

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED        (Y/N)  
ADOPTED AS AMENDED        (Y/N)  
ADOPTED W/O OBJECTION        (Y/N)  
FAILED TO ADOPT        (Y/N)  
WITHDRAWN        (Y/N)  
OTHER           

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1 Committee/Subcommittee hearing bill: Criminal Justice  
2 Subcommittee

3 Representative Bracy offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove lines 104-336 and insert:

7 (c) If the jury unanimously determines that the defendant  
8 should be sentenced to death, the jury's recommendation to the  
9 court shall be a sentence of death. If the jury does not  
10 unanimously determine that the defendant should be sentenced to  
11 death, the jury's recommendation to the court shall be a  
12 sentence of life imprisonment without the possibility of parole.

13 (3) IMPOSITION OF LIFE OR DEATH SENTENCE.-

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

15 1. Life imprisonment without the possibility of parole,  
16 the court shall impose the recommended sentence.

17 2. Death, the court, after considering each aggravating

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18 factor found by the jury and all mitigating circumstances, may  
19 impose a sentence of life imprisonment without the possibility  
20 of parole or a sentence of death. The court may only consider an  
21 aggravating factor that was unanimously found by the jury to  
22 exist.

23 (b) If the defendant waived his or her right to a  
24 sentencing proceeding by a jury, the court, after considering  
25 all aggravating factors and mitigating circumstances, may impose  
26 a sentence of life imprisonment without the possibility of  
27 parole or a sentence of death. The court may only impose a  
28 sentence of death if the court finds at least one aggravating  
29 factor has been proven beyond a reasonable doubt to exist.

30 (4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.-  
31 In each case in which the court imposes a death sentence, the  
32 court shall, considering the records of the trial and the  
33 sentencing proceedings, enter a written order addressing the  
34 aggravating factors set forth in subsection (6) found to exist,  
35 the mitigating circumstances in subsection (7) reasonably  
36 established by the evidence, whether there are sufficient  
37 aggravating factors to warrant the death penalty, and whether  
38 the mitigating circumstances reasonably established by the  
39 evidence outweigh the aggravating factors. If the court does not  
40 issue its order requiring the death sentence within 30 days  
41 after the rendition of the judgment and sentence, the court  
42 shall impose a sentence of life imprisonment without the  
43 possibility of parole in accordance with s. 775.082.

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44 ~~(2) ADVISORY SENTENCE BY THE JURY. After hearing all the~~  
45 ~~evidence, the jury shall deliberate and render an advisory~~  
46 ~~sentence to the court, based upon the following matters:~~

47 ~~(a) Whether sufficient aggravating circumstances exist as~~  
48 ~~enumerated in subsection (5);~~

49 ~~(b) Whether sufficient mitigating circumstances exist~~  
50 ~~which outweigh the aggravating circumstances found to exist; and~~

51 ~~(c) Based on these considerations, whether the defendant~~  
52 ~~should be sentenced to life imprisonment or death.~~

53 ~~(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—~~

54 ~~Notwithstanding the recommendation of a majority of the jury,~~  
55 ~~the court, after weighing the aggravating and mitigating~~  
56 ~~circumstances, shall enter a sentence of life imprisonment or~~  
57 ~~death, but if the court imposes a sentence of death, it shall~~  
58 ~~set forth in writing its findings upon which the sentence of~~  
59 ~~death is based as to the facts:~~

60 ~~(a) That sufficient aggravating circumstances exist as~~  
61 ~~enumerated in subsection (5), and~~

62 ~~(b) That there are insufficient mitigating circumstances~~  
63 ~~to outweigh the aggravating circumstances.~~

64  
65 ~~In each case in which the court imposes the death sentence, the~~  
66 ~~determination of the court shall be supported by specific~~  
67 ~~written findings of fact based upon the circumstances in~~  
68 ~~subsections (5) and (6) and upon the records of the trial and~~  
69 ~~the sentencing proceedings. If the court does not make the~~

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70 ~~findings requiring the death sentence within 30 days after the~~  
71 ~~rendition of the judgment and sentence, the court shall impose~~  
72 ~~sentence of life imprisonment in accordance with s. 775.082.~~

73 (5)~~(4)~~ REVIEW OF JUDGMENT AND SENTENCE.—The judgment of  
74 conviction and sentence of death shall be subject to automatic  
75 review by the Supreme Court of Florida and disposition rendered  
76 within 2 years after the filing of a notice of appeal. Such  
77 review by the Supreme Court shall have priority over all other  
78 cases and shall be heard in accordance with rules promulgated by  
79 the Supreme Court.

