The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Committee on Criminal and Civil Justice

BILL:	SB 1804
INTRODUCER:	Senator Martin
SUBJECT:	Capital Sex Trafficking
DATE:	April 14, 2025
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	**Favorable**
2.	Atchley	Harkness	ACJ	**Pre-meeting**
3.			FP	

I. Summary:

SB 1804 creates a new crime, Capital Sex Trafficking, in s. 787.062, F.S. A person who knowingly engages in human trafficking by use of physical force for sexual violence upon a child less than 12 years of age, or upon a person who is mentally defective or mentally incapacitated commits capital sex trafficking, which is a capital felony.

A person younger than 18 years of age who commits capital sex trafficking commits a life felony.

The bill may have a positive insignificant fiscal impact (unquantifiable increase in prison and jail beds) on the Department of Correction and may increase workload for the state court system. See Section V., Fiscal Impact Statement.

The bill takes effect October 1, 2025.

II. Present Situation:

"Human trafficking" is defined in s. 787.06(2)(d), F.S., as transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, purchasing, patronizing, procuring, or obtaining another person for the purpose of exploitation of that person.

Any person who knowingly, or in reckless disregard of the facts, engages in human trafficking, attempts to engage in human trafficking, or benefits financially by receiving anything of value from participation in a venture that has subjected a person to human trafficking:

- For commercial sexual activity who does so by the transfer or transport of any child younger than 18 years of age or an adult believed by the person to be a child younger than 18 years of

age from outside this state to within this state commits a felony of the first degree, punishable by imprisonment for a term of years not exceeding life.

- For commercial sexual activity in which any child younger than 18 years of age or an adult believed by the person to be a child younger than 18 years of age, or in which any person who is mentally defective or mentally incapacitated as those terms are defined in s. 794.011(1), F.S., is involved commits a life felony, punishable as provided in s. 775.082(3)(a)6., F.S., s. 775.083, F.S., or s. 775.084, F.S. For each instance of human trafficking of any individual under this subsection, a separate crime is committed and a separate punishment is authorized.
- Any parent, legal guardian, or other person having custody or control of a minor who sells or otherwise transfers custody or control of such minor, or offers to sell or otherwise transfer custody of such minor, with knowledge or in reckless disregard of the fact that, as a consequence of the sale or transfer, the minor will be subject to human trafficking commits a life felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.
- Any person who, for the purpose of committing or facilitating an offense under this section, permanently brands, or directs to be branded, a victim of an offense under this section commits a second degree felony, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S. For purposes of this subsection, the term "permanently branded" means a mark on the individual's body that, if it can be removed or repaired at all, can only be removed or repaired by surgical means, laser treatment, or other medical procedure.

Capital Felonies for Sexual Battery Cases and the Eighth Amendment

Section 794.011(2)(a), F.S., states that a person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a *capital felony*, punishable as provided in ss. 775.082, and 921.141, F.S.[1]

Section 794.011(8)(c), F.S., provides that a person who is in a position of familial or custodial authority who engages in any act with a person less than 12 years of age which constitutes sexual battery, or in an attempt to commit sexual battery injures the sexual organs of such person commits a *capital or life felony*, punishable as provided in ss. 775.082 and 921.141, F.S.[2]

Sexual battery means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.[3]

[1] Section 775.082, F.S., provides that a person who has been convicted of a capital felony shall be punished by death if the proceeding held to determine sentence according to the procedure set forth in s. 921.141, F.S., results in a determination that such person shall be punished by death, otherwise such person shall be punished by life imprisonment and shall be ineligible for parole. Section 921.141, F.S., provides that upon conviction or adjudication of guilt of a defendant of a capital felony, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082, F.S.

[2] *Id*.; and *see* s. 775.082(3), F.S., setting forth the sentence for a life felony, in general, as: for a life felony committed on or after July 1, 1995, by a term of imprisonment for life or by imprisonment for a term of years not exceeding life imprisonment.

[3] Section 794.011(1)(j), F.S.

