

**STUDI KOMPARATIF PENERAPAN SANKSI PIDANA MATI
DI INDONESIA DAN DI FLORIDA**



SKRIPSI

**DIAJUKAN KEPADA FAKULTAS SYARIAH DAN HUKUM
UNIVERSITAS ISLAM NEGERI SUNAN KALIJAGA YOGYAKARTA
UNTUK PERSYARATAN GELAR STRATA I**

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ABSTRAK

Sanksi pidana mati merupakan sanksi pidana yang paling sensasional serta penuh dengan perdebatan dalam pelaksanaannya. Meskipun Indonesia dan Amerika Serikat keduanya memiliki undang undang yang mengatur pidana mati tetapi terdapat “*stereotype*” yang berbeda ketika kedua negara melaksanakannya. ketika Indonesia menjalankan eksekusi mati terhadap 14 terpidana mati penolakan dan nota protes datang dari berbagai lini seperti presiden Brazil Dilma Rousseff, PM Australi Tonny Abbot dan bahkan sekjen PBB Ban Ki Moon padahal di saat yang bersamaan (2015) Amerika Serikat melakukan eksekusi terhadap 28 terpidana mati, oleh karena itu penelitian ini dibuat untuk membandingkan sanksi pidana mati di Indonesia dan Amerika Serikat (Florida), demikian penelitian ini bertujuan untuk : (1) menganalisis sanksi penerapan pidana mati di indonesia dan negara bagian Florida; (2) menganalisis kendala dari sanksi pidana mati yang belaku di kedua negara.

Adapun metode penelitian yang digunakan dalam Skripsi ini adalah penelitian kepustakaan (*library research*) dengan tambahan wawancara penelitian dengan BPK Heri Supriyanto dari Kejati DIY dan BPK Elfi Marzuni dari Pengadilan Tinggi Yogyakarta, data primernya yaitu berupa sumber Hukum Pidana Indonesia seperti KUHP dan undang undang lainnya yang terkait dengan pidana mati serta sumber Hukum Pidana yang berlaku di Florida seperti “*2015 Florida statutes*”. Metode komparatif digunakan untuk menganalisis data yang berbeda dengan jalan membandingkan agar dapat menghasilkan deskripsi yang lebih obyektif dan sistematis untuk memperoleh kesimpulan mengenai pelaksanaan sanksi pidana mati di Indonesia dan negara bagian Florida.

Berdasarkan hasil penelitian dan pembahasan ditemukan bahwa dalam penjatuhan sanksi pidana mati Indonesia dan Florida tidak di temukan perbedaan yang signifikan kecuali dalam metode yang di gunakan. ke dua negara mengedepankan hak asasi manusia untuk tidak di siksa dan di rendahkan harkat dan martabatnya seperti yang tertulis dalam undang undang dasar kedua negara. meskipun demikian terdapat beberapa kelebihan dan kekurangan dalam metode yang digunakan oleh kedua negara. Ide awal dari metode “*Lethal injection*” (suntik mati) adalah untuk memberikan terpidana kematian tanpa rasa sakit tetapi saat ini “*lethal injection*” masih memiliki beberapa kelemahan dalam faktor kesehatan, “*Human error*”, dan sarana prasarana. Apabila dibandingkan dengan di Indonesia, Indonesia memiliki lebih sedikit permasalahan dalam pelaksanaannya yaitu “*Human error*” metode tembak mati sendiri memiliki tingkat keberhasilan yang lebih tinggi apabila dibandingkan dengan metode “*Lethal injection*”.

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HALAMAN PERSEMBAHAN

Ku persembahkan Sebuah Tulisan sederhana ini sebagai wujud syukur, rasa cinta dan terimakasih kepada:

Allah SWT, atas segala karunia, rahmat dan nikmat yang telah diberikan olehnya

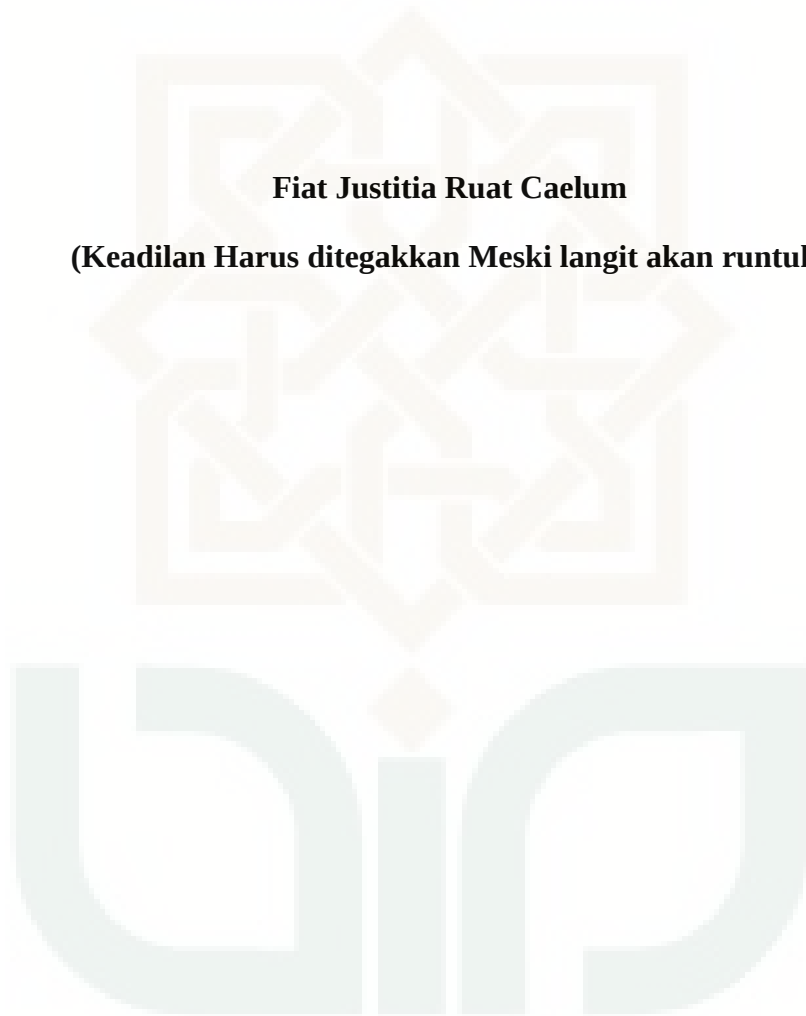
Ayahku Syamsudin Muslim B.sc. dan Ibu ku Yusi Indriani yang telah membesarkanku dengan penuh cinta, kasih sayang dan perhatian.

kakak ku Putri Ayu Wandira S.pd. dan adik adik ku Monika Putri Rahmadan, Garda Buana, dan Melodi putri yang telah memberikan semangat dan dukungan moril dalam penyusunan skripsi ini.

MOTTO

Fiat Justitia Ruat Caelum

(Keadilan Harus ditegakkan Meski langit akan runtuh)



KATA PENGANTAR

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ
الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ وَالصَّلَاةُ وَالسَّلَامُ عَلَى أَشْرَفِ الْأَنْبِيَاءِ وَالْمُرْسَلِينَ سَيِّدِنَا
مُحَمَّدٍ وَعَلَى آلِهِ وَأَصْحَابِهِ أَجْمَعِينَ. (أَمَّا بَعْدُ)

Assalamualaikum Wr. Wb.

Alhamdulillah penulis panjatkan puji syukur ke hadiarat Allah SWT yang telah memberikan rahmat, hidayah dan Inayahnya dan shalawat serta salam tetap terkirim kepada Rasulullah SAW, Sehingga penulis dapat menyelesaikan Skripsi ini yang berjudul **“Studi Komparatif dalam penerapan sanksi pidana mati di Indonesia dan di Florida”**. dengan berbagai kendala yang Alhamdullilah akhirnya dapat di lewati.

Penulisan skripsi tentang hukum khususnya dalam hal sanksi pidana mati merupakan pemaparan teori teori, serta segala aturan yang mengaturnya yang telah mahasiswa dapatkan selama di bangku perkuliahan untuk di korelasikan dengan fakta di lapangan dan hukum hukum yang berlaku dalam perundang undangan negara republik indonesia. Dalam kesempatan ini penulis mengucapkan terimakasih sebesar besarnya kepada:

1. Bapak Prof Drs. Yudian Wahyudi M.A., Ph.D., selaku Rektor Universitas Islam Negeri Sunan Kalijaga Yogyakarta.
2. Bapak Dr. H. Syafiq Mahmadah Hanafi, M. Ag. selaku dekan Fakultas Syariah dan Hukum Universitas Islam Sunan Kalijaga.
3. Dr. Ahmad Bahiej, S.H., M., Hum. selaku Ketua Program studi Ilmu HUKUM Fakultas Syariah dan Hukum Universitas Islam Sunan Kalijaga dan Faisal Luqman Hakim S.H., M.Hum. selaku Sekertaris Jurusan Ilmu Hukum Fakultas Syariah dan Hukum Universitas Islam Sunan Kalijaga.
4. Iswanto S.H., M.H selaku, Dosen Pembimbing Akademik.
5. Ach. Tahir S.H., S.H.I., L.L.M., M.A, dan Dr. Ahmad Bahiej S.H., M.Hum Selaku Dosen pembimbing skripsi yang telah banyak memberikan dukungan demi kelancaran penelitian ini.
6. Seluruh Dosen Program Studi Ilmu Hukum Universitas Islam Negeri Sunan Kalijaga yang telah memberikan banyak ilmu kepada penulis.

