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Dying to Appeal: The Long-Lasting and Ineffective Appeal Process of the Death Sentence

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DYING TO APPEAL: THE LONG-LASTING AND INEFFECTIVE APPEAL PROCESS
OF THE DEATH SENTENCE

Marlene Brito

I. INTRODUCTION

On November 2, 1990, the lifeless body of a battered baby was found in the bushes of a Miami Beach residence. The child was Ana Maria Cardona’s (“Cardona”) three-year-old son, Lazaro Figueroa (“Lazaro”). Cardona was arrested and charged with aggravated child abuse and first-degree murder.

Cardona regularly beat, choked, starved, confined, emotionally abused, and systematically tortured Lazaro. On October 31, 1990, Cardona split open Lazaro’s head when she severely beat him with a baseball bat. The next day, when Lazaro screamed at the sight of his mother, Cardona grabbed the bat and killed the little boy. Cardona abandoned Lazaro in

1 Juris Doctor Candidate, May 2016, St. Thomas University School of Law, ST. THOMAS LAW REVIEW, Member-Candidate; Bachelor of Science in Criminal Justice, Minor in Psychology, Florida International University (2012).
3 See Cardona, 641 So. 3d at 361 (noting Lazaro’s father was a well-off drug dealer who was murdered a month before Lazaro was born); Ana Maria Cardona, MURDERPEDIA, http://murderpedia.org/female.C/c/cardona-ana.htm (last updated Dec. 13, 2013) (stating the child was known as “baby lollipops” while he was unidentified because of the design of the shirt he was wearing when he was found).
4 See Cardona, 641 So. 3d at 361–62 (affirming the trial courts conviction of aggravated child abuse and first-degree murder and the respective sentences); Ana Maria Cardona, supra note 3 (listing Cardona’s characteristics and current status). At the time of the arrest, Cardona was a thirty-year-old Cuban immigrant living in Miami. Ana Maria Cardona, supra note 3.
5 See Cardona, 641 So. 3d at 362 (explaining Lazaro spent much of the time tied to a bed, left in a bathtub with the hot or cold-water running, or locked in a closet); Luisa Yanez, Baby Lollipops Killer Sentenced To Electric Chair Judge Calls Mother’s Crime Most Heinous In Dade History, SUNSENTINEL (Apr. 2, 1992), http://articles.sun-sentinel.com/1992-04-02/news/9201310802_1_baby-lollipops-ana-cardona-lazaro-figueroa (stating Lazaro weighed only eighteen pounds at the time of death); Erik Andrews, Average Height and Weight of Three-Year-Olds, Livestrong.com, http://www.livestrong.com/article/192232-normal-height-weight-for-a-three-year-old/ (last updated Nov. 3, 2013) (stating the average weight of a three-year-old boy is between twenty-seven and thirty eight and a half pounds). In order to avoid changing Lazaro’s diaper as long as possible, Cardona would wrap duct tape around the child’s diaper to hold in the excrement. Cardona, 641 So. 3d at 362. One juror in Cardona’s trial even said the photographs that were shown of Lazaro haunted him. Yanez, supra.
6 See Cardona, 641 So. 3d at 362 (stating that after splitting Lazaro’s head open, Cardona locked the little boy in the closet where he had been confined for the last two months).
7 See id. (stating when Cardona was found, she told police the child fell off the bed and injured himself).
some bushes at a Miami Beach residence.\footnote{See Cardona v. State, 641 So. 2d 361, 362 ( Fla. 1994) (stating Cardona claimed she took Lazaro to the Miami Beach residence so the people who owned the house could help him).} Cardona was sentenced to death on April 1, 1992.\footnote{See id. at 363 (holding the jury found Cardona guilty of both, first-degree murder and aggravated child abuse); see also Ana Maria Cardona, supra note 3 (stating Cardona was first sentenced to death on April 1, 1992). The jury recommended death by a vote of eight to four and the court followed the recommendation. Cardona, 641 So. 2d at 363.}

However, twenty-two years later, she is still alive, and awaiting an appeal before the Florida Supreme Court.\footnote{See High Profile Cases, FLA. S. CT., http://www.floridasupremecourt.org/pub_info/index.shtml (last updated July 31, 2013) (listing all cases pending before the Florida Supreme Court). Cardona’s is currently waiting to be heard before the Florida Supreme Court on her automatic appeal. Id.}

