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FILED  
THOMAS D. HALL  
MAY 29 2002

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT  
BY \_\_\_\_\_

**IN RE: AMENDMENTS TO THE  
FLORIDA RULES OF CRIMINAL  
PROCEDURE**

**CASE NUMBER: SCO2-1230**

**EMERGENCY PETITION OF  
THE FLORIDA BAR CRIMINAL PROCEDURE RULES COMMITTEE**

John F. Harkness, Jr., Executive Director of The Florida Bar, and Raymond J. Rafool, II, Chair of The Florida Bar Criminal Procedure Rules Committee, file this Emergency Petition pursuant to *Fla. R. App. P. 2.130(a)*.

Pursuant to its Fast Track procedures, the committee proposes *Fla. R. Crim P. 3.203* and amendments to *Fla. R. Crim P. 3.704*, reflected on the Table of Contents attached hereto as Attachment "A", which includes the voting record of the committee. The Florida Bar Board of Governors approved the proposed amendments on March 15, 2002, by a vote of 32 in favor and 0 opposed. The proposed amendments are attached as Attachment "B". Copies of the referral memoranda concerning these proposals are contained in Attachment "C". The Committee believes that the adoption of these Rules will significantly improve the Florida Rules of Criminal Procedure by correlating the Rules with new legislation.

The recommended amendments and rationale are as follows:

**1. Rule 3.203 - Defendant's Mental Retardation As A Bar To The Imposition Of Death Sentence.**

Proposed *Fla. R. Crim P. 3.203* is a new rule. The Committee found that an amendment under the Fast Track procedure was necessary to implement Senate Bill 238 (Death Penalty - Mental Retardation), effective July 1, 2001. The bill created a new defense and prohibited the imposition of the death penalty on a mentally retarded defendant. The committee voted to create *Rule 3.203* to provide procedures and guidance for defendants, the State of Florida, and the trial courts.

The proposed rule requires notice of the defendant's intent to raise the mental retardation issue/defense; the filing of a motion to determine mental retardation; the appointment of experts; and a time frame for the examination(s) of the defendant. The rule also addresses the defendant's refusal to cooperate with his or her counsel or procedures when mental retardation is an issue.

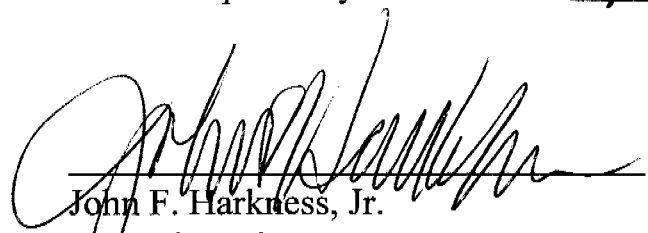
## **2. Rule 3.704 - The Criminal Punishment Code.**

The proposed modification of *Fla. R. Crim P. 3.704* amends the rule to be consistent with Senate Bill 322 (Youth Offenders - Amending Definition Of Prior Record), effective July 1, 2001. The bill amended Section 921.0021, Florida Statutes, by expanding the definition of "prior record" to include 5 years of a juvenile record rather than 3 years. Because of the anticipated frequency of utilization of this expanded definition since July 1, 2001, the committee, as well as the Committee for Review And Notification of Criminal And Juvenile Legislation, believe the rule amendment has a priority necessitating the Fast Track procedure.

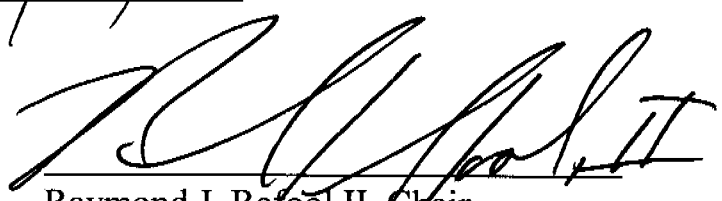
The additional proposed Committee Note explains that the rule was amended to include juvenile dispositions of offenses committed within 5 years prior to the date of the commission of the primary offense, noting such change was caused by the amendment to Section 921.0021, Florida Statutes, effective July 1, 2001.

The Committee respectfully requests that the Court adopt these proposed amendments to the Florida Rules of Criminal Procedure.

Respectfully submitted on May 28, 2002



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Committee Vote: N/A: Under the fast track procedures of the Criminal Procedure Rules Committee, proposals approved by the fast track subcommittee are approved for submission to the Florida Supreme Court if an objection is not received from one-third of the full committee members.

Board of Governors Vote: 32-0

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Committee Vote: N/A: Under the fast track procedures of the  
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Supreme Court if an objection is not received from one-third of the  
full committee members.  
Board of Governors Vote: 32-0

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SUBJECT INDEX

**Proposed Rule**

**Reason for Change**

**RULE 3.203. DEFENDANT'S MENTAL  
RETARDATION AS A BAR TO IMPOSITION  
OF DEATH SENTENCE**

**(a) Notice of Intent to Raise Mental Retardation  
as Bar to Imposition of Death Sentence; Time for Filing;**

**Contents.** A defendant who intends to raise mental retardation as a bar to the imposition of a death sentence shall give written notice to the prosecutor not less than 20 days before trial or at such other time as ordered by the court. The notice shall contain the names and addresses of any experts whom the defendant may call to testify at a hearing to determine mental retardation.