7. Seluruh teman teman Ilmu hukum angkatan 2011 yang tidak dapat saya sebutkan satu persatu yang sedikit banyak telah memberikan dukungan serta, motivasi pada penyusun.

Dalam Penulisan skripsi ini penulis menyadari masih banyak kekurangan dan kelemahan. Akhir kata, semoga skripsi ini dapat bermanfaat bagi penyusun dan pembaca dengan sebaik baiknya.

Wassalamu'alaikum Wr. Wb.

Yogyakarta, 14 juni 2016

penulis

Ariel Siva

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BAB I

PENDAHULUAN

A. Latar belakang.

Hukuman mati telah dikenal umat manusia sejak ribuan tahun yang lalu bahkan dapat dikatakan bahwa hukuman mati merupakan salah satu hukum tertua yang usianya seusia dengan peradaban manusia itu sendiri. Didalam *Codex Ur-namu* yang ditulis 2100 SM, hukuman mati diterapkan untuk beberapa jenis kejahatan seperti pembunuhan, perampokan, dan pencabulan. Naskah hukum lainnya yang tak kalah terkenal adalah *Code of Hammurabi* yang ditulis oleh raja Babylon pada sekitar tahun 1760 SM didalamnya mereferensikan eksekusi mati dengan cara ditenggelamkan.¹

Bersamaan dengan eksistensinya, kontroversi mengenai hukuman mati juga memiliki sejarah yang panjang. Pada 1760 dan 1770 an di Amerika Serikat muncul beberapa pertanyaan mengenai hukuman mati untuk “*Property Crime*” seperti pencurian dan perampokan. Beberapa politisi ternama pada saat itu seperti James Madison, DeWitt Clinton, mendukung untuk menghapuskan hukuman mati.

¹ Michael Newton, *Criminal Justice Crime fighting and Crime Prevention* (New York: Chelsea House Publisher, 2010), hlm. 23

sedangkan Thomas Jefferson dan Benjamin Franklin menganjurkan untuk menghapuskan hukuman mati untuk segala jenis kejahatan kecuali pembunuhan.²

Beberapa waktu yang lalu tepatnya pada tanggal 29 April 2015 pemerintah Indonesia melakukan salah satu fungsinya dalam menjalankan Undang - Undang. Eksekusi terhadap terpidana mati Bali Nine merupakan salah satu bukti bahwa Indonesia menyatakan perang terhadap kejahatan narkoba. Hal ini bukan tanpa alasan menurut data statistik Badan Narkotika Nasional (BNN) pada tahun 2014 diperkirakan 3,8 juta hingga 4,1 juta orang Indonesia beresiko terpapar narkoba. Hal demikian telah menghantarkan indoneisa pada fase darurat narkoba sebagaimana yang ditetapkan oleh BNN.

Menurut menteri Hukum dan HAM Yasonna Laoly perlindungan pemerintah terhadap warga negara merupakan hal wajib dan tercantum didalam Undang Undang Dasar 1945 dan sanksi pidana mati diperlukan untuk memerangi narkoba,³ sedangkan menlu Retno L.P. Marsudi beranggapan bahwa hukuman mati adalah kebijakan hukum positif di Indonesia dan tidak ada perbedaan diantara hukuman mati terhadap terorisme maupun narkoba. Menteri Retno menganggap keduanya

² Stuart Banner, *The Death Penalty An American History*, (USA: Harvard University Press, 2003), hlm. 90

³ CNN Indonesia, "Menkumham: hukuman mati perlu untuk perangi narkoba", (<http://m.cnnIndonesia.com/nasional/20150120175207-12-26034/menkumham-hukuman-mati-perlu-untuk-perangi-narkoba/>) diakses pada 2 oktober 2015

sebagai suatu hal yang darurat dan menganggap hukuman mati sebagai suatu ganjaran yang setimpal.⁴

Berbeda dengan Mentri Hukum dan HAM dan Mentri Luar negri, eksekusi mati yang dilakukan oleh pemerintahan Indonesia mendapat kecaman dari berbagai pihak. Ban Ki-Moon sekjen PBB ikut mengecam praktik eksekusi yang dilakukan oleh pemerintahan Indonesia. Presiden Brazil Dilma Rousseff mengecam sanksi pidana mati yang dijatuhkan pemerintahan Indonesia bahkan penolakan itu dipertegas dengan penolakan surat kepercayaan (*good will*) Indonesia dan menarik duta besarnya dari Indonesia. Hal yang sama dilakukan oleh pemerintah Belanda dan Australia yang ikut menarik duta besarnya dari Indonesia..

Disaat yang bersamaan di Amerika Serikat Eksekusi mati merupakan hal yang rutin terjadi setiap tahunnya, pada tahun 2015 terjadi 28 eksekusi mati. Pidana mati di Amerika Serikat atau yang juga dikenal dengan "*Capital Punishment*" merupakan suatu hal yang tak terpisahkan dari sejarah berdirinya Amerika Serikat. hingga abad ke – 18 di Amerika Serikat hukuman mati merupakan hukuman untuk segala jenis kejahatan termasuk kejahatan terhadap harta benda (*Property Crime*).

Menurut Wallace undang - undang hukum pidana merupakan suatu cerminan atas nilai dan moral.⁵ Dalam sudut pandang hukum, hukum pidana seharusnya

⁴ Indopos, "Menlu: Hukuman Mati Terhadap Teroris dan Narkoba Sama saja" (<http://www.indopos.co.id/2015/02/menlu-hukuman-mati-terhadap-teroris-dan-narkoba-sama-saja.html>) diakses pada 2 oktober 2015

⁵ Harvey Wallace, Cliff Roberson, *Principles of Criminal Law* (USA: Pearson, 2012), hlm.5

menghukum perbuatan seseorang tanpa mengenal siapa yang dihukum dan siapa yang menghukum. Berbeda dengan yang terjadi pada eksekusi yang lalu perbedaan sikap yang diterima oleh pemerintah Indonesia atas eksekusi mati yang terjadi di Indonesia berbeda dengan sikap yang diterima oleh pemerintah Amerika Serikat atas eksekusi yang dijalankan oleh pemerintah Amerika Serikat. Hal ini mengindikasikan adanya suatu perbedaan dalam penerapan pidana mati di Indonesia dengan pidana mati di Amerika Serikat yang menyebabkan pidana mati di Indonesia bertentangan nilai dan moral yang dianut oleh pemerintah Brazil, Belanda, dan Australia. Hal - hal seperti inilah yang kemudian mendasari lahirnya studi mengenai perbandingan hukum.

Studi perbandingan hukum telah dimulai sejak zaman Aristoteles (384 – 322 SM), yang meneliti 153 konstitusi Yunani dan beberapa kota lainnya dalam bukunya, *Politics*. Solon (640 – 558 SM), melakukan studi perbandingan hukum ketika menyusun hukum Athena. Studi perbandingan hukum berlanjut pada abad pertengahan dimana dilakukan studi perbandingan antara hukum kanonik (gereja) dan hukum Romawi, dan pada abad 16 di Inggris telah memperdebatkan kegunaan hukum kanonik dan hukum kebiasaan.⁶

Saat ini terdapat tak kurang dari 42 sistem hukum didunia, untuk melakukan perbandingan hukum, perlu terlebih dahulu mempelajari sistem hukum dari negara asing karena setiap negara mempunyai sistem hukumnya sendiri – sendiri. Meskipun demikian untuk mengetahui sistem hukum asing itu sangatlah sulit, Oleh karena itu,

⁶ Romli Atasmata, *Perbandingan Hukum Pidana* (Bandung: Mandar Maju, 1996), hlm. 1

untuk memudahkannya diadakan klasifikasi sistem hukum,⁷ dan perbandingan secara tradisional telah difokuskan pada tiga keluarga hukum di dunia, yakni sistem *Civil Law*, sistem *Common Law*, dan sistem hukum sosialis. Pemikiran tentang keluarga hukum telah digunakan sebagai unsur utama yang bersifat organisasional bagi analisis terhadap sistem hukum di dunia.⁸

Berdasarkan data yang telah dikemukakan di atas penulis akan melakukan suatu penelitian komparatif dengan subjek penerapan sanksi pidana mati di Indonesia dan disalah satu negara bagian Amerika Serikat yaitu Negara bagian Florida. Penyusun akan melakukan sebuah penelitian dengan judul “**Studi Komparatif Penerapan Sanksi Pidana Mati di Indonesia dan di Florida)**”

B. Rumusan masalah

Berdasarkan dari apa yang telah penulis paparkan dalam latar belakang maka dapat diambil rumusan masalahnya yaitu:

1. Bagaimana penerapan pidana mati di Negara Bagian Florida dan di Indonesia perbedaan dan persamaan dalam pelaksanaannya?
2. Apa kelebihan dan kekurangan dalam penerapan sanksi pidana mati yang berlaku di Indonesia dan di Florida.

⁷ Barda Nawawi Arief, *Perbandingan Hukum Pidana* (Jakarta : Rajawali Pers, 2010), hlm. 16

⁸ Peter de Cruz, *Perbandingan Sistem Hukum* (Jakarta: Nusa Media, 2010), hlm. 38

C. Tujuan penelitian dan kegunaan

1. Tujuan penelitian

- a. Untuk mencari pemahaman yang lebih baik mengenai sanksi pidana mati yang berlaku di Indonesia dan Amerika, dengan cara membandingkan hukum yang berlaku di kedua negara tersebut.
- b. Untuk memberikan gambaran kekurangan sanksi pidana mati yang berlaku di Indonesia dan solusi yang dapat diambil untuk memperbaikinya.

