

By Senator Ingoglia

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1 A bill to be entitled
2 An act relating to jury recommendations in death
3 penalty cases; amending ss. 921.141 and 921.142, F.S.;
4 providing for jury recommendations concerning death
5 sentences, rather than jury determinations of
6 sentences; specifying that a jury recommends a death
7 sentence if at least eight jurors recommend a death
8 sentence; specifying that a jury recommends a sentence
9 of life imprisonment without the possibility of parole
10 if fewer than eight jurors recommend a death sentence;
11 requiring the sentencing court to set forth in writing
12 specified findings if it imposes a death sentence;
13 providing an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Subsections (1), (2), and (3) of section
18 921.141, Florida Statutes, are amended to read:

19 921.141 Sentence of death or life imprisonment for capital
20 felonies; further proceedings to determine sentence.—

21 (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon
22 conviction or adjudication of guilt of a defendant of a capital
23 felony, the court shall conduct a separate sentencing proceeding
24 to determine whether the defendant should be sentenced to death
25 or life imprisonment as authorized by s. 775.082. The proceeding
26 shall be conducted by the trial judge before the trial jury as
27 soon as practicable, if the defendant has not waived his or her
28 right to a sentencing recommendation by a jury. If, through
29 impossibility or inability, the trial jury is unable to

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30 reconvene for a hearing on the issue of penalty, having
31 determined the guilt of the accused, the trial judge may summon
32 a special juror or jurors as provided in chapter 913 to make a
33 recommendation as to ~~determine the issue of~~ the imposition of
34 the penalty. If the trial jury has been waived, or if the
35 defendant pleaded guilty, the sentencing proceeding shall be
36 conducted before a jury impaneled for that purpose, unless
37 waived by the defendant. In the proceeding, evidence may be
38 presented as to any matter that the court deems relevant to the
39 nature of the crime and the character of the defendant and shall
40 include matters relating to any of the aggravating factors
41 enumerated in subsection (6) and for which notice has been
42 provided pursuant to s. 782.04(1)(b) or mitigating circumstances
43 enumerated in subsection (7). Any such evidence that the court
44 deems to have probative value may be received, regardless of its
45 admissibility under the exclusionary rules of evidence, provided
46 the defendant is accorded a fair opportunity to rebut any
47 hearsay statements. However, this subsection shall not be
48 construed to authorize the introduction of any evidence secured
49 in violation of the Constitution of the United States or the
50 Constitution of the State of Florida. The state and the
51 defendant or the defendant's counsel shall be permitted to
52 present argument for or against sentence of death.

53 (2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—

54 (a) This subsection applies only if the defendant has not
55 waived his or her right to a sentencing recommendation
56 ~~proceeding~~ by a jury.

57 (b) After hearing all the evidence, the jury shall
58 deliberate and render an advisory sentence to the court, based

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59 upon the following matters:

60 1. Whether sufficient aggravating factors exist as
61 enumerated in subsection (6). A finding that an aggravating
62 factor exists must be unanimous.

63 2. Whether sufficient mitigating circumstances exist which
64 outweigh the aggravating factors found to exist.

65 3. Based on these considerations, whether the defendant
66 should be sentenced to life imprisonment or death.

67 (c) If at least eight jurors determine that the defendant
68 should be sentenced to death, the jury's recommendation to the
69 court shall be a sentence of death. If fewer than eight jurors
70 determine that the defendant should be sentenced to death, the
71 jury's recommendation to the court shall be a sentence of life
72 imprisonment without the possibility of parole.

73 (3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—

74 Notwithstanding the recommendation of the jury, the court, after
75 weighing the aggravating and mitigating circumstances, shall
76 enter a sentence of life imprisonment or death, but if the court
77 imposes a sentence of death, it shall set forth in writing its
78 findings upon which the sentence of death is based as to the
79 facts:

80 (a) That sufficient aggravating factors exist as enumerated
81 in subsection (6).

82 (b) That there are insufficient mitigating circumstances to
83 outweigh the aggravating factors.