**(b) Motion for Determination of Mental Retardation; Time for Filing After Recommendation of Death.** A defendant who has given timely notice under subdivision (a) of this rule may file a motion for determination of mental retardation within 10 days after an advisory jury has recommended a death sentence.

**(c) Motion for Determination of Mental Retardation; Time for Filing After Recommendation of Life.** The prosecutor shall notify the defendant, within 10 days after an advisory jury has returned a recommended sentence of life, if the state intends to seek a sentence of death. A defendant who has given timely notice under subdivision (a) of this rule may file a motion for determination of mental retardation within 10 days after receiving notice that the state intends to seek a death sentence.

By memorandum of May 23, 2001, to the Honorable O.H. Eaton, as Chair of the Criminal Procedure Rules Committee, the Honorable Chris W. Altenbernd, Chair of the Committee for Review and Notification of Criminal and Juvenile Legislation, requested the committee review Senate Bill 238 (Death Penalty – Mental Retardation), effective July 1, 2001, in connection with Rule 3.202. The bill created a new defense by prohibiting a trial judge from imposing a death sentence on a mentally retarded defendant. Judge Altenbernd's memorandum requested high priority to the issue.

The committee voted to create a new rule, Rule 3.203, which contains procedures for defendants who intend to raise mental retardation as a bar to the imposition of the death sentence.

The procedures require: notice of the defendant's intent to raise the mental retardation defense; the filing of a motion to determine mental retardation; and the appointment of experts and a time frame for their examination of the defendant. The rule also addresses the defendant's refusal to cooperate.

ATTACHMENT B

**(d) Motion for Determination of Mental Retardation; Time for Filing After Waiver of Advisory Jury Recommendation.** A defendant who waives the right to a penalty phase jury may file a motion for determination of mental retardation no later than 10 days after completion of the penalty phase hearing.

**(e) Appointment of Experts; Time of Examination.** The court shall appoint 2 experts in the field of mental retardation upon the receipt of the motion for determination of mental retardation. The experts shall evaluate the defendant and provide to the court and the parties a written report of their findings. The reports shall be provided a reasonable time prior to the final sentencing hearing. Attorneys for the state and defendant may be present at the examinations.

**(f) Defendant's Refusal to Cooperate.** If the defendant refuses to be examined by or fully cooperate with the court-appointed experts, the court may, in its discretion:

(1) order the defense to allow the court-appointed experts to review all mental health reports, tests, and evaluations by the defendant's expert; or

(2) prohibit defense experts from testifying concerning any tests, evaluations, or examinations of the defendant regarding the defendant's mental retardation.

**(g) Hearing on Motion to Determine Mental Retardation.** At the hearing on the motion, the court shall consider the findings of the court-appointed experts, the



findings of any other expert offered by the state or the defense, and all other evidence on the issue of whether the defendant has mental retardation. If the court finds, by clear and convincing evidence, that the defendant has mental retardation as defined in section 921.137, Florida Statutes (2001), the court may not impose a sentence of death. The court shall enter a written order that sets forth with specificity the findings in support of the court's determination.

**RULE 3.704. THE CRIMINAL PUNISHMENT CODE**

- (a) [NO CHANGE]
- (b) [NO CHANGE]
- (c) [NO CHANGE]
- (d) **General Rules and Definitions.**

(1) One or more Criminal Punishment Code scoresheets must be prepared for each offender covering all offenses pending before the court for sentencing, including offenses for which the offender may qualify as an habitual felony offender, an habitual violent felony offender, violent career criminal or prison releasee reoffender. The office of the state attorney or the Department of Corrections, or both where appropriate, must prepare the scoresheets and present them to defense counsel for review as to accuracy. If sentences are imposed under section 775.084 or section 775.082(9), Florida Statutes, and the Criminal Punishment Code, a scoresheet listing only those offenses sentenced under the Criminal Punishment Code must be filed in addition to any sentencing documents filed pursuant to section 775.084 or section 775.082(9).

(2) One scoresheet must be prepared for all offenses committed under any single version or revision of the guidelines or Criminal Punishment Code pending before the court for sentencing.

(3) If an offender is before the court for

By memorandum of May 23, 2001, to the Honorable O.H. Eaton, as Chair of the Criminal Procedure Rules Committee, the Honorable Chris W. Altenbernd, Chair of the Committee for Review and Notification of Criminal and Juvenile Legislation, requested the committee review Senate Bill 322 (Youth Offenders – Amending Definition of Prior Record), effective July 1, 2001, in connection with Rule 3.703. Section 2 of the bill expands the definition of prior record to include 5 years of a juvenile record rather than 3 years.

Judge Altenbernd’s memorandum requested high priority to the issue.

sentencing for more than one felony and the felonies were committed under more than one version or revision of the guidelines or Criminal Punishment Code, separate scoresheets must be prepared and used at sentencing. The sentencing court may impose such sentence concurrently or consecutively.