No one has been executed for a non-murder offense in this country since 1964, although two people were convicted in Louisiana of capital sexual battery of a child and sentenced to death. One of those individuals, Patrick Kennedy, appealed his case to the U.S. Supreme Court, which struck down Louisiana's law.[4] Five other states have laws allowing the death penalty for sexual battery against a minor, though no one has been sentenced to death in those states.[5]

Historically, capital sexual battery has been punishable by up to a penalty of death in Florida. Although the crimes found in ss. 794.011(2)(a) and (8)(c), F.S., are categorized as capital crimes, life imprisonment without the possibility of parole is the current maximum sentence for these crimes under the applicable case law. This is largely due to a string of court cases from the seventies and early eighties ruling on the constitutionality of the death penalty as applied by the states.[6]

In 1977, the U.S. Supreme Court decided *Coker v. Georgia*, a case involving a death sentence for the sexual battery of an adult female.[7] Relying heavily on the *Gregg v. Georgia*[8] decision from the prior term of court, the *Coker* court explained that the Eighth Amendment[9] bars excessive punishment in relation to the offense committed. Therefore, a particular punishment can be excessive if it "is grossly out of proportion to the severity of the crime."[10]

In applying an Eighth Amendment analysis, the *Coker* court said that "judgment should be informed by objective factors to the maximum possible extent...attention must be given to the public attitudes concerning a particular sentence history and precedent, legislative attitudes, and the response of juries reflected in their sentencing decisions."[11] After performing such a review,[12] the court found that "in the light of the legislative decisions in almost all of the States and in most of the countries around the world, it would be difficult to support a claim that the death penalty for rape is an indispensable part of the States' criminal justice system."[13] The court

[4] Death Penalty Information Center, Death Penalty for Offenses Other than Murder, available at https://deathpenaltyinfo.org/facts-and-research/crimes-punishable-by-death/death-penalty-for-offenses-other-than-murder (last visited March 28, 2025); Death Penalty Information Center, Kennedy v. Louisiana Resource Page, available at https://deathpenaltyinfo.org/facts-and-research/united-states-supreme-court/significant-supreme-court-opinions/kennedy-v-louisiana-resource-page (last visited March 28, 2025).
[5] Those states are Montana, South Carolina, Oklahoma, Georgia, and Texas. Death Penalty Information Center, Kennedy v. Louisiana Resource Page, available at https://deathpenaltyinfo.org/facts-and-research/united-states-supreme-court/significant-supreme-court-opinions/kennedy-v-louisiana-resource-page (last visited March 28, 2025).
[6] *Gibson v. State*, 721 So.2d 363 (Fla. 2nd DCA, 1998).
[7] *Coker v. Georgia*, 433 U.S. 584, (1977).
[8] *Gregg v. Georgia*, 428 U.S. 153 (1976), (finding that the Georgia death penalty scheme satisfied the requirements of the Eighth Amendment when imposed for the crime of murder. In a footnote, the *Gregg* court specified: "We do not address here the question whether the taking of the criminal's life is a proportionate sanction where no victim has been deprived of life for example, when capital punishment is imposed for rape, kidnapping, or armed robbery that does not result in the death of any human being." at footnote 35).
[9] The Eighth Amendment to the U.S. Constitution states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. CONST. Amend VIII.
[10] *Coker v. Georgia*, 433 U.S. 584, 592 (1977).
[11] *Coker v. Georgia*, 433 U.S. 584, 592 (1977).
[12] *Coker v. Georgia*, 433 U.S. 584, 593-597 (1977).
[13] *Id*.

held that a death sentence is disproportionate punishment for the rape of an adult woman, and is therefore cruel and unusual punishment within the meaning of the Eighth Amendment.[14]

In 1981, the Florida Supreme Court, in *Buford v. State*,[15] held that a death sentence for sexual battery by an adult upon a child, is constitutionally prohibited.[16] The court stated that "[t]he reasoning of the justices in *Coker v. Georgia* compels us to hold that a sentence of death is grossly disproportionate and excessive punishment for the crime of sexual assault and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment."[17]