84 ~~(a) After hearing all of the evidence presented regarding~~
85 ~~aggravating factors and mitigating circumstances, the jury shall~~
86 ~~deliberate and determine if the state has proven, beyond a~~
87 ~~reasonable doubt, the existence of at least one aggravating~~

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88 ~~factor set forth in subsection (6).~~

89 ~~(b) The jury shall return findings identifying each~~
90 ~~aggravating factor found to exist. A finding that an aggravating~~
91 ~~factor exists must be unanimous. If the jury:~~

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

94 ~~2. Unanimously finds at least one aggravating factor, the~~
95 ~~defendant is eligible for a sentence of death and the jury shall~~
96 ~~make a recommendation to the court as to whether the defendant~~
97 ~~shall be sentenced to life imprisonment without the possibility~~
98 ~~of parole or to death. The recommendation shall be based on a~~
99 ~~weighing of all of the following:~~

100 ~~a. Whether sufficient aggravating factors exist.~~

101 ~~b. Whether aggravating factors exist which outweigh the~~
102 ~~mitigating circumstances found to exist.~~

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

106 ~~(c) If a unanimous jury determines that the defendant~~
107 ~~should be sentenced to death, the jury's recommendation to the~~
108 ~~court shall be a sentence of death. If a unanimous jury does not~~
109 ~~determine that the defendant should be sentenced to death, the~~
110 ~~jury's recommendation to the court shall be a sentence of life~~
111 ~~imprisonment without the possibility of parole.~~

112 ~~(3) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—~~

113 ~~(a) If the jury has recommended a sentence of:~~

114 ~~1. Life imprisonment without the possibility of parole, the~~
115 ~~court shall impose the recommended sentence.~~

116 ~~2. Death, the court, after considering each aggravating~~

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117 ~~factor found by the jury and all mitigating circumstances, may~~
118 ~~impose a sentence of life imprisonment without the possibility~~
119 ~~of parole or a sentence of death. The court may consider only an~~
120 ~~aggravating factor that was unanimously found to exist by the~~
121 ~~jury.~~

122 ~~(b) If the defendant waived his or her right to a~~
123 ~~sentencing proceeding by a jury, the court, after considering~~
124 ~~all aggravating factors and mitigating circumstances, may impose~~
125 ~~a sentence of life imprisonment without the possibility of~~
126 ~~parole or a sentence of death. The court may impose a sentence~~
127 ~~of death only if the court finds that at least one aggravating~~
128 ~~factor has been proven to exist beyond a reasonable doubt.~~

129 Section 2. Subsections (2), (3), and (4) of section
130 921.142, Florida Statutes, are amended to read:

131 921.142 Sentence of death or life imprisonment for capital
132 drug trafficking felonies; further proceedings to determine
133 sentence.—

134 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon
135 conviction or adjudication of guilt of a defendant of a capital
136 felony under s. 893.135, the court shall conduct a separate
137 sentencing proceeding to determine whether the defendant should
138 be sentenced to death or life imprisonment as authorized by s.
139 775.082. The proceeding shall be conducted by the trial judge
140 before the trial jury as soon as practicable, if the defendant
141 has not waived his or her right to a sentencing recommendation
142 by a jury. If, through impossibility or inability, the trial
143 jury is unable to reconvene for a hearing on the issue of
144 penalty, having determined the guilt of the accused, the trial
145 judge may summon a special juror or jurors as provided in

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146 chapter 913 to make a recommendation as to ~~determine the issue~~
147 ~~of~~ the imposition of the penalty. If the trial jury has been
148 waived, or if the defendant pleaded guilty, the sentencing
149 proceeding shall be conducted before a jury impaneled for that
150 purpose, unless waived by the defendant. In the proceeding,
151 evidence may be presented as to any matter that the court deems
152 relevant to the nature of the crime and the character of the
153 defendant and shall include matters relating to any of the
154 aggravating factors enumerated in subsection (7) and for which
155 notice has been provided pursuant to s. 782.04(1)(b) or
156 mitigating circumstances enumerated in subsection (8). Any such
157 evidence that the court deems to have probative value may be
158 received, regardless of its admissibility under the exclusionary
159 rules of evidence, provided the defendant is accorded a fair
160 opportunity to rebut any hearsay statements. However, this
161 subsection shall not be construed to authorize the introduction
162 of any evidence secured in violation of the Constitution of the
163 United States or the Constitution of the State of Florida. The
164 state and the defendant or the defendant's counsel shall be
165 permitted to present argument for or against sentence of death.