2. Kegunaan penelitian

- a. Secara teoritis

Penelitian ini diharapkan dapat memberikan sumbangsih yang signifikan bagi ilmu pengetahuan hukum pidana, khususnya pemahaman mendalam mengenai Sanksi Pidana mati yang berlaku di Indonesia dan di Amerika Serikat.

- b. Secara Praktis

Hasil penelitian ini diharapkan memberi kontribusi positif bagi praktisi hukum dan teoritis hukum untuk menambah literatur pengetahuan dibidang hukum mengenai sanksi pidana mati yang berlaku di Indonesia dan Amerika Serikat khususnya Florida.

D. Telaah pustaka.

Telaah pustaka berisi tentang uraian uraian sistematis mengenai hasil – hasil penelitian yang pernah dilakukan sebelumnya oleh peneliti terdahulu dan memiliki keterkaitan dengan penelitian yang akan dilakukan.⁹ Dalam hal ini penyusun akan mereferensikan beberapa penelitian mengenai hukuman mati yang telah dilakukan oleh peneliti terdahulu, beberapa diantaranya adalah sebagai berikut:

Nisroka¹⁰, dalam skripsinya yang berjudul Pidana Mati Terhadap kejahatan Terorisme Dalam Perspektif Hukum Pidana Indonesia dan Hak Asasi Manusia, melakukan penelitian tentang bagaimana pidana mati bagi tindak pidana terorisme menurut hukum pidana Indonesia dan bagaimana sanksi pidana mati bagi tindak pidana terorisme dalam perspektif Hak Asasi Manusia. Sementara penelitian ini akan membahas mengenai perbandingan antara hukuman mati di Indonesia dengan Amerika Serikat serta mengenai bagaimana konsep hukum dari hukuman mati itu sendiri.

Choirul Salim¹¹, dalam skripsinya yang berjudul Hukuman Mati Bagi Bandar Narkoba (Perspektif Hukum Positif dan Fatwa Yusuf Al-Qaradhawi) melakukan penelitian mengenai landasan hukum pidana mati bagi bandar narkoba berdasarkan hukum positif dan fatwa Yusuf Al-Qaradhawi. Sementara Penelitian ini akan

⁹ Fakultas Syari'ah dan Hukum, *Pedoman teknik penulisan skripsi mahasiswa* (Yogyakarta: Fakultas Syai'ah press, 2009), hlm. 3

¹⁰ Nisroka, *Pidana Mati Terhadap Tindak Kejahatan Terorisme Perspektif Hukum Pidana Indonesia dan Hak Asasi Manusia* (Yogyakarta: Fakultas Syari'ah dah Hukum Universitas Islam Negri Sunan Kalijaga, 2013)

¹¹ Choirul Salim, *Hukuman Mati Bagi Bandar Narkoba* (Yogyakarta: Fakultas Syari'ah dah Hukum Universitas Islam Negri Sunan Kalijaga, 2013)

membahas mengenai hukuman mati berdasarkan hukum positif yang diterapkan di Indoneisa dan Amerika Serika khususnya negara bagian Florida.

Berry Silagan ¹², dalam skripsinya yang berjudul Kebijakan Pidana Mati Dalam Undang – Undang No.20 Tahun 2001 Terhadap Pelaku Tindak Pidana Korupsi (Suatu Tinjauan Yuridis Normatif), melakukan penelitian mengenai Urgensi Penerapan Hukuman mati bagi terpidana korupsi. Sementara penelitian ini akan membahas mengenai sistem Hukuman Mati yang telah diterapkan di Indonesia dan Amerika Serika khususnya negara bagian Florida.

E. Kerangka teoritik.

Metode komparatif merupakan salah satu metode penelitian yang paling tua. Sejak zaman Yunani kuno metode komparatif sering digunakan dalam beberapa format oleh para pemikir terkemuka. Sebuah penelitian komparatif mencakup pembelajaran mengenai persamaan dan perbedaan didalam beberapa budaya, masyarakat, dan lembaga/institusi tertentu.¹³

1. Tujuan perbandingan hukum

Van Apeldron membedakan tujuan perbandingan hukum dalam tujuan yang bersifat teoritis dan tujuan yang bersifat praktis.

¹² Berry Silagan, *Kebijakan Pidana Mati Dalam Undang – Undang No.20 Tahun 2001 terhadap Pelaku Tindak Pidana Korupsi* (Medan: Universitas Sumatra Utara, 2010).

¹³ Richard J. Terrill, *World Criminal Justice Systems* (Ohio: Andeson Publishing, 2007), hlm. x

Tujuan yang bersifat teoritis menjelaskan hukum sebagai gejala dunia (*universal*) dan oleh karena itu ilmu pengetahuan hukum harus dapat memahami gejala dunia tersebut; dan untuk itu harus dipahami hukum dimasa lampau dan hukum dimasa sekarang.

Tujuan yang bersifat praktis dari perbandingan hukum adalah merupakan alat pertolongan untuk tata tertib masyarakat dan pembaharuan hukum nasional serta memberikan pengetahuan mengenai berbagai peraturan dan pikiran hukum kepada pembentuk undang – undang dan hakim.¹⁴

2. Teori pembedaan

Hukuman dalam hukum pidana merupakan suatu bentuk nestapa yang dijatuhkan terhadap seseorang sebagai reaksi atas pidana yang dilakukannya. Dalam hal ini hukuman dalam hukum pidana memiliki beberapa macam tujuan seperti untuk melindungi masyarakat taat hukum dari pelanggar hukum atau menghukum pelanggar hukum itu sendiri. Tujuan – tujuan seperti itu merupakan pemikiran yang digunakan untuk membenarkan suatu hukuman secara moral, tidak hanya sekedar menjelaskannya.

Mengenai teori – teori pembedaan berhubungan langsung dengan pengertian hukum pidana subjektif tersebut. Teori – teori ini mencari dan menerangkan tentang dasar dari hak negara dalam menjatuhkan dan menjalankan pidana tersebut. Jelaslah kiranya pidana yang diancamkan apabila diterapkan justru menyerang kepentingan

¹⁴ *Ibid*, hlm. 12

hukum dan hak pribadi manusia yang sebenarnya dilindungi oleh hukum.¹⁵ Oleh karena itu hukuman membutuhkan suatu “*Moral Justification*” karena hukuman yang dijatuhkan terhadap seorang terpidana pada dasarnya merupakan suatu perbuatan yang dalam konteks berbeda merupakan suatu perbuatan yang seharusnya tidak dilakukan.

“*Moral Justification*” merupakan suatu pemikiran yang berfokus pada satu atau dua hal berikut. Fokus yang pertama adalah untuk menemukan suatu alasan pembenar dalam melakukan suatu tindakan menghukum seseorang. Alasan tersebut yang kemudian akan menjadikan suatu tindakan sebagai suatu hukuman yang dibenarkan secara hukum. Fokus selanjutnya adalah menemukan alasan pembenar bagi institusi dan sistem hukum itu sendiri, untuk menerapkan sebuah sistem yang membenarkan negara atau masyarakat menghukum orang - orang yang melanggar norma yang berlaku.¹⁶

3. Fungsi hukum pidana

Secara umum hukum pidana berfungsi mengatur dan menyelenggarakan kehidupan masyarakat agar dapat tercipta dan terpeliharanya ketertiban umum. Manusia hidup dipenuhi oleh berbagai kepentingan dan kebutuhan. Dalam rangka memenuhi kebutuhan dan kepentingan ini, manusia bersikap dan berbuat. Agar

¹⁵ Adami Chazawi, *Pelajaran Hukum Pidana Bagian 1* (Jakarta: Rajawali Pers, 2005), hlm. 156

¹⁶ Geben Bruinsma, David Weisburd, *Encyclopedia of Criminology and Criminal Justice*, (New Yorks: Springer Reference, 2014), hlm. 5187

sikap dan perbuatannya tidak merugikan hak dan kepentingan pihak lain, hukum memberikan batasan-batasan sehingga manusia tidak sebebas-bebasnya berbuat dan bertingkah laku. Fungsi yang demikian itu terdapat pada setiap jenis hukum termasuk hukum pidana. Oleh karena itu, fungsi yang demikian disebut dengan fungsi umum hukum pidana.¹⁷ Sedangkan secara khusus hukum pidana berfungsi sebagai berikut :

- 1) Melindungi kepentingan hukum dari perbuatan yang menyerang atau memperkosanya.
- 2) Memberi dasar legitimasi bagi negara dalam rangka menjalankan fungsi negara mempertahankan kepentingan hukum yang dilindungi.
- 3) Mengatur dan membatasi kekuasaan negara dalam rangka menjalankan fungsi negara mempertahankan kepentingan hukum yang dilindungi.

4. Tujuan hukum pidana

Pidana adalah suatu reaksi atas delik (*punishment*) dan berwujud suatu nestapa yang sengaja ditimpakan (sifat negatif) oleh negara atau lembaga negara terhadap pembuat delik. Nestapa hanyalah suatu tujuan yang terdekat saja, bukan suatu tujuan terakhir yang dicita citakan sesuai upaya pembinaan (*treatment*).¹⁸

¹⁷ Adami Chazawi, *Op.Cit*, hlm. 16 - 20

¹⁸ Aruan Sakidjo, Bambang Purnomo, *Hukum Pidana* (Yogyakarta: Ghalia Indonesia, 1990), hlm. 70

Mendefinisikan dan membedakan pidana merupakan langkah awal untuk mempelajari tujuan hukum pidana. Pada dasarnya hukum pidana bertujuan untuk menegakkan peradilan dan melindungi masyarakat.

