

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

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1 A bill to be entitled
2 An act relating to the death penalty; amending ss.
3 921.141 and 921.142, F.S.; requiring a determination
4 of a specified number of jurors, rather than jury
5 unanimity, for a sentencing recommendation of death to
6 the court; requiring a determination of a specified
7 number of jurors, rather than jury unanimity, for a
8 sentencing recommendation of life imprisonment without
9 the possibility of parole to the court; requiring the
10 court to impose the recommended sentence of death if a
11 certain number of jurors recommend a sentence of
12 death; authorizing the court to impose a sentence of
13 life imprisonment without the possibility of parole or
14 a sentence of death if a certain number of jurors
15 recommend a sentence of death; requiring the court to
16 include in its written order the reasons for not
17 accepting the jury's recommended sentence, if
18 applicable; specifying that the court may impose a
19 sentence of death only if the jury unanimously finds
20 at least one aggravating factor beyond a reasonable
21 doubt; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. Subsections (2), (3), and (4) of section
26 921.141, Florida Statutes, are amended to read:

27 921.141 Sentence of death or life imprisonment for capital
28 felonies; further proceedings to determine sentence.—

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

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30 subsection applies only if the defendant has not waived his or
31 her right to a sentencing proceeding by a jury.

32 (a) After hearing all of the evidence presented regarding
33 aggravating factors and mitigating circumstances, the jury shall
34 deliberate and determine if the state has proven, beyond a
35 reasonable doubt, the existence of at least one aggravating
36 factor set forth in subsection (6).

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

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

42 2. Unanimously finds at least one aggravating factor, the
43 defendant is eligible for a sentence of death and the jury shall
44 make a recommendation to the court as to whether the defendant
45 shall be sentenced to life imprisonment without the possibility
46 of parole or to death. The recommendation shall be based on a
47 weighing of all of the following:

48 a. Whether sufficient aggravating factors exist.

49 b. Whether aggravating factors exist which outweigh the
50 mitigating circumstances found to exist.

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

54 (c) If at least eight jurors determine ~~a unanimous jury~~
55 ~~determines~~ that the defendant should be sentenced to death, the
56 jury's recommendation to the court must ~~shall~~ be a sentence of
57 death. If fewer than eight jurors ~~a unanimous jury does not~~
58 determine that the defendant should be sentenced to death, the

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59 jury's recommendation to the court ~~must shall~~ be a sentence of
60 life imprisonment without the possibility of parole.

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

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

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

65 2. Death, and if at least ten jurors recommend a sentence
66 of death, the court must impose the recommended sentence of
67 death. The court may impose a sentence of death only if the jury
68 unanimously finds at least one aggravating factor beyond a
69 reasonable doubt.

70 3. Death, and either eight or nine jurors recommend a
71 sentence of death, the court, after considering each aggravating
72 factor found by the jury and all mitigating circumstances, may
73 impose a sentence of life imprisonment without the possibility
74 of parole or a sentence of death. The court may consider only an
75 aggravating factor that was unanimously found to exist by the
76 jury. The court may impose a sentence of death only if the jury
77 unanimously finds at least one aggravating factor beyond a
78 reasonable doubt.

79 (b) If the defendant waived his or her right to a
80 sentencing proceeding by a jury, the court, after considering
81 all aggravating factors and mitigating circumstances, may impose
82 a sentence of life imprisonment without the possibility of
83 parole or a sentence of death. The court may impose a sentence
84 of death only if the court finds that at least one aggravating
85 factor has been proven to exist beyond a reasonable doubt.

86 (4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE
87 IMPRISONMENT OR DEATH.—In each case in which the court imposes a

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88 sentence of life imprisonment without the possibility of parole
89 or death, the court shall, considering the records of the trial
90 and the sentencing proceedings, enter a written order addressing
91 the aggravating factors set forth in subsection (6) found to
92 exist, the mitigating circumstances in subsection (7) reasonably
93 established by the evidence, whether there are sufficient
94 aggravating factors to warrant the death penalty, and whether
95 the aggravating factors outweigh the mitigating circumstances
96 reasonably established by the evidence. The court must include
97 in its written order the reasons for not accepting the jury's
98 recommended sentence, if applicable. If the court does not issue
99 its order requiring the death sentence within 30 days after the
100 rendition of the judgment and sentence, the court shall impose a
101 sentence of life imprisonment without the possibility of parole
102 in accordance with s. 775.082.

