

1 A bill to be entitled

2
3 An act relating to sentencing in capital felonies;
4 amending s. 921.137, F.S.; defining terms;
5 prohibiting the imposition of a death sentence upon a
6 defendant with a severe mental disorder; providing
7 procedures for raising severe mental disorder as a
8 bar to imposition of a death sentence; providing an
9 effective date.

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

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13 Section 1. Section 921.137, Florida Statutes, is amended
14 to read:

15 921.137. Imposition of Death Sentence Upon a Defendant
16 With Mental Retardation or Severe Mental Disorder Prohibited.--

17 (1) As used in this section, the term "mental retardation"
18 means significantly subaverage general intellectual functioning
19 existing concurrently with deficits in adaptive behavior and
20 manifested during the period from conception to age 18. The term
21 "significantly subaverage general intellectual functioning," for
22 the purpose of this section, means performance that is two or more
23 standard deviations from the mean score on a standardized
24 intelligence test specified by the Department of Children and
25 Family Services in rule 65G-4.011 of the Florida Administrative
26 Code. ~~in the rules of the Agency for Persons with Disabilities.~~
27 The term "adaptive behavior," for the purpose of this definition,
28 means the effectiveness or degree with which an individual meets
29 the standards of personal independence and social responsibility
30 expected of his or her age, cultural group, and community. The
31 ~~Agency for Persons with Disabilities~~ Department of Children and
32 Family Services shall adopt rules to specify the standardized
33 intelligence tests as provided in this subsection.

34 (2) As used in this section, the term "severe mental
35 disorder" means an impairment of emotional processes that exercise
36 conscious control of one's actions, or of the ability to perceive
37 or understand reality, caused by a diagnosed psychosis, dementia,
38 traumatic brain injury, or other mental disorder, which impairment
39 substantially interferes with a defendant's ability to meet the
40 ordinary demands of living and manifested prior to the time of the
41 offense. A disorder manifested primarily by repeated criminal
42 conduct or attributable solely to the acute effects of voluntary
43 use of alcohol or other drugs does not, standing alone, constitute
44 a severe mental disorder for purposes of this section.

45 ~~(2)~~ (3) A sentence of death may not be imposed upon a
46 defendant convicted of a capital felony if it is determined in
47 accordance with this section that the defendant has mental
48 retardation.

49 (4) A sentence of death may not be imposed upon a defendant
50 convicted of a capital felony if it is determined in accordance
51 with this section that the defendant, at the time of the offense,
52 had a severe mental disorder that significantly impaired the
53 capacity

54 (a) to appreciate the nature, consequences or wrongfulness
55 of one's conduct,

56 (b) to exercise rational judgment in relation to conduct,
57 or

58 (c) to conform one's conduct to the requirements of law.

59 ~~(3)~~(5) A defendant charged with a capital felony who
60 intends to raise mental retardation or severe mental disorder as a
61 bar to the death sentence must give notice of such intention in
62 accordance with the rules of court governing notices of intent to
63 offer expert testimony regarding mental health mitigation during
64 the penalty phase of a capital trial.

65 ~~(4)~~(6) After a defendant who has given notice of his or her
66 intention to raise mental retardation or severe mental disorder as
67 a bar to the death sentence is convicted of a capital felony and
68 an advisory jury has returned a recommended sentence of death, the
69 defendant may file a motion to determine whether the defendant has
70 mental retardation or a severe mental disorder. Upon receipt of
71 the motion, the court shall appoint two experts in the field of
72 mental retardation or mental disorders, as appropriate, who shall
73 evaluate the defendant and report their findings to the court and
74 all interested parties prior to the final sentencing hearing.
75 Notwithstanding s. 921.141 or s. 921.142, the final sentencing
76 hearing shall be held without a jury. At the final sentencing
77 hearing, the court shall consider the findings of the court-
78 appointed experts and consider the findings of any other expert
79 which is offered by the state or the defense on the issue of
80 whether the defendant has mental retardation or a severe mental
81 disorder. If the court finds, by clear and convincing evidence,
82 that the defendant has mental retardation as defined in subsection
83 (1), or a severe mental disorder as defined in subsection (2), the
84 court may not impose a sentence of death and shall enter a written
85 order that sets forth with specificity the findings in support of
86 the determination.

87 ~~(5)~~(7) If a defendant waives his or her right to a
88 recommended sentence by an advisory jury following a plea of guilt
89 or nolo contendere to a capital felony and adjudication of guilt
90 by the court, or following a jury finding of guilt of a capital
91 felony, upon acceptance of the waiver by the court, a defendant
92 who has given notice as required in subsection ~~(3)~~(5) may file a
93 motion for a determination of mental retardation or severe mental
94 disorder. Upon granting the motion, the court shall proceed as
95 provided in subsection ~~(4)~~(6).

96 ~~(6)~~(8) If, following a recommendation by an advisory jury
97 that the defendant be sentenced to life imprisonment, the state
98 intends to request the court to order that the defendant be
99 sentenced to death, the state must inform the defendant of such
100 request if the defendant has notified the court of his or her
101 intent to raise mental retardation or severe mental disorder as a
102 bar to the death sentence. After receipt of the notice from the
103 state, the defendant may file a motion requesting a determination
104 by the court of whether the defendant has mental retardation or a
105 severe mental disorder. Upon granting the motion, the court shall
106 proceed as provided in subsection ~~(4)~~(6).

107 ~~(7)~~(9) The state may appeal, pursuant to s. 924.07, a
108 determination of mental retardation or severe mental disorder made
109 under subsection ~~(4)~~(6).

110 ~~(8)~~(10) This section does not apply to a defendant who was
111 sentenced to death prior to the effective date of this act.

112 (11) Notwithstanding subsections (5)-(9), it is the intent
113 of the legislature that the Florida Supreme Court adopt rules of
114 procedure to implement subsections (1)-(4) which shall abrogate
115 any contrary procedures set forth above.

116 Section 2. This act shall take effect July 1, 2012.