

CHAPTER 2023-25

Committee Substitute for Committee Substitute for House Bill No. 1297

An act relating to capital sexual battery; amending s. 794.011, F.S.; providing for death sentences for certain child sexual offenders; creating s. 921.1425, F.S.; providing legislative intent concerning capital punishment for certain child sexual offenders; providing for separate death penalty proceedings in such cases; providing for findings and recommended sentences by a jury; providing for imposition of sentence of life imprisonment or death; providing requirements for a court order in support of a death sentence; providing for automatic review of sentences of death; specifying aggravating factors and mitigating circumstances; providing for victim impact evidence; providing for resentencing if provisions are found to be unconstitutional; providing applicability; amending ss. 921.137 and 921.141, F.S.; conforming provisions to changes made by the act; amending s. 924.07, F.S.; authorizing the state to appeal from a sentence on the grounds that it resulted from the failure of the circuit court to comply with specified sentencing procedure requirements; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 794.011, Florida Statutes, is amended to read:

794.011 Sexual battery.—

(2)(a) A person 18 years of age or older who commits sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age commits a capital felony, punishable as provided in ss. 775.082 and 921.1425. In all capital cases under this section, the procedure set forth in s. 921.1425 shall be followed in order to determine a sentence of death or life imprisonment. If the prosecutor intends to seek the death penalty, the prosecutor must give notice to the defendant and file the notice with the court within 45 days after arraignment. The notice must contain a list of the aggravating factors the state intends to prove and has reason to believe it can prove beyond a reasonable doubt. The court may allow the prosecutor to amend the notice upon a showing of good cause 921.141.

Section 2. Section 921.1425, Florida Statutes, is created to read:

921.1425 Sentence of death or life imprisonment for capital sexual battery; further proceedings to determine sentence.—

(1) INTENT.—

(a) The Legislature finds that a person who commits a sexual battery upon, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age carries a great risk of death and danger to vulnerable members of this state. Such crimes destroy the innocence of a young child and violate all standards of decency held by civilized society. The Legislature further finds that *Buford v. State of Florida*, 403 So. 2d 943 (Fla. 1981), was wrongly decided, and that *Kennedy v. Louisiana*, 554 U.S. 407, (2008), was wrongly decided and an egregious infringement of the states' power to punish the most heinous of crimes.

(b) It is the intent of the Legislature that the procedure set forth in this section shall be followed, and a prosecutor must file notice, as provided in s. 794.011(2)(a), if he or she intends to seek the death penalty.

(2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony under s. 794.011, the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment as authorized by s. 775.082. The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may summon a special juror or jurors as provided in chapter 913 to determine the issue of the imposition of the penalty. If the trial jury has been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any of the aggravating factors enumerated in subsection (7) and for which notice has been provided pursuant to s. 794.011(2)(a) or mitigating circumstances enumerated in subsection (8). Any such evidence that the court deems to have probative value may be received, regardless of its admissibility under the exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any hearsay statements. However, this subsection shall not be construed to authorize the introduction of any evidence secured in violation of the United States Constitution or the Florida Constitution. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against a sentence of death.

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

(a) After hearing all of the evidence presented 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 two aggravating factors set forth in subsection (7).

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

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

2. Unanimously finds at least two aggravating factors, 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 that the defendant should be sentenced to death, the jury’s recommendation to the court shall be a sentence of death. If fewer than eight jurors determine that the defendant should be sentenced to death, the jury’s recommendation to the court shall be a sentence of life imprisonment without the possibility of parole.

(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 imprisonment without the possibility of parole.

2. 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 found at least two aggravating factors 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 two aggravating factors have 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, 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 shall 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.

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

(7) AGGRAVATING FACTORS.—Aggravating factors shall be limited to the following:

(a) The capital felony was committed by a person previously convicted of a felony violation of s. 794.011, and under sentence of imprisonment or placed on community control or on felony probation.

