

By Senator Martin

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1 A bill to be entitled
2 An act relating to capital sex trafficking; creating
3 s. 787.062, F.S.; providing legislative findings;
4 providing definitions; providing penalties for persons
5 convicted of the capital felony of human trafficking
6 by use of physical force upon certain persons for sex;
7 providing requirements for sentencing in certain
8 capital cases; providing requirements for prosecutors
9 of such cases; creating s. 921.1427, F.S.; providing
10 legislative findings and intent; providing
11 requirements for separate sentencing proceedings in
12 certain capital felony cases; providing construction;
13 providing applicability; providing for findings and
14 recommended sentences by a jury; providing
15 requirements for imposition of a sentence of life
16 imprisonment or a sentence of death; providing
17 requirements for a written court order in support of a
18 sentence of life imprisonment or a sentence of death;
19 providing for automatic review of sentences of death
20 within a certain time period; specifying aggravating
21 factors and mitigating circumstances; providing for
22 victim impact evidence; providing for resentencing if
23 provisions are found to be unconstitutional; providing
24 applicability; amending s. 924.07, F.S.; authorizing
25 the state to appeal from a sentence on the ground that
26 it resulted from the failure of the circuit court to
27 comply with specified sentencing procedure
28 requirements; amending ss. 921.137 and 921.141, F.S.;
29 conforming provisions to changes made by the act;

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30 providing an effective date.

31
32 Be It Enacted by the Legislature of the State of Florida:

33
34 Section 1. Section 787.062, Florida Statutes, is created to
35 read:

36 787.062 Capital sex trafficking.-

37 (1) The Legislature finds that human trafficking is a form
38 of modern-day slavery, and victims of such schemes include young
39 children, young teenagers, and persons with diminished mental
40 capacity. The Legislature finds that victims of human
41 trafficking are subjected to force for the purpose of sexual
42 exploitation. Such crimes destroy the innocence of young
43 children and violate all standards of decency held by civilized
44 society.

45 (2) As used in this section, the term:

46 (a) "Human trafficking" has the same meaning as provided in
47 s. 787.06(2).

48 (b) "Physical force" means the touching, striking, causing
49 of bodily harm, confining, or restraining of another.

50 (c) "Sexual violence" means an act of any of the following:

51 1. Sexual battery, as defined in s. 794.011(1).

52 2. Lewd or lascivious battery, as defined in s. 800.04(4).

53 3. Lewd or lascivious molestation, as defined in s.
54 800.04(5).

55 4. Lewd or lascivious conduct, as defined in s. 800.04(6).

56 5. Sodomasochistic abuse or sexual bestiality as those
57 terms are defined in s. 827.071(1).

58 (3) (a) Except as provided in paragraph (b), a person who

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59 knowingly engages in human trafficking by use of physical force
60 for sexual violence upon a child less than 12 years of age, or
61 upon a person who is mentally defective or mentally
62 incapacitated as those terms are defined in s. 794.011(1),
63 commits a capital felony, punishable as provided in ss. 775.082
64 and 921.1427.

65 (b) A person younger than 18 years of age who commits an
66 offense under this subsection commits a life felony, punishable
67 as provided in s. 775.082(3)(a)6., s. 775.083, or s. 775.084.

68 (4) In all capital cases under this section, the procedure
69 in s. 921.1427 shall be followed to determine a sentence of
70 death or life imprisonment. If the prosecutor intends to seek
71 the death penalty, the prosecutor must give notice to the
72 defendant and file the notice with the court within 45 days
73 after arraignment. The notice must contain a list of the
74 aggravating factors the state intends to prove and has reason to
75 believe it can prove beyond a reasonable doubt. The court may
76 allow the prosecutor to amend the notice upon a showing of good
77 cause.

78 Section 2. Section 921.1427, Florida Statutes, is created
79 to read:

80 921.1427 Sentence of death or life imprisonment for capital
81 sex trafficking; further proceedings to determine sentence.—

82 (1) FINDINGS; INTENT.—

83 (a) The Legislature finds that a person who commits the act
84 of human trafficking for sex of a person younger than 12 years
85 of age carries a great risk of death and danger to vulnerable
86 members of this state. Such crimes destroy the innocence of
87 young children and violate all standards of decency held by

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88 civilized society, and that persons who traffic in such
89 vulnerable children may be determined by the trier of fact to
90 have a culpable mental state of reckless indifference or
91 disregard for human life.

92 (b) It is the intent of the Legislature that the procedure
93 in this section shall be followed, and a prosecutor must file
94 notice, as provided in s. 787.062(4), if he or she intends to
95 seek the death penalty.