Three years after *Buford*, the Florida Supreme Court recognized in *Rusaw v. State* that while the death penalty as punishment for the capital crime of sexual battery of a child is not a constitutional sentence, "[t]he legislature, by setting sexual battery of a child apart from other sexual batteries, has obviously found that crime to be of special concern. Just because death is no longer a possible punishment for the crime described in s. 794.011(2), F.S., does not mean that the alternative penalty suffers from any defect." [18]

In 2008, the U.S. Supreme Court, in *Kennedy v. Louisiana*, a child sexual battery case for which the defendant was sentenced to death, also began its Eighth Amendment analysis by examining existing statutes and legislation, and statistics on executions for child sexual battery.[19]

Like the *Coker* court, the *Kennedy* court found that there is a national consensus against the death penalty for child sexual battery.[20] This finding led the court to conclude that the death penalty is not a proportional punishment for the sexual battery of a child.[21]

Case Law and Subsequent Statutory Changes Regarding Death Penalty Sentencing Procedure

The Sixth Amendment of the U.S. Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ."[22] This right,

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[14] "We have the abiding conviction that the death penalty, which 'is unique in its severity and irrevocability,'... is an excessive penalty for the rapist who, as such, does not take human life." *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 286, 153 L.Ed.2d 982 (1977); [internal citation: *Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976)].
[15] *Buford v. State*, 403 So.2d 943 (Fla.1981), *cert. denied*, 454 U.S. 1163, 102 S.Ct. 1037, 71 L.Ed.2d 319 (1982).
[16] *Id*.
[17] *Id*.
[18] *Rusaw v. State*, 451 So.2d 469 (Fla. 1984), referring to life imprisonment without the possibility of parole, ss. 775.082 and 921.141, F.S.
[19] The state court in *Kennedy* explained that since 1993, four more States—Oklahoma, South Carolina, Montana, and Georgia—had capitalized the crime of child rape, and at least eight States had authorized capital punishment for other nonhomicide crimes. By its count, 14 of the then–38 States permitting capital punishment, plus the Federal Government, allowed the death penalty for nonhomicide crimes and FIVE allowed the death penalty for the crime of child rape. *Kennedy v. Louisiana*, 554 U.S. 407, 418 (2008).
[20] After reviewing the authorities informed by contemporary norms, including the history of the death penalty for this and other nonhomicide crimes, current state statutes and new enactments, and the number of executions since 1964, we conclude there is a national consensus against capital punishment for the crime of child rape. *Kennedy v. Louisiana*, 554 U.S. 407, 434 (2008).
[21] *Kennedy v. Louisiana*, 554 U.S. 407, 422 (2008).
[22] U.S. CONST. Amend. VI.

in conjunction with the Due Process Clause, requires that each element of a crime be proved to a jury beyond a reasonable doubt.[23]

The U.S. Supreme Court in *Ring v. Arizona*, applied this right to Arizona's capital sentencing scheme, which required a judge to determine the presence of aggravating and mitigating factors and to only sentence a defendant to death if the judge found at least one aggravating factor.[24] The Court struck down the Arizona sentencing scheme, finding it to be a violation of the Sixth Amendment because it permitted sentencing judges, without a jury, to find aggravating circumstances justifying imposition of the death penalty.[25]

In 2016, the U.S. Supreme Court issued the *Hurst v. Florida* opinion finding that Florida's death penalty sentencing process was unconstitutional because "the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death."[26] Thereafter, the Legislature amended ss. 921.141 and 921.142, F.S., to incorporate the following statutory changes:

- The jury is required to identify each aggravating factor found to exist by a unanimous jury vote in order for a defendant to be eligible for a sentence of death;
- The jury is required to determine whether the aggravating factors outweigh the mitigating circumstances in reaching its sentencing recommendation;
- If at least ten of the twelve members of the jury determine that the defendant should be sentenced to death, the jury's recommendation is a sentence of death;
- The jury is required to recommend a sentence of life imprisonment without the possibility of parole if fewer than ten jurors determined that the defendant should be sentenced to death;
- The judge is permitted to impose a sentence of life imprisonment without the possibility of parole when the jury recommends a sentence of death; and
- The judge is no longer permitted to "override" the jury's recommendation of a sentence of life imprisonment by imposing a sentence of death.[27]

Also in 2016, *Hurst v. State*, on remand from the U.S. Supreme Court, was decided by the Florida Supreme Court. In addition to finding that the prior 2016 statutory amendments to the death penalty sentencing provisions were constitutional, the court also held that "in order for the trial court to impose a sentence of death, the jury's recommended sentence of death must be unanimous."[28]

After the *Hurst v. State* decision in 2016, the Legislature again amended ss. 921.141 and 921.142, F.S., this time to require a unanimous vote of the jury for a sentencing recommendation of death.[29]

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[23] *United States v. Gaudin*, 515 U.S. 506, 510 (1995).
[24] *Ring v. Arizona*, 536 U.S. 584, 592 (2002).
[25] *Id*. at 609.
[26] *Hurst v. Florida*, 577 U.S. 92 (2016). The *Hurst v. Florida* decision was based on the Sixth Amendment and the 2002 U.S. Supreme Court decision in *Ring v. Arizona*, which held that juries rather than judges acting alone must make crucial *factual* determinations that subject a convicted murderer to the death penalty. *Ring v. Arizona*, 536 U.S. 584 (2002).
[27] Chapter 2016-13, L.O.F. (2016).
[28] *Hurst v. State*, 202 So.3d 40, 44, (Fla. 2016), *cert. den.*, 137 S.Ct. 2161 (2017).
[29] Chapter 2017-1, L.O.F. (2017).

Subsequent to the Legislature's 2016 amendments to the death penalty sentencing proceedings, in an effort to comply with both *Hurst v. Florida*[30] and *Hurst v. State*,[31] the Florida Supreme Court receded from its *Hurst v. State* opinion, eliminating the need for most of the statutory changes made in 2016.[32]

In *Poole v. State*, the Florida Supreme Court opined that the *Hurst v. State* court had gone beyond where the U.S. Supreme Court required in order to bring Florida's death penalty proceedings into compliance with constitutional standards.[33]

The *Poole* court left intact only the requirement that a unanimous jury find a statutory aggravating circumstance by a reasonable doubt standard of proof.[34] This particular part of Florida's death penalty sentencing proceeding is necessary, as the *Poole* court explained, because there are two components to the death penalty sentencing decision-making process: the *eligibility decision* which is the trier of fact's responsibility, and the *selection decision* which is the sentencing judge's responsibility.[35]

As to the eligibility decision, the U.S. Supreme Court has required that the death penalty be reserved for only a subset of those who commit murder. "To render a defendant *eligible* for the death penalty in a homicide case, [the Supreme Court has] indicated that the *trier of fact* must convict the defendant of murder and find one 'aggravating circumstance' (or its equivalent) at either the guilt or penalty phase."[36]

The selection decision involves determining "whether a defendant eligible for the death penalty should in fact receive that sentence."[37] The selection decision is a subjective determination to be made by the court. It is not a "fact" or "element" of the offense for the fact-finder to decide.[38]

According to the *Poole* court, the *Hurst v. State* court misinterpreted the *Hurst v. Florida* decision on this key point: the *Hurst v. Florida* decision is about death penalty *eligibility*.

Post-*Poole* if a jury unanimously finds at least one aggravating circumstance exists in a murder case, the defendant is death-eligible.