Tujuan utama dalam hukum pidana adalah untuk memberikan peradilan terhadap seluruh anggota masyarakat. Pada umumnya, peradilan berarti setiap individu setara dimata hukum. Dalam hal penegakan peradilan Megan Kurlcychek dari Univercity of Albany , New York, mengidentifikasi 4 tujuan dalam sistem hukum pidana di Amerika Serikat:

- 1) Untuk melindungi masyarakat dari kejahatan potensial dimasa depan yang mungkin dilakukan oleh kriminal yang paling berbahaya atau nekat.
- 2) Untuk menentukan kapan tindak pidana terjadi dan memberikan sanksi yang layak untuk tindak pidana tersebut.
- 3) Untuk merehabilitasi terpidana sehingga ketika terpidana telah menjalani masa hukumannya terpidana tersebut dapat kembali ke masyarakat.
- 4) Untuk melindungi korban dan sebisa mungkin mengembalikan status korban seperti sebelum kejahatan terjadi.¹⁹

Didalam RUU KUHP tujuan pembedaan diuraikan secara jelas pada pasal 54 ayat (1) dan (2), pembedaan bertujuan:

- 1) Mencegah dilakukannya tindak pidana dengan menegakkan norma hukum demi pengayoman masyarakat;

¹⁹ Larry K. Gaines, Roger Leroy Miller, *Criminal Justice In Action The Core*, (USA: Wadsworth, 2014), hlm. 7

- 2) Memasyarakatkan terpidana dengan mengadakan pembinaan sehingga menjadi orang yang baik dan berguna;
- 3) Menyelesaikan konflik yang ditimbulkan oleh tindak pidana, memulihkan keseimbangan, dan mendatangkan rasa damai dalam masyarakat;
- 4) Membebaskan rasa bersalah pada terpidana;
- 5) Pidanaan tidak dimaksudkan untuk menderitakan dan merendahkan martabat manusia.

Ide keseimbangan menjadi dasar materi penyusunan RUU KUHP, yang antara lain mencakup; keseimbangan monodualistik antara kepentingan umum masyarakat dan kepentingan individu perseorangan; keseimbangan antara perlindungan kepentingan pelaku tindak pidana (ide individualisasi pidana) dan korban tindak pidana; keseimbangan antara unsur objektif (perbuatan lahiriah) dan unsur subjektif (orang/ sikap batin); keseimbangan antara kriteria formal dan materiil; keseimbangan antara kepastian hukum, kelenturan/ elastisitas/ fleksibilitas, dan keadilan; serta keseimbangan nilai – nilai nasional dan nilai – nilai internasional.²⁰

F. Metode Penelitian

Metode penelitian merupakan hal yang penting dalam suatu penelitian ilmiah. Hal ini dikarenakan metode penelitian akan menggambarkan kondisi subjek dan

²⁰ Mahrus Ali, *Dasar – Dasar Hukum Pidana* (Yogyakarta: Sinar Grafika, 2011), hlm. 19

objek penelitian, dalam hal ini penulis akan menggunakan metode penelitian sebagai berikut.

1. Jenis Penelitian

Adapun jenis penelitian yang penulis gunakan dalam penelitian ini adalah penelitian pustaka atau (*library reseach*) yaitu dengan meneliti dari tinjauan pustaka dengan mencari buku – buku atau dokumen – dokumen dan dengan wawancara penelitian untuk melengkapi data terkait dengan sanksi pidana mati.

2. Sifat Penelitian

Penelitian ini bersifat deskriptif analisis dengan pendekatan Yuridis Normatif, yakni menggunakan sumber sumber data peraturan perundang – undangan, keputusan keputusan pengadilan, teori - teori hukum, dan pendapat pendapat sarjana hukum terkemuka.²¹

3. Sumber penelitian

a. Bahan Hukum Primer

Adalah Bahan hukum yang mengikat antara lain;

- 1) Undang – Undang Dasar 1945
- 2) Kitab Undang – Undang Hukum Pidana
- 3) Undang – Undang No. 2 / PNPS / 1964 Tentang Pelaksanaan Pidana Mati

²¹ Rianto Adi , *Metodologi Penelitian Sosial dan Hukum* (Jakarta: Granit, 2010), hlm. 92

- 4) Putusan MK 2 – 3/PUU-V/2007
- 5) United States Code (U.S. Code)
- 6) 2015 Florida Statutes
- 7) Florida Lethal Injection Protocol

b. Bahan Hukum sekunder

Adalah bahan hukum yang diperoleh dari buku teks, jurnal jurnal asing, pendapat para sarjana kasus – kasus hukum serta simposium yang dilakukan para pakar terkait dengan pembahasan sanksi pidana mati.

c. Bahan Hukum Tersier

Adalah Bahan hukum yang memberikan petunjuk atau penjelasan bermakna terhadap bahan hukum sekunder, seperti kamus hukum, ensiklopedia, dan lain – lain.

4. Analisis data

Dalam mengelola dan menganalisis data yang diperoleh selama penelitian, penulis akan menerapkan metode analisis secara kualitatif. Yaitu analisis data dengan cara merangkai data yang dikumpulkan secara sistematis. Dengan demikian setelah data terkumpul penulis akan melakukan beberapa prosedur pengolahan data berupa pemilahan data, klarifikasi data, penyuntingan data, verifikasi data dan analisis data dengan konstruksi pembahasan hasil penelitian.

G. Sistematika pembahasan

Sistematika pembahasan dalam penelitian dalam skripsi ini digunakan dengan tujuan untuk mempermudah pembaca dalam memahami skripsi ini secara

keseluruhan. Skripsi ini nantinya akan terbagi kedalam beberapa sub bab yang nantinya akan saling berkaitan antara satu dengan lainnya.

Bab pertama, merupakan pendahuluan yang didalamnya terdapat latar belakang masalah pokok masalah, tujuan penelitian, manfaat penelitian, telaah pustaka, kerangka teori, metodologi penelitian, dan sistematika pembahasan.

Bab ke dua, membahas sanksi pidana di Indonesia dan di Florida Amerika Serikat.

Bab ke tiga, akan membahas mengenai tinjauan hukum pidana, terhadap sanksi pidana mati.

Bab ke empat, akan membahas penerapan dan perbandingan sanksi pidana mati di Indonesia dan di Florida.

Bab ke lima, merupakan bab akhir yang berisikan dengan kesimpulan dan saran. Kesimpulan disini merupakan jawaban dari pokok masalah yang ada pada bab pertama.

BAB V

PENUTUP

A. Kesimpulan

Dari uraian di atas, setelah penulis mempelajari, membahas, dan menganalisa permasalahan yang penulis angkat, maka sebagai hasil akhir dari penulisan skripsi ini, akan penulis kemukakan beberapa kesimpulan sebagai berikut :

1. Penerapan sanksi pidana mati di Indonesia dan di Florida memiliki sejarah yang panjang dan telah melalui beberapa perubahan yang signifikan dalam pelaksanaannya. Perubahan ini terlihat dalam bentuk metode eksekusi mati di kedua negara. Tujuan eksekusi mati berubah menjadi lebih manusiawi. Indonesia menggunakan metode eksekusi mati dengan cara ditembak karena dianggap lebih efektif dan manusiawi sedangkan Florida memilih suntik mati dan kursi listrik karena menganggap kedua metode tersebut lebih cepat dan tidak menyiksa terpidana. Hal merupakan tuntutan perundang undangan yang berlaku sebagaimana yang diatur dalam undang undang dasar yaitu pasal 28 G UUD 1945 dan amandemen ke 8 "*U.S. Constitution*" yang melarang segala bentuk hukuman yang merendahkan harkat dan martabat manusia.
2. Terdapat beberapa kekurangan dan kelebihan dalam penerapan pidana mati yang dianut oleh Indonesia dan Florida. Ide metode eksekusi dengan mati suntik mati di Florida pada dasarnya merupakan metode yang paling

manusiawi karena terpidana akan mati dengan keadaan tidur sehingga menciptakan kematian yang tidak menyakitkan tetapi dalam penerapannya masih terdapat beberapa kendala. Kendala ini dimulai dari faktor Kesehatan, “*Human error*”, serta sarana dan prasarana hal ini berpengaruh pada tingkat kesuksesan dalam praktek pelaksanaan suntik mati. Apabila dibandingkan dengan metode eksekusi mati di Indonesia metode tembak mati merupakan metode eksekusi yang tergolong primitif dan di tinggalkan oleh pemerintah florida sejak tahun 1924 meskipun metode ini tergolong metode yang primitif metode ini memiliki kemungkinan “*error*” yang kecil sehingga tidak menyiksa terpidana mati dengan rasa sakit dalam waktu yang lama efektifitas metode ini dibuktikan dengan kembalinya metode eksekusi mati dengan regu tembak di negara bagian Utah. Penerapan pidana mati di Florida juga memakan waktu yang lebih lama dikarenakan proses hukum yang lebih panjang dibandingkan di Indonesia.