(4) The sentencing judge must review the scoresheet for accuracy and sign it.

(5) Felonies, except capital felonies, with continuing dates of enterprise are to be sentenced under the guidelines or Criminal Punishment Code in effect on the beginning date of the criminal activity.

(6) "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.

(7) "Primary offense" means the offense at conviction pending before the court for sentencing for which the total sentence points recommend a sanction that is as severe as, or more severe than, the sanction recommended for any other offense committed by the offender and pending before the court at sentencing. Only one count of one offense before the court for sentencing shall be classified as the primary offense.

(8) "Additional offense" means any offense other than the primary offense for which an offender is convicted and which is pending before the court for sentencing at the time of the primary offense.

(9) "Victim injury" is scored for physical injury or death suffered by a person as a direct result of any offense pending before the court for sentencing. Except as otherwise provided by law, the sexual penetration and sexual contact points will be scored as follows. Sexual penetration points are scored if an offense pending before the court for sentencing involves sexual penetration. Sexual contact points are scored if an offense pending before the court for sentencing involves sexual contact, but no penetration. If the victim of an offense involving sexual penetration or sexual contact without penetration suffers any physical injury as a direct result of an offense pending before the court for sentencing, that physical injury must be scored in addition to any points scored for the sexual contact or sexual penetration.

Victim injury must be scored for each victim physically injured and for each offense resulting in physical injury whether there are one or more victims. However, victim injury must not be scored for an offense for which the offender has not been convicted.

Victim injury resulting from one or more capital offenses before the court for sentencing must not be included upon any scoresheet prepared for non-capital offenses also pending before the court for sentencing. This does not prohibit the scoring of victim injury as a result of the non-capital offense or offenses before the court for sentencing.

(10) Unless specifically provided otherwise by statute, attempts, conspiracies, and solicitations must be indicated in the space provided on the Criminal Punishment Code scoresheet and must be scored at one severity level below

the completed offense.

Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 1 and 2 must be scored as misdemeanors. Attempts, solicitations, and conspiracies of third-degree felonies located in offense severity levels 3, 4, 5, 6, 7, 8, 9, and 10 must be scored as felonies one offense level beneath the incomplete or inchoate offense.

(11) An increase in offense severity level may result from a reclassification of felony degrees pursuant to sections 775.0845, 775.087, 775.0875, or 794.023. Any such increase must be indicated in the space provided on the Criminal Punishment Code scoresheet.

(12) A single assessment of thirty prior serious felony points is added if the offender has a primary offense or any additional offense ranked in level 8, 9, or 10 and one or more prior serious felonies. A "prior serious felony" is an offense in the offender's prior record ranked in level 8, 9, or 10 and for which the offender is serving a sentence of confinement, supervision or other sanction or for which the offender's date of release from confinement, supervision, or other sanction, whichever is later, is within 3 years before the date the primary offense or any additional offenses were committed. Out of state convictions wherein the analogous or parallel Florida offenses are located in offense severity level 8, 9, or 10 must be considered prior serious felonies.

(13) If the offender has one or more prior capital felonies, points must be added to the subtotal sentence points of the offender equal to twice the number of points the

offender receives for the primary offense and any additional offense. Out-of-state convictions wherein the analogous or parallel Florida offenses are capital offenses must be considered capital offenses for purposes of operation of this section.

(14) "Prior record" refers to any conviction for an offense committed by the offender prior to the commission of the primary offense. Prior record includes convictions for offenses committed by the offender as an adult or as a juvenile, convictions by federal, out of state, military, or foreign courts and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law. Federal, out of state, military or foreign convictions are scored at the severity level at which the analogous or parallel Florida crime is located.

(A) Convictions for offenses committed more than 10 years prior to the date of the commission of the primary offense must not be scored as prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or other sanction, whichever is later, to the date of the commission of the primary offense.

(B) Juvenile dispositions of offenses committed by the offender within 5 years prior to the date of the commission of the primary offense must be scored as prior record if the offense would have been a crime if committed by an adult. Juvenile dispositions of sexual offenses committed by the offender more than 5 years prior to the date of the primary

The amendment to subparagraph (d)(14)(B) conforms the criminal punishment code to §921.0021, Florida Statutes, which was amended by Section 2 of Senate Bill 322.

offense must be scored as prior record if the offender has not maintained a conviction-free record, either as an adult or as a juvenile, for a period of ~~53~~ consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of commission of the primary offense.

(C) [NO CHANGE]

(D) [NO CHANGE]

(E) [NO CHANGE]

(15) [NO CHANGE]

(A) [NO CHANGE]

(B) [NO CHANGE]

(C) [NO CHANGE]

(D) [NO CHANGE]

(E) [NO CHANGE]

(F) [NO CHANGE]

(G) [NO CHANGE]

(16) [NO CHANGE]

(A) [NO CHANGE]

- (B) [NO CHANGE]
- (C) [NO CHANGE]
- (17) [NO CHANGE]
- (18) [NO CHANGE]
- (19) [NO CHANGE]
- (20) [NO CHANGE]
- (21) [NO CHANGE]
- (22) [NO CHANGE]
- (23) [NO CHANGE]
- (24) [NO CHANGE]
- (25) [NO CHANGE]
- (26) [NO CHANGE]
- (27) [NO CHANGE]
- (A) [NO CHANGE]
- (B) [NO CHANGE]
- (28) [NO CHANGE]



**Committee Notes**

The terms must and shall, as used in this rule, are mandatory and not permissive.

