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# **Criminal Justice Subcommittee**

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

**MEETING PACKET**

**Steve Crisafulli  
Speaker**

**Carlos Trujillo  
Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Criminal Justice Subcommittee

**Start Date and Time:** Tuesday, February 02, 2016 01:30 pm  
**End Date and Time:** Tuesday, February 02, 2016 03:30 pm  
**Location:** Sumner Hall (404 HOB)  
**Duration:** 2.00 hrs

**Consideration of the following proposed committee bill(s):**

PCB CRJS 16-07 -- Sentencing for Capital Felonies

**NOTICE FINALIZED on 01/29/2016 4:25PM by Denson.Karan**

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB CRJS 16-07 Sentencing for Capital Felonies  
**SPONSOR(S):** Criminal Justice Subcommittee  
**TIED BILLS:** None **IDEN./SIM. BILLS:** None

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee		Aziz <i>PA</i>	White <i>TW</i>

### SUMMARY ANALYSIS

Under current law, when a defendant is convicted of a capital offense, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or life imprisonment. After hearing the evidence, the jury renders an advisory sentence to the judge based on whether sufficient aggravating circumstances exist, whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances, and based on these considerations, whether the defendant should be sentenced to life imprisonment or death. A simple majority vote of the jury is necessary to recommend the death penalty. Juries are not required to list on the verdict aggravating and mitigating circumstances that the jury finds persuasive or to disclose the number of jurors making these findings.

The judge may sentence a defendant as recommended by the jury or may override the jury's recommendation. If the judge sentences a defendant to death, the judge must make written findings which indicate that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.

On January 12, 2016, the United States Supreme Court held Florida's capital sentencing scheme unconstitutional. The Court ruled that, under the Sixth Amendment of the United States Constitution, a jury, not a judge, must find each fact necessary to impose a sentence of death as a jury's "mere recommendation is not enough."

The bill amends Florida's capital sentencing scheme to comply with the United States Supreme Court's ruling. Under the new sentencing scheme, the jury will continue to determine whether an aggravating factor exists, but will be required to make that determination unanimously. If the jury:

- Does not unanimously find at least one aggravating factor, the jury may only recommend a sentence of life imprisonment without the possibility of parole.
- Unanimously finds one or more aggravating factors, the jury may recommend a sentence of death or a life imprisonment without the possibility of parole. To recommend a sentence of death, a minimum of nine jurors must concur in the recommendation. If fewer than nine jurors concur, a sentence of life imprisonment without the possibility of parole will be the jury's recommendation to the court.

If the jury recommends life imprisonment without the possibility of parole, the judge must impose the recommended sentence. If the jury recommends a sentence of death, the judge may impose a sentence of death or a sentence of life imprisonment without the possibility of parole after considering each aggravating factor found by the jury and all mitigating circumstances. The judge may only consider an aggravating factor that was unanimously found by the jury.

The bill does not appear to have a fiscal impact.

The bill takes effect upon becoming law.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Death Penalty - Background**

In 1972, the United States Supreme Court decided *Furman v. Georgia*, which struck down all of the then-existing death penalty statutes in the United States on grounds that the imposition and carrying out of the death penalty constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.<sup>1</sup>

Florida was the first state to reenact a death penalty statute in the wake of *Furman*. This occurred in the fall of 1972, when House Bill 1-A was enacted during a Special Session of the Legislature.<sup>2</sup> While many statutory changes have been made over the years, this legislation formed the basis for Florida's current capital sentencing proceedings.

##### **Current Death Row Statistics**

Florida is currently one of 31 states that impose the death penalty.<sup>3</sup> As of January 31, 2016, there were 389 people on death row in Florida – more than any other state aside from California.<sup>4</sup> Of the 389 inmates on death row, 157 have been on death row for more than 20 years.<sup>5</sup>

Since 1976, Florida has executed 91 inmates.<sup>6</sup> During the same period, Texas has executed 525 inmates, Oklahoma has executed 112 inmates, and Virginia has executed 110.<sup>7</sup> Florida executed two death row inmates in 2015, and eight in 2014.<sup>8</sup>

##### **Capital Sentencing Proceedings**

Sections 921.141 and 921.142, F.S.,<sup>9</sup> govern Florida's death penalty. Under these sections, if a defendant is convicted of a capital felony,<sup>10</sup> a separate sentencing proceeding is conducted before the trial jury or, if the defendant pled, before a jury impaneled for that purpose.<sup>11, 12</sup> During the sentencing proceeding, the jury must determine whether the defendant should be sentenced to death or to life imprisonment.<sup>13</sup>

After hearing all the evidence, the jury is required to render an advisory sentence to the judge based on the following factors:

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<sup>1</sup> *Furman v. Georgia*, 408 U.S. 238 (1972).

<sup>2</sup> The bill was signed by Governor Askew on December 8, 1972. Chapter 72-724, L.O.F. (1973).

<sup>3</sup> The other states are Alabama, Arizona, Arkansas, California, Colorado, Delaware, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming. *Facts About the Death Penalty* (updated June 2, 2015), Death Penalty Information Center, [www.deathpenaltyinfo.org/FactSheet.pdf](http://www.deathpenaltyinfo.org/FactSheet.pdf) (last visited on January 31, 2016).

<sup>4</sup> California has 746 inmates on death row. *Id.* See "Death Row Roster" Florida Department of Corrections, <http://www.dc.state.fl.us/activeinmates/deathrowroster.asp> (last visited on January 31, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> "Death Row" Florida Department of Corrections <http://www.dc.state.fl.us/oth/deathrow/#Statistics> (last visited January 31, 2016).

<sup>7</sup> *Facts About the Death Penalty* (updated June 2, 2015), *supra* note 3.

<sup>8</sup> "Death Row", *supra* note 6.

<sup>9</sup> Section 921.142, F.S., addresses capital drug trafficking felonies specified in s. 893.135, F.S., and s. 921.141, F.S., addresses capital premeditated, felony, and other murder offenses. See ss. 782.04(1)(a), 782.09(1)(a), 790.161(4), and 790.166(2), F.S. (specifying capital murder offenses).

<sup>10</sup> Section 893.135, F.S.

<sup>11</sup> ss. 921.141(1) and 921.142(2), F.S.

<sup>12</sup> A defendant may waive his or her right to a sentencing proceeding before a jury and, in such case, the judge determines the sentence by following the same process the judge must follow when determining the sentence to impose after receipt of a jury recommendation. *Id.*

<sup>13</sup> *Id.*

- Whether sufficient aggravating circumstances<sup>14</sup> exist;
- Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.<sup>15</sup>

A simple majority vote of the jury is necessary to recommend the death penalty. Juries are not required to list on the verdict aggravating and mitigating circumstances that the jury finds persuasive or to disclose the number of jurors making these findings.<sup>16</sup> However, aggravating circumstances must be proven beyond a reasonable doubt.<sup>17</sup>

The aggravating circumstances that may be considered are limited by statute. Section 921.141(5), F.S., which addresses sentencing proceedings for capital murder offenses, provides for the following aggravating circumstances:

- 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.
- The capital felony was committed by a criminal gang member, as defined in s. 874.03, F.S.

<sup>14</sup> "An aggravating circumstance is a standard to guide the jury in making the choice between the alternative recommendations of life imprisonment without the possibility of parole or death. It is a statutorily enumerated circumstance which increases the gravity of a crime or the harm to a victim." *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.*

<sup>15</sup> ss. 921.141(2) and 921.142(3), F.S.

<sup>16</sup> "If a majority of the jury, seven or more, determine that (defendant) should be sentenced to death, your advisory sentence will be: A majority of the jury by a vote of \_\_\_\_\_ to \_\_\_\_\_ advise and recommend to the court that it impose the death penalty upon (defendant).

On the other hand, if by six or more votes the jury determines that (defendant) should not be sentenced to death, your advisory sentence will be:

The jury advises and recommends to the court that it impose a sentence of life imprisonment upon (defendant) without possibility of parole." *Fla. Standard Jury Instructions, Criminal Cases, Penalty Proceedings Capital Cases, Instr. 7.11.*

<sup>17</sup> *Id.*

- 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 person subject to specified injunctions or foreign protection orders and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

Section 921.142(6), F.S., which addresses sentencing proceedings for capital drug trafficking offenses, provides for the following aggravating circumstances:

- The capital felony was committed by a person under a sentence of imprisonment.
- The defendant was previously convicted of another capital felony or of a state or federal offense involving the distribution of a controlled substance that is punishable by a sentence of at least one year of imprisonment.
- The defendant knowingly created grave 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 offense involved the distribution of controlled substances to persons under the age of 18 years, the distribution of controlled substances within school zones, or the use or employment of persons under the age of 18 years in aid of distribution of controlled substances.
- The offense involved distribution of controlled substances known to contain a potentially lethal adulterant.
- The defendant intentionally killed the victim, intentionally inflicted serious bodily injury which resulted in the death of the victim, or intentionally engaged in conduct intending that the victim be killed or that lethal force be employed against the victim, which resulted in the death of the victim.
- The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.
- The defendant committed the offense after planning and premeditation.
- The defendant committed the offense in a heinous, cruel, or depraved manner in that the offense involved torture or serious physical abuse to the victim.

Mitigating factors are not limited by statute. Sections 921.141(6) and (7), F.S., specify that mitigating circumstances for capital offenses shall include:

- 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.

The following may also constitute a mitigating circumstance: (a) the victim was a participant in the defendant's conduct or consented to the act for a capital murder offense,<sup>18</sup> and (b) the defendant could

not have reasonably foreseen that her or his conduct during the commission of the offense would cause or create a grave risk of death to one or more persons for a capital trafficking offense.<sup>19</sup>

The judge is not required to sentence a defendant as recommended by the jury. The judge conducts an independent analysis of the aggravating and mitigating factors. The recommendation of the jury must be given great weight in the judge's decision-making process on the ultimate sentence rendered by the judge.<sup>20</sup> The judge may override the jury's decision. If the judge sentences a person to death, he or she must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.<sup>21</sup>

In sum, Florida does not require a unanimous jury recommendation or a unanimous finding by the jury that any aggravating circumstance has been proved.<sup>22</sup> A Florida jury may recommend a death sentence to the trial judge on a simple majority vote of the 12 jurors, and there is no special verdict required to reflect the vote on the aggravating circumstances.<sup>23</sup> From 2000-2012, only 20 percent of jury recommendations were unanimous.

