

CHAPTER 2023-23

Committee Substitute for Committee Substitute for Senate Bill No. 450

An act relating to the death penalty; amending ss. 921.141 and 921.142, F.S.; requiring a determination of a specified number of jurors, rather than jury unanimity, for a sentencing recommendation of death to the court; requiring a determination of a specified number of jurors, rather than jury unanimity, for a sentencing recommendation of life imprisonment without the possibility of parole to the court; requiring the court to impose the recommended sentence of life imprisonment without the possibility of parole if fewer than eight jurors recommend a sentence of death; authorizing the court to impose a sentence of life imprisonment without the possibility of parole or a sentence of death if at least eight jurors recommend a sentence of death; specifying that the court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt; requiring the court to include in its written order the reasons for not accepting the jury's recommended sentence, if applicable; providing an effective date.

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

Section 1. Subsections (2), (3), and (4) of section 921.141, Florida Statutes, are amended to read:

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

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

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (6).

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

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

2. Unanimously finds at least one aggravating factor, the defendant is eligible for a sentence of death and the jury shall make a recommendation to the court as to whether the defendant shall be sentenced to life

imprisonment without the possibility of parole or to death. The recommendation shall be based on a weighing of all of the following:

- a. Whether sufficient aggravating factors exist.
- b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.
- c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) ~~If at least eight jurors determine a unanimous jury determines~~ that the defendant should be sentenced to death, the jury's recommendation to the court ~~must shall~~ be a sentence of death. ~~If fewer than eight jurors a unanimous jury does not determine that the defendant should be sentenced to death, the jury's recommendation to the court must shall~~ be a sentence of life imprisonment without the possibility of parole.

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

- (a) If the jury has recommended a sentence of:
 1. Life imprisonment without the possibility of parole, the court shall impose the recommended sentence of life.
 2. ~~Death, and at least eight jurors recommend a sentence of death,~~ the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury. The court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

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

(4) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—In each case in which the court imposes a sentence of life imprisonment without the possibility of parole or death, the court shall, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors set forth in subsection (6) found to exist, the mitigating circumstances in subsection (7) reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the

aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. The court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable. If the court does not issue its order requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082.

Section 2. Subsections (3), (4), and (5) of section 921.142, Florida Statutes, are amended to read:

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

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

(a) After hearing all of the evidence presented regarding aggravating factors and mitigating circumstances, the jury shall deliberate and determine if the state has proven, beyond a reasonable doubt, the existence of at least one aggravating factor set forth in subsection (7).

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

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

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

a. Whether sufficient aggravating factors exist.

b. Whether aggravating factors exist which outweigh the mitigating circumstances found to exist.

c. Based on the considerations in sub-subparagraphs a. and b., whether the defendant should be sentenced to life imprisonment without the possibility of parole or to death.

(c) If at least eight jurors determine a unanimous jury determines that the defendant should be sentenced to death, the jury's recommendation to the court must ~~shall~~ be a sentence of death. If fewer than eight jurors a unanimous jury does not determine that the defendant should be sentenced to death, the jury's recommendation to the court must ~~shall~~ be a sentence of life imprisonment without the possibility of parole.

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

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

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

2. Death, and at least eight jurors recommend a sentence of death, the court, after considering each aggravating factor found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death. The court may consider only an aggravating factor that was unanimously found to exist by the jury. The court may impose a sentence of death only if the jury unanimously finds at least one aggravating factor beyond a reasonable doubt.

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

(5) ORDER OF THE COURT IN SUPPORT OF SENTENCE OF LIFE IMPRISONMENT OR DEATH.—In each case in which the court imposes a sentence of life imprisonment without the possibility of parole or death sentence, the court shall, considering the records of the trial and the sentencing proceedings, enter a written order addressing the aggravating factors set forth in subsection (7) found to exist, the mitigating circumstances in subsection (8) reasonably established by the evidence, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances reasonably established by the evidence. The court must include in its written order the reasons for not accepting the jury's recommended sentence, if applicable. If the court does not issue its order requiring the death sentence within 30 days after the rendition of the judgment and sentence, the court shall impose a sentence of life imprisonment without the possibility of parole in accordance with s. 775.082.

Section 3. This act shall take effect upon becoming a law.

Approved by the Governor April 20, 2023.

Filed in Office Secretary of State April 20, 2023.