**2001 Amendment.** 3.704 (d)(14)(B). The definition of "prior record" was amended to include juvenile dispositions of offenses committed within 5 years prior to the date of the commission of the primary offense. "Prior record" was previously defined to include juvenile disposition of offenses committed within 3 years prior to the date of the commission of the primary offense. This amendment reflects the legislative change to section 921.0021, Florida Statutes, effective July 1, 2001. This new definition of prior record applies to primary offenses committed on or after July 1, 2001.

The proposal adds a Committee Note explaining the rule change.

**RAFOOL & RAFOOL, P.A.**  
ATTORNEYS AND COUNSELORS AT LAW

Brandon J. Rafool  
Raymond J. Rafool, II



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**THE FLORIDA BAR CRIMINAL PROCEDURE RULES COMMITTEE**  
**REFERAL MEMORANDUM**

To: Kevin Emas, Chair, Fast Track  
From: Raymond J. Rafool, II, Chair  
Date: July 24, 2001  
Subject: 01-12-FT (Senate Bill 322: Youth Offenders - Amending  
Definition Of Prior Record)

---

The Honorable Chris W. Altenbernd is Chair of the Committee For Review And Notification Of Criminal And Juvenile Legislation (a Supreme Court Of Florida Appointed Committee). Enclosed is Judge Altenbernd's memorandum relating to Senate Bill 322 (Youth Offenders - Amending Definition Of Prior Record). Section 2 of the bill expands the definition of prior record to include five (5) years of a juvenile record rather than three (3) years. That committee believes a change is required in Rule 3.703 to accommodate the new legislation. It also requested high priority to the issue in light of such issue affecting cases tried this Summer (Summer 2001). The Morris Committee was notified and it is suggested that you work with the Morris Committee relative to these issues. For your information, the Honorable O. H. Eaton, Jr. and the Honorable Stanford Blake are both on the Morris Committee. Enclosed for your convenience is a copy of Senate Bill 322.

I refer this matter to the Fast Track Committee and provide the members with a copy of this correspondence. Please implement

the fast track process. As you know, Susan Elsass is no longer available. In that regard, you may contact Gary Rose at (850) 561-5600 to arrange a telephone conference for your subcommittee meeting.

Enclosures

cc: Gary Rose, Temporary Florida Bar Liaison

DAVID F. PATTERSON  
CHIEF JUDGE  
EDWARD F. THREADGILL  
JERRY R. PARKER  
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JAMES BIRKHOLO  
CLERK  
ROBERT P. STRZALKA, JR.  
MARSHAL

**DISTRICT COURT OF APPEAL**  
SECOND DISTRICT  
1005 E. MEMORIAL BOULEVARD  
LAKELAND, FLORIDA 33801-2019

PLEASE REPLY TO:

P.O. BOX 327  
LAKELAND, FL 33802-0327  
(863)499-2290

801 E. TWIGGS ST. #600  
TAMPA, FL 33602-3547  
(813)272-3430

To: Judge O. H. "Bill" Eaton, Chair of the Florida Criminal Procedure  
Rules Committee

From: Judge Chris W. Altenbernd, Chair of the Committee for Review and  
Notification of Criminal and Juvenile Legislation

Date: May 23, 2001

---

Re: Notification of 2001 Legislation Requiring Possible Committee  
Action & Request for Timely Action.

---

The Committee for Review of Legislation met on Friday, May 18, 2001. We determined that at least 10 bills enacted by the Legislature warrant consideration by your committee. We have also received a request from Judge Doyel concerning a federal issue that we are referring to you. This memorandum identifies those bills and provides our initial assessment of the urgency of the need for action by your committee. Some of these bills have also been referred to the standard jury instruction committee and to the Florida Criminal Punishment Code committee.

**RECEIVED**


MAY 29 2001

O. H. EATON, JR.  
Circuit Judge  
18th Judicial Court  
Brevard and Seminole Counties, FL 28

May 23, 2001

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May 23, 2001

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Florida Criminal Procedure Rules Committee Memorandum

Page Four

May 23, 2001

Additionally, this bill highlights the fact that the standard forms currently contain no standard order to be entered on violation of probation or community control. If such an order existed, this bill might require that it be amended. Several members of our committee commented that a standard order for entry upon violation of probation or community control would be useful. Although this order is an appealable order, it is common for a defendant to be resentenced upon violation without the entry of any written order of violation.

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Florida Criminal Procedure Rules Committee Memorandum

Page Five

May 23, 2001

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I enclose a copy of Judge Doyel's correspondence. It is largely self-explanatory. The forms that he proposes appear to be forms for use in criminal cases. If you conclude that this matter is outside the mandate of your committee, please give me your thoughts as to the appropriate committee.