Distribution of Jury Votes in Death Cases by Calendar Year of Disposition by Florida Supreme Court <sup>24</sup> (N=296)																
Original Jury Vote	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	Total	% <sup>25</sup>	Cum %
7-5	6	1	4	4	0	3	0	2	4	1	3	2	2	32	11%	11%
8-4	4	6	2	6	2	0	3	0	2	9	2	1	5	42	14%	25%
9-3	4	4	3	6	2	2	11	3	5	6	6	9	5	66	22%	47%
10-2	3	12	4	3	3	3	2	2	2	5	11	1	3	54	18%	66%
11-1	2	8	5	5	3	1	1	2	1	5	5	1	3	42	14%	80%
12-0	9	6	8	4	2	3	6	7	6	0	1	6	2	60	20%	100%
Subtotal	28	37	26	28	12	12	23	16	20	26	28	20	20	296	100%	
Other <sup>26</sup>	3	1	2	3	4	2	0	0	1	4	3	1	0	24		
TOTAL	31	38	28	31	16	14	23	16	21	30	31	21	20	320		

Each sentence of death is subject to automatic review by the Supreme Court of Florida.<sup>27</sup> The sentence, and the reasons for it, must be reduced to writing so that the Florida Supreme Court can engage in meaningful review.<sup>28</sup> The Florida Supreme Court engages in a proportionality review in all cases in which the death penalty is handed down. Proportionality review is the comparison of one case in which the defendant was sentenced to death to other similar death sentence cases.

<sup>19</sup> s. 921.142(7)(g), F.S.,

<sup>20</sup> What is referred to as the *Tedder* "Great Weight" Standard was announced by the Florida Supreme Court in *Tedder v. State*, 322 So.2d 908, 910 (Fla. 1975). In that case, the court determined that "[a] jury recommendation under our trifurcated death penalty statute should be given great weight. In order to sustain a sentence of death following a jury recommendation of life, the facts suggesting a sentence of death should be so clear and convincing that virtually no reasonable person could differ."

<sup>21</sup> ss. 921.141(3) and 921.142(4), F.S.

<sup>22</sup> Even in 1976, Florida's capital sentencing scheme was particularly unique in that the jury only recommended a sentence, its recommendation need not be unanimous or by any particular numerical vote, and the trial judge was permitted to override the jury's sentencing vote, whether for a life or death sentence. See *Proffitt v. Florida*, 428 U.S. 242, 252 (1976); *Spaziano v. Florida*, 468 U.S. 447 (1984). See also that *Wilcox v. State*, 143 So. 3d 359, 389 (Fla. 2014)(Death sentence involving a seven-to-five jury recommendation was not unconstitutional on that basis); *Kimbrough v. State*, 125 So. 3d 752, 754 (Fla. 2013) and *Mann v. State*, 112 So. 3d 1158 (Fla. 2013) (Non-unanimous jury recommendations to impose sentence of death are not unconstitutional).

<sup>23</sup> ss. 921.141(2)-(3) and 921.142(3)-(4), F.S.; American Bar Association, *Death Penalty Due Process Review Project Section of Individual Rights and Responsibilities, Report to the House of Delegates (108A)*;

[http://www.americanbar.org/news/reporter\\_resources/midyear-meeting-2015/house-of-delegates-resolutions/108a.html](http://www.americanbar.org/news/reporter_resources/midyear-meeting-2015/house-of-delegates-resolutions/108a.html).

<sup>24</sup> Thirteen years of data compiled by the Supreme Court Clerk's Office. Fla. S. Comm. on Criminal Justice, SB 664 (2015) Staff Analysis 8 (March 9, 2015), available at <http://www.flsenate.gov/Session/Bill/2015/0664/Analyses/2015s0664.pre.cj.PDF>.

<sup>25</sup> Calculated percentage excludes the "other" category.

<sup>26</sup> Includes waiver of penalty phase, and judicial overrides from jury recommendation of life to judge imposing death.

<sup>27</sup> Section 921.141(4), F.S.

<sup>28</sup> *State v. Dixon*, 283 So.2d 1, 8 (Fla. 1973).

### **The Sixth Amendment, *Ring*, and *Hurst***

The Sixth Amendment of the United States Constitution provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury. . . ." <sup>29</sup> This right, in conjunction with the Due Process Clause, requires that each element of a crime be proved to a jury beyond a reasonable doubt. <sup>30</sup> Applying this right, the United States Supreme Court held in 2000 that any facts increasing the penalty for a defendant must be submitted to a jury and proved beyond a reasonable doubt. <sup>31</sup> Two years later, the 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. <sup>32</sup> The Court struck the sentencing scheme down, 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. <sup>33</sup> This ruling was subsequently held to not apply retroactively to cases already final on direct review. <sup>34</sup>

In the years following *Ring*, the Florida Supreme Court has repeatedly held that the state's capital sentencing scheme did not violate the Sixth Amendment under *Ring* since s. 921.141, F.S., is unique in allowing the jury to recommend death and the judge impose the sentence. <sup>35</sup>

#### *Hurst v. Florida*

In this case, Timothy Lee Hurst was convicted of first-degree murder for fatally stabbing his co-worker in 1998 with a box cutter. <sup>36</sup> A jury recommended a sentence of death by a seven-to-five vote; thereafter, the trial court entered a sentence of death. <sup>37</sup> Hurst challenged his sentence arguing that the jury was required to find specific aggravators and to issue a unanimous advisory sentence recommendation. <sup>38</sup> The Florida Supreme Court denied Hurst's claims that his sentence violated *Ring* by adhering to Florida's precedent of not adopting *Ring* and citing to the Eleventh Circuit's recent approval of the capital sentencing scheme. <sup>39</sup> Hurst appealed this denial to the United States Supreme Court arguing that Florida's capital sentencing scheme violated *Ring* because the jury recommends the sentence with only a simple majority, the judge finds the facts necessary for imposition of the death penalty, and the judge imposes the death penalty. <sup>40</sup>

On January 12, 2016, the United States Supreme Court held Florida's capital sentencing scheme unconstitutional in an eight-to-one opinion. <sup>41</sup> The Court ruled that the Sixth Amendment requires a jury, not a judge, to find each fact necessary to impose a sentence of death as a jury's "mere recommendation is not enough." <sup>42</sup> The Court compared Florida's sentencing scheme to Arizona's in *Ring* and found Florida's distinctive factor of the advisory jury verdict immaterial. Like the unconstitutional practice in *Ring*, the judge in *Hurst* performed her own fact finding and increased Hurst's authorized punishment, thereby violating the Sixth Amendment. <sup>43</sup> The Court also expressly

<sup>29</sup> U.S. CONST. Amend. VI.

<sup>30</sup> *United States v. Gaudin*, 515 U.S. 506, 510 (1995).

<sup>31</sup> *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000).

<sup>32</sup> *Ring v. Arizona*, 536 U.S. 584, 592 (2002).

<sup>33</sup> *Id.* at 609.

<sup>34</sup> *Schiro v. Summerlin*, 542 U.S. 348, 358 (2004).

<sup>35</sup> *Bottoson v. Moore*, 833 So.2d 693 (Fla. 2002) cert. denied, 537 U.S. 1070 (2002); *King v. Moore*, 831 So. 2d 143 (Fla. 2002) cert. denied, 537 U.S. 1067 (2002); and *State v. Steele*, 921 So. 2d 538, 548 (Fla. 2005).

<sup>36</sup> *Hurst v. State*, 147 So. 3d 435, 437 (Fla. 2014), *rev'd and remanded*, No. 14-7505, 2016 WL 112683 (U.S. Jan. 12, 2016).

<sup>37</sup> *Id.* at 440.

<sup>38</sup> *Id.* at 446.

<sup>39</sup> *Id.* at 446-447. See *Evans v. Secretary, Fla. Dep't of Corrections*, 699 F.3d 1249(11th Cir. 2012), cert. denied, 133 S.Ct. 2393 (2013)(Citing *Hildwin v. Florida*, 490 U.S. 638 (1989), where the United States Supreme Court upheld Florida capital sentencing scheme thirteen years before *Ring*).

<sup>40</sup> Brief for Petitioner at 17-52 *Hurst v. Florida*, 2016 WL 112683 (2016) (No. 14-7505), 2015 WL 3542784.

<sup>41</sup> *Hurst v. Florida*, 2016 WL 112683, at \*3 (2016).

<sup>42</sup> *Id.* at \*5.

<sup>43</sup> *Id.* at \*6.



overruled its past decisions upholding Florida's capital sentencing scheme which were issued prior to *Ring*.<sup>44</sup>

The Court's opinion did not address Hurst's contention that a jury's advisory verdict must be greater than a simple majority in order to comport with the Sixth and Eighth Amendments. Neither the United States Supreme Court nor the Florida Supreme Court has required unanimity in a jury's capital sentencing recommendation. Alabama's capital sentencing scheme allows the imposition of the death penalty with a 10-2 jury sentencing recommendation.<sup>45</sup> Similarly, Delaware requires unanimity regarding the finding of aggravating factors, but does not require unanimity in a sentencing recommendation.<sup>46</sup> Furthermore, in the 2006 Legislative Session, the Florida House of Representatives passed a resolution stating the House "believes that the public policy of this state should be that unanimous jury recommendations not be required in death penalty cases."<sup>47</sup> The Resolution provided that requiring unanimity is inappropriate since it allows a "single juror the ability to override the reasoned judgment of all other jurors weighing and considering the same facts and circumstances."<sup>48</sup> In support of a non-unanimous jury recommendation, the resolution states some of Florida's most notorious murderers were sentenced with a less than unanimous recommendation, such as Theodore Bundy and Ailen Wuornos.<sup>49</sup>

### **Effect of the Bill**

The bill amends ss. 921.141 and 921.142, F.S., to comply with the United States Supreme Court's holding that a jury, not a judge, must find each fact necessary to impose a sentence of death. Under the bill, the jury, after hearing all of the evidence presented on aggravating factors and mitigating circumstances, must determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor and must return findings identifying each aggravating factor found. Such findings must be unanimous. If the jury:

- Does not unanimously find an 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 recommend to the court whether the defendant shall be sentenced to life imprisonment without the possibility of parole or death.

