

Criminal Justice Subcommittee

Tuesday, February 2, 2016 1:30 PM - 3:30 PM Sumner Hall (404 HOB)

ACTION PACKET

Criminal Justice Subcommittee 2/2/2016 1:30:00PM

Location: Sumner Hall (404 HOB)

Summary:

Criminal Justice Subcommittee

Tuesday February 02, 2016 01:30 pm

PCB CRJS 16-07 Favorable

Amendment PCB CRJS 16-07 a1 Failed to Adopt

amendment 1

Yeas: 11

Nays: 2

Criminal Justice Subcommittee

2/2/2016 1:30:00PM

Location: Sumner Hall (404 HOB)

Attendance:

	Present	Absent	Excused
Carlos Trujillo (Chair)	x	- Indiana - Indi	
Dennis Baxley	X		
Randolph Bracy	X		
Jay Fant	X		Start of the start
Gayle Harrell	X		
Dave Kerner	X		
Chris Latvala	X		
Ray Pilon	X		
Scott Plakon	X		
Sharon Pritchett	X		
Ross Spano	X		
Charles Van Zant	X		
Clovis Watson, Jr.	X		
Totals:	13	0	0

Criminal Justice Subcommittee

2/2/2016 1:30:00PM

Location: Sumner Hall (404 HOB)

PCB CRJS 16-07 : Sentencing for Capital Felonies

X Favorable

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Dennis Baxley	X				
Randolph Bracy		X			
Jay Fant	X				
Gayle Harrell	X				
Dave Kerner	X				
Chris Latvala	X				
Ray Pilon	X				
Scott Plakon	x				
Sharon Pritchett		X			
Ross Spano	X				
Charles Van Zant	X				
Clovis Watson, Jr.	X				
Carlos Trujillo (Chair)	X				
	Total Yeas: 11	Total Nays: 2			

PCB CRJS 16-07 Amendments

Amendment PCB CRJS 16-07 a1 - amendment 1

X Failed to Adopt

Appearances:

PCB CRJS 16-07 Dembinsky, Stephan - Waive In Support The Florida Police Chiefs Association Chief of Police 3050 South Atltantic Ave Daytona Beach Shores FL 32118

PCB CRJS 16-07

Purdy, Jim (State Employee) - Information Only Florida Public Defender Association, Inc. Public Defender, 7th Circuit 251 North Ridgewood Avenue Daytona Beach Florida 32114

Phone: 386.239.7730

Phone: 386-763-5334

Criminal Justice Subcommittee

2/2/2016 1:30:00PM

Location: Sumner Hall (404 HOB)

PCB CRJS 16-07 : Sentencing for Capital Felonies (continued)

Appearances: (continued)

PCB CRJS 16-07

Sundby, Scott - Information Only University of Miami, School of Law Professor of Law University of Miami School of Law Coral Gables FI 33146

Phone: 305-284-5848

PCB CRJS 16-07

Schlakman, Mark - Information Only FSU Center for the Advancement of Human Rights Senior Program Director FSU/CAHR 426 W. Jefferson St. Tallahassee FL 32301

Phone: (850) 766-2146

PCB CRJS 16-07

Dimmig, Rex - Information Only Public Defender, 10th Circuit 255 North Broad

PCB CRJS 16-07

King, Brad (State Employee) - Proponent Florida Prosecuting Attorneys Association State Attorney, 5th Circuit 110 NW 1st Ave, Suite 5000 Ocala FI 34475

Phone: 352-671-5914

PCB CRJS 16-07

Delgado, Ingrid (Lobbyist) - Opponent Florida Conference of Catholic Bishops Associate for Social Concerns & Respect Life 201 W. Park Av Tallahassee FL 32301

Print Date: 2/2/2016 3:49 pm Leagis ® Page 4 of 4 COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. PCB CRJS 16-07 (2016)