**Time Requests**

1. I would request that you date and sign the enclosed acknowledgment so that I will have a record that you have received the notification.



Florida Criminal Procedure Rules Committee Memorandum

Page Six

May 23, 2001

2. I would request that your committee provide me with a short report on these matters by August 1, 2001.
3. Your committee is obviously familiar with the procedures to follow to amend the rules and associated forms. Given that the legislature chose to make many of these new bills effective in July, we would urge you to consider whether an expedited petition is required. We would also request your thoughts on the best methods to implement these matters in the period after the laws become effective and before formal amendments to the rules and forms can be approved by the supreme court.

Copies: Per attached List

Citation	Found Document	Rank 1 of 13	Database
2001 FL S.B. 322 (SN)			BILLS
2001 Florida Senate Bill No. 322, Florida 103rd Regular Session (FULL TEXT - STATE NET)			

:

FLORIDA BILL TEXT

2001 Legislature CS for SB 322

VERSION: Enacted - Interim  
 June 13, 2001  
 Geller

An act relating to the disposition of offenders; amending s. 944.1905, F.S.; requiring that certain inmates who are less than a specified age be placed in specific correctional facilities and housed in separate dormitories; requiring that the Department of Corrections report to the Legislature on its compliance with housing youthful offenders; requiring that certain inmates who are less than a specified age and who have no prior juvenile adjudication be placed in facilities for youthful offenders; providing for the reassignment of an inmate to the general population if the inmate threatens the safety of other inmates or correctional staff; amending s. 921.0021, F.S.; redefining the term "prior record" to extend the time during which the disposition of certain juvenile offenses are included in an offender's record; providing an effective date.

TEXT:

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

Section 1. Subsection (5) is added to section 944.1905, Florida Statutes, to read:

944.1905 Initial inmate classification; inmate reclassification. -The Department of Corrections shall classify inmates pursuant to an objective classification scheme. The initial inmate classification questionnaire and the inmate reclassification questionnaire must cover both aggravating and mitigating factors.

<<+ (5) (a) Notwithstanding any other provision of this section, the department shall assign to specific correctional facilities all inmates who are less than 18 years of age and who are not eligible for and have not been assigned to a facility for youthful offenders. Any such inmate who is less than 18 years of age shall be housed in a dormitory that is separate from

001 FL S.B. 322 (SN)

inmates who are 18 years of age or older. Furthermore, the department shall provide any food service, education, and recreation for such inmate separately from inmates who are 18 years of age or older. The department shall report to the Legislature on compliance with this paragraph by April 1, 2002. +>>

<<+ (b) Notwithstanding the requirements of s. 958.11, any inmate who is less than 18 years of age, who was 15 years of age or younger at the time of his or her offense, and who has no prior juvenile adjudication must be placed in a facility for youthful offenders until the inmate is 18 years of age. At the discretion of the department, such an inmate may be placed in a facility for youthful offenders until the inmate is 21 years of age. +>>

<<+ (c) Any inmate who is assigned to a facility under paragraph (a) or paragraph (b) shall be removed and reassigned to the general inmate population if his or her behavior threatens the safety of other inmates or correctional staff. +>>

Section 2. Subsection (5) of section 921.0021, Florida Statutes, is amended to read:

921.0021 Definitions.--As used in this chapter, for any felony offense, except any capital felony, committed on or after October 1, 1998, the term:

(5) "Prior record" means a conviction for a crime committed by the offender, as an adult or a juvenile, prior to the time of the primary offense. Convictions by federal, out-of-state, military, or foreign courts, and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law, are included in the offender's prior record. Convictions for offenses committed by the offender more than 10 years before the primary offense are not included in the offender's prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of release from confinement, supervision, or sanction, whichever is later, to the date of the primary offense. Juvenile dispositions of offenses committed by the offender within <<+ 5 +>> <<- 3 ->> years before the primary offense are included in the offender's prior record when the offense would have been a crime had the offender been an adult rather than a juvenile. Juvenile dispositions of sexual offenses committed by the offender which were committed <<+ 5 +>> <<- 3 ->> years or more before the primary offense are included in the offender's prior record if the offender has not maintained a conviction-free record, either as an adult or a juvenile, for a period of <<+ 5 +>> <<- 3 ->> consecutive years from the most recent date of release from

2001 FL S.B. 322 (SN)

confinement, supervision, or sanction, whichever is later, to the date of the primary offense.

Section 3. This act shall take effect July 1, 2001.