In making its recommendation, the jury must weigh the following:

- Whether sufficient aggravating factors exist.
- Whether sufficient mitigating circumstances exist that outweigh the aggravating factors found to exist.
- Based on these considerations, whether the defendant should be sentenced to life imprisonment without the possibility of parole or death.

To recommend a sentence of death, a minimum of nine jurors must concur in the recommendation. If fewer than nine jurors concur, a sentence of life imprisonment without the possibility of parole will be the jury's recommendation to the court.

If the jury recommends life imprisonment without the possibility of parole, the judge must impose the recommended sentence. If the jury recommends a sentence of death, the judge may impose a

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<sup>44</sup> *Id.* at \*7.

<sup>45</sup> ALA. CODE § 13A-5-46(f) ("The decision of the jury to recommend a sentence of death must be based on a vote of at least 10 jurors."). See also *Gobble v. State*, 104 So. 3d 920, 977 (Ala. Crim. App. 2010) ("*Ring* does not require a unanimous recommendation for the death penalty before a defendant may be sentenced to death.>").

<sup>46</sup> DEL. CODE ANN. tit. 11, § 4209.

<sup>47</sup> Fla. HR 1627 (2006).

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* The Staff Analysis states Bundy, Wuornos, and Joe Nixon all received a 10-2 recommendation. Fla. H.R. Justice Council, HR 1627 (2006) Staff Analysis 6 (April 10, 2006) available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h1627b.JC.doc&DocumentType=Analysis&BillNumber=1627&Session=2006>.

sentence of death or a sentence of life imprisonment without the possibility of parole. The judge may only consider an aggravating factor that was unanimously found by the jury. If the defendant waived his or her right to a sentencing proceeding by a jury, the court may impose a sentence of death or life imprisonment without the possibility of parole. The court, sitting without a jury, still must weigh aggravating factors against mitigating circumstances and may only impose death if the court finds at least one aggravating factor to have been proven beyond a reasonable doubt.

To impose the jury's recommendation, the judge must enter a written order imposing the sentence for the defendant. In writing the order, the judge must consider the records of the trial and sentencing proceedings and address the aggravating factors found to exist by the jury and mitigating circumstances reasonably established by the evidence. If the court does not issue its order requiring the death sentence within 30 days after the judgment and sentence were rendered, the court must impose a sentence of life imprisonment without the possibility of parole.

The bill also amends s. 775.082, F.S., relating to penalties, to reflect that a person who has been convicted of a capital felony will be punished by death if the capital punishment scheme in s. 921.141, F.S., results in a determination that the person will be punished by death. The bill also reenacts ss. 782.04, 794.011, and 893.135, F.S., to incorporate the amendments made by the bill.

The bill is effective upon becoming law.

#### B. SECTION DIRECTORY:

Section 1. Amends s. 775.082, F.S., relating to penalties; applicability of sentencing structures; mandatory minimum sentences for certain reoffenders previously released from prison.

Section 2. Amends s. 921.141, F.S., relating to the sentence of death or life imprisonment for capital felonies.

Section 3. Amends s. 921.142, F.S., relating to the sentence of death or life imprisonment for capital drug trafficking felonies.

Section 4. Reenacts s. 782.04, F.S., relating to murder.

Section 5. Reenacts s. 794.011, F.S., relating to sexual battery.

Section 6. Reenacts s. 893.135, F.S., relating to trafficking; mandatory sentences; suspension or reduction of sentences; conspiracy to engage in trafficking.

Section 7. Provides the bill is effective upon becoming law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The bill does not appear to have any impact on state revenues.

#### 2. Expenditures:

The bill does not appear to have any impact on state expenditures.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

Retroactivity

Any decision of the United States Supreme Court which results in a “new rule” of constitutional law applies retroactively to all criminal cases still pending direct review.<sup>50</sup> It is likely the Court’s ruling in *Hurst* will apply retroactively to pending or future appeals on direct review.<sup>51</sup>

Whether *Hurst* will apply retroactively to death row appeals on collateral review or inmates who have exhausted their appeals will depend on whether the holding in *Hurst* is determined to be substantive or a watershed rule of criminal procedure.<sup>52</sup> For example, in *Schriro v. Summerlin*, the United States Supreme Court held that the *Ring* decision was not retroactive.<sup>53</sup> In determining that *Ring*’s holding was merely procedural, rather than substantive or a watershed rule, the Court stated:<sup>54</sup>

*Ring* held that “a sentencing judge, sitting without a jury, [may not] find an aggravating circumstance necessary for imposition of the death penalty.” 536 U.S., at 609. Rather, “the Sixth Amendment requires that [those circumstances] be found by a jury.” *Ibid*. This holding did not alter the range of conduct Arizona law subjected to the death penalty. It could not have; it rested entirely on the Sixth Amendment’s jury-trial guarantee, a provision that has nothing to do with

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<sup>50</sup> *Griffith v. Kentucky*, 479 U.S. 314, 328 (1987)(holding that “a new rule for the conduct of criminal prosecutions is to be applied retroactively to all cases, state or federal, pending on direct review or not yet final, with no exception for cases in which the new rule constitutes a ‘clear break’ with the past); *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004)(stating that “when a decision of this Court results in a ‘new rule,’ that rule applies to all criminal cases still pending on direct review.”); *Johnson v. State*, 904 So. 2d 400, 407 (Fla. 2005)(stating “It is clear that new law announced by this Court or the United States Supreme Court applies to all non-final criminal cases – that is, to all cases involving convictions for which an appellate court mandate has not yet issued.”).

<sup>51</sup> Currently, there are 43 cases involving a sentence of death that is on direct review. E-mail from the Department of Legal Affairs dated January 27, 2016 (on file with the Criminal Justice Subcommittee).

<sup>52</sup> *Schriro v. Summerlin*, 542 U.S. 348, 351 (2004). Retroactivity only applies to: (1) a substantive rule that “places certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe or if it prohibits a certain category of punishment for a class of defendants because of their status or offense”; and (2) a procedural rule which constitutes a watershed rule of criminal procedure implicating the fundamental fairness and accuracy of the criminal proceeding. *Teague v. Lane*, 498 U.S. 288, 310-13 (1989).

<sup>53</sup> *Schriro*, 542 U.S. at 358.

<sup>54</sup> *Id*.

the range of conduct a State may criminalize. Instead, *Ring* altered the range of permissible methods for determining whether a defendant's conduct is punishable by death, requiring that a jury rather than a judge find the essential facts bearing on punishment. Rules that allocate decisionmaking authority in this fashion are prototypical procedural rules.

Given this ruling by the Court and the fact that the holding in *Hurst* is effectively the same as the holding in *Ring*, it seems probable that the Florida Supreme Court, under the precedent of *Summerlin*, would find that *Hurst* does not meet the test for retroactivity on collateral review.<sup>55</sup>

The Florida Supreme Court has scheduled oral arguments to address the applicability of *Hurst* to pending collateral appeals.<sup>56</sup>

**B. RULE-MAKING AUTHORITY:**

The bill does not appear to create a need for rulemaking or rulemaking authority.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

N/A

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<sup>55</sup> See *Schiro*, 542 U.S. at 358 (“The right to jury trial is fundamental to our system of criminal procedure, and States are bound to enforce the Sixth Amendment’s guarantees as we interpret them. But it does not follow that, when a criminal defendant has had a full trial and one round of appeals in which the State faithfully applied the Constitution as we understood it at the time, he may nevertheless continue to litigate his claims indefinitely in hopes that we will one day have a change of heart. Ring announced a new procedural rule that does not apply retroactively to cases already final on direct review.”). In 2005, the Florida Supreme Court held that *Ring* did not apply retroactively in Florida to defendants whose convictions were final when that decision was rendered. *Johnson v. State*, 904 So. 2d 400 (Fla. 2005).

<sup>56</sup> *Lambrix v. Florida*, Case No. SC16-8 & SC 16-56, Order Jan. 15, 2016 (available at [https://efactssc-public.flcourts.org/casedocuments/2016/8/2016-8\\_order\\_208838.pdf](https://efactssc-public.flcourts.org/casedocuments/2016/8/2016-8_order_208838.pdf)).

1                                   A bill to be entitled  
 2           An act relating to sentencing for capital felonies;  
 3           amending s. 775.082, F.S.; conforming a provision to  
 4           changes made by the act; amending ss. 921.141 and  
 5           921.142, F.S.; deleting provisions relating to  
 6           advisory sentencing by juries and findings by the  
 7           court in support of sentences of death; requiring  
 8           juries to find aggravating factors, if any, in the  
 9           penalty phase of capital cases; specifying a standard  
 10          of proof for such factors; requiring unanimity for  
 11          such findings; requiring a jury to make a  
 12          recommendation to the court whether the defendant  
 13          shall be sentenced to life imprisonment or death;  
 14          specifying considerations for such a recommendation;  
 15          requiring a minimum number of jurors to support a  
 16          recommendation of a sentence of death; requiring a  
 17          sentence of life imprisonment without the possibility  
 18          of parole in certain circumstances; requiring the  
 19          court to enter an order meeting specified requirements  
 20          in each case in which it imposes a death sentence;  
 21          reenacting ss. 782.04(1)(b) and 794.011(2)(a), F.S.,  
 22          relating to murder and sexual battery, respectively,  
 23          for the purpose of incorporating amendments made by  
 24          the act to s. 921.141, F.S., in references thereto;  
 25          reenacting s. 893.135(1)(b), (c), (d), (e), (f), (g),  
 26          (h), (i), (j), (k), and (l), F.S., relating to

27           trafficking in controlled substances, for the purpose  
 28           of incorporating amendments made by the act to s.  
 29           921.142, F.S., in references thereto; providing an  
 30           effective date.

31

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

33

34           Section 1. Paragraph (a) of subsection (1) of section  
 35           775.082, Florida Statutes, is amended to read:

36           775.082 Penalties; applicability of sentencing structures;  
 37           mandatory minimum sentences for certain reoffenders previously  
 38           released from prison.—

39           (1) (a) Except as provided in paragraph (b), a person who  
 40           has been convicted of a capital felony shall be punished by  
 41           death if the proceeding held to determine sentence according to  
 42           the procedure set forth in s. 921.141 results in a determination  
 43           ~~findings by the court~~ that such person shall be punished by  
 44           death, otherwise such person shall be punished by life  
 45           imprisonment and shall be ineligible for parole.