Amendment No. 1

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COMMITTEE/SUBCOMMITTE	EE	ACTION	1
ADOPTED		(Y/N)	
ADOPTED AS AMENDED	_	(Y/N)	
ADOPTED W/O OBJECTION		(Y/N)	
FAILED TO ADOPT	*	(Y/N)	2/2/14
WITHDRAWN		(Y/N)	
OTHER			

Committee/Subcommittee hearing bill: Criminal Justice Subcommittee

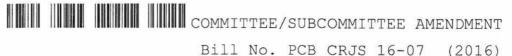
Representative Bracy offered the following:

Amendment (with title amendment)

Remove lines 104-336 and insert:

- (c) If the jury unanimously determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If the jury does not unanimously 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.
 - (3) IMPOSITION OF LIFE OR DEATH SENTENCE.
 - (a) If the jury has recommended a sentence of:
- 1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence.
 - 2. Death, the court, after considering each aggravating

PCB CRJS 16-07 al



Amendment No. 1

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 only consider an aggravating factor that was unanimously found by the jury to exist.

- (b) 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 only impose a sentence of death if the court finds at least one aggravating factor has been proven beyond a reasonable doubt to exist.
- (4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—
 In each case in which the court imposes a death sentence, the
 court shall, considering the records of the trial and the
 sentencing proceedings, enter a written order addressing the
 aggravating factors set forth in subsection (6) found to exist,
 the mitigating circumstances in subsection (7) reasonably
 established by the evidence, whether there are sufficient
 aggravating factors to warrant the death penalty, and whether
 the mitigating circumstances reasonably established by the
 evidence outweigh the aggravating factors. If the court does not
 issue its order requiring the death sentence within 30 days
 after the rendition of the judgment and sentence, the court
 shall impose a sentence of life imprisonment without the
 possibility of parole in accordance with s. 775.082.

PCB CRJS 16-07 al



COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. PCB CRJS 16-07

Amendment No. 1

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(2)	ADVISORY	SENTENCE	BY THE	JURYAfte	r hearing	all the
evidence,	the jury	shall del	iberate	and rende	r an advis	ory
sentence	to the cou	ırt, based	l upon t	the followi	ng matters	÷
(a)	Whether s	sufficient	aggrav	rating circ	umstances	exist as

- enumerated in subsection (5); (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.
- (3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH. Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:
- (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

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

PCB CRJS 16-07 al

COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. PCB CRJS 16-07

Amendment No. 1

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

- (5) (4) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within 2 years after the filing of a notice of appeal. Such review by the Supreme Court shall have priority over all other cases and shall be heard in accordance with rules promulgated by the Supreme Court.
- (6) (5) AGGRAVATING FACTORS CIRCUMSTANCES. Aggravating factors circumstances shall be limited to the following:
- (a) 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

PCB CRJS 16-07 al

COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. PCB CRJS 16-07

Amendment No. 1

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

- (e) 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. (f)
- 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

PCB CRJS 16-07 a1

COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. PCB CRJS 16-07 (2016)

Amendment No. 1

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

- (n) The capital felony was committed by a criminal gang member, as defined in s. 874.03.
- (o) The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.
- (p) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.
- (7) (6) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be 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

PCB CRJS 16-07 a1

COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. PCB CRJS 16-07 (2016)

Amendment No. 1

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- The defendant acted under extreme duress or under the substantial domination of another person.
- (f) 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.
- (h) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.
- (8) (7) VICTIM IMPACT EVIDENCE.—Once the prosecution has provided evidence of the existence of one or more aggravating factors circumstances as described in subsection (6) (5), the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.
- (9) (8) APPLICABILITY.—This section does not apply to a person convicted or adjudicated guilty of a capital drug trafficking felony under s. 893.135.
- Section 3. Section 921.142, Florida Statutes, is amended to read:
 - 921.142 Sentence of death or life imprisonment for capital

PCB CRJS 16-07 a1

COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. PCB CRJS 16-07 (2016)