80 (6)~~(5)~~ AGGRAVATING FACTORS ~~CIRCUMSTANCES~~.—Aggravating  
81 factors ~~circumstances~~ shall be limited to the following:

82 (a) The capital felony was committed by a person  
83 previously convicted of a felony and under sentence of  
84 imprisonment or placed on community control or on felony  
85 probation.

86 (b) The defendant was previously convicted of another  
87 capital felony or of a felony involving the use or threat of  
88 violence to the person.

89 (c) The defendant knowingly created a great risk of death  
90 to many persons.

91 (d) The capital felony was committed while the defendant  
92 was engaged, or was an accomplice, in the commission of, or an  
93 attempt to commit, or flight after committing or attempting to  
94 commit, any: robbery; sexual battery; aggravated child abuse;  
95 abuse of an elderly person or disabled adult resulting in great

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96 | bodily harm, permanent disability, or permanent disfigurement;  
97 | arson; burglary; kidnapping; aircraft piracy; or unlawful  
98 | throwing, placing, or discharging of a destructive device or  
99 | bomb.

100 |       (e) The capital felony was committed for the purpose of  
101 | avoiding or preventing a lawful arrest or effecting an escape  
102 | from custody.

103 |       (f) The capital felony was committed for pecuniary gain.

104 |       (g) The capital felony was committed to disrupt or hinder  
105 | the lawful exercise of any governmental function or the  
106 | enforcement of laws.

107 |       (h) The capital felony was especially heinous, atrocious,  
108 | or cruel.

109 |       (i) The capital felony was a homicide and was committed in  
110 | a cold, calculated, and premeditated manner without any pretense  
111 | of moral or legal justification.

112 |       (j) The victim of the capital felony was a law enforcement  
113 | officer engaged in the performance of his or her official  
114 | duties.

115 |       (k) The victim of the capital felony was an elected or  
116 | appointed public official engaged in the performance of his or  
117 | her official duties if the motive for the capital felony was  
118 | related, in whole or in part, to the victim's official capacity.

119 |       (l) The victim of the capital felony was a person less  
120 | than 12 years of age.

121 |       (m) The victim of the capital felony was particularly

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122 vulnerable due to advanced age or disability, or because the  
123 defendant stood in a position of familial or custodial authority  
124 over the victim.

125 (n) The capital felony was committed by a criminal gang  
126 member, as defined in s. 874.03.

127 (o) The capital felony was committed by a person  
128 designated as a sexual predator pursuant to s. 775.21 or a  
129 person previously designated as a sexual predator who had the  
130 sexual predator designation removed.

131 (p) The capital felony was committed by a person subject  
132 to an injunction issued pursuant to s. 741.30 or s. 784.046, or  
133 a foreign protection order accorded full faith and credit  
134 pursuant to s. 741.315, and was committed against the petitioner  
135 who obtained the injunction or protection order or any spouse,  
136 child, sibling, or parent of the petitioner.

137 ~~(7)(6)~~ MITIGATING CIRCUMSTANCES.—Mitigating circumstances  
138 shall be the following:

139 (a) The defendant has no significant history of prior  
140 criminal activity.

141 (b) The capital felony was committed while the defendant  
142 was under the influence of extreme mental or emotional  
143 disturbance.

144 (c) The victim was a participant in the defendant's  
145 conduct or consented to the act.

146 (d) The defendant was an accomplice in the capital felony  
147 committed by another person and his or her participation was

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148 relatively minor.

149 (e) The defendant acted under extreme duress or under the  
150 substantial domination of another person.

151 (f) The capacity of the defendant to appreciate the  
152 criminality of his or her conduct or to conform his or her  
153 conduct to the requirements of law was substantially impaired.

154 (g) The age of the defendant at the time of the crime.

155 (h) The existence of any other factors in the defendant's  
156 background that would mitigate against imposition of the death  
157 penalty.