According to *Poole*, the *Hurst v. State* court had a "mistaken view" of what constitutes an *element* of an offense which is a *fact* that a jury must determine exists beyond a reasonable doubt for a defendant to be death eligible. *Hurst v. State*, therefore, mistakenly decided that the Sixth Amendment right to trial by a jury required:

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[30] *Hurst v. Florida*, 577 U.S. 92 (2016).
[31] *Hurst v. State*, 202 So.3d 40 (Fla. 2016), interpreting and applying *Hurst v. Florida*, 577 U.S. 92 (2016).
[32] *Poole v. State*, 297 So. 3d 487 (Fla. 2020), receding from *Hurst v. State*, 202 So.3d 40 (Fla. 2016).
[33] *Poole v. State*, 297 So. 3d 487 (Fla. 2020).
[34] *Poole v. State*, 297 So. 3d 487 (Fla. 2020).
[35] *Poole v. State*, 297 So. 3d 487, 501 (Fla. 2020).
[36] *Poole v. State*, 297 So. 3d 487, 501 (Fla. 2020), quoting *Tuilaepa v. California*, 512 U.S. 967, 971-972 (U.S. 1994) (emphasis added).
[37] *Id*.
[38] *Poole v. State*, 297 So. 3d 487, 504 (Fla. 2020).

- Unanimous jury findings as to all of the aggravating factors that were proven beyond a reasonable doubt;
- That the aggravating factors are sufficient[39] to impose a death sentence;
- That the aggravating factors outweigh the mitigating factors;[40] and
- A unanimous jury recommendation of a sentence of death.[41]

In sum, the *Poole* court rejected the *Hurst v. State* court's view of a capital jury's role that goes beyond the "fact-finding" required to determine whether a defendant is death eligible.[42]

Florida's Current Death Penalty Statutes

In 2023, the Legislature again amended the death penalty procedure in homicide cases to clarify the judge's and the jury's role. Specifically, ss. 921.14 and 921.142, F.S., were amended to:

- Delete the requirement of a unanimous jury recommendation for the imposition of the death penalty replacing it with a recommendation of at least eight jurors recommending the death penalty.
- Provide that if fewer than eight jurors vote to recommend the death penalty, the jury's sentencing recommendation must be for life without the possibility of parole and the court is bound by that recommendation.
- Provide that if the jury recommends a sentence of death, the court may impose the recommended sentence of death, or a sentence of life imprisonment without the possibility of parole.
- Specify that the death penalty may only be imposed if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.
- Require that the court enter a written order whether the sentence is for death or for life without the possibility of parole and the court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable.[43]

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[39] [F]or purposes of complying with s. 921.141(3)(a), F.S., "sufficient aggravating circumstances" means "one or more." *See Miller v. State*, 42 So. 3d 204, 219 (Fla. 2010) ("sufficient aggravating circumstances" means "one or more such circumstances." For purposes of complying with s. 921.141(3)(a), F.S., "sufficient aggravating circumstances" means "one or more." *See Miller v. State*, 42 So. 3d 204, 219 (Fla. 2010) ("sufficient aggravating circumstances" means "one or more such circumstances"). *Poole v. State*, 297 So. 3d 487, 502 (Fla. 2020).

[40] "The role of the s. 921.141(3)(b), F.S., selection finding is to give the defendant an opportunity for mercy if it is justified by the relevant mitigating circumstances and by the facts surrounding his crime." *Poole v. State*, 297 So. 3d 487, 503 (Fla. 2020). See also *Rogers v. State*, 285 So.3d 872, 886 (Fla. 2019).

[41] *Hurst v. Florida* does not require a unanimous jury recommendation—or any jury recommendation—before a death sentence can be imposed. The Supreme Court in *Spaziano* "upheld the constitutionality under the Sixth Amendment of a Florida judge imposing a death sentence even in the face of a jury recommendation of life—a jury override. It necessarily follows that the Sixth Amendment, as interpreted in *Spaziano*, does not require any jury recommendation of death, much less a unanimous one. And as we have also explained, the Court in *Hurst v. Florida* overruled *Spaziano* only to the extent it allows a judge, rather than a jury, to find a necessary aggravating circumstance." *See Hurst v. Florida*, 136 S. Ct. at 624. See also *Spaziano v. Florida*, 468 U.S. 447 at 464-65, (1984) holding that the Eighth Amendment does not require a jury's favorable recommendation before a death penalty can be imposed. *Poole v. State*, 297 So. 3d 487, 505 (Fla. 2020).