46           Section 2. Section 921.141, Florida Statutes, is amended  
 47           to read:

48           921.141 Sentence of death or life imprisonment for capital  
 49           felonies; further proceedings to determine sentence.—

50           (1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon  
 51           conviction or adjudication of guilt of a defendant of a capital  
 52           felony, the court shall conduct a separate sentencing proceeding

53 to determine whether the defendant should be sentenced to death  
54 or life imprisonment as authorized by s. 775.082. The proceeding  
55 shall be conducted by the trial judge before the trial jury as  
56 soon as practicable. If, through impossibility or inability, the  
57 trial jury is unable to reconvene for a hearing on the issue of  
58 penalty, having determined the guilt of the accused, the trial  
59 judge may summon a special juror or jurors as provided in  
60 chapter 913 to determine the issue of the imposition of the  
61 penalty. If the trial jury has been waived, or if the defendant  
62 pleaded guilty, the sentencing proceeding shall be conducted  
63 before a jury impaneled for that purpose, unless waived by the  
64 defendant. In the proceeding, evidence may be presented as to  
65 any matter that the court deems relevant to the nature of the  
66 crime and the character of the defendant and shall include  
67 matters relating to any of the aggravating factors or mitigating  
68 circumstances enumerated in subsections ~~(5) and (6)~~ and (7). Any  
69 such evidence which the court deems to have probative value may  
70 be received, regardless of its admissibility under the  
71 exclusionary rules of evidence, provided the defendant is  
72 accorded a fair opportunity to rebut any hearsay statements.  
73 However, this subsection shall not be construed to authorize the  
74 introduction of any evidence secured in violation of the  
75 Constitution of the United States or the Constitution of the  
76 State of Florida. The state and the defendant or the defendant's  
77 counsel shall be permitted to present argument for or against  
78 sentence of death.

79 (2) FINDINGS AND RECOMMENDED SENTENCE BY THE JURY—This  
 80 subsection applies only if the defendant has not waived his or  
 81 her right to a sentencing proceeding by a jury.

82 (a) After hearing all of the evidence presented in  
 83 aggravation and mitigation, the jury shall deliberate and  
 84 determine if the state has proven, beyond a reasonable doubt,  
 85 the existence of at least one aggravating factor set forth in  
 86 subsection (6).

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

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

92 2. Unanimously finds at least one aggravating factor, the  
 93 defendant is eligible for a sentence of death and the jury shall  
 94 make a recommendation to the court as to whether the defendant  
 95 shall be sentenced to life imprisonment without the possibility  
 96 of parole or death. The recommendation shall be based on a  
 97 weighing of the following:

98 a. Whether sufficient aggravating factors exist.

99 b. Whether sufficient mitigating circumstances exist that  
 100 outweigh the aggravating factors found to exist.

101 c. Based on these considerations, whether the defendant  
 102 should be sentenced to life imprisonment without the possibility  
 103 of parole or death.

104 (c) If at least 9 jurors determine that the defendant



105 should be sentenced to death, the jury's recommendation to the  
 106 court shall be a sentence of death. If fewer than 9 jurors  
 107 determine that the defendant should be sentenced to death, the  
 108 jury's recommendation to the court shall be a sentence of life  
 109 imprisonment without the possibility of parole.

110 (3) IMPOSITION OF LIFE OR DEATH SENTENCE.—

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

112 1. Life imprisonment without the possibility of parole,  
 113 the court shall impose the recommended sentence.

114 2. Death, the court, after considering each aggravating  
 115 factor found by the jury and all mitigating circumstances, may  
 116 impose a sentence of life imprisonment without the possibility  
 117 of parole or a sentence of death. The court may only consider an  
 118 aggravating factor that was unanimously found by the jury to  
 119 exist.

120 (b) If the defendant waived his or her right to a  
 121 sentencing proceeding by a jury, the court, after considering  
 122 all aggravating factors and mitigating circumstances, may impose  
 123 a sentence of life imprisonment without the possibility of  
 124 parole or a sentence of death. The court may only impose a  
 125 sentence of death if the court finds at least one aggravating  
 126 factor has been proven beyond a reasonable doubt to exist.

127 (4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—

128 In each case in which the court imposes a death sentence, the  
 129 court shall, considering the records of the trial and the  
 130 sentencing proceedings, enter a written order addressing the

131 aggravating factors set forth in subsection (6) found to exist,  
 132 the mitigating circumstances in subsection (7) reasonably  
 133 established by the evidence, whether there are sufficient  
 134 aggravating factors to warrant the death penalty, and whether  
 135 the mitigating circumstances reasonably established by the  
 136 evidence outweigh the aggravating factors. If the court does not  
 137 issue its order requiring the death sentence within 30 days  
 138 after the rendition of the judgment and sentence, the court  
 139 shall impose a sentence of life imprisonment without the  
 140 possibility of parole in accordance with s. 775.082.

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

144 ~~(a) Whether sufficient aggravating circumstances exist as~~  
 145 ~~enumerated in subsection (5);~~

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

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

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

151 ~~Notwithstanding the recommendation of a majority of the jury,~~  
 152 ~~the court, after weighing the aggravating and mitigating~~  
 153 ~~circumstances, shall enter a sentence of life imprisonment or~~  
 154 ~~death, but if the court imposes a sentence of death, it shall~~  
 155 ~~set forth in writing its findings upon which the sentence of~~  
 156 ~~death is based as to the facts.~~

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

159           ~~(b) That there are insufficient mitigating circumstances~~  
 160 ~~to outweigh the aggravating circumstances.~~

161

162 ~~In each case in which the court imposes the death sentence, the~~  
 163 ~~determination of the court shall be supported by specific~~  
 164 ~~written findings of fact based upon the circumstances in~~  
 165 ~~subsections (5) and (6) and upon the records of the trial and~~  
 166 ~~the sentencing proceedings. If the court does not make the~~  
 167 ~~findings requiring the death sentence within 30 days after the~~  
 168 ~~rendition of the judgment and sentence, the court shall impose~~  
 169 ~~sentence of life imprisonment in accordance with s. 775.082.~~

170           (5)~~(4)~~ REVIEW OF JUDGMENT AND SENTENCE.—The judgment of  
 171 conviction and sentence of death shall be subject to automatic  
 172 review by the Supreme Court of Florida and disposition rendered  
 173 within 2 years after the filing of a notice of appeal. Such  
 174 review by the Supreme Court shall have priority over all other  
 175 cases and shall be heard in accordance with rules promulgated by  
 176 the Supreme Court.

177           (6)~~(5)~~ AGGRAVATING FACTORS CIRCUMSTANCES.—Aggravating  
 178 factors ~~eircumstances~~ shall be limited to the following:

179           (a) The capital felony was committed by a person  
 180 previously convicted of a felony and under sentence of  
 181 imprisonment or placed on community control or on felony  
 182 probation.

183 (b) The defendant was previously convicted of another  
 184 capital felony or of a felony involving the use or threat of  
 185 violence to the person.

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

188 (d) The capital felony was committed while the defendant  
 189 was engaged, or was an accomplice, in the commission of, or an  
 190 attempt to commit, or flight after committing or attempting to  
 191 commit, any: robbery; sexual battery; aggravated child abuse;  
 192 abuse of an elderly person or disabled adult resulting in great  
 193 bodily harm, permanent disability, or permanent disfigurement;  
 194 arson; burglary; kidnapping; aircraft piracy; or unlawful  
 195 throwing, placing, or discharging of a destructive device or  
 196 bomb.

197 (e) The capital felony was committed for the purpose of  
 198 avoiding or preventing a lawful arrest or effecting an escape  
 199 from custody.

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

201 (g) The capital felony was committed to disrupt or hinder  
 202 the lawful exercise of any governmental function or the  
 203 enforcement of laws.

204 (h) The capital felony was especially heinous, atrocious,  
 205 or cruel.

206 (i) The capital felony was a homicide and was committed in  
 207 a cold, calculated, and premeditated manner without any pretense  
 208 of moral or legal justification.

209 (j) The victim of the capital felony was a law enforcement  
 210 officer engaged in the performance of his or her official  
 211 duties.

212 (k) The victim of the capital felony was an elected or  
 213 appointed public official engaged in the performance of his or  
 214 her official duties if the motive for the capital felony was  
 215 related, in whole or in part, to the victim's official capacity.

216 (l) The victim of the capital felony was a person less  
 217 than 12 years of age.

218 (m) The victim of the capital felony was particularly  
 219 vulnerable due to advanced age or disability, or because the  
 220 defendant stood in a position of familial or custodial authority  
 221 over the victim.

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

224 (o) The capital felony was committed by a person  
 225 designated as a sexual predator pursuant to s. 775.21 or a  
 226 person previously designated as a sexual predator who had the  
 227 sexual predator designation removed.

228 (p) The capital felony was committed by a person subject  
 229 to an injunction issued pursuant to s. 741.30 or s. 784.046, or  
 230 a foreign protection order accorded full faith and credit  
 231 pursuant to s. 741.315, and was committed against the petitioner  
 232 who obtained the injunction or protection order or any spouse,  
 233 child, sibling, or parent of the petitioner.

234 (7) ~~(6)~~ MITIGATING CIRCUMSTANCES.—Mitigating circumstances

235 shall be the following:

236 (a) The defendant has no significant history of prior  
237 criminal activity.

238 (b) The capital felony was committed while the defendant  
239 was under the influence of extreme mental or emotional  
240 disturbance.

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

243 (d) The defendant was an accomplice in the capital felony  
244 committed by another person and his or her participation was  
245 relatively minor.

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

248 (f) The capacity of the defendant to appreciate the  
249 criminality of his or her conduct or to conform his or her  
250 conduct to the requirements of law was substantially impaired.

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

252 (h) The existence of any other factors in the defendant's  
253 background that would mitigate against imposition of the death  
254 penalty.

255 (8) ~~(7)~~ VICTIM IMPACT EVIDENCE.—Once the prosecution has  
256 provided evidence of the existence of one or more aggravating  
257 factors ~~circumstances~~ as described in subsection (6) ~~(5)~~, the  
258 prosecution may introduce, and subsequently argue, victim impact  
259 evidence to the jury. Such evidence shall be designed to  
260 demonstrate the victim's uniqueness as an individual human being

261 and the resultant loss to the community's members by the  
 262 victim's death. Characterizations and opinions about the crime,  
 263 the defendant, and the appropriate sentence shall not be  
 264 permitted as a part of victim impact evidence.