2001 FL S.B. 322 (SN)

END OF DOCUMENT

RAFOOL & RAFOOL, P.A.  
ATTORNEYS AND COUNSELORS AT LAW

Brandon J. Rafool  
Raymond J. Rafool, II



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**THE FLORIDA BAR CRIMINAL PROCEDURE RULES COMMITTEE**  
**REFERAL MEMORANDUM**

To: Honorable Kevin Emas, Chair, Fast Track  
From: Raymond J. Rafool, II, Chair  
Date: July 24, 2001  
Subject: 01-13-FT (Senate Bill 238: Death Penalty - Mental Retardation)

---

The Honorable Chris W. Altenbernd is Chair Of The Committee For Review And Notification Of Criminal And Juvenile Legislation (a Supreme Court Of Florida appointed committee). Enclosed is Judge Altenbernd's memorandum relating to the newly passed Senate Bill 238 (Death Penalty - Mental Retardation) which became effective July 1, 2001. The bill prohibits a trial judge from imposing a death sentence on a mentally retarded defendant. That committee believes that same may concern the Florida Rules Of Criminal Procedure, specifically Rule 3.202. An amendment may be needed to address the new defense. It also requested high priority to the issue in light of such issue affecting cases tried this Summer (Summer 2001). The committee also notified the Morris Committee and suggested that our committee work with the Morris Committee relative to these issues. For your information, the Honorable O. H. Eaton, Jr. and the Honorable Stanford Blake are both on the Morris Committee. Enclosed for your convenience is a copy of Senate Bill 238.

I refer this matter to the Fast Track Committee and provide the members with a copy of this correspondence. Please implement the fast track process. As you know, Susan Elsass is no longer available. In that regard, you may contact Gary Rose at (850) 561-5600 to arrange a telephone conference for your subcommittee meeting.

Enclosures

cc: Gary Rose, Temporary Florida Bar Liaison

Citation	Found Document	Rank 1 of 13	Database
2001 FL S.B. 238 (SN)			BILLS
2001 Florida Senate Bill No. 238, Florida 103rd Regular Session (FULL TEXT - STATE NET)			

## FLORIDA BILL TEXT

2001 Legislature

CS for SB 238

VERSION: Enacted - Interim

June 12, 2001

Mitchell

An act relating to the death penalty; creating s. 921.137, F.S.; defining the term "mental retardation"; prohibiting imposition of the sentence of death if the court determines that the defendant has mental retardation; requiring that a defendant notify the court of an intention to raise mental retardation as a bar to the sentence of death; providing requirements for the court in determining whether the defendant has mental retardation; providing that the sentence of death may not be imposed if the court finds by clear and convincing evidence that the defendant has mental retardation; requiring notice to the defendant if the state requests a sentence of death, notwithstanding the jury's recommendation for life imprisonment; authorizing the state to appeal a determination of mental retardation; providing for application of the act; providing an effective date.

## TEXT:

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

Section 1. Section 921.137, Florida Statutes, is created to read:

<<+ 921.137 Imposition of the death sentence upon a mentally retarded defendant prohibited.-- +>>

<<+ (1) As used in this section, the term "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Department of Children and Family Services. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets

2001 FL S.B. 238 (SN)

the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Department of Children and Family Services shall adopt rules to specify the standardized intelligence tests as provided in this subsection. +>>

<<+ (2) A sentence of death may not be imposed upon a defendant convicted of a capital felony if it is determined in accordance with this section that the defendant has mental retardation. +>>

<<+ (3) A defendant charged with a capital felony who intends to raise mental retardation as a bar to the death sentence must give notice of such intention in accordance with the rules of court governing notices of intent to offer expert testimony regarding mental-health mitigation during the penalty phase of a capital trial. +>>

<<+ (4) After a defendant who has given notice of his or her intention to raise mental retardation 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 has mental retardation. Upon receipt of the motion, the court shall appoint two experts in the field of mental retardation 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, 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 mental retardation. If the court finds, by clear and convincing evidence, that the defendant has mental retardation 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. +>>

<<+ (5) If a defendant waives his or her right to a recommended sentence by an advisory jury following a plea of guilt or nolo contendere to a capital felony and adjudication of guilt by the court, or following a jury finding of guilt of a capital felony, upon acceptance of the waiver by the court, a defendant who has given notice as required in subsection (3) may file a motion for a determination of mental retardation. Upon granting the motion, the court shall proceed as provided in subsection (4). +>>

<<+ (6) If, following a recommendation by an advisory jury that the defendant be sentenced to life imprisonment, the state intends to request the court to order that the defendant be sentenced to death, the state must



2001 FL S.B. 238 (SN)

inform the defendant of such request if the defendant has notified the court of his or her intent to raise mental retardation as a bar to the death sentence. After receipt of the notice from the state, the defendant may file a motion requesting a determination by the court of whether the defendant has mental retardation. Upon granting the motion, the court shall proceed as provided in subsection (4). +>>

<<+ (7) The state may appeal, pursuant to s. 924.07, a determination of mental retardation made under subsection (4). +>>

<<+ (8) This section does not apply to a defendant who was sentenced to death prior to the effective date of this act. +>>

Section 2. This act shall take effect upon becoming a law.