[42] "This Court clearly erred in *Hurst v. State* by requiring that the jury make any finding beyond the section 921.141(3)(a) eligibility finding of one or more statutory aggravating circumstances. Neither *Hurst v. Florida*, nor the Sixth or Eighth Amendment, nor the Florida Constitution mandates that the jury make the s. 941.121(3)(b), F.S., selection finding or that the jury recommend a sentence of death."

[43] Sections 921.141 and 921.142, F.S.

In an additional 2023 amendment to the death penalty procedure, s. 921.1425, F.S., was created, which provides for a death sentence or life imprisonment without the possibility of parole for the crime of sexual battery by an adult upon a child under the age of 12, or the attempt to commit the crime, and the adult injures the child's sexual organs.[44] The procedure in s. 921.1425, F.S., as it differs from s. 921.141, (2013), F.S., is that the jury must unanimously find at least two aggravating factors for the defendant to receive the death penalty.

On December 14, 2023, Lake County, prosecutors announced they would seek the first death sentence for a man accused of committing sexual battery of a minor under the age of 12. A statement from the office of State Attorney William Gladson said the decision reflects the "severity of the crime and its impact on the community." In February 2024, the defendant pled guilty and was sentenced to life in prison without the possibility of parole.[45]

III. Effect of Proposed Changes:

Capital Sex Trafficking

The crime created in s. 787.062, F.S., Capital Sex Trafficking, provides that a person who knowingly engages in human trafficking by use of physical force for sexual violence upon a child less than 12 years of age, or upon a person who is mentally defective[46] or mentally incapacitated[47] as those terms are defined in the bill, commits a capital felony.[48] This new capital felony can result in a sentence of death or life without the possibility of parole. A person younger than 18 years of age who violates s. 787.062, F.S., commits a life felony.[49]

The bill defines "physical force" as the touching, striking, causing of bodily harm, confining, or restraining of another.

As provided in the bill, "sexual violence" means an act of any of the following:

- Sexual battery, as defined in s. 794.011(1), F.S.[50];

[44] Other states have introduced similar legislation since the Florida law was changed. Death Penalty Information Center, Death Penalty for Child Sexual Abuse that Does Not Result in Death, available at Death Penalty for Child Sexual Abuse that Does Not Result in Death | Death Penalty Information Center, (last visited March 27, 2025).

[45] *Id.*

[46] "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct. Section 794.011(1)(c), F.S.

[47] "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent. Section 794.011(1)(d), F.S.

[48] As provided in ss. 775.082 and 921.1427, F.S.

[49] A person convicted of an offense that is not included in s. 782.04, F.S., but that is an offense that is a life felony or is punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, or an offense that was reclassified as a life felony or an offense punishable by a term of imprisonment for life or by a term of years not exceeding life imprisonment, which was committed before the person attained 18 years of age may be punished by a term of imprisonment for life or a term of years equal to life imprisonment if the judge conducts a sentencing hearing in accordance with s. 921.1401, F.S., and finds that life imprisonment or a term of years equal to life imprisonment is an appropriate sentence. A person who is sentenced to a term of imprisonment of more than 20 years is entitled to a review of his or her sentence in accordance with s. 921.1402(2)(d), F.S.

[50] "Sexual battery" means oral, anal, or female genital penetration by, or union with, the sexual organ of another or the anal or female genital penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose. Section 794.011(1)(j), F.S.

- Lewd or lascivious battery, as defined in s. 800.04(4), F.S.[51];
- Lewd or lascivious molestation, as defined in s. 800.04(5), F.S.[52];
- Lewd or lascivious conduct, as defined in s. 800.04(6), F.S.[53]; or
- Sadomasochistic abuse or sexual bestiality as those terms are defined in s. 827.071(1), F.S.