265 (9)~~(8)~~ APPLICABILITY.—This section does not apply to a  
 266 person convicted or adjudicated guilty of a capital drug  
 267 trafficking felony under s. 893.135.

268 Section 3. Section 921.142, Florida Statutes, is amended  
 269 to read:

270 921.142 Sentence of death or life imprisonment for capital  
 271 drug trafficking felonies; further proceedings to determine  
 272 sentence.—

273 (1) FINDINGS.—The Legislature finds that trafficking in  
 274 cocaine or opiates carries a grave risk of death or danger to  
 275 the public; that a reckless disregard for human life is implicit  
 276 in knowingly trafficking in cocaine or opiates; and that persons  
 277 who traffic in cocaine or opiates may be determined by the trier  
 278 of fact to have a culpable mental state of reckless indifference  
 279 or disregard for human life.

280 (2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon  
 281 conviction or adjudication of guilt of a defendant of a capital  
 282 felony under s. 893.135, the court shall conduct a separate  
 283 sentencing proceeding to determine whether the defendant should  
 284 be sentenced to death or life imprisonment as authorized by s.  
 285 775.082. The proceeding shall be conducted by the trial judge  
 286 before the trial jury as soon as practicable. If, through

287 impossibility or inability, the trial jury is unable to  
 288 reconvene for a hearing on the issue of penalty, having  
 289 determined the guilt of the accused, the trial judge may summon  
 290 a special juror or jurors as provided in chapter 913 to  
 291 determine the issue of the imposition of the penalty. If the  
 292 trial jury has been waived, or if the defendant pleaded guilty,  
 293 the sentencing proceeding shall be conducted before a jury  
 294 impaneled for that purpose, unless waived by the defendant. In  
 295 the proceeding, evidence may be presented as to any matter that  
 296 the court deems relevant to the nature of the crime and the  
 297 character of the defendant and shall include matters relating to  
 298 any of the aggravating factors or mitigating circumstances  
 299 enumerated in subsections ~~(6) and (7)~~ and (8). Any such evidence  
 300 which the court deems to have probative value may be received,  
 301 regardless of its admissibility under the exclusionary rules of  
 302 evidence, provided the defendant is accorded a fair opportunity  
 303 to rebut any hearsay statements. However, this subsection shall  
 304 not be construed to authorize the introduction of any evidence  
 305 secured in violation of the Constitution of the United States or  
 306 the Constitution of the State of Florida. The state and the  
 307 defendant or the defendant's counsel shall be permitted to  
 308 present argument for or against sentence of death.

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

312 (a) After hearing all of the evidence presented in



313 aggravation and mitigation, the jury shall deliberate and  
 314 determine if the state has proven, beyond a reasonable doubt,  
 315 the existence of at least one aggravating factor set forth in  
 316 subsection (7).

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

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

322 2. Unanimously finds at least one aggravating factor, the  
 323 defendant is eligible for a sentence of death and the jury shall  
 324 make a recommendation to the court as to whether the defendant  
 325 shall be sentenced to life imprisonment without the possibility  
 326 of parole or death. The recommendation shall be based on a  
 327 weighing of the following:

328 a. Whether sufficient aggravating factors exist.

329 b. Whether sufficient mitigating circumstances exist that  
 330 outweigh the aggravating factors found to exist.

331 c. Based on these considerations, whether the defendant  
 332 should be sentenced to life imprisonment without the possibility  
 333 of parole or death.

334 (c) If at least 9 jurors determine that the defendant  
 335 should be sentenced to death, the jury's recommendation to the  
 336 court shall be a sentence of death. If fewer than 9 jurors  
 337 determine that the defendant should be sentenced to death, the  
 338 jury's recommendation to the court shall be a sentence of life

339 imprisonment without the possibility of parole.

340 (4) IMPOSITION OF LIFE OR DEATH SENTENCE.—

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

342 1. Life imprisonment without the possibility of parole,  
 343 the court shall impose the recommended sentence.

344 2. Death, the court, after considering each aggravating  
 345 factor found by the jury and all mitigating circumstances, may  
 346 impose a sentence of life imprisonment without the possibility  
 347 of parole or a sentence of death. The court may only consider an  
 348 aggravating factor that was unanimously found by the jury to  
 349 exist.

350 (b) If the defendant waived his or her right to a  
 351 sentencing proceeding by a jury, the court, after considering  
 352 all aggravating factors and mitigating circumstances, may impose  
 353 a sentence of life imprisonment without the possibility of  
 354 parole or a sentence of death. The court may only impose a  
 355 sentence of death if the court finds at least one aggravating  
 356 factor has been proven beyond a reasonable doubt to exist.

357 (5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF DEATH.—

358 In each case in which the court imposes a death sentence, the  
 359 court shall, considering the records of the trial and the  
 360 sentencing proceedings, enter a written order addressing the  
 361 aggravating factors set forth in subsection (7) found to exist,  
 362 the mitigating circumstances in subsection (8) reasonably  
 363 established by the evidence, whether there are sufficient  
 364 aggravating factors to warrant the death penalty, and whether

365 the mitigating circumstances reasonably established by the  
 366 evidence outweigh the aggravating factors. If the court does not  
 367 issue its order requiring the death sentence within 30 days  
 368 after the rendition of the judgment and sentence, the court  
 369 shall impose a sentence of life imprisonment without the  
 370 possibility of parole in accordance with s. 775.082.

371 ~~(3) ADVISORY SENTENCE BY THE JURY. After hearing all the~~  
 372 ~~evidence, the jury shall deliberate and render an advisory~~  
 373 ~~sentence to the court, based upon the following matters:~~

374 ~~(a) Whether sufficient aggravating circumstances exist as~~  
 375 ~~enumerated in subsection (6);~~

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

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

380 ~~(4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—~~

381 ~~Notwithstanding the recommendation of a majority of the jury,~~  
 382 ~~the court, after weighing the aggravating and mitigating~~  
 383 ~~circumstances, shall enter a sentence of life imprisonment or~~  
 384 ~~death, but if the court imposes a sentence of death, it shall~~  
 385 ~~set forth in writing its findings upon which the sentence of~~  
 386 ~~death is based as to the facts:~~

387 ~~(a) That sufficient aggravating circumstances exist as~~  
 388 ~~enumerated in subsection (6), and~~

389 ~~(b) That there are insufficient mitigating circumstances~~  
 390 ~~to outweigh the aggravating circumstances.~~

391  
 392 ~~In each case in which the court imposes the death sentence, the~~  
 393 ~~determination of the court shall be supported by specific~~  
 394 ~~written findings of fact based upon the circumstances in~~  
 395 ~~subsections (6) and (7) and upon the records of the trial and~~  
 396 ~~the sentencing proceedings. If the court does not make the~~  
 397 ~~findings requiring the death sentence within 30 days after the~~  
 398 ~~rendition of the judgment and sentence, the court shall impose~~  
 399 ~~sentence of life imprisonment in accordance with s. 775.082, and~~  
 400 ~~that person shall be ineligible for parole.~~

401 (6)~~(5)~~ REVIEW OF JUDGMENT AND SENTENCE.—The judgment of  
 402 conviction and sentence of death shall be subject to automatic  
 403 review and disposition rendered by the Supreme Court of Florida  
 404 within 2 years after the filing of a notice of appeal. Such  
 405 review by the Supreme Court shall have priority over all other  
 406 cases and shall be heard in accordance with rules promulgated by  
 407 the Supreme Court.

408 (7)~~(6)~~ AGGRAVATING FACTORS CIRCUMSTANCES.—Aggravating  
 409 factors ~~circumstances~~ shall be limited to the following:

410 (a) The capital felony was committed by a person under a  
 411 sentence of imprisonment.

412 (b) The defendant was previously convicted of another  
 413 capital felony or of a state or federal offense involving the  
 414 distribution of a controlled substance that is punishable by a  
 415 sentence of at least 1 year of imprisonment.

416 (c) The defendant knowingly created grave risk of death to

417 one or more persons such that participation in the offense  
 418 constituted reckless indifference or disregard for human life.

419 (d) The defendant used a firearm or knowingly directed,  
 420 advised, authorized, or assisted another to use a firearm to  
 421 threaten, intimidate, assault, or injure a person in committing  
 422 the offense or in furtherance of the offense.

423 (e) The offense involved the distribution of controlled  
 424 substances to persons under the age of 18 years, the  
 425 distribution of controlled substances within school zones, or  
 426 the use or employment of persons under the age of 18 years in  
 427 aid of distribution of controlled substances.

428 (f) The offense involved distribution of controlled  
 429 substances known to contain a potentially lethal adulterant.

430 (g) The defendant:

- 431 1. Intentionally killed the victim;
- 432 2. Intentionally inflicted serious bodily injury which  
 433 resulted in the death of the victim; or
- 434 3. Intentionally engaged in conduct intending that the  
 435 victim be killed or that lethal force be employed against the  
 436 victim, which resulted in the death of the victim.

437 (h) The defendant committed the offense as consideration  
 438 for the receipt, or in the expectation of the receipt, of  
 439 anything of pecuniary value.

440 (i) The defendant committed the offense after planning and  
 441 premeditation.

442 (j) The defendant committed the offense in a heinous,

443 | cruel, or depraved manner in that the offense involved torture  
 444 | or serious physical abuse to the victim.

445 |       (8)~~(7)~~ MITIGATING CIRCUMSTANCES.—Mitigating circumstances  
 446 | shall include the following:

447 |           (a) The defendant has no significant history of prior  
 448 | criminal activity.

449 |           (b) The capital felony was committed while the defendant  
 450 | was under the influence of extreme mental or emotional  
 451 | disturbance.

452 |           (c) The defendant was an accomplice in the capital felony  
 453 | committed by another person, and the defendant's participation  
 454 | was relatively minor.

455 |           (d) The defendant was under extreme duress or under the  
 456 | substantial domination of another person.

457 |           (e) The capacity of the defendant to appreciate the  
 458 | criminality of her or his conduct or to conform her or his  
 459 | conduct to the requirements of law was substantially impaired.