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

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

(d) The capital felony was committed by a sexual offender who is required to register pursuant to s. 943.0435 or a person previously required to register as a sexual offender who had such requirement removed.

(e) The defendant knowingly created a great risk of death to one or more persons such that participation in the offense constituted reckless indifference or disregard for human life.

(f) 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.

(g) The capital felony was committed for pecuniary gain.

- (h) The capital felony was especially heinous, atrocious, or cruel.
- (i) The victim of the capital felony was particularly vulnerable due to age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- (j) The capital felony was committed by a person subject to an injunction issued pursuant to s. 741.30 or s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.
- (k) The victim of the capital felony sustained serious bodily injury.
- (8) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall be the following:
- (a) The defendant has no significant history of prior criminal activity.
- (b) The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- (c) The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- (d) The defendant acted under extreme duress or under the substantial domination of another person.
- (e) 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.
- (f) The age of the defendant at the time of the crime.
- (g) The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.
- (9) VICTIM IMPACT EVIDENCE.—Once the prosecution has provided evidence of the existence of two or more aggravating factors as described in subsection (7), the prosecution may introduce, and subsequently argue, victim impact evidence to the jury. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the physical and psychological harm to the victim. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.
- (10) CONSTITUTIONALITY.—Notwithstanding s. 775.082(2) or s. 775.15, or any other provision of law, a sentence of death shall be imposed under this section notwithstanding existing case law which holds such a sentence is unconstitutional under the Florida Constitution and the United States Constitution. In any case for which the Florida Supreme Court or the

United States Supreme Court reviews a sentence of death imposed pursuant to this section, and in making such a review reconsiders the prior holdings in *Buford v. State* and *Kennedy v. Louisiana*, and determines a sentence of death remains unconstitutional, the court having jurisdiction over the person previously sentenced to death shall cause such person to be brought before the court, and the court shall sentence such person to life imprisonment as provided in s. 775.082(1).

(11) APPLICABILITY.—This section applies to any capital felony under s. 794.011, that is committed on or after October 1, 2023.

Section 3. Subsection (4) of section 921.137, Florida Statutes, is amended to read:

921.137 Imposition of the death sentence upon an intellectually disabled defendant prohibited.—

(4) After a defendant who has given notice of his or her intention to raise intellectual disability as a bar to the death sentence is convicted of a capital felony and an advisory jury has returned a recommended sentence of death, the defendant may file a motion to determine whether the defendant is intellectually disabled. Upon receipt of the motion, the court shall appoint two experts in the field of intellectual disabilities who shall evaluate the defendant and report their findings to the court and all interested parties prior to the final sentencing hearing. Notwithstanding s. 921.141, or s. 921.142, or s. 921.1425, the final sentencing hearing shall be held without a jury. At the final sentencing hearing, the court shall consider the findings of the court-appointed experts and consider the findings of any other expert which is offered by the state or the defense on the issue of whether the defendant has an intellectual disability. If the court finds, by clear and convincing evidence, that the defendant has an intellectual disability as defined in subsection (1), the court may not impose a sentence of death and shall enter a written order that sets forth with specificity the findings in support of the determination.

Section 4. Subsection (9) of section 921.141, Florida Statutes, is amended to read:

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

(9) APPLICABILITY.—This section does not apply to a person convicted or adjudicated guilty of a capital sexual battery under s. 794.011 or a capital drug trafficking felony under s. 893.135.

Section 5. Paragraph (n) is added to subsection (1) of section 924.07, Florida Statutes, to read:

924.07 Appeal by state.—

(1) The state may appeal from:

(n) The sentence in a case of capital sexual battery on the ground that it resulted from the circuit court’s failure to comply with sentencing procedures under s. 921.1425, including by striking a notice of intent to seek the death penalty, refusing to impanel a capital jury, or otherwise granting relief that prevents the state from seeking a sentence of death.

Section 6. This act shall take effect October 1, 2023.

Approved by the Governor May 1, 2023.

Filed in Office Secretary of State May 1, 2023.