Death Penalty Procedure

The bill provides that in all capital cases under s. 787.062, F.S., the procedure in s. 921.1427, F.S., must be followed to determine a sentence of death or life imprisonment. If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court within 45 days after arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause.

The bill requires the court to conduct a separate sentencing proceeding upon the conviction or adjudication of guilt of a defendant of a capital felony under s. 787.062(4), F.S., to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082, F.S.

The proceeding must be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in ch. 913, F.S., to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant.

In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and must include matters relating to any of the aggravating factors and for which notice has been provided pursuant to s. 787.062(4), F.S., or relating to any of the mitigating circumstances.

Any such evidence that the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, subsection (2) of s. 941.1427, F.S., may not be construed to authorize the introduction of any evidence secured in violation of the

[51] A person commits lewd or lascivious battery by: engaging in sexual activity with a person 12 years of age or older but less than 16 years of age; encouraging, forcing, or enticing any person less than 16 years of age to engage in sadomasochistic abuse, sexual bestiality, prostitution, or any other act involving sexual activity. Section 800.04(4), F.S.

[52] A person who intentionally touches in a lewd or lascivious manner the breasts, genitals, genital area, or buttocks, or the clothing covering them, of a person less than 16 years of age, or forces or entices a person under 16 years of age to so touch the perpetrator, commits lewd or lascivious molestation. Section 800.04(5), F.S.

[53] A person who intentionally touches a person under 16 years of age in a lewd or lascivious manner or solicits a person under 16 years of age to commit a lewd or lascivious act, commits lewd or lascivious conduct. Section800.04(6), F.S.

United States Constitution or the State Constitution. The state and the defendant or the defendant's counsel must be permitted to present arguments for or against a sentence of death.

If a defendant has not waived his or her right to a sentencing proceeding by a jury, the jury will hear all of the evidence presented regarding aggravating factors and mitigating circumstances. The jury must deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least two aggravating factors.

The jury must return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:

- Does not unanimously find at least two aggravating factors, the defendant is ineligible for a sentence of death.
- Unanimously finds at least two aggravating factors, the defendant is eligible for a sentence of death and the jury must make a recommendation to the court as to whether the defendant must be sentenced to life imprisonment without the possibility of parole or to death. The recommendation must be based on a weighing of all of the following:
    - Whether sufficient aggravating factors exist.
    - Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
    - Based on these considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole.

If the jury has recommended a sentence of:

- Life imprisonment without the possibility of parole, the court must impose the recommended sentence of life imprisonment without the possibility of parole.
- Death, the court may impose the recommended sentence of death or a sentence of life imprisonment without the possibility of parole. The court may impose a sentence of death only if the jury unanimously found at least two aggravating factors to have been proven beyond a reasonable doubt.

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

Regardless of the sentence, the court must enter a written sentencing order considering the records of the trial and the sentencing proceedings, and addressing:

- The aggravating factors found to exist;
- The mitigating circumstances reasonably established by the evidence;
- Whether there are sufficient aggravating factors to warrant the death penalty; and

- Whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence.

The court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable.

If the court does not issue its sentencing order requiring a sentence of death within 30 days after the rendition of the judgment and sentence, the court must impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082, F.S.

The judgment of conviction and sentence of death shall be subject to automatic review by the Florida Supreme Court and disposition rendered within two years after the filing of a notice of appeal. Such review by the Florida Supreme Court must have priority over all other cases and must be heard in accordance with rules adopted by the Florida Supreme Court.

