to the court must ~~shall~~ be a sentence of  
77 death. If fewer than eight jurors ~~a unanimous jury does not~~  
78 determine that the defendant should be sentenced to death, the  
79 jury's recommendation to the court must ~~shall~~ be a sentence of  
80 life imprisonment without the possibility of parole.

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

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

83           1. Life imprisonment without the possibility of parole, the  
84 court shall impose the recommended sentence of life.

85           2. Death, and if at least ten jurors recommend a sentence  
86 of death, the court must impose the recommended sentence of  
87 death. The court may impose a sentence of death only if the jury  
88 unanimously finds at least one aggravating factor beyond a  
89 reasonable doubt.

90           3. Death, and either eight or nine jurors recommend a  
91 sentence of death, the court, after considering each aggravating  
92 factor found by the jury and all mitigating circumstances, may  
93 impose a sentence of life imprisonment without the possibility  
94 of parole or a sentence of death. The court may consider only an  
95 aggravating factor that was unanimously found to exist by the  
96 jury. The court may impose a sentence of death only if the jury  
97 unanimously finds at least one aggravating factor beyond a



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98 reasonable doubt.

99 (b) If the defendant waived his or her right to a  
100 sentencing proceeding by a jury, the court, after considering  
101 all aggravating factors and mitigating circumstances, may impose  
102 a sentence of life imprisonment without the possibility of  
103 parole or a sentence of death. The court may impose a sentence  
104 of death only if the court finds at least one aggravating factor  
105 has been proven to exist beyond a reasonable doubt.

106 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE  
107 IMPRISONMENT OR DEATH.—In each case in which the court imposes a  
108 sentence of life imprisonment without the possibility of parole  
109 or death—sentence, the court shall, considering the records of  
110 the trial and the sentencing proceedings, enter a written order  
111 addressing the aggravating factors set forth in subsection (7)  
112 found to exist, the mitigating circumstances in subsection (8)  
113 reasonably established by the evidence, whether there are  
114 sufficient aggravating factors to warrant the death penalty, and  
115 whether the aggravating factors outweigh the mitigating  
116 circumstances reasonably established by the evidence. The court  
117 must include in its written order the reasons for not accepting  
118 the jury's recommended sentence, if applicable. If the court  
119 does not

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

122 And the title is amended as follows:

123 Delete lines 167 - 168

124 and insert:

125 recommended sentence of death if a certain number of  
126 jurors recommend a sentence of death; permitting the



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127 court to impose a sentence of life imprisonment  
128 without the possibility of parole or a sentence of  
129 death if a certain number of jurors recommend a  
130 sentence of death; requiring the court to enter a  
131 written order with findings upon imposition of  
132 sentence; specifying that the