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

461 |           (g) The defendant could not have reasonably foreseen that  
 462 | her or his conduct in the course of the commission of the  
 463 | offense would cause or would create a grave risk of death to one  
 464 | or more persons.

465 |           (h) The existence of any other factors in the defendant's  
 466 | background that would mitigate against imposition of the death  
 467 | penalty.

468 |       (9)~~(8)~~ VICTIM IMPACT EVIDENCE.—Once the prosecution has

469 provided evidence of the existence of one or more aggravating  
 470 factors ~~circumstances~~ as described in subsection (7) ~~(6)~~, the  
 471 prosecution may introduce, and subsequently argue, victim impact  
 472 evidence. Such evidence shall be designed to demonstrate the  
 473 victim's uniqueness as an individual human being and the  
 474 resultant loss to the community's members by the victim's death.  
 475 Characterizations and opinions about the crime, the defendant,  
 476 and the appropriate sentence shall not be permitted as a part of  
 477 victim impact evidence.

478 Section 4. For the purpose of incorporating the amendment  
 479 made by this act to section 921.141, Florida Statutes, in a  
 480 reference thereto, paragraph (b) of subsection (1) of section  
 481 782.04, Florida Statutes, is reenacted to read:

482 782.04 Murder.—

483 (1)

484 (b) In all cases under this section, the procedure set  
 485 forth in s. 921.141 shall be followed in order to determine  
 486 sentence of death or life imprisonment.

487 Section 5. For the purpose of incorporating the amendment  
 488 made by this act to section 921.141, Florida Statutes, in a  
 489 reference thereto, paragraph (a) of subsection (2) of section  
 490 794.011, Florida Statutes, is reenacted to read:

491 794.011 Sexual battery.—

492 (2)(a) A person 18 years of age or older who commits  
 493 sexual battery upon, or in an attempt to commit sexual battery  
 494 injures the sexual organs of, a person less than 12 years of age

495 commits a capital felony, punishable as provided in ss. 775.082  
 496 and 921.141.

497 Section 6. For the purpose of incorporating the amendment  
 498 made by this act to section 921.142, Florida Statutes, in  
 499 references thereto, paragraphs (b), (c), (d), (e), (f), (g),  
 500 (h), (i), (j), (k), and (l) of subsection (1) of section  
 501 893.135, Florida Statutes, are reenacted to read:

502 893.135 Trafficking; mandatory sentences; suspension or  
 503 reduction of sentences; conspiracy to engage in trafficking.—

504 (1) Except as authorized in this chapter or in chapter 499  
 505 and notwithstanding the provisions of s. 893.13:

506 (b)1. Any person who knowingly sells, purchases,  
 507 manufactures, delivers, or brings into this state, or who is  
 508 knowingly in actual or constructive possession of, 28 grams or  
 509 more of cocaine, as described in s. 893.03(2)(a)4., or of any  
 510 mixture containing cocaine, but less than 150 kilograms of  
 511 cocaine or any such mixture, commits a felony of the first  
 512 degree, which felony shall be known as "trafficking in cocaine,"  
 513 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

514 If the quantity involved:

515 a. Is 28 grams or more, but less than 200 grams, such  
 516 person shall be sentenced to a mandatory minimum term of  
 517 imprisonment of 3 years, and the defendant shall be ordered to  
 518 pay a fine of \$50,000.

519 b. Is 200 grams or more, but less than 400 grams, such  
 520 person shall be sentenced to a mandatory minimum term of



521 imprisonment of 7 years, and the defendant shall be ordered to  
 522 pay a fine of \$100,000.

523 c. Is 400 grams or more, but less than 150 kilograms, such  
 524 person shall be sentenced to a mandatory minimum term of  
 525 imprisonment of 15 calendar years and pay a fine of \$250,000.

526 2. Any person who knowingly sells, purchases,  
 527 manufactures, delivers, or brings into this state, or who is  
 528 knowingly in actual or constructive possession of, 150 kilograms  
 529 or more of cocaine, as described in s. 893.03(2)(a)4., commits  
 530 the first degree felony of trafficking in cocaine. A person who  
 531 has been convicted of the first degree felony of trafficking in  
 532 cocaine under this subparagraph shall be punished by life  
 533 imprisonment and is ineligible for any form of discretionary  
 534 early release except pardon or executive clemency or conditional  
 535 medical release under s. 947.149. However, if the court  
 536 determines that, in addition to committing any act specified in  
 537 this paragraph:

538 a. The person intentionally killed an individual or  
 539 counseled, commanded, induced, procured, or caused the  
 540 intentional killing of an individual and such killing was the  
 541 result; or

542 b. The person's conduct in committing that act led to a  
 543 natural, though not inevitable, lethal result,

544  
 545 such person commits the capital felony of trafficking in  
 546 cocaine, punishable as provided in ss. 775.082 and 921.142. Any

547 person sentenced for a capital felony under this paragraph shall  
 548 also be sentenced to pay the maximum fine provided under  
 549 subparagraph 1.

550 3. Any person who knowingly brings into this state 300  
 551 kilograms or more of cocaine, as described in s. 893.03(2)(a)4.,  
 552 and who knows that the probable result of such importation would  
 553 be the death of any person, commits capital importation of  
 554 cocaine, a capital felony punishable as provided in ss. 775.082  
 555 and 921.142. Any person sentenced for a capital felony under  
 556 this paragraph shall also be sentenced to pay the maximum fine  
 557 provided under subparagraph 1.

558 (c)1. A person who knowingly sells, purchases,  
 559 manufactures, delivers, or brings into this state, or who is  
 560 knowingly in actual or constructive possession of, 4 grams or  
 561 more of any morphine, opium, hydromorphone, or any salt,  
 562 derivative, isomer, or salt of an isomer thereof, including  
 563 heroin, as described in s. 893.03(1)(b), (2)(a), (3)(c)3., or  
 564 (3)(c)4., or 4 grams or more of any mixture containing any such  
 565 substance, but less than 30 kilograms of such substance or  
 566 mixture, commits a felony of the first degree, which felony  
 567 shall be known as "trafficking in illegal drugs," punishable as  
 568 provided in s. 775.082, s. 775.083, or s. 775.084. If the  
 569 quantity involved:

570 a. Is 4 grams or more, but less than 14 grams, such person  
 571 shall be sentenced to a mandatory minimum term of imprisonment  
 572 of 3 years and shall be ordered to pay a fine of \$50,000.

573           b. Is 14 grams or more, but less than 28 grams, such  
 574 person shall be sentenced to a mandatory minimum term of  
 575 imprisonment of 15 years and shall be ordered to pay a fine of  
 576 \$100,000.

577           c. Is 28 grams or more, but less than 30 kilograms, such  
 578 person shall be sentenced to a mandatory minimum term of  
 579 imprisonment of 25 years and shall be ordered to pay a fine of  
 580 \$500,000.

581           2. A person who knowingly sells, purchases, manufactures,  
 582 delivers, or brings into this state, or who is knowingly in  
 583 actual or constructive possession of, 14 grams or more of  
 584 hydrocodone, or any salt, derivative, isomer, or salt of an  
 585 isomer thereof, or 14 grams or more of any mixture containing  
 586 any such substance, commits a felony of the first degree, which  
 587 felony shall be known as "trafficking in hydrocodone,"  
 588 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 589 If the quantity involved:

590           a. Is 14 grams or more, but less than 28 grams, such  
 591 person shall be sentenced to a mandatory minimum term of  
 592 imprisonment of 3 years and shall be ordered to pay a fine of  
 593 \$50,000.

594           b. Is 28 grams or more, but less than 50 grams, such  
 595 person shall be sentenced to a mandatory minimum term of  
 596 imprisonment of 7 years and shall be ordered to pay a fine of  
 597 \$100,000.

598           c. Is 50 grams or more, but less than 200 grams, such

599 | person shall be sentenced to a mandatory minimum term of  
 600 | imprisonment of 15 years and shall be ordered to pay a fine of  
 601 | \$500,000.

602 |         d. Is 200 grams or more, but less than 30 kilograms, such  
 603 | person shall be sentenced to a mandatory minimum term of  
 604 | imprisonment of 25 years and shall be ordered to pay a fine of  
 605 | \$750,000.

606 |         3. A person who knowingly sells, purchases, manufactures,  
 607 | delivers, or brings into this state, or who is knowingly in  
 608 | actual or constructive possession of, 7 grams or more of  
 609 | oxycodone, or any salt, derivative, isomer, or salt of an isomer  
 610 | thereof, or 7 grams or more of any mixture containing any such  
 611 | substance, commits a felony of the first degree, which felony  
 612 | shall be known as "trafficking in oxycodone," punishable as  
 613 | provided in s. 775.082, s. 775.083, or s. 775.084. If the  
 614 | quantity involved:

615 |         a. Is 7 grams or more, but less than 14 grams, such person  
 616 | shall be sentenced to a mandatory minimum term of imprisonment  
 617 | of 3 years and shall be ordered to pay a fine of \$50,000.

618 |         b. Is 14 grams or more, but less than 25 grams, such  
 619 | person shall be sentenced to a mandatory minimum term of  
 620 | imprisonment of 7 years and shall be ordered to pay a fine of  
 621 | \$100,000.

622 |         c. Is 25 grams or more, but less than 100 grams, such  
 623 | person shall be sentenced to a mandatory minimum term of  
 624 | imprisonment of 15 years and shall be ordered to pay a fine of

625 \$500,000.

626       d. Is 100 grams or more, but less than 30 kilograms, such  
627 person shall be sentenced to a mandatory minimum term of  
628 imprisonment of 25 years and shall be ordered to pay a fine of  
629 \$750,000.