166 (3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY.—

167 (a) This subsection applies only if the defendant has not
168 waived his or her right to a sentencing recommendation
169 ~~proceeding~~ by a jury.

170 (b) After hearing all the evidence, the jury shall
171 deliberate and render an advisory sentence to the court, based
172 upon the following matters:

173 1. Whether sufficient aggravating factors exist as
174 enumerated in subsection (7). A finding that an aggravating

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175 factor exists must be unanimous.

176 2. Whether sufficient mitigating circumstances exist which
177 outweigh the aggravating factors found to exist.

178 3. Based on these considerations, whether the defendant
179 should be sentenced to life imprisonment or death.

180 (c) If at least eight jurors determine that the defendant
181 should be sentenced to death, the jury's recommendation to the
182 court shall be a sentence of death. If fewer than eight jurors
183 determine that the defendant should be sentenced to death, the
184 jury's recommendation to the court shall be a sentence of life
185 imprisonment without the possibility of parole.

186 (4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—
187 Notwithstanding the recommendation of the jury, the court, after
188 weighing the aggravating and mitigating circumstances, shall
189 enter a sentence of life imprisonment or death, but if the court
190 imposes a sentence of death, it shall set forth in writing its
191 findings upon which the sentence of death is based as to the
192 facts:

193 (a) That sufficient aggravating factors exist as enumerated
194 in subsection (7).

195 (b) That there are insufficient mitigating circumstances to
196 outweigh the aggravating factors.

197 ~~(a) After hearing all of the evidence presented regarding~~
198 ~~aggravating factors and mitigating circumstances, the jury shall~~
199 ~~deliberate and determine if the state has proven, beyond a~~
200 ~~reasonable doubt, the existence of at least one aggravating~~
201 ~~factor set forth in subsection (7).~~

202 ~~(b) The jury shall return findings identifying each~~
203 ~~aggravating factor found to exist. A finding that an aggravating~~

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204 ~~factor exists must be unanimous. If the jury:~~

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

207 ~~2. Unanimously finds at least one aggravating factor, the~~
208 ~~defendant is eligible for a sentence of death and the jury shall~~
209 ~~make a recommendation to the court as to whether the defendant~~
210 ~~shall be sentenced to life imprisonment without the possibility~~
211 ~~of parole or to death. The recommendation shall be based on a~~
212 ~~weighing of all of the following:~~

213 ~~a. Whether sufficient aggravating factors exist.~~

214 ~~b. Whether aggravating factors exist which outweigh the~~
215 ~~mitigating circumstances found to exist.~~

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

219 ~~(c) If a unanimous jury determines that the defendant~~
220 ~~should be sentenced to death, the jury's recommendation to the~~
221 ~~court shall be a sentence of death. If a unanimous jury does not~~
222 ~~determine that the defendant should be sentenced to death, the~~
223 ~~jury's recommendation to the court shall be a sentence of life~~
224 ~~imprisonment without the possibility of parole.~~

225 ~~(4) IMPOSITION OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.~~

226 ~~(a) If the jury has recommended a sentence of:~~

227 ~~1. Life imprisonment without the possibility of parole, the~~
228 ~~court shall impose the recommended sentence.~~

229 ~~2. Death, the court, after considering each aggravating~~
230 ~~factor found by the jury and all mitigating circumstances, may~~
231 ~~impose a sentence of life imprisonment without the possibility~~
232 ~~of parole or a sentence of death. The court may consider only an~~

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233 ~~aggravating factor that was unanimously found to exist by the~~
234 ~~jury.~~

235 ~~(b) If the defendant waived his or her right to a~~
236 ~~sentencing proceeding by a jury, the court, after considering~~
237 ~~all aggravating factors and mitigating circumstances, may impose~~
238 ~~a sentence of life imprisonment without the possibility of~~
239 ~~parole or a sentence of death. The court may impose a sentence~~
240 ~~of death only if the court finds at least one aggravating factor~~
241 ~~has been proven to exist beyond a reasonable doubt.~~

242 Section 3. This act shall take effect July 1, 2023.