96 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon
97 conviction or adjudication of guilt of a defendant of a capital
98 felony under s. 787.062(3)(a), the court shall conduct a
99 separate sentencing proceeding to determine whether the
100 defendant should be sentenced to death or life imprisonment as
101 authorized by s. 775.082. The proceeding shall be conducted by
102 the trial judge before the trial jury as soon as practicable.
103 If, through impossibility or inability, the trial jury is unable
104 to reconvene for a hearing on the issue of penalty after having
105 determined the guilt of the accused, the trial judge may summon
106 a special juror or jurors as provided in chapter 913 to
107 determine the imposition of the penalty. If the jury trial has
108 been waived, or if the defendant pleaded guilty, the sentencing
109 proceeding shall be conducted before a jury impaneled for that
110 purpose, unless waived by the defendant. In the proceeding,
111 evidence may be presented as to any matter that the court deems
112 relevant to the nature of the crime and the character of the
113 defendant and shall include matters relating to any of the
114 aggravating factors enumerated in subsection (7) and for which
115 notice has been provided pursuant to s. 787.062(4) or mitigating
116 circumstances enumerated in subsection (8). Any such evidence

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117 the court deems to have probative value may be received,
118 regardless of its admissibility under the exclusionary rules of
119 evidence, provided the defendant is accorded a fair opportunity
120 to rebut any hearsay statements. However, this subsection shall
121 not be construed to authorize the introduction of any evidence
122 secured in violation of the United States Constitution or the
123 State Constitution. The state and the defendant or the
124 defendant's counsel shall be permitted to present argument for
125 or against a sentence of death.

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

129 (a) After hearing all of the evidence presented regarding
130 aggravating factors and mitigating circumstances, the jury shall
131 deliberate and determine if the state has proven, beyond a
132 reasonable doubt, the existence of at least two aggravating
133 factors set forth in subsection (7).

134 (b) The jury shall return findings identifying each
135 aggravating factor found to exist. A finding that at least two
136 aggravating factors exist must be unanimous. If the jury:

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

139 2. Unanimously finds at least two aggravating factors, the
140 defendant is eligible for a sentence of death and the jury shall
141 make a recommendation to the court as to whether the defendant
142 shall be sentenced to life imprisonment without the possibility
143 of parole or sentenced to death. The recommendation shall be
144 based on a weighing of all of the following:

145 a. Whether sufficient aggravating factors exist.

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146 b. Whether aggravating factors exist which outweigh the
147 mitigating circumstances found to exist.

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

152 (c) If at least eight jurors determine that the defendant
153 should be sentenced to death, the jury's recommendation to the
154 court shall be a sentence of death. If fewer than eight jurors
155 determine that the defendant should be sentenced to death, the
156 jury's recommendation to the court shall be a sentence of life
157 imprisonment without the possibility of parole.

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

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

160 1. Life imprisonment without the possibility of parole, the
161 court shall impose the recommended sentence of life imprisonment
162 without the possibility of parole.

163 2. Death, the court, after considering each aggravating
164 factor found by the jury and all mitigating circumstances, may
165 impose a sentence of life imprisonment without the possibility
166 of parole or a sentence of death. The court may consider only an
167 aggravating factor that was unanimously found to exist by the
168 jury. The court may impose a sentence of death only if the jury
169 unanimously found at least two aggravating factors beyond a
170 reasonable doubt.

171 (b) If the defendant waived his or her right to a
172 sentencing proceeding by a jury, the court, after considering
173 all aggravating factors and mitigating circumstances, may impose
174 a sentence of life imprisonment without the possibility of

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175 parole or a sentence of death. The court may impose a sentence
176 of death only if the court finds that at least two aggravating
177 factors have been proven to exist beyond a reasonable doubt.

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

195 (6) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of
196 conviction and sentence of death shall be subject to automatic
197 review by the Supreme Court and disposition rendered within 2
198 years after the filing of a notice of appeal. Such review by the
199 Supreme Court shall have priority over all other cases and shall
200 be heard in accordance with rules adopted by the Supreme Court.

201 (7) AGGRAVATING FACTORS.—Aggravating factors shall be
202 limited to the following:

203 (a) The capital felony was committed by a person previously

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204 convicted of a felony violation under s. 787.06 or s. 787.062,
205 and under sentence of imprisonment or placed on community
206 control or on felony probation.

207 (b) The defendant was previously convicted of another
208 capital felony or of a felony involving the use or threat of
209 violence to the person.

210 (c) The capital felony was committed by a person designated
211 as a sexual predator pursuant to s. 775.21 or a person
212 previously designated as a sexual predator who had the sexual
213 predator designation removed.

214 (d) The capital felony was committed by a sexual offender
215 who is required to register pursuant to s. 943.0435 or a person
216 previously required to register as a sexual offender who had
217 such requirement removed.

