

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 Committee on Criminal Justice

BILL: SB 776

INTRODUCER: Senator Ingoglia

SUBJECT: Aggravating Factors for Capital Felonies

DATE: March 17, 2025

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Stokes</u>	<u>CJ</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>FP</u>	_____

I. Summary:

SB 776 amends s. 921.141, F.S., to create an additional aggravating factor for the jury and the sentencing court to consider during a capital trial and sentencing.

The aggravating factor created by the bill provides that if the capital felony was committed against the head of a state, including but not limited to, the President or the Vice President of the United States or the Governor of this or another state, or if in an attempt to commit such crime a capital felony was committed against another individual, the aggravating factor may be considered during a capital trial and sentencing .

The bill has an indeterminate fiscal impact. *See Section V. Fiscal Impact Statement.*

The bill takes effect on July 1, 2025.

II. Present Situation:

Florida’s Current Sentencing Proceedings in Capital Cases

Most of the statutes governing the proceedings to determine a sentence of either death or life imprisonment without the possibility of parole¹ in capital cases are set forth in s. 921.141, F.S. The court conducts the sentencing proceeding upon conviction or adjudication of guilt of a defendant in a capital felony.² Typically, the proceeding is conducted by the trial judge before the trial jury as soon as practicable.³

¹ Section 775.082(1)(a), F.S.

² Section 921.141(1), F.S.

³ *Id.*

Aggravating Factors and Mitigating Circumstances

During the sentencing proceeding, the jury (or the judge if the jury is waived by the defendant) considers evidence that is relevant to the nature of the crime and the character of the defendant. The evidence includes matters relating to any of the aggravating factors⁴ or mitigating circumstances.⁵

Aggravating factors are facts that tend to show a particular trait or status of the victim, a trait of the defendant, or facts related to the nature of the crime or the manner in which the defendant committed it.⁶

The aggravating factors are limited to the following:

- The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or 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 to the person.
- The defendant knowingly created a great risk of death to many persons.
- The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.
- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.
- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- The victim of the capital felony was a person less than 12 years of age.
- The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.

⁴ Section 921.141(6), F.S.

⁵ Section 921.141(7), F.S.

⁶ Section 921.141(6), F.S.

- The capital felony was committed by a criminal gang member.⁷
- The capital felony was committed by a person designated as a sexual predator⁸ or a person previously designated as a sexual predator who had the sexual predator designation removed.
- The capital felony was committed by a person subject to a domestic violence injunction⁹, or an injunction for protection against repeat violence, dating violence and of sexual violence,¹⁰ or a foreign protection order,¹¹ and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

Additionally, the following mitigating circumstances may be considered by the jury or the court as reasons this particular defendant may not be sentenced to death, in the opinion of the jury or the court.

Statutory 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 victim was a participant in the defendant's conduct or consented to the act.
- 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 existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.¹²

⁷ "Criminal gang member" means a person who meets two or more of the following criteria: Admits to criminal gang membership; Is identified as a criminal gang member by a parent or guardian; Is identified as a criminal gang member by a documented reliable informant; Adopts the style of dress of a criminal gang; Adopts the use of a hand sign identified as used by a criminal gang; Has a tattoo identified as used by a criminal gang; Associates with one or more known criminal gang members; Is identified as a criminal gang member by an informant of previously untested reliability and such identification is corroborated by independent information; Is identified as a criminal gang member by physical evidence; Has been observed in the company of one or more known criminal gang members four or more times; (Observation in a custodial setting requires a willful association. It is the intent of the Legislature to allow this criterion to be used to identify gang members who recruit and organize in jails, prisons, and other detention settings.) Has authored any communication indicating responsibility for the commission of any crime by the criminal gang. Where a single act or factual transaction satisfies the requirements of more than one of the criteria in this subsection, each of those criteria has thereby been satisfied for the purposes of the statute. s. 874.03, F.S.

⁸ Section 775.21(4)(a), F.S.

⁹ Injunction for protection against domestic violence, s.741.30 F.S.

¹⁰ Injunction for protection against repeat violence, dating violence, and protection in cases of sexual violence, s.784.046, F.S.

¹¹ Section 741.315, F.S.

¹² Section 921.141(7)(a)-(h), F.S.

Jury Findings and Recommended Sentence

The jury must return findings identifying each aggravating factor found to exist beyond a reasonable doubt. A finding that an aggravating factor exists must be unanimous.¹³ If the jury:

- Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.
- Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury must make a recommendation to the court as to whether the defendant shall 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.¹⁴

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 death¹⁵. If at least eight jurors do not determine that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.¹⁶

Imposition of Sentence

If the jury has recommended a sentence of:

- Life imprisonment without the possibility of parole, the court must impose the recommended sentence.¹⁷
- Death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury.¹⁸

If the defendant waived 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 one aggravating factor has been proven to exist beyond a reasonable doubt.¹⁹

¹³ Section 921.141(2)(b), F.S.

¹⁴ Section 921.141(2) and (b), F.S.

¹⁵ Section 921.141(2)(c), F.S.

¹⁶ Section 921.141(2)(c), F.S.

¹⁷ Section 921.141(3), F.S.

¹⁸ Section 921.141(3), F.S.

¹⁹ Section 921.141(3), F.S.

III. Effect of Proposed Changes:

The bill amends s. 921.141, F.S., to create an additional aggravating factor for the jury and the sentencing court to consider during a capital trial and sentencing.

The aggravating factor created in s. 921.141(6)(q), F.S., provides that if the capital felony was committed against the head of a state, including but not limited to, the President or the Vice President of the United States or the Governor of this or another state, or if in an attempt to commit such crime a capital felony was committed against another individual, the aggravating factor may be considered during a capital trial and sentencing.

The bill takes effect on July 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:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have an unquantifiable prison bed impact based on the new aggravating factor if additional defendants are convicted and sentenced to life imprisonment or imprisoned until the death sentence is carried out.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following section of the Florida Statutes: 921.141(6)(q), F.S.

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.