Amendment No. 1

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drug trafficking felonies; further proceedings to determine sentence.-

- (1) FINDINGS.—The Legislature finds that trafficking in cocaine or opiates carries a grave risk of death or danger to the public; that a reckless disregard for human life is implicit in knowingly trafficking in cocaine or opiates; and that persons who traffic in cocaine or opiates may be determined by the trier of fact to have a culpable mental state of reckless indifference or disregard for human life.
- (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.-Upon conviction or adjudication of guilt of a defendant of a capital felony under s. 893.135, 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. The proceeding shall 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 chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded 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

PCB CRJS 16-07 a1

COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. PCB CRJS 16-07 (2016)

Amendment No. 1

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character of the defendant and shall include matters relating to any of the aggravating factors or mitigating circumstances enumerated in subsections (6) and (7) and (8). Any such evidence which 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, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

- (3) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY-This subsection applies only if the defendant has not waived his or her right to a sentencing proceeding by a jury.
- (a) After hearing all of the evidence presented in aggravation and mitigation, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (7).
- The jury shall return findings identifying each aggravating factor found to exist. A finding that an aggravating factor exists must be unanimous. If the jury:
- 1. Does not unanimously find at least one aggravating factor, the defendant is ineligible for a sentence of death.
 - 2. Unanimously finds at least one aggravating factor, the

PCB CRJS 16-07 a1



COMMITTEE/SUBCOMMITTEE AMENDMENT Bill No. PCB CRJS 16-07 (2016)

Amendment No. 1

defendant is eligible	for a sentence of	f death and th	e jury shall
make a recommendation	to the court as t	to whether the	defendant
shall be sentenced to	life imprisonment	t without the	possibility
of parole or death. The	ne recommendation	shall be base	ed on a
weighing of the follow	ving:		

- a. Whether sufficient aggravating factors exist.
- b. Whether sufficient mitigating circumstances exist that outweigh the aggravating factors found to exist.
- c. Based on these considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.
- (c) If the jury unanimously determines that the defendant should be sentenced to death, the jury's recommendation to the court shall be a sentence of death. If the jury does not unanimously

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TITLE AMENDMENT

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



Please fill out the <u>entire</u> form and submit <u>two</u> copies to the committee/subcommittee

Administrative Assistant at the meeting.

Type or Print Clearly

Bill Number: PCB CRJS 16-07 Meeting Date: February 2, 2016
Fill in appropriate information: PCB/PCS/Amendment # or Presentation/Workshop Topic: Sentencing for Capital Felomes
Committee/Subcommittee: Criminal Justice Subcommittee
Name: Stephan Dembinsky
Title: Chief of Police
Address: 3050 South Atlantic Ave.
City: Daytona Beach Show State/Zip: FL 32118
Phone Number: 386 - 763 - 5334
Representing: The Florida Police Chiefs Association
Registered Lobbyist: YES NO State Employee: YES NO
I Wish To Speak: YES NO Bill Amendment
Proponent Opponent Opponent Opponent Opponent
I Have Been Requested to Speak: YES NO Info Only Info Only Info Only

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COMMITTEE/SUBCOMMITTEE APPEARANCE RECORD

Please fill out the entire form and submit two copies to the committee/subcommittee administrative assistant at the meeting.

Bill Number:	N/A		Meeting Date:	Feb 2 2016 1:30PM		
PCB/PCS/Amer Presentation/Wo		CRJS7				
Committee/Sub	committee:	Criminal Justice	e Subcommittee			
Name:	Purdy, Jim			6		
Title:	Public Defender, 7th Circuit					
Address:	251 North Ridgewood Avenue					
City:	Daytona Beach		State/Zip:	Florida 32114		
Phone Number:	386.239.7730					
Representing:	Florida Public	Defender Associa	tion, Inc.			
Regis	tered Lobbyist	No No	State Employee:	Yes		

I Wish To Speak: Yes

I Have Been Requested To Speak: No

Info Only	NT/A
Bill	Amendment



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Administrative Assistant at the meeting.