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

221 (f) The defendant used a firearm or knowingly directed,
222 advised, authorized, or assisted another to use a firearm to
223 threaten, intimidate, assault, or injure a person in committing
224 the offense or in furtherance of the offense.

225 (g) The capital felony was especially heinous, atrocious,
226 or cruel.

227 (h) The victim of the capital felony was particularly
228 vulnerable due to age or disability, or because the defendant
229 stood in a position of familial or custodial authority over the
230 victim.

231 (i) The capital felony was committed by a person subject to
232 an injunction issued pursuant to s. 741.30 or s. 784.046, or a

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233 foreign protection order accorded full faith and credit pursuant
234 to s. 741.315, and was committed against the petitioner who
235 obtained the injunction or protection order or any spouse,
236 child, sibling, or parent of the petitioner.

237 (j) The victim of the capital felony sustained serious
238 bodily injury.

239 (8) MITIGATING CIRCUMSTANCES.—Mitigating circumstances
240 shall include the following:

241 (a) The defendant has no significant history of prior
242 criminal activity.

243 (b) The capital felony was committed while the defendant
244 was under the influence of extreme mental or emotional
245 disturbance.

246 (c) The defendant was an accomplice in the capital felony
247 committed by another person, and the defendant's participation
248 was relatively minor.

249 (d) The defendant was under extreme duress or under the
250 substantial domination of another person.

251 (e) The capacity of the defendant to appreciate the
252 criminality of her or his conduct or to conform her or his
253 conduct to the requirements of law was substantially impaired.

254 (f) The age of the defendant at the time of the offense.

255 (g) The defendant could not have reasonably foreseen that
256 her or his conduct in the course of the commission of the
257 offense would cause or would create a grave risk of death to one
258 or more persons.

259 (h) The existence of any other factors in the defendant's
260 background that would mitigate against imposition of the death
261 penalty.

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

272 (10) CONSTITUTIONALITY.—Notwithstanding s. 775.082(2) or s.
273 775.15, or any other provision of law, a sentence of death shall
274 be imposed under this section notwithstanding existing case law
275 that holds that such a sentence is unconstitutional under the
276 State Constitution and the United States Constitution. In any
277 case for which the Florida Supreme Court or the United States
278 Supreme Court reviews a sentence of death imposed pursuant to
279 this section, and in making such a review reconsiders the prior
280 holdings in *Buford v. State of Florida*, 403 So. 2d 943 (Fla.
281 1981), and *Kennedy v. Louisiana*, 554 U.S. 407 (2008), and
282 determines that a sentence of death remains unconstitutional,
283 the court having jurisdiction over the person previously
284 sentenced to death shall cause such person to be brought before
285 the court, and the court shall sentence such person to life
286 imprisonment as provided in s. 775.082(1).

287 (11) APPLICABILITY.—This section applies to any capital
288 felony under s. 787.062 that is committed on or after October 1,
289 2025.

290 Section 3. Paragraph (o) is added to subsection (1) of

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291 section 924.07, Florida Statutes, to read:

292 924.07 Appeal by state.—

293 (1) The state may appeal from:

294 (o) The sentence in a case of capital human trafficking on
295 the ground that it resulted from the circuit court's failure to
296 comply with sentencing procedures under s. 921.1427, including
297 by striking a notice of intent to seek the death penalty,
298 refusing to impanel a capital jury, or otherwise granting relief
299 that prevents the state from seeking a sentence of death.

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

302 921.137 Imposition of the death sentence upon an
303 intellectually disabled defendant prohibited.—

304 (4) After a defendant who has given notice of his or her
305 intention to raise intellectual disability as a bar to the death
306 sentence is convicted of a capital felony and an advisory jury
307 has returned a recommended sentence of death, the defendant may
308 file a motion to determine whether the defendant is
309 intellectually disabled. Upon receipt of the motion, the court
310 shall appoint two experts in the field of intellectual
311 disabilities who shall evaluate the defendant and report their
312 findings to the court and all interested parties prior to the
313 final sentencing hearing. Notwithstanding s. 921.141, s.
314 921.142, ~~or~~ s. 921.1425, or s. 921.1427, the final sentencing
315 hearing shall be held without a jury. At the final sentencing
316 hearing, the court shall consider the findings of the court-
317 appointed experts and consider the findings of any other expert
318 which is offered by the state or the defense on the issue of
319 whether the defendant has an intellectual disability. If the

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

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

327 921.141 Sentence of death or life imprisonment for capital
328 felonies; further proceedings to determine sentence.-

329 (9) APPLICABILITY.-This section does not apply to a person
330 convicted or adjudicated guilty of a capital sexual battery
331 under s. 794.011, a capital sex trafficking felony under
332 787.062, or a capital drug trafficking felony under s. 893.135.

333 Section 6. This act shall take effect October 1, 2025.