630       4. A person who knowingly sells, purchases, manufactures,  
631 delivers, or brings into this state, or who is knowingly in  
632 actual or constructive possession of, 30 kilograms or more of  
633 any morphine, opium, oxycodone, hydrocodone, hydromorphone, or  
634 any salt, derivative, isomer, or salt of an isomer thereof,  
635 including heroin, as described in s. 893.03(1)(b), (2)(a),  
636 (3)(c)3., or (3)(c)4., or 30 kilograms or more of any mixture  
637 containing any such substance, commits the first degree felony  
638 of trafficking in illegal drugs. A person who has been convicted  
639 of the first degree felony of trafficking in illegal drugs under  
640 this subparagraph shall be punished by life imprisonment and is  
641 ineligible for any form of discretionary early release except  
642 pardon or executive clemency or conditional medical release  
643 under s. 947.149. However, if the court determines that, in  
644 addition to committing any act specified in this paragraph:

645       a. The person intentionally killed an individual or  
646 counseled, commanded, induced, procured, or caused the  
647 intentional killing of an individual and such killing was the  
648 result; or

649       b. The person's conduct in committing that act led to a  
650 natural, though not inevitable, lethal result,

651  
 652 such person commits the capital felony of trafficking in illegal  
 653 drugs, punishable as provided in ss. 775.082 and 921.142. A  
 654 person sentenced for a capital felony under this paragraph shall  
 655 also be sentenced to pay the maximum fine provided under  
 656 subparagraph 1.

657 5. A person who knowingly brings into this state 60  
 658 kilograms or more of any morphine, opium, oxycodone,  
 659 hydrocodone, hydromorphone, or any salt, derivative, isomer, or  
 660 salt of an isomer thereof, including heroin, as described in s.  
 661 893.03(1)(b), (2)(a), (3)(c)3., or (3)(c)4., or 60 kilograms or  
 662 more of any mixture containing any such substance, and who knows  
 663 that the probable result of such importation would be the death  
 664 of a person, commits capital importation of illegal drugs, a  
 665 capital felony punishable as provided in ss. 775.082 and  
 666 921.142. A person sentenced for a capital felony under this  
 667 paragraph shall also be sentenced to pay the maximum fine  
 668 provided under subparagraph 1.

669 (d)1. Any person who knowingly sells, purchases,  
 670 manufactures, delivers, or brings into this state, or who is  
 671 knowingly in actual or constructive possession of, 28 grams or  
 672 more of phencyclidine or of any mixture containing  
 673 phencyclidine, as described in s. 893.03(2)(b), commits a felony  
 674 of the first degree, which felony shall be known as "trafficking  
 675 in phencyclidine," punishable as provided in s. 775.082, s.  
 676 775.083, or s. 775.084. If the quantity involved:

677 a. Is 28 grams or more, but less than 200 grams, such  
 678 person shall be sentenced to a mandatory minimum term of  
 679 imprisonment of 3 years, and the defendant shall be ordered to  
 680 pay a fine of \$50,000.

681 b. Is 200 grams or more, but less than 400 grams, such  
 682 person shall be sentenced to a mandatory minimum term of  
 683 imprisonment of 7 years, and the defendant shall be ordered to  
 684 pay a fine of \$100,000.

685 c. Is 400 grams or more, such person shall be sentenced to  
 686 a mandatory minimum term of imprisonment of 15 calendar years  
 687 and pay a fine of \$250,000.

688 2. Any person who knowingly brings into this state 800  
 689 grams or more of phencyclidine or of any mixture containing  
 690 phencyclidine, as described in s. 893.03(2)(b), and who knows  
 691 that the probable result of such importation would be the death  
 692 of any person commits capital importation of phencyclidine, a  
 693 capital felony punishable as provided in ss. 775.082 and  
 694 921.142. Any person sentenced for a capital felony under this  
 695 paragraph shall also be sentenced to pay the maximum fine  
 696 provided under subparagraph 1.

697 (e)1. Any person who knowingly sells, purchases,  
 698 manufactures, delivers, or brings into this state, or who is  
 699 knowingly in actual or constructive possession of, 200 grams or  
 700 more of methaqualone or of any mixture containing methaqualone,  
 701 as described in s. 893.03(1)(d), commits a felony of the first  
 702 degree, which felony shall be known as "trafficking in

703 methaqualone," punishable as provided in s. 775.082, s. 775.083,  
 704 or s. 775.084. If the quantity involved:

705 a. Is 200 grams or more, but less than 5 kilograms, such  
 706 person shall be sentenced to a mandatory minimum term of  
 707 imprisonment of 3 years, and the defendant shall be ordered to  
 708 pay a fine of \$50,000.

709 b. Is 5 kilograms or more, but less than 25 kilograms,  
 710 such person shall be sentenced to a mandatory minimum term of  
 711 imprisonment of 7 years, and the defendant shall be ordered to  
 712 pay a fine of \$100,000.

713 c. Is 25 kilograms or more, such person shall be sentenced  
 714 to a mandatory minimum term of imprisonment of 15 calendar years  
 715 and pay a fine of \$250,000.

716 2. Any person who knowingly brings into this state 50  
 717 kilograms or more of methaqualone or of any mixture containing  
 718 methaqualone, as described in s. 893.03(1)(d), and who knows  
 719 that the probable result of such importation would be the death  
 720 of any person commits capital importation of methaqualone, a  
 721 capital felony punishable as provided in ss. 775.082 and  
 722 921.142. Any person sentenced for a capital felony under this  
 723 paragraph shall also be sentenced to pay the maximum fine  
 724 provided under subparagraph 1.

725 (f)1. Any person who knowingly sells, purchases,  
 726 manufactures, delivers, or brings into this state, or who is  
 727 knowingly in actual or constructive possession of, 14 grams or  
 728 more of amphetamine, as described in s. 893.03(2)(c)2., or



729 methamphetamine, as described in s. 893.03(2)(c)4., or of any  
 730 mixture containing amphetamine or methamphetamine, or  
 731 phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine  
 732 in conjunction with other chemicals and equipment utilized in  
 733 the manufacture of amphetamine or methamphetamine, commits a  
 734 felony of the first degree, which felony shall be known as  
 735 "trafficking in amphetamine," punishable as provided in s.  
 736 775.082, s. 775.083, or s. 775.084. If the quantity involved:

737       a. Is 14 grams or more, but less than 28 grams, such  
 738 person shall be sentenced to a mandatory minimum term of  
 739 imprisonment of 3 years, and the defendant shall be ordered to  
 740 pay a fine of \$50,000.

741       b. Is 28 grams or more, but less than 200 grams, such  
 742 person shall be sentenced to a mandatory minimum term of  
 743 imprisonment of 7 years, and the defendant shall be ordered to  
 744 pay a fine of \$100,000.

745       c. Is 200 grams or more, such person shall be sentenced to  
 746 a mandatory minimum term of imprisonment of 15 calendar years  
 747 and pay a fine of \$250,000.

748       2. Any person who knowingly manufactures or brings into  
 749 this state 400 grams or more of amphetamine, as described in s.  
 750 893.03(2)(c)2., or methamphetamine, as described in s.  
 751 893.03(2)(c)4., or of any mixture containing amphetamine or  
 752 methamphetamine, or phenylacetone, phenylacetic acid,  
 753 pseudoephedrine, or ephedrine in conjunction with other  
 754 chemicals and equipment used in the manufacture of amphetamine

755 or methamphetamine, and who knows that the probable result of  
 756 such manufacture or importation would be the death of any person  
 757 commits capital manufacture or importation of amphetamine, a  
 758 capital felony punishable as provided in ss. 775.082 and  
 759 921.142. Any person sentenced for a capital felony under this  
 760 paragraph shall also be sentenced to pay the maximum fine  
 761 provided under subparagraph 1.

762 (g)1. Any person who knowingly sells, purchases,  
 763 manufactures, delivers, or brings into this state, or who is  
 764 knowingly in actual or constructive possession of, 4 grams or  
 765 more of flunitrazepam or any mixture containing flunitrazepam as  
 766 described in s. 893.03(1)(a) commits a felony of the first  
 767 degree, which felony shall be known as "trafficking in  
 768 flunitrazepam," punishable as provided in s. 775.082, s.  
 769 775.083, or s. 775.084. If the quantity involved:

770 a. Is 4 grams or more but less than 14 grams, such person  
 771 shall be sentenced to a mandatory minimum term of imprisonment  
 772 of 3 years, and the defendant shall be ordered to pay a fine of  
 773 \$50,000.

774 b. Is 14 grams or more but less than 28 grams, such person  
 775 shall be sentenced to a mandatory minimum term of imprisonment  
 776 of 7 years, and the defendant shall be ordered to pay a fine of  
 777 \$100,000.

778 c. Is 28 grams or more but less than 30 kilograms, such  
 779 person shall be sentenced to a mandatory minimum term of  
 780 imprisonment of 25 calendar years and pay a fine of \$500,000.

781           2. Any person who knowingly sells, purchases,  
 782 manufactures, delivers, or brings into this state or who is  
 783 knowingly in actual or constructive possession of 30 kilograms  
 784 or more of flunitrazepam or any mixture containing flunitrazepam  
 785 as described in s. 893.03(1)(a) commits the first degree felony  
 786 of trafficking in flunitrazepam. A person who has been convicted  
 787 of the first degree felony of trafficking in flunitrazepam under  
 788 this subparagraph shall be punished by life imprisonment and is  
 789 ineligible for any form of discretionary early release except  
 790 pardon or executive clemency or conditional medical release  
 791 under s. 947.149. However, if the court determines that, in  
 792 addition to committing any act specified in this paragraph:

793           a. The person intentionally killed an individual or  
 794 counseled, commanded, induced, procured, or caused the  
 795 intentional killing of an individual and such killing was the  
 796 result; or

797           b. The person's conduct in committing that act led to a  
 798 natural, though not inevitable, lethal result,

799  
 800 such person commits the capital felony of trafficking in  
 801 flunitrazepam, punishable as provided in ss. 775.082 and  
 802 921.142. Any person sentenced for a capital felony under this  
 803 paragraph shall also be sentenced to pay the maximum fine  
 804 provided under subparagraph 1.

805           (h)1. Any person who knowingly sells, purchases,  
 806 manufactures, delivers, or brings into this state, or who is

807 knowingly in actual or constructive possession of, 1 kilogram or  
 808 more of gamma-hydroxybutyric acid (GHB), as described in s.  
 809 893.03(1)(d), or any mixture containing gamma-hydroxybutyric  
 810 acid (GHB), commits a felony of the first degree, which felony  
 811 shall be known as "trafficking in gamma-hydroxybutyric acid  
 812 (GHB)," punishable as provided in s. 775.082, s. 775.083, or s.  
 813 775.084. If the quantity involved:

814 a. Is 1 kilogram or more but less than 5 kilograms, such  
 815 person shall be sentenced to a mandatory minimum term of  
 816 imprisonment of 3 years, and the defendant shall be ordered to  
 817 pay a fine of \$50,000.