B. Saran - Saran

Saran penulis setelah mengkaji skripsi dengan tema “*Studi Komparatif Penerapan Sanksi Pidana Mati di Indonesia – Amerika Serikat (Florida)*” ini adalah sebagai berikut:

1. Penelitian dengan metode studi komparatif sangatlah bermanfaat, dengan melakukan studi komparatif peneliti akan memperoleh gambaran umum – khusus mengenai apa saja yang dapat / seharusnya diperbaiki.
2. Metode penerapan Sanksi pidana mati yang berlaku di Indonesia sesuai dengan peraturan dan perundang undangan yang berlaku (*ICCPR & UUD 1945*) yang mana metode ekekusi dengan regu tembak tidak memberikan derita yang berkepanjangan terhadap terdakwa meskipun metode tembak memberikan rasa sakit tetapi kemungkinan “*error*” dari metode ini sangat sedikit sehingga tidak diperlukan adanya pembaharuan.

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No. : UIN.02/DS.1/PP.00.9/1157 2016
Hal : Permohonan Izin Penelitian

Yogyakarta, 12 Mei 2016

Kepada
Yth. Kepala Kejaksaan Tinggi DIY
di. Yogyakarta

Assalamu'alaikum wr.wb.

Dekan Fakultas Syari'ah dan Hukum UIN Sunan Kalijaga Yogyakarta memohon kepada Bapak/Ibu untuk memberikan izin kepada mahasiswa Fakultas Syari'ah dan Hukum UIN Sunan Kalijaga sebagaimana yang tersebut di bawah ini :

No	Nama	NIM	JURUSAN
1.	Ariel Siva	11340056	IH

Untuk mengadakan penelitian di Kejaksaan Tinggi Yogyakarta guna mendapatkan data dan informasi dalam rangka Penulisan Karya Tulis Ilmiah (Skripsi) yang berjudul "STUDI KOMPARATIF PENERAPAN SANKSI PIDANA MATI DI INDONESIA - AMERIKA SERIKAT (FLORIDA)".

Demikian kami sampaikan, atas bantuan dan kerjasamanya kami ucapkan terima kasih

Wassalamu'alaikum wr.wb.

a.n. Dekan,
Wakil Dekan Bidang Akademik,

Dr. Samsul Hadi, M.Ag
NIP. 19730708 200003 1 003 7

Tembusan :

Dekan Fakultas Syari'ah dan Hukum UIN Sunan Kalijaga Yogyakarta.p

SURAT KETERANGAN TELAH MELAKUKAN WAWANCARA

Yang bertanda tangan dibawah ini:

Nama : HERI SUPRIYANTO, SH.MH
Pangkat : Jaisa Madya
Jabatan : Jaisa Fungsional
Instansi : KEJATI D.I.Y

Dengan ini menyatakan:

Nama : Ariel Siva
NIM : 11340056
Prodi : Ilmu Hukum
Fakultas : Syari'ah dan Hukum

Telah melakukan wawancara dengan saya sebagai responden penelitian.

Dengan demikian pernyataan ini dibuat dengan sebenar benarnya untuk dipergunakan sebagaimana mestinya.

Yogyakarta, Juni 2016


(HERI SUPRIYANTO, SH.MH)



KEMENTERIAN AGAMA RI
UNIVERSITAS ISLAM NEGERI SUNAN KALIJAGA
FAKULTAS SYARIAH DAN HUKUM

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No. : UIN.02/DS.1/PP.00.9/124 2016
Hal : Permohonan Izin Penelitian

Yogyakarta, 30 Mei 2016

Kepada
Yth. kepala Pengadilan Tinggi Yogyakarta
di. Yogyakarta

Assalamu'alaikum wr.wb.

Dekan Fakultas Syariah dan Hukum UIN Sunan Kalijaga Yogyakarta memohon kepada Bapak/Ibu untuk memberikan izin kepada mahasiswa Fakultas Syariah dan Hukum UIN Sunan Kalijaga sebagaimana yang tersebut di bawah ini :

No	Nama	NIM	JURUSAN
1.	Ariel Siva	11340056	IH

Untuk mengadakan penelitian di Pengadilan Tinggi Yogyakarta guna mendapatkan data dan informasi dalam rangka Penulisan Karya Tulis Ilmiah (Skripsi) yang berjudul "STUDI KOMPARATIF PENERAPAN SANKSI PIDANA MATI DI INDONESIA – AMERIKA SERIKAT (FLORIDA)".

Demikian kami sampaikan, atas bantuan dan kerjasamanya kami ucapkan terima kasih

Wassalamu'alaikum wr.wb.

a.n. Dekan,
Wakil Dekan Bidang Akademik,

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Tembusan :

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PENGADILAN TINGGI YOGYAKARTA

JL. Lingkar Selatan, Wojo, Bangunharjo, Sewon, Bantul, Yogyakarta

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Nomor : W13.U/ 988 /HK.00/VI/2016

Yogyakarta, 8 Juni 2016

Lampiran : -

Kepada

Perihal : Permohonan Ijin Penelitian

Yth. Dekan Fakultas Hukum

Universitas Islam Negeri Sunan Kalijaga .

Yogyakarta

Di

Yogyakarta

Berkenaan dengan Surat Saudara Nomor : UIN.02/DS.1/PP.00.9/1296/2016 tanggal 30 Mei 2016 perihal Permohonan Ijin Penelitian atas nama :

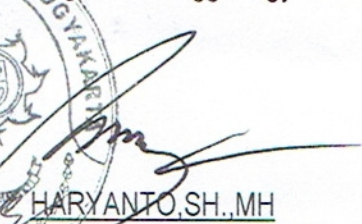
Nama : ARIEL SIVA

No. Mahasiswa : 11340056

Bersama ini diberitahukan bahwa pada prinsipnya kami tidak keberatan dan kepada mahasiswa tersebut diatas diberikan ijin untuk melakukan penelitian di Pengadilan Tinggi Yogyakarta.

Demikian agar menjadikan periksa.

Ketua Pengadilan Tinggi Yogyakarta



HARYANTO, S.H., M.H.
NIP. 19530419 198103 1 001



PENGADILAN TINGGI YOGYAKARTA

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SURAT KETERANGAN

Nomor : W13.U/1024/HK.00/VI/2016

Yang bertanda tangan dibawah ini Ketua Pengadilan Tinggi Yogyakarta menerangkan bahwa :

Nama : ARIEL SIVA
Nomor Mahasiswa : 11340056
Perguruan Tinggi : Universitas Islam Negeri Sunan Kalijaga Yogyakarta

Menerangkan bahwa yang namanya tersebut diatas pada tanggal 9 dan 10 Juni 2016 telah melakukan penelitian pada Kantor Pengadilan Tinggi Yogyakarta.

Demikian Surat Keterangan ini kami buat agar dapat dipergunakan sebagaimana mestinya.

Yogyakarta, 13 Juni 2016

Ketua Pengadilan Tinggi Yogyakarta



HARYANTO,SH..MH

NIP. 19530419 198103 1 001

The 2015 Florida Statutes

Title XLVI

CRIMES

Chapter 782

HOMICIDE

782.04 Murder.—

(1)(a) The unlawful killing of a human being:

1. When perpetrated from a premeditated design to effect the death of the person killed or any human being;
2. When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any:
 - a. Trafficking offense prohibited by s. [893.135](#)(1),
 - b. Arson,
 - c. Sexual battery,
 - d. Robbery,
 - e. Burglary,
 - f. Kidnapping,
 - g. Escape,
 - h. Aggravated child abuse,
 - i. Aggravated abuse of an elderly person or disabled adult,
 - j. Aircraft piracy,
 - k. Unlawful throwing, placing, or discharging of a destructive device or bomb,
 - l. Carjacking,
 - m. Home-invasion robbery,
 - n. Aggravated stalking,
 - o. Murder of another human being,
 - p. Resisting an officer with violence to his or her person,
 - q. Aggravated fleeing or eluding with serious bodily injury or death,
 - r. Felony that is an act of terrorism or is in furtherance of an act of terrorism; or
 3. Which resulted from the unlawful distribution of any substance controlled under s. [893.03](#)(1), cocaine as described in s. [893.03](#)(2)(a)4., opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or methadone by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,

is murder in the first degree and constitutes a capital felony, punishable as provided in s. [775.082](#).

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

(2) The unlawful killing of a human being, when perpetrated by any act imminently dangerous to another and evincing a depraved mind regardless of human life, although without any premeditated design to effect the death of any particular individual, is murder in the second degree and constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(3) When a human being is killed during the perpetration of, or during the attempt to perpetrate, any:

- (a) Trafficking offense prohibited by s. [893.135](#)(1),
- (b) Arson,
- (c) Sexual battery,
- (d) Robbery,
- (e) Burglary,
- (f) Kidnapping,
- (g) Escape,
- (h) Aggravated child abuse,
- (i) Aggravated abuse of an elderly person or disabled adult,
- (j) Aircraft piracy,
- (k) Unlawful throwing, placing, or discharging of a destructive device or bomb,
- (l) Carjacking,
- (m) Home-invasion robbery,
- (n) Aggravated stalking,
- (o) Murder of another human being,
- (p) Aggravated fleeing or eluding with serious bodily injury or death,
- (q) Resisting an officer with violence to his or her person, or
- (r) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

by a person other than the person engaged in the perpetration of or in the attempt to perpetrate such felony, the person perpetrating or attempting to perpetrate such felony commits murder in the second degree, which constitutes a felony of the first degree, punishable by imprisonment for a term of years not exceeding life or as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(4) The unlawful killing of a human being, when perpetrated without any design to effect death, by a person engaged in the perpetration of, or in the attempt to perpetrate, any felony other than any:

- (a) Trafficking offense prohibited by s. [893.135\(1\)](#),
- (b) Arson,
- (c) Sexual battery,
- (d) Robbery,
- (e) Burglary,
- (f) Kidnapping,
- (g) Escape,
- (h) Aggravated child abuse,
- (i) Aggravated abuse of an elderly person or disabled adult,
- (j) Aircraft piracy,
- (k) Unlawful throwing, placing, or discharging of a destructive device or bomb,
- (l) Unlawful distribution of any substance controlled under s. [893.03\(1\)](#), cocaine as described in s. [893.03\(2\)\(a\)4.](#), or opium or any synthetic or natural salt, compound, derivative, or preparation of opium by a person 18 years of age or older, when such drug is proven to be the proximate cause of the death of the user,
- (m) Carjacking,
- (n) Home-invasion robbery,
- (o) Aggravated stalking,
- (p) Murder of another human being,
- (q) Aggravated fleeing or eluding with serious bodily injury or death,
- (r) Resisting an officer with violence to his or her person, or
- (s) Felony that is an act of terrorism or is in furtherance of an act of terrorism,

is murder in the third degree and constitutes a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

- (5) As used in this section, the term "terrorism" means an activity that:
- (a)1. Involves a violent act or an act dangerous to human life which is a violation of the criminal laws of this state or of the United States; or
 - 2. Involves a violation of s. [815.06](#); and
 - (b) Is intended to:
 - 1. Intimidate, injure, or coerce a civilian population;
 - 2. Influence the policy of a government by intimidation or coercion; or
 - 3. Affect the conduct of government through destruction of property, assassination, murder, kidnapping, or aircraft piracy.

History.—s. 2, ch. 1637, 1868; RS 2380; GS 3205; RGS 5035; s. 1, ch. 8470, 1921; CGL 7137; s. 1, ch. 28023, 1953; s. 712, ch. 71-136; s. 3, ch. 72-724; s. 14, ch. 74-383; s. 6, ch. 75-298; s. 1, ch. 76-141; s. 290, ch. 79-400; s. 1, ch. 82-4; s. 1, ch. 82-69; s. 1, ch. 84-16; s. 6, ch. 87-243; ss. 2, 4, ch. 89-281; s. 4, ch. 90-112; s. 3, ch. 93-212; s. 11, ch. 95-195; s. 18, ch. 96-322; s. 1, ch. 98-417; s. 10, ch. 99-188; s. 16, ch. 2000-320; s. 2, ch. 2001-236; s. 2, ch. 2001-357; s. 1, ch. 2002-212; s. 12, ch. 2005-128; s. 1, ch. 2010-121; s. 2, ch. 2012-21; s. 4, ch. 2014-176; s. 9, ch. 2015-34.

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The 2015 Florida Statutes

[Title XLVI](#)

CRIMES

[Chapter 794](#)

SEXUAL BATTERY

794.011 Sexual battery.—

(1) As used in this chapter:

- (a) "Consent" means intelligent, knowing, and voluntary consent and does not include coerced submission. "Consent" shall not be deemed or construed to mean the failure by the alleged victim to offer physical resistance to the offender.
- (b) "Mentally defective" means a mental disease or defect which renders a person temporarily or permanently incapable of appraising the nature of his or her conduct.
- (c) "Mentally incapacitated" means temporarily incapable of appraising or controlling a person's own conduct due to the influence of a narcotic, anesthetic, or intoxicating substance administered without his or her consent or due to any other act committed upon that person without his or her consent.
- (d) "Offender" means a person accused of a sexual offense in violation of a provision of this chapter.
- (e) "Physically helpless" means unconscious, asleep, or for any other reason physically unable to communicate unwillingness to an act.
- (f) "Retaliation" includes, but is not limited to, threats of future physical punishment, kidnapping, false imprisonment or forcible confinement, or extortion.
- (g) "Serious personal injury" means great bodily harm or pain, permanent disability, or permanent disfigurement.
- (h) "Sexual battery" means oral, anal, or vaginal penetration by, or union with, the sexual organ of another or the anal or vaginal penetration of another by any other object; however, sexual battery does not include an act done for a bona fide medical purpose.
- (i) "Victim" means a person who has been the object of a sexual offense.
- (j) "Physically incapacitated" means bodily impaired or handicapped and substantially limited in ability to resist or flee.

(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 [921.141](#).

(b) A person less than 18 years of age 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 life felony, punishable as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#).

(3) A person who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process thereof uses or threatens to use a deadly weapon or uses actual physical force likely to cause serious personal injury commits a life felony, punishable as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#).

(4)(a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#).

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#).

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), commits a felony of the first degree, punishable as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#).

(d) A person commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#) if the person commits sexual battery upon a person 12 years of age or older without that person's consent, under any of the circumstances listed in paragraph (e), and such person was previously convicted of a violation of:

1. Section [787.01](#)(2) or s. [787.02](#)(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. [800.04](#) or s. [847.0135](#)(5);
2. Section [787.01](#)(3)(a)2. or 3.;
3. Section [787.02](#)(3)(a)2. or 3.;
4. Section [800.04](#);
5. Section [825.1025](#);
6. Section [847.0135](#)(5); or
7. This chapter, excluding subsection (10) of this section.

(e) The following circumstances apply to paragraphs (a)-(d):

1. The victim is physically helpless to resist.
2. The offender coerces the victim to submit by threatening to use force or violence likely to cause serious personal injury on the victim, and the victim reasonably believes that the offender has the present ability to execute the threat.

3. The offender coerces the victim to submit by threatening to retaliate against the victim, or any other person, and the victim reasonably believes that the offender has the ability to execute the threat in the future.

4. The offender, without the prior knowledge or consent of the victim, administers or has knowledge of someone else administering to the victim any narcotic, anesthetic, or other intoxicating substance that mentally or physically incapacitates the victim.

5. The victim is mentally defective, and the offender has reason to believe this or has actual knowledge of this fact.

6. The victim is physically incapacitated.

7. The offender is a law enforcement officer, correctional officer, or correctional probation officer as defined in s. [943.10](#)(1), (2), (3), (6), (7), (8), or (9), who is certified under s. [943.1395](#) or is an elected official exempt from such certification by virtue of s. [943.253](#), or any other person in a position of control or authority in a probation, community control, controlled release, detention, custodial, or similar setting, and such officer, official, or person is acting in such a manner as to lead the victim to reasonably believe that the offender is in a position of control or authority as an agent or employee of government.

(5)(a) A person 18 years of age or older who commits sexual battery upon a person 12 years of age or older but younger than 18 years of age, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the first degree, punishable as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#).

(b) A person 18 years of age or older who commits sexual battery upon a person 18 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#).

(c) A person younger than 18 years of age who commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#).

(d) A person commits a felony of the first degree, punishable as provided in s. [775.082](#), s. [775.083](#), s. [775.084](#), or s. [794.0115](#) if the person commits sexual battery upon a person 12 years of age or older, without that person's consent, and in the process does not use physical force and violence likely to cause serious personal injury and the person was previously convicted of a violation of:

1. Section [787.01](#)(2) or s. [787.02](#)(2) when the violation involved a victim who was a minor and, in the course of committing that violation, the defendant committed against the minor a sexual battery under this chapter or a lewd act under s. [800.04](#) or s. [847.0135](#)(5);

2. Section [787.01](#)(3)(a)2. or 3.;

3. Section [787.02](#)(3)(a)2. or 3.;

4. Section [800.04](#);

5. Section [825.1025](#);

6. Section [847.0135](#)(5); or

7. This chapter, excluding subsection (10) of this section.

(6)(a) The offenses described in paragraphs (5)(a)-(c) are included in any sexual battery offense charged under subsection (3).

(b) The offense described in paragraph (5)(a) is included in an offense charged under paragraph (4)(a).

(c) The offense described in paragraph (5)(b) is included in an offense charged under paragraph (4)(b).

(d) The offense described in paragraph (5)(c) is included in an offense charged under paragraph (4)(c).

(e) The offense described in paragraph (5)(d) is included in an offense charged under paragraph (4)(d).

(7) A person who is convicted of committing a sexual battery on or after October 1, 1992, is not eligible for basic gain-time under s. [944.275](#). This subsection may be cited as the "Junny Rios-Martinez, Jr. Act of 1992."

(8) Without regard to the willingness or consent of the victim, which is not a defense to prosecution under this subsection, a person who is in a position of familial or custodial authority to a person less than 18 years of age and who:

(a) Solicits that person to engage in any act which would constitute sexual battery under paragraph (1)(h) commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(b) Engages in any act with that person while the person is 12 years of age or older but younger than 18 years of age which constitutes sexual battery under paragraph (1)(h) commits a felony of the first degree, punishable by a term of years not exceeding life or as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(c) Engages in any act with that person while the person is less than 12 years of age which constitutes sexual battery under paragraph (1)(h), or in an attempt to commit sexual battery injures the sexual organs of such person commits a capital or life felony, punishable pursuant to subsection (2).

(9) For prosecution under paragraph (4)(a), paragraph (4)(b), paragraph (4)(c), or paragraph (4)(d) which involves an offense committed under any of the circumstances listed in subparagraph (4)(e)7., acquiescence to a person reasonably believed by the victim to be in a position of authority or control does not constitute consent, and it is not a defense that the perpetrator was not actually in a position of control or authority if the circumstances were such as to lead the victim to reasonably believe that the person was in such a position.

(10) A person who falsely accuses a person listed in subparagraph (4)(e)7. or other person in a position of control or authority as an agent or employee of government of violating paragraph (4)(a), paragraph (4)(b), paragraph (4)(c), or paragraph (4)(d) commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or

s. [775.084](#).