158 ~~(8)~~ ~~(7)~~ VICTIM IMPACT EVIDENCE.—Once the prosecution has  
159 provided evidence of the existence of one or more aggravating  
160 factors ~~circumstances~~ as described in subsection ~~(6)~~ ~~(5)~~, the  
161 prosecution may introduce, and subsequently argue, victim impact  
162 evidence to the jury. Such evidence shall be designed to  
163 demonstrate the victim's uniqueness as an individual human being  
164 and the resultant loss to the community's members by the  
165 victim's death. Characterizations and opinions about the crime,  
166 the defendant, and the appropriate sentence shall not be  
167 permitted as a part of victim impact evidence.

168 ~~(9)~~ ~~(8)~~ APPLICABILITY.—This section does not apply to a  
169 person convicted or adjudicated guilty of a capital drug  
170 trafficking felony under s. 893.135.

171 Section 3. Section 921.142, Florida Statutes, is amended  
172 to read:

173 921.142 Sentence of death or life imprisonment for capital

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174 drug trafficking felonies; further proceedings to determine  
175 sentence.—

176 (1) FINDINGS.—The Legislature finds that trafficking in  
177 cocaine or opiates carries a grave risk of death or danger to  
178 the public; that a reckless disregard for human life is implicit  
179 in knowingly trafficking in cocaine or opiates; and that persons  
180 who traffic in cocaine or opiates may be determined by the trier  
181 of fact to have a culpable mental state of reckless indifference  
182 or disregard for human life.

183 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon  
184 conviction or adjudication of guilt of a defendant of a capital  
185 felony under s. 893.135, the court shall conduct a separate  
186 sentencing proceeding to determine whether the defendant should  
187 be sentenced to death or life imprisonment as authorized by s.  
188 775.082. The proceeding shall be conducted by the trial judge  
189 before the trial jury as soon as practicable. If, through  
190 impossibility or inability, the trial jury is unable to  
191 reconvene for a hearing on the issue of penalty, having  
192 determined the guilt of the accused, the trial judge may summon  
193 a special juror or jurors as provided in chapter 913 to  
194 determine the issue of the imposition of the penalty. If the  
195 trial jury has been waived, or if the defendant pleaded guilty,  
196 the sentencing proceeding shall be conducted before a jury  
197 impaneled for that purpose, unless waived by the defendant. In  
198 the proceeding, evidence may be presented as to any matter that  
199 the court deems relevant to the nature of the crime and the

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200 character of the defendant and shall include matters relating to  
201 any of the aggravating factors or mitigating circumstances  
202 enumerated in subsections ~~(6) and~~ (7) and (8). Any such evidence  
203 which the court deems to have probative value may be received,  
204 regardless of its admissibility under the exclusionary rules of  
205 evidence, provided the defendant is accorded a fair opportunity  
206 to rebut any hearsay statements. However, this subsection shall  
207 not be construed to authorize the introduction of any evidence  
208 secured in violation of the Constitution of the United States or  
209 the Constitution of the State of Florida. The state and the  
210 defendant or the defendant's counsel shall be permitted to  
211 present argument for or against sentence of death.

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

215 (a) After hearing all of the evidence presented in  
216 aggravation and mitigation, the jury shall deliberate and  
217 determine if the state has proven, beyond a reasonable doubt,  
218 the existence of at least one aggravating factor set forth in  
219 subsection (7).

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

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

225 2. Unanimously finds at least one aggravating factor, the

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226 defendant is eligible for a sentence of death and the jury shall  
227 make a recommendation to the court as to whether the defendant  
228 shall be sentenced to life imprisonment without the possibility  
229 of parole or death. The recommendation shall be based on a  
230 weighing of the following:

231 a. Whether sufficient aggravating factors exist.

232 b. Whether sufficient mitigating circumstances exist that  
233 outweigh the aggravating factors found to exist.

234 c. Based on these considerations, whether the defendant  
235 should be sentenced to life imprisonment without the possibility  
236 of parole or death.

237 (c) If the jury unanimously determines that the defendant  
238 should be sentenced to death, the jury's recommendation to the  
239 court shall be a sentence of death. If the jury does not  
240 unanimously

241 -----  
242 -----

243 **T I T L E A M E N D M E N T**

244 Remove lines 15-16 and insert:  
245 requiring a unanimous jury for the recommendation of a sentence  
246 of death; requiring a