2001 FL S.B. 238 (SN)

END OF DOCUMENT

DAVID F. PATTERSON  
CHIEF JUDGE  
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JERRY R. PARKER  
CHRIS W. ALTENBERND  
JOHN R. BLUE  
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To: Judge O. H. "Bill" Eaton, Chair of the Florida Criminal Procedure Rules Committee

From: Judge Chris W. Altenbernd, Chair of the Committee for Review and Notification of Criminal and Juvenile Legislation

Date: May 23, 2001

---

Re: **Notification of 2001 Legislation Requiring Possible Committee Action & Request for Timely Action.**

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**RECEIVED**

MAY 29 2001

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Brevard and Seminole Counties, FL 42

May 23, 2001

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Florida Criminal Procedure Rules Committee Memorandum

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May 23, 2001

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Florida Criminal Procedure Rules Committee Memorandum

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Section 3. This act shall take effect July 1, 2001.

Approved by the Governor June 13, 2001.

Filed in Office Secretary of State June 13, 2001.

## CONSTRUCTION—BUILDING CODES—FACSIMILE TRANSMISSIONS

### Chapter 2001-211

S.B. No. 428

An act relating to building construction; amending s. 95.11, F.S.; providing alternative applications to a statute of limitations for certain legal or equitable actions for actions to enforce claims against payment bonds; revising a statute of limitations for actions to enforce claims against certain payment bonds; amending s. 255.05, F.S.; clarifying criteria for performance of bonds; revising a provision relating to notice of nonpayment for certain labor, materials, or supplies; amending s. 713.01, F.S.; revising certain definitions; amending s. 713.02, F.S.; clarifying a criterion for a proscription against certain liens; amending s. 713.13, F.S.; deleting authorization for certain fax numbers in notices of commencement; amending s. 713.18, F.S.; revising provisions relating to manner of serving notices and certain instruments; amending s. 713.23, F.S.; including certain unpaid finance charges under a written notice of nonpayment of a payment bond; amending s. 713.245, F.S.; providing additional bond criteria for coextension of a surety's duty to pay lienors with a contractor's duty to pay; amending s. 725.06, F.S.; revising indemnification and hold harmless restrictions for certain construction agreements, contracts, or guarantees; providing application; amending s. 725.08, F.S.; revising indemnification and hold harmless restrictions for certain professional services contracts; repealing s. 713.18(3), F.S., relating to service of certain notices by facsimile transmission; amending s. 489.13, F.S.; providing for issuance of a notice of noncompliance, imposition of an administrative fine, and assessment of reasonable investigative and legal costs of prosecution for unlicensed contracting; specifying that such remedies are not exclusive; providing for uses of fine proceeds; requiring the Department of Business and Professional Regulation to create a web page on its internet website dedicated to listing known information concerning unlicensed contractors; providing an effective date.

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

Section 1. Section 489.13, Florida Statutes, is amended to read:

#### 489.13. Unlicensed contracting; notice of noncompliance; fine; authority to issue or receive a building permit; web page

(1) Any person performing an activity requiring licensure under this part as a construction contractor is guilty of unlicensed contracting if he or she does not hold a valid active certificate or registration authorizing him or her to perform such activity, regardless of whether he or she holds a local construction contractor license or local certificate of competency. Persons working outside the geographical scope of their registration are guilty of unlicensed activity for purposes of this part.

(2) For a first offense, any person who holds a state or local construction license and is found guilty of unlicensed contracting under this section shall be issued a notice of noncompliance pursuant to s. 489.13(7).

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ty shall be submitted to the Space Industry Committee created pursuant to s. 331.367, or any successor organization, and the committee shall, at least once each quarter, submit a written report to the director of the Office of Tourism, Trade, and Economic Development delineating the committee's recommendation for prioritizing those proposals that it has reviewed. The director of the Office of Tourism, Trade, and Economic Development shall take into consideration the prioritization reports of the Space Industry Committee. For purposes of this sub-subparagraph, "aerospace infrastructure" means land, buildings and other improvements, fixtures, machinery, equipment, instruments, and software that will improve the state's capability to support, expand, or attract the launch, construction, processing, refurbishment, or manufacturing of rockets, missiles, capsules, spacecraft, satellites, satellite control facilities, ground support equipment and related tangible personal property, launch vehicles, modules, space stations or components destined for space station operation, and space flight research and development facilities, instruments, and equipment, together with any engineering, permitting, and other expenses directly related to such land, buildings, improvements, fixtures, machinery, equipment, instruments, or software.

Section 45. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2001.

Became a law without the Governor's approval June 10, 2001.

Filed in Office Secretary of State June 9, 2001.

**DEATH PENALTY—MENTALLY RETARDED AND DEVELOPMENTALLY DISABLED PERSONS—EVALUATION AND RECOMMENDATION**

Chapter 2001-202

C.S.S.B. No. 238

An act relating to the death penalty; creating s. 921.137, F.S.; defining the term "mental retardation"; prohibiting imposition of the sentence of death if the court determines that the defendant has mental retardation; requiring that a defendant notify the court of an intention to raise mental retardation as a bar to the sentence of death; providing requirements for the court in determining whether the defendant has mental retardation; providing that the sentence of death may not be imposed if the court finds by clear and convincing evidence that the defendant has mental retardation; requiring notice to the defendant if the state requests a sentence of death, notwithstanding the jury's recommendation for life imprisonment; authorizing the state to appeal a determination of mental retardation; providing for application of the act; providing an effective date.