History.—s. 2, ch. 74-121; s. 17, ch. 75-298; s. 1, ch. 84-86; s. 1, ch. 89-216; s. 3, ch. 92-135; s. 1, ch. 92-310; s. 3, ch. 93-156; s. 2, ch. 95-348; s. 99, ch. 99-3; s. 8, ch. 99-188; s. 1, ch. 2002-211; s. 3, ch. 2014-4.

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The 2015 Florida Statutes

Title XLVI CRIMES

Chapter 893 DRUG ABUSE PREVENTION AND CONTROL

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

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

(a) Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, in excess of 25 pounds of cannabis, or 300 or more cannabis plants, commits a felony of the first degree, which felony shall be known as "trafficking in cannabis," punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). If the quantity of cannabis involved:

1. Is in excess of 25 pounds, but less than 2,000 pounds, or is 300 or more cannabis plants, but not more than 2,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$25,000.
2. Is 2,000 pounds or more, but less than 10,000 pounds, or is 2,000 or more cannabis plants, but not more than 10,000 cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$50,000.
3. Is 10,000 pounds or more, or is 10,000 or more cannabis plants, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$200,000.

For the purpose of this paragraph, a plant, including, but not limited to, a seedling or cutting, is a "cannabis plant" if it has some readily observable evidence of root formation, such as root hairs. To determine if a piece or part of a cannabis plant severed from the cannabis plant is itself a cannabis plant, the severed piece or part must have some readily observable evidence of root formation, such as root hairs. Callous tissue is not readily observable evidence of root formation. The viability and sex of a plant and the fact that the plant may or may not be a dead harvested plant are not relevant in determining if the plant is a "cannabis plant" or in the charging of an offense under this paragraph. Upon conviction, the court shall impose the longest term of imprisonment provided for in this paragraph.

(b)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 28 grams or more of cocaine, as described in s. [893.03\(2\)\(a\)4.](#), or of any mixture containing cocaine, but less than 150 kilograms of cocaine or any such mixture, commits a felony of the first degree, which felony shall be known as "trafficking in cocaine," punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). If the quantity involved:

- a. Is 28 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- b. Is 200 grams or more, but less than 400 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- c. Is 400 grams or more, but less than 150 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

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

- a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or
- b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in cocaine, punishable as provided in ss. [775.082](#) and [921.142](#). Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

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

provided under subparagraph 1.

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

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

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

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

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

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

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

c. Is 50 grams or more, but less than 200 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

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

3. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 7 grams or more of oxycodone, or any salt, derivative, isomer, or salt of an isomer thereof, or 7 grams or more of any mixture containing any such substance, commits a felony of the first degree, which felony shall be known as "trafficking in oxycodone," punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). If the quantity involved:

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

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

c. Is 25 grams or more, but less than 100 grams, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 years and shall be ordered to pay a fine of \$500,000.

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

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

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

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

such person commits the capital felony of trafficking in illegal drugs, punishable as provided in ss. [775.082](#) and [921.142](#). A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

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

(d)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into

this state, or who is knowingly in actual or constructive possession of, 28 grams or more of phencyclidine or of any mixture containing phencyclidine, as described in s. [893.03\(2\)\(b\)](#), commits a felony of the first degree, which felony shall be known as

"trafficking in phencyclidine," punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). If the quantity involved:

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

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

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

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

(e)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 200 grams or more of methaqualone or of any mixture containing methaqualone, as described in s.

[893.03\(1\)\(d\)](#), commits a felony of the first degree, which felony shall be known as "trafficking in methaqualone," punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). If the quantity involved:

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

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

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

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

(f)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 14 grams or more of amphetamine, as described in s. [893.03\(2\)\(c\)2.](#), or methamphetamine, as described in s. [893.03\(2\)\(c\)4.](#), or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment utilized in the manufacture of amphetamine or methamphetamine, commits a felony of the first degree, which felony shall be known as "trafficking in amphetamine," punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). If the quantity involved:

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

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

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

2. Any person who knowingly manufactures or brings into this state 400 grams or more of amphetamine, as described in s. [893.03\(2\)\(c\)2.](#), or methamphetamine, as described in s. [893.03\(2\)\(c\)4.](#), or of any mixture containing amphetamine or methamphetamine, or phenylacetone, phenylacetic acid, pseudoephedrine, or ephedrine in conjunction with other chemicals and equipment used in the manufacture of amphetamine or methamphetamine, and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of amphetamine, a capital felony punishable as provided in ss. [775.082](#) and [921.142](#). Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

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

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

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

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

2. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state or who is knowingly in actual or constructive possession of 30 kilograms or more of flunitrazepam or any mixture containing flunitrazepam as described in s. [893.03\(1\)\(a\)](#) commits the first degree felony of trafficking in flunitrazepam. A person who has been

convicted of the first degree felony of trafficking in flunitrazepam under this subparagraph shall be punished by life imprisonment and is ineligible for any form of discretionary early release except pardon or executive clemency or conditional medical release under s.

[947.149](#). However, if the court determines that, in addition to committing any act specified in this paragraph:

- a. The person intentionally killed an individual or counseled, commanded, induced, procured, or caused the intentional killing of an individual and such killing was the result; or
- b. The person's conduct in committing that act led to a natural, though not inevitable, lethal result,

such person commits the capital felony of trafficking in flunitrazepam, punishable as provided in ss. [775.082](#) and [921.142](#). Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(h)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-hydroxybutyric acid (GHB), as described in s. [893.03\(1\)\(d\)](#), or any mixture containing gamma-hydroxybutyric acid (GHB), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-hydroxybutyric acid (GHB)," punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#). If the quantity involved:

- a. Is 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- b. Is 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly manufactures or brings into this state 150 kilograms or more of gamma-hydroxybutyric acid (GHB), as described in s. [893.03\(1\)\(d\)](#), or any mixture containing gamma-hydroxybutyric acid (GHB), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of gamma-hydroxybutyric acid (GHB), a capital felony punishable as provided in ss. [775.082](#) and [921.142](#). Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(i)1. Any person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 1 kilogram or more of gamma-butyrolactone (GBL), as described in s. [893.03\(1\)\(d\)](#), or any mixture containing gamma-butyrolactone (GBL), commits a felony of the first degree, which felony shall be known as "trafficking in gamma-butyrolactone (GBL)," punishable as provided in s.

[775.082](#), s. [775.083](#), or s. [775.084](#). If the quantity involved:

- a. Is 1 kilogram or more but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- b. Is 5 kilograms or more but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$250,000.

2. Any person who knowingly manufactures or brings into the state 150 kilograms or more of gamma-butyrolactone (GBL), as described in s. [893.03\(1\)\(d\)](#), or any mixture containing gamma-butyrolactone (GBL), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of gamma-butyrolactone (GBL), a capital felony punishable as provided in ss. [775.082](#) and [921.142](#). Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

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

- a. Is 1 kilogram or more, but less than 5 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 3 years, and the defendant shall be ordered to pay a fine of \$50,000.
- b. Is 5 kilograms or more, but less than 10 kilograms, such person shall be sentenced to a mandatory minimum term of imprisonment of 7 years, and the defendant shall be ordered to pay a fine of \$100,000.
- c. Is 10 kilograms or more, such person shall be sentenced to a mandatory minimum term of imprisonment of 15 calendar years and pay a fine of \$500,000.

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

(k)1. A person who knowingly sells, purchases, manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, 10 grams or more of any of the following substances described in s. [893.03\(1\)\(c\)](#):

- a. 3,4-Methylenedioxymethamphetamine (MDMA);

- b. 4-Bromo-2,5-dimethoxyamphetamine;
- c. 4-Bromo-2,5-dimethoxyphenethylamine;
- d. 2,5-Dimethoxyamphetamine;
- e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- f. N-ethylamphetamine;
- g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- i. 4-methoxyamphetamine;
- j. 4-methoxymethamphetamine;
- k. 4-Methyl-2,5-dimethoxyamphetamine;
- l. 3,4-Methylenedioxy-N-ethylamphetamine;
- m. 3,4-Methylenedioxyamphetamine;
- n. N,N-dimethylamphetamine;
- o. 3,4,5-Trimethoxyamphetamine;
- p. 3,4-Methylenedioxymethcathinone;
- q. 3,4-Methylenedioxypyrovalerone (MDPV); or
- r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., commits a felony of the first degree, which felony shall be known as "trafficking in Phenethylamines," punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

2. If the quantity involved:

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

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

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

3. A person who knowingly manufactures or brings into this state 30 kilograms or more of any of the following substances described in s. [893.03](#)(1)(c):

- a. 3,4-Methylenedioxymethamphetamine (MDMA);
- b. 4-Bromo-2,5-dimethoxyamphetamine;
- c. 4-Bromo-2,5-dimethoxyphenethylamine;
- d. 2,5-Dimethoxyamphetamine;
- e. 2,5-Dimethoxy-4-ethylamphetamine (DOET);
- f. N-ethylamphetamine;
- g. N-Hydroxy-3,4-methylenedioxyamphetamine;
- h. 5-Methoxy-3,4-methylenedioxyamphetamine;
- i. 4-methoxyamphetamine;
- j. 4-methoxymethamphetamine;
- k. 4-Methyl-2,5-dimethoxyamphetamine;
- l. 3,4-Methylenedioxy-N-ethylamphetamine;
- m. 3,4-Methylenedioxyamphetamine;
- n. N,N-dimethylamphetamine;
- o. 3,4,5-Trimethoxyamphetamine;
- p. 3,4-Methylenedioxymethcathinone;
- q. 3,4-Methylenedioxypyrovalerone (MDPV); or
- r. Methylmethcathinone,

individually or analogs thereto or isomers thereto or in any combination of or any mixture containing any substance listed in sub-subparagraphs a.-r., and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of Phenethylamines, a capital felony punishable as provided in ss. [775.082](#) and [921.142](#). A person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

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

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

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

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

2. Any person who knowingly manufactures or brings into this state 7 grams or more of lysergic acid diethylamide (LSD) as described in s. [893.03](#)(1)(c), or any mixture containing lysergic acid diethylamide (LSD), and who knows that the probable result of such manufacture or importation would be the death of any person commits capital manufacture or importation of lysergic acid diethylamide (LSD), a capital felony punishable as provided in ss. [775.082](#) and [921.142](#). Any person sentenced for a capital felony under this paragraph shall also be sentenced to pay the maximum fine provided under subparagraph 1.