818 b. Is 5 kilograms or more but less than 10 kilograms, such  
 819 person shall be sentenced to a mandatory minimum term of  
 820 imprisonment of 7 years, and the defendant shall be ordered to  
 821 pay a fine of \$100,000.

822 c. Is 10 kilograms or more, such person shall be sentenced  
 823 to a mandatory minimum term of imprisonment of 15 calendar years  
 824 and pay a fine of \$250,000.

825 2. Any person who knowingly manufactures or brings into  
 826 this state 150 kilograms or more of gamma-hydroxybutyric acid  
 827 (GHB), as described in s. 893.03(1)(d), or any mixture  
 828 containing gamma-hydroxybutyric acid (GHB), and who knows that  
 829 the probable result of such manufacture or importation would be  
 830 the death of any person commits capital manufacture or  
 831 importation of gamma-hydroxybutyric acid (GHB), a capital felony  
 832 punishable as provided in ss. 775.082 and 921.142. Any person

833 sentenced for a capital felony under this paragraph shall also  
 834 be sentenced to pay the maximum fine provided under subparagraph  
 835 1.

836 (i)1. Any person who knowingly sells, purchases,  
 837 manufactures, delivers, or brings into this state, or who is  
 838 knowingly in actual or constructive possession of, 1 kilogram or  
 839 more of gamma-butyrolactone (GBL), as described in s.  
 840 893.03(1)(d), or any mixture containing gamma-butyrolactone  
 841 (GBL), commits a felony of the first degree, which felony shall  
 842 be known as "trafficking in gamma-butyrolactone (GBL),"   
 843 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.  
 844 If the quantity involved:

845 a. Is 1 kilogram or more but less than 5 kilograms, such  
 846 person shall be sentenced to a mandatory minimum term of  
 847 imprisonment of 3 years, and the defendant shall be ordered to  
 848 pay a fine of \$50,000.

849 b. Is 5 kilograms or more but less than 10 kilograms, such  
 850 person shall be sentenced to a mandatory minimum term of  
 851 imprisonment of 7 years, and the defendant shall be ordered to  
 852 pay a fine of \$100,000.

853 c. Is 10 kilograms or more, such person shall be sentenced  
 854 to a mandatory minimum term of imprisonment of 15 calendar years  
 855 and pay a fine of \$250,000.

856 2. Any person who knowingly manufactures or brings into  
 857 the state 150 kilograms or more of gamma-butyrolactone (GBL), as  
 858 described in s. 893.03(1)(d), or any mixture containing gamma-

859 butyrolactone (GBL), and who knows that the probable result of  
 860 such manufacture or importation would be the death of any person  
 861 commits capital manufacture or importation of gamma-  
 862 butyrolactone (GBL), a capital felony punishable as provided in  
 863 ss. 775.082 and 921.142. Any person sentenced for a capital  
 864 felony under this paragraph shall also be sentenced to pay the  
 865 maximum fine provided under subparagraph 1.

866 (j)1. Any person who knowingly sells, purchases,  
 867 manufactures, delivers, or brings into this state, or who is  
 868 knowingly in actual or constructive possession of, 1 kilogram or  
 869 more of 1,4-Butanediol as described in s. 893.03(1)(d), or of  
 870 any mixture containing 1,4-Butanediol, commits a felony of the  
 871 first degree, which felony shall be known as "trafficking in  
 872 1,4-Butanediol," punishable as provided in s. 775.082, s.  
 873 775.083, or s. 775.084. If the quantity involved:

874 a. Is 1 kilogram or more, but less than 5 kilograms, such  
 875 person shall be sentenced to a mandatory minimum term of  
 876 imprisonment of 3 years, and the defendant shall be ordered to  
 877 pay a fine of \$50,000.

878 b. Is 5 kilograms or more, but less than 10 kilograms,  
 879 such person shall be sentenced to a mandatory minimum term of  
 880 imprisonment of 7 years, and the defendant shall be ordered to  
 881 pay a fine of \$100,000.

882 c. Is 10 kilograms or more, such person shall be sentenced  
 883 to a mandatory minimum term of imprisonment of 15 calendar years  
 884 and pay a fine of \$500,000.

885 2. Any person who knowingly manufactures or brings into  
 886 this state 150 kilograms or more of 1,4-Butanediol as described  
 887 in s. 893.03(1)(d), or any mixture containing 1,4-Butanediol,  
 888 and who knows that the probable result of such manufacture or  
 889 importation would be the death of any person commits capital  
 890 manufacture or importation of 1,4-Butanediol, a capital felony  
 891 punishable as provided in ss. 775.082 and 921.142. Any person  
 892 sentenced for a capital felony under this paragraph shall also  
 893 be sentenced to pay the maximum fine provided under subparagraph  
 894 1.

895 (k)1. A person who knowingly sells, purchases,  
 896 manufactures, delivers, or brings into this state, or who is  
 897 knowingly in actual or constructive possession of, 10 grams or  
 898 more of any of the following substances described in s.

899 893.03(1)(c):

- 900 a. 3,4-Methylenedioxymethamphetamine (MDMA);
- 901 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 902 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 903 d. 2,5-Dimethoxyamphetamine;
- 904 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 905 f. N-ethylamphetamine;
- 906 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 907 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 908 i. 4-methoxyamphetamine;
- 909 j. 4-methoxymethamphetamine;
- 910 k. 4-Methyl-2,5-dimethoxyamphetamine;

- 911 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 912 m. 3,4-Methylenedioxyamphetamine;
- 913 n. N,N-dimethylamphetamine;
- 914 o. 3,4,5-Trimethoxyamphetamine;
- 915 p. 3,4-Methylenedioxymethcathinone;
- 916 q. 3,4-Methylenedioxypyrovalerone (MDPV); or
- 917 r. Methylnmethcathinone,

918

919 individually or analogs thereto or isomers thereto or in any  
 920 combination of or any mixture containing any substance listed in  
 921 sub-subparagraphs a.-r., commits a felony of the first degree,  
 922 which felony shall be known as "trafficking in Phenethylamines,"  
 923 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

924 2. If the quantity involved:

925 a. Is 10 grams or more, but less than 200 grams, such  
 926 person shall be sentenced to a mandatory minimum term of  
 927 imprisonment of 3 years and shall be ordered to pay a fine of  
 928 \$50,000.

929 b. Is 200 grams or more, but less than 400 grams, such  
 930 person shall be sentenced to a mandatory minimum term of  
 931 imprisonment of 7 years and shall be ordered to pay a fine of  
 932 \$100,000.

933 c. Is 400 grams or more, such person shall be sentenced to  
 934 a mandatory minimum term of imprisonment of 15 years and shall  
 935 be ordered to pay a fine of \$250,000.

936 3. A person who knowingly manufactures or brings into this



937 state 30 kilograms or more of any of the following substances  
 938 described in s. 893.03(1)(c):

- 939 a. 3,4-Methylenedioxyamphetamine (MDMA);
- 940 b. 4-Bromo-2,5-dimethoxyamphetamine;
- 941 c. 4-Bromo-2,5-dimethoxyphenethylamine;
- 942 d. 2,5-Dimethoxyamphetamine;
- 943 e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- 944 f. N-ethylamphetamine;
- 945 g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- 946 h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- 947 i. 4-methoxyamphetamine;
- 948 j. 4-methoxymethamphetamine;
- 949 k. 4-Methyl-2,5-dimethoxyamphetamine;
- 950 l. 3,4-Methylenedioxy-N-ethylamphetamine;
- 951 m. 3,4-Methylenedioxyamphetamine;
- 952 n. N,N-dimethylamphetamine;
- 953 o. 3,4,5-Trimethoxyamphetamine;
- 954 p. 3,4-Methylenedioxy-methcathinone;
- 955 q. 3,4-Methylenedioxy-pyrovalerone (MDPV); or
- 956 r. Methylmethcathinone,

957  
 958 individually or analogs thereto or isomers thereto or in any  
 959 combination of or any mixture containing any substance listed in  
 960 sub-subparagraphs a.-r., and who knows that the probable result  
 961 of such manufacture or importation would be the death of any  
 962 person commits capital manufacture or importation of

963 Phenethylamines, a capital felony punishable as provided in ss.  
 964 775.082 and 921.142. A person sentenced for a capital felony  
 965 under this paragraph shall also be sentenced to pay the maximum  
 966 fine provided under subparagraph 1.

967 (1)1. Any person who knowingly sells, purchases,  
 968 manufactures, delivers, or brings into this state, or who is  
 969 knowingly in actual or constructive possession of, 1 gram or  
 970 more of lysergic acid diethylamide (LSD) as described in s.  
 971 893.03(1)(c), or of any mixture containing lysergic acid  
 972 diethylamide (LSD), commits a felony of the first degree, which  
 973 felony shall be known as "trafficking in lysergic acid  
 974 diethylamide (LSD)," punishable as provided in s. 775.082, s.  
 975 775.083, or s. 775.084. If the quantity involved:

976 a. Is 1 gram or more, but less than 5 grams, such person  
 977 shall be sentenced to a mandatory minimum term of imprisonment  
 978 of 3 years, and the defendant shall be ordered to pay a fine of  
 979 \$50,000.

980 b. Is 5 grams or more, but less than 7 grams, such person  
 981 shall be sentenced to a mandatory minimum term of imprisonment  
 982 of 7 years, and the defendant shall be ordered to pay a fine of  
 983 \$100,000.

984 c. Is 7 grams or more, such person shall be sentenced to a  
 985 mandatory minimum term of imprisonment of 15 calendar years and  
 986 pay a fine of \$500,000.

987 2. Any person who knowingly manufactures or brings into  
 988 this state 7 grams or more of lysergic acid diethylamide (LSD)

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989 as described in s. 893.03(1)(c), or any mixture containing  
990 lysergic acid diethylamide (LSD), and who knows that the  
991 probable result of such manufacture or importation would be the  
992 death of any person commits capital manufacture or importation  
993 of lysergic acid diethylamide (LSD), a capital felony punishable  
994 as provided in ss. 775.082 and 921.142. Any person sentenced for  
995 a capital felony under this paragraph shall also be sentenced to  
996 pay the maximum fine provided under subparagraph 1.

997 Section 7. This act shall take effect upon becoming a law.