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

Section 1. Section 921.137, Florida Statutes, is created to read:

**921.137. Imposition of the death sentence upon a mentally retarded defendant prohibited**

(1) As used in this section, the term "mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to age 18. The term "significantly subaverage general intellectual functioning," for the purpose of this section, means performance that is two or more standard deviations from the mean score on a standardized intelligence test specified in the rules of the Department of Children and Family Services. The term "adaptive behavior," for the purpose of this definition, means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected of his or her age, cultural group, and community. The Department of Children and Family Services shall adopt rules to specify the standardized intelligence tests as provided in this subsection.

*Additions are indicated by underline; deletions by strikeout*

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

(3) A defendant charged with a capital felony who intends to raise mental retardation as a bar to the death sentence must give notice of such intention in accordance with the rules of court governing notices of intent to offer expert testimony regarding mental-health mitigation during the penalty phase of a capital trial.

(4) After a defendant who has given notice of his or her intention to raise mental retardation 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 has mental retardation. Upon receipt of the motion, the court shall appoint two experts in the field of mental retardation 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, 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 mental retardation. If the court finds, by clear and convincing evidence, that the defendant has mental retardation 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.

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

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

(7) The state may appeal, pursuant to s. 924.07, a determination of mental retardation made under subsection (4).

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

Section 2. This act shall take effect upon becoming a law.

Approved by the Governor June 12, 2001.

Filed in Office Secretary of State June 12, 2001.

NURSES AND NURSING—EDUCATION—STUDENT LOAN FORGIVENESS

Chapter 2001-203

C.S.S.B. No. 1256

An act relating to nursing education; prohibiting the Board of Nursing from developing any rule relating to faculty/student clinical ratios until a specified time; requiring the Board of Nursing and the Department of Education to submit to the Legislature an implementation plan detailing the impact and cost of any such proposed rule change; amending ss. 240.4075, 240.4076, F.S.; including nursing homes, family practice teaching hospitals and specialty children's hospitals as facilities eligible under the program; exempting such hospitals from the fund-matching requirements of the program; transferring the program from the Board of Regents to the Department of Health; providing an effective date.

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

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Filed in Office Secretary of State June 13, 2001.

YOUTHFUL OFFENDERS—DISPOSITION—RECLASSIFICATION

Chapter 2001-210

C.S.S.B. No. 322

An act relating to the disposition of offenders; amending s. 944.1905, F. S.; requiring that certain inmates who are less than a specified age be placed in specific correctional facilities and housed in separate dormitories; requiring that the Department of Corrections report to the Legislature on its compliance with housing youthful offenders; requiring that certain inmates who are less than a specified age and who have no prior juvenile adjudication be placed in facilities for youthful offenders; providing for the reassignment of an inmate to the general population if the inmate threatens the safety of other inmates or correctional staff; amending s. 921.0021, F.S.; redefining the term "prior record" to extend the time during which the disposition of certain juvenile offenses are included in an offender's record; providing an effective date.

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

Section 1. Subsection (5) is added to section 944.1905, Florida Statutes, to read:

944.1905. Initial inmate classification; inmate reclassification

The Department of Corrections shall classify inmates pursuant to an objective classification scheme. The initial inmate classification questionnaire and the inmate reclassification questionnaire must cover both aggravating and mitigating factors.

(5)(a) Notwithstanding any other provision of this section, the department shall assign to specific correctional facilities all inmates who are less than 18 years of age and who are not eligible for and have not been assigned to a facility for youthful offenders. Any such inmate who is less than 18 years of age shall be housed in a dormitory that is separate from inmates who are 18 years of age or older. Furthermore, the department shall provide any food service, education, and recreation for such inmate separately from inmates who are 18 years of age or older. The department shall report to the Legislature on compliance with this paragraph by April 1, 2002.

(b) Notwithstanding the requirements of s. 958.11, any inmate who is less than 18 years of age, who was 15 years of age or younger at the time of his or her offense, and who has no prior juvenile adjudication must be placed in a facility for youthful offenders until the inmate is 18 years of age. At the discretion of the department, such an inmate may be placed in a facility for youthful offenders until the inmate is 21 years of age.

(c) Any inmate who is assigned to a facility under paragraph (a) or paragraph (b) shall be removed and reassigned to the general inmate population if his or her behavior threatens the safety of other inmates or correctional staff.

Section 2. Subsection (5) of section 921.0021, Florida Statutes, is amended to read:

921.0021. Definitions

As used in this chapter, for any felony offense, except any capital felony, committed on or after October 1, 1998, the term:

(5) "Prior record" means a conviction for a crime committed by the offender, as an adult or a juvenile, prior to the time of the primary offense. Convictions by federal, out-of-state, military, or foreign courts, and convictions for violations of county or municipal ordinances that incorporate by reference a penalty under state law, are included in the offender's prior record. Convictions for offenses committed by the offender more than 10 years before the primary offense are not included in the offender's prior record if the offender has not been convicted of any other crime for a period of 10 consecutive years from the most recent date of