(2) A person acts knowingly under subsection (1) if that person intends to sell, purchase, manufacture, deliver, or bring into this state, or to actually or constructively possess, any of the controlled substances listed in subsection (1), regardless of which

controlled substance listed in subsection (1) is in fact sold, purchased, manufactured, delivered, or brought into this state, or actually or constructively possessed.

(3) Notwithstanding the provisions of s. [948.01](#), with respect to any person who is found to have violated this section, adjudication of guilt or imposition of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole prior to serving the mandatory minimum term of imprisonment prescribed by this section. A person sentenced to a mandatory minimum term of imprisonment under this section is not eligible for any form of discretionary early release, except pardon or executive clemency or conditional medical release under s. [947.149](#), prior to serving the mandatory minimum term of imprisonment.

(4) The state attorney may move the sentencing court to reduce or suspend the sentence of any person who is convicted of a violation of this section and who provides substantial assistance in the identification, arrest, or conviction of any of that person's accomplices, accessories, coconspirators, or principals or of any other person engaged in trafficking in controlled substances. The arresting agency shall be given an opportunity to be heard in aggravation or mitigation in reference to any such motion. Upon good cause shown, the motion may be filed and heard in camera. The judge hearing the motion may reduce or suspend the sentence if the judge finds that the defendant rendered such substantial assistance.

(5) Any person who agrees, conspires, combines, or confederates with another person to commit any act prohibited by subsection (1) commits a felony of the first degree and is punishable as if he or she had actually committed such prohibited act. Nothing in this subsection shall be construed to prohibit separate convictions and sentences for a violation of this subsection and any violation of subsection (1).

(6) A mixture, as defined in s. [893.02](#), containing any controlled substance described in this section includes, but is not limited to, a solution or a dosage unit, including but not limited to, a pill or tablet, containing a controlled substance. For the purpose of clarifying legislative intent regarding the weighing of a mixture containing a controlled substance described in this section, the weight of the controlled substance is the total weight of the mixture, including the controlled substance and any other substance in the mixture. If there is more than one mixture containing the same controlled substance, the weight of the controlled substance is calculated by aggregating the total weight of each mixture.

(7) For the purpose of further clarifying legislative intent, the Legislature finds that the opinion in *Hayes v. State*, 750 So. 2d 1 (Fla. 1999) does not correctly construe legislative intent. The Legislature finds that the opinions in *State v. Hayes*, 720 So. 2d 1095 (Fla. 4th DCA 1998) and *State v. Baxley*, 684 So. 2d 831 (Fla. 5th DCA 1996) correctly construe legislative intent.

History.—s. 1, ch. 79-1; s. 1, ch. 80-70; s. 2, ch. 80-353; s. 491, ch. 81-259; s. 1, ch. 82-2; s. 3, ch. 82-16; s. 53, ch. 83-215; s. 5, ch. 87-243; ss. 1, 4, ch. 89-281; s. 1, ch. 90-112; s. 3, ch. 93-92; s. 24, ch. 93-406; s. 15, ch. 95-184; s. 5, ch. 95-415; s. 54, ch. 96-388; s. 3, ch. 97-1; s. 1828, ch. 97-102; s. 23, ch. 97-194; s. 9, ch. 99-188; s. 4, ch. 2000-320; s. 2, ch. 2001-55; s. 7, ch. 2001-57; ss. 1, 2, 3, ch. 2002-212; s. 4, ch. 2003-10; s. 3, ch. 2005-128; s. 7, ch. 2008-184; s. 5, ch. 2011-73; s. 3, ch. 2011-90; s. 4, ch. 2013-29; s. 3, ch. 2014-159; s. 1, ch. 2014-176; s. 14, ch. 2015-34.

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The 2015 Florida Statutes

Title XLVII	Chapter
CRIMINAL PROCEDURE AND	921
CORRECTIONS	SENTENCE

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

(1) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony, 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 or mitigating circumstances enumerated in subsections (5) and (6). Any such evidence which 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 Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

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

- (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);
- (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(3) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

- (a) That sufficient aggravating circumstances exist as enumerated in subsection (5), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

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

(4) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida 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 promulgated by the Supreme Court.

(5) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

- (a) 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.
- (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 defendant knowingly created a great risk of death to many persons.
- (d) 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.
- (e) The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- (f) The capital felony was committed for pecuniary gain.
- (g) The capital felony was committed to disrupt or hinder the lawful exercise of any

governmental function or the enforcement of laws.

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

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

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

(k) 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.

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

(m) 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.

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

(o) 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.

(p) 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.

(6) 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 victim was a participant in the defendant's conduct or consented to the act.

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

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

(f) 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.

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

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

(7) VICTIM IMPACT EVIDENCE.—Once the prosecution has provided evidence of the existence of one or more aggravating circumstances as described in subsection (5), 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 resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.

(8) APPLICABILITY.—This section does not apply to a person convicted or adjudicated guilty of a capital drug trafficking felony under s. [893.135](#).

History.—s. 237a, ch. 19554, 1939; CGL 1940 Supp. 8663(246); s. 119, ch. 70-339; s. 1, ch. 72-72; s. 9, ch. 72-724; s. 1, ch. 74-379; s. 248, ch. 77-104; s. 1, ch. 77-174; s. 1, ch. 79-353; s. 177, ch. 83-216; s. 1, ch. 87-368; s. 10, ch. 88-381; s. 3, ch. 90-112; s. 1, ch. 91-270; s. 1, ch. 92-81; s. 1, ch. 95-159; s. 5, ch. 96-290; s. 1, ch. 96-302; s. 7, ch. 2005-28; s. 2, ch. 2005-64; s. 27, ch. 2008-238; s. 25, ch. 2010-117; s. 1, ch. 2010-120.

Note.—Former s. 919.23.

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The 2015 Florida Statutes

<u>Title XLVII</u>	<u>Chapter</u>
CRIMINAL PROCEDURE AND	<u>921</u>
CORRECTIONS	SENTENCE

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

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

(2) SEPARATE PROCEEDINGS ON ISSUE OF PENALTY.—Upon conviction or adjudication of guilt of a defendant of a capital felony under s. [893.135](#), 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 or mitigating circumstances enumerated in subsections (6) and (7). Any such evidence which 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 Constitution of the United States or the Constitution of the State of Florida. The state and the defendant or the defendant's counsel shall be permitted to present argument for or against sentence of death.

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

- (a) Whether sufficient aggravating circumstances exist as enumerated in subsection (6);
- (b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- (c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

(4) FINDINGS IN SUPPORT OF SENTENCE OF DEATH.—Notwithstanding the recommendation of a majority of the jury, the court, after weighing the aggravating and mitigating circumstances, shall enter a sentence of life imprisonment or death, but if the court imposes a sentence of death, it shall set forth in writing its findings upon which the sentence of death is based as to the facts:

- (a) That sufficient aggravating circumstances exist as enumerated in subsection (6), and
- (b) That there are insufficient mitigating circumstances to outweigh the aggravating circumstances.

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

(5) REVIEW OF JUDGMENT AND SENTENCE.—The judgment of conviction and sentence of death shall be subject to automatic review and disposition rendered by the Supreme Court of Florida 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 promulgated by the Supreme Court.

(6) AGGRAVATING CIRCUMSTANCES.—Aggravating circumstances shall be limited to the following:

- (a) The capital felony was committed by a person under a sentence of imprisonment.
- (b) 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 1 year of imprisonment.
- (c) 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.
- (d) 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.

(e) 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.

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

(g) The defendant:

1. Intentionally killed the victim;
2. Intentionally inflicted serious bodily injury which resulted in the death of the victim; or
3. 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.

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

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

(j) 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.

(7) MITIGATING CIRCUMSTANCES.—Mitigating circumstances shall include 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 the defendant's participation was relatively minor.

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

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

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

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

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

(8) VICTIM IMPACT EVIDENCE.—Once the prosecution has provided evidence of the existence of one or more aggravating circumstances as described in subsection (6), the prosecution may introduce, and subsequently argue, victim impact evidence. Such evidence shall be designed to demonstrate the victim's uniqueness as an individual human being and the resultant loss to the community's members by the victim's death. Characterizations and opinions about the crime, the defendant, and the appropriate sentence shall not be permitted as a part of victim impact evidence.

History.—s. 2, ch. 90-112; s. 2, ch. 92-81; s. 6, ch. 96-290; s. 1837, ch. 97-102; s. 10, ch. 99-188; s. 26, ch. 2000-320; s. 1, ch. 2002-212; s. 19, ch. 2005-128.

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