103 Section 2. Subsections (3), (4), and (5) of section
104 921.142, Florida Statutes, are amended to read:

105 921.142 Sentence of death or life imprisonment for capital
106 drug trafficking felonies; further proceedings to determine
107 sentence.—

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

111 (a) After hearing all of the evidence presented regarding
112 aggravating factors and mitigating circumstances, the jury shall
113 deliberate and determine if the state has proven, beyond a
114 reasonable doubt, the existence of at least one aggravating
115 factor set forth in subsection (7).

116 (b) The jury shall return findings identifying each

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117 aggravating factor found to exist. A finding that an aggravating
118 factor exists must be unanimous. If the jury:

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

121 2. Unanimously finds at least one aggravating factor, the
122 defendant is eligible for a sentence of death and the jury shall
123 make a recommendation to the court as to whether the defendant
124 shall be sentenced to life imprisonment without the possibility
125 of parole or to death. The recommendation shall be based on a
126 weighing of all of the following:

127 a. Whether sufficient aggravating factors exist.

128 b. Whether aggravating factors exist which outweigh the
129 mitigating circumstances found to exist.

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

133 (c) If at least eight jurors determine ~~a unanimous jury~~
134 ~~determines~~ that the defendant should be sentenced to death, the
135 jury's recommendation to the court must ~~shall~~ be a sentence of
136 death. If fewer than eight jurors ~~a unanimous jury does not~~
137 determine that the defendant should be sentenced to death, the
138 jury's recommendation to the court must ~~shall~~ be a sentence of
139 life imprisonment without the possibility of parole.

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

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

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

144 2. Death, and if at least ten jurors recommend a sentence
145 of death, the court must impose the recommended sentence of

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146 death. The court may impose a sentence of death only if the jury
147 unanimously finds at least one aggravating factor beyond a
148 reasonable doubt.

149 3. Death, and either eight or nine jurors recommend a
150 sentence of death, the court, after considering each aggravating
151 factor found by the jury and all mitigating circumstances, may
152 impose a sentence of life imprisonment without the possibility
153 of parole or a sentence of death. The court may consider only an
154 aggravating factor that was unanimously found to exist by the
155 jury. The court may impose a sentence of death only if the jury
156 unanimously finds at least one aggravating factor beyond a
157 reasonable doubt.

158 (b) If the defendant waived his or her right to a
159 sentencing proceeding by a jury, the court, after considering
160 all aggravating factors and mitigating circumstances, may impose
161 a sentence of life imprisonment without the possibility of
162 parole or a sentence of death. The court may impose a sentence
163 of death only if the court finds at least one aggravating factor
164 has been proven to exist beyond a reasonable doubt.

165 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE
166 IMPRISONMENT OR DEATH.—In each case in which the court imposes a
167 sentence of life imprisonment without the possibility of parole
168 or death sentence, the court shall, considering the records of
169 the trial and the sentencing proceedings, enter a written order
170 addressing the aggravating factors set forth in subsection (7)
171 found to exist, the mitigating circumstances in subsection (8)
172 reasonably established by the evidence, whether there are
173 sufficient aggravating factors to warrant the death penalty, and
174 whether the aggravating factors outweigh the mitigating

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175 circumstances reasonably established by the evidence. The court
176 must include in its written order the reasons for not accepting
177 the jury's recommended sentence, if applicable. If the court
178 does not issue its order requiring the death sentence within 30
179 days after the rendition of the judgment and sentence, the court
180 shall impose a sentence of life imprisonment without the
181 possibility of parole in accordance with s. 775.082.

182 Section 3. This act shall take effect upon becoming a law.