Aggravating factors are limited to the following:

- The capital felony was committed by a person who was previously convicted of a felony violation of s. 794.011, F.S., and was under a sentence of imprisonment or was placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence.
- The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21, F.S., or a person previously designated as a sexual predator who had the sexual predator designation removed.
- The capital felony was committed by a sexual offender who is required to register pursuant to s. 943.0435, F.S., or a person previously required to register as a sexual offender who had such requirement removed.
- The defendant knowingly created a great risk of death to one or more persons such that participation in the offense constituted reckless indifference or disregard for human life.
- The defendant used a firearm or knowingly directed, advised, authorized, or assisted another to use a firearm to threaten, intimidate, assault, or injure a person in committing the offense or in furtherance of the offense.
- The capital felony was committed for pecuniary gain.
- The capital felony was especially heinous, atrocious, or cruel.
- The victim of the capital felony was particularly vulnerable due to age or disability, or because the defendant was in a position of familial or custodial authority in relation to the victim.
- The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30, F.S., or s. 784.046, F.S., or a foreign protection order accorded full faith and credit
- pursuant to s. 741.315, F.S., and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.
- The victim of the capital felony sustained serious bodily injury.

Mitigating circumstances are the following:

- The defendant has no significant history of prior criminal activity.

- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.
- The defendant could not have reasonably foreseen that her or his conduct in the course of the commission of the offense would cause or would create a grave risk of death to one or more persons.
- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

Once the prosecution has provided evidence of the existence of two or more aggravating factors, the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence must be designed to demonstrate the victim's uniqueness as an individual human being and the physical and psychological harm to the victim. Characterizations and opinions about the crime, the defendant, and the appropriate sentence may not be permitted as a part of victim impact evidence.

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

The bill specifies that s. 921.141, F.S., does not apply to a person convicted or adjudicated guilty of a capital sex trafficking offense under s. 787.062, F.S.

The bill amends s. 924.07, F.S., to create an appellate opportunity for the State if the sentence in a case of capital sex trafficking resulted from the circuit court's failure to comply with sentencing procedures under s. 921.1427, F.S., including by:

- Striking the State's notice of intent to seek the death penalty;
- Refusing to impanel a capital jury; or
- Otherwise granting relief that prevents the State from seeking the death penalty.

The bill amends s. 921.137(4), F.S., to add a reference to newly created s. 921.1427, F.S., which provides procedures for sentencing a person who gives notice of his or her intention to raise intellectual disability as a bar to the death sentence. Section 921.137, F.S., prohibits the imposition of the death penalty upon an intellectually disabled defendant.

The bill provides Legislative findings.

Newly created s. 921.1427, F.S., applies to any capital felony under s. 787.062, F.S., that is committed on or after October 1, 2025.

The bill takes effect October 1, 2025.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Pursuant to the U.S. and Florida Supreme Courts, a sentence of death is constitutionally prohibited for a crime other than one which causes death. The Supreme Court of Florida held in *Buford v. State*,[54] that a death sentence for sexual battery by an adult upon a child, is constitutionally prohibited.[55] The court stated that "[t]he reasoning of the justices in *Coker v. Georgia* compels us to hold that a sentence of death is grossly disproportionate and excessive punishment for the crime of sexual assault and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment."[56]

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

[54] *Buford v. State*, 403 So.2d 943 (Fla.1981), *cert. denied*, 454 U.S. 1163, 102 S.Ct. 1037, 71 L.Ed.2d 319 (1982).
[55] *Id*.
[56] *Id*.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) and the Criminal Justice Impact Conference, which provides the final, official estimate of the prison bed impact, if any, of legislation, has provided a preliminary estimate that the bill may have a positive insignificant prison bed impact on the Department of Corrections. The EDR provides:

- Per DOC, in FY 23-24, there were 17 new commitments to prison for commercial sexual activity of a child under 18 years of age. Four of these commitments received life sentences, and three received sentences that would have them released within the five-year forecast window. However, it is not known how many of these offenders would fit the criteria described in the bill.

In addition, there may be an indeterminate workload impact on the criminal trial courts, appellate courts, prosecutors, defense attorneys, and appellate counsel as a result of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 924.07, 921.137, 921.141.

This bill creates the following sections of the Florida Statutes: 787.062, 921.1427,

IX. Additional Information:

A. Committee Substitute – Statement of Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.