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Bill Number: CRJS7 Meeting Date: 2/2/16
Fill in appropriate information: PCB/PCS/Amendment # or Presentation/Workshop Topic: CAPITAL SENTENCIME
Committee/Subcommittee: Criminal Justice
Name: Swith Sunday Sunday
Title: Professor of Law
Address: Univ. of Miami School of Law
City: Coral Calles State/Zip: FL 33146
Phone Number: 305-284 - 5848
Representing: Univ. of Mani School of Law
Registered Lobbyist: YES NO State Employee: YES NO
I Wish To Speak: YES NO Bill Amendment
Proponent Opponent Op
I Have Been Requested to Speak: YES NO Info Only Info Only





Please fill out the $\frac{\text{entire}}{\text{administrative}}$ form and submit two copies to the committee/subcommittee

Bill Number:	N/A		Meeting Date:	Feb 2 2016	1:30PM
PCB/PCS/Amer Presentation/Wo		PCB CRJS 16-07			
Committee/Sub	committee:	Criminal Justice	Subcommittee		
Name:	Schlakman, M	ark			
Title:	senior program	n director			
Address:	FSU/CAHR, 4	26 W. Jefferson St.			
City:	Tallahassee		State/Zip:	FL 32301	
Phone Number:	(850) 766-2146	í			
Representing:	FSU Center fo	r the Advancement	of Human Rights	i	G.
Regis	tered Lobbyist	: No	State Employee	. No	

I Wish To Speak: Yes

I Have Been Requested To Speak: No

Bill	Amendment		
Info Only	N/A		





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COMMITTEE/SUBCOMMITTEE APPEARANCE RECORD

Please fill out the $\underbrace{\text{entire}}_{\text{administrative}}$ form and submit $\underbrace{\text{two}}_{\text{copies}}$ to the committee/subcommittee

Bill Number:	N/A	Meeting Date:	Feb 2 2016 1:30PM
PCB/PCS/Amer Presentation/Wo			
Committee/Sub	committee: Crimin	al Justice Subcommittee	
Name:	Dimmig, Rex		
Title:	Public Defender, 10th C	Circuit	
Address:	255 North Broad		
City:		State/Zip:	
Phone Number:			
Representing:	*		
Regis	tered Lobbyist: No	State Employee:	No
I Wish To Speal	k: Yes	Bill	Amendment
	quested To Speak: No	Info Only	N/A

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Bill Number: PCB CRJS 16-07 Meeting Date: 2/2/16
Fill in appropriate information: PCB/PCS/Amendment # or Presentation/Workshop Topic: Death Penalty
Committee/Subcommittee: Criminal Justice
Name: Brad King
Title: State Attorney, 5th Circuit
Address: 110 NW 15T Ave, Suite 5000
City: Ocala State/Zip: F 34495
Phone Number: 352 - 671 - 5914
Representing: Florida Prosecuting Attorneys Association
Registered Lobbyist: YES NO State Employee: YES NO Elected Official
I Wish To Speak: YES NO Bill Amendment Proponent Opponent Opponent Opponent Opponent Opponent D
I Have Been Requested to Speak: YES NO Info Only Info Only Info Only

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Bill Number: Meetin	g Date: 2 2 1	C .
Fill in appropriate information: PCB/PCS/Amendment # or Presentation/Workshop Topic:	Dentena.	
Committee/Subcommittee:	wh O	
Name: Thand Pelogolo		
Title: Associate for Social C	nnoens 1 Va	greatify
Address: 201 M Para Av		,
City: State/Z	(ip: <u>37361</u>	
Phone Number:		
Representing: Thomas Conformer	- Co-Holic T	Bishaps
Registered Lobbyist: YES NO State	e Employee: YES	NO
I Wish To Speak: YES NO	Bill	Amendment
I Have Been Requested to Speak: YES NO Info C		Proponent Opponent Info Only
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