Cardona appealed her 1992 conviction until she received a new trial.\footnote{See Cardona v. State, 826 So. 2d 968, 969 (Fla. 2002) (holding the Court is compelled to reverse and a new trial is required because the State committed a Brady violation); Brady v. Maryland, 373 U.S. 83, 87 (1963) (holding that the suppression of evidence favorable to an accused upon request violated the Due Process Clause, where the evidence was material to guilt or punishment regardless of the state’s good or bad faith); Commission on Capital Cases, FLA. CAPITAL CASES, http://www.floridacapitalcases.state.fl.us/inmate-details.cfm?id=60 (last updated Feb. 4, 2009) (listing all the appeals Cardona has filed with their respective dates). The State failed to disclose material criminal investigation reports of the State’s extensive interviews with Cardona’s codefendant and the State’s key witness against Cardona. Cardona, 826 So. 2d at 969. Cardona filed a direct appeal, a petition for writ of certiorari, and a motion with a state circuit court, which were all denied. Commission on Capital Cases, supra. Cardona then appealed to the Florida Supreme Court, where she was granted a new trial. Commission on Capital Cases, supra.}

In 2011, Cardona was once again convicted and sentenced to death.\footnote{See Ana Maria Cardona, supra note 3 (noting Cardona was resentenced to death on June 10, 2011).} Presently, the Florida Supreme Court has failed to hear oral arguments on Cardona’s direct-appeal.\footnote{See High Profile Cases, supra note 10 (showing the case is pending before the Florida Supreme Court and has not been heard); see also Supreme Court of Florida Briefs & Other Documents in Case No. 11-1446, FLA. SUP. CT., http://www.floridasupremecourt.org/pub_info/summaries/briefs/11/11-1446/index.html (last updated July 31, 2013) [hereinafter Supreme Court of Florida Briefs] (listing all documents that have been filed with the Florida Supreme Court for Cardona’s direct appeal). The docket shows there was an amended motion filed on April 4, 2014, to which no answer or order has been filed. Supreme Court of Florida Briefs, supra.} Ultimately, Cardona’s case will have appeared before the Florida Supreme Court on at least three occasions.\footnote{See Ana Maria Cardona, supra note 3 (listing Cardona’s 1994 and 2002 Florida Supreme Court opinions); Commission on Capital Cases, supra note 11 (listing Cardona’s trial and appeal summary). Cardona appealed her first death sentence on May 4, 1992 and the conviction and sentence were not affirmed until June 2, 1994, over two years later. Commission on Capital Cases, supra note 11.} Cardona has been able
to stay\textsuperscript{15} her execution by using the appeal process despite her “heinous, atrocious [and] cruel” acts.\textsuperscript{16}

Florida Statute section 921.141 states that a disposition should be rendered within two years of filing the appeal.\textsuperscript{17} As seen in Cardona, this does not always occur.\textsuperscript{18} Cardona epitomizes the Florida appeal process, which resembles many other death penalty cases, because she is living via the appeal process hoping to stay her execution based on a minor technicality.\textsuperscript{19}

Currently, Florida has 395 inmates on death row; some were sentenced nearly forty years ago.\textsuperscript{20} Death penalty cases should have high priority over all other cases pending before the highest court of the state because someone’s life is on the line.\textsuperscript{21} Thus, it should not take over fifteen years to execute a person who has been sentenced to death.\textsuperscript{22}

\begin{itemize}
  \item \textsuperscript{15}See Black’s Law Dictionary 1639 (10th ed. 2009) (defining “stay” as a postponement of a proceeding or a judgment).
  \item \textsuperscript{16}See Cardona v. State, 641 So. 2d 361, 363 (Fla. 1994) (Fla. 1994) (affirming Cardona’s conviction and sentence because the death penalty did not constitute cruel and unusual punishment or a violation of her due process rights).
  \item \textsuperscript{17}See Fla. Stat. § 921.141(4) (2014) (“The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within two years after the filing of a notice of appeal.”).
  \item \textsuperscript{18}See supra note 13 (elucidating how it has taken almost three years since the appeal was filed, and no decision has been rendered). Since the case was filed in 2011, there have been ten orders granting motions for extensions of time or motions to toll time pending disposition. Id.
  \item \textsuperscript{19}See Evaluating Fairness and Accuracy in State Death Penalty Systems: The Florida Death Penalty Assessment Report, ABA 209 (Sept. 2006), http://www.americanbar.org/content/dam/aba/migrated/moratorium/assessmentproject/florida/report.authcheckdam.pdf [hereinafter Florida Death Penalty Assessment Report] (listing all the ways a defendant may receive a reversal of a death sentence). The death-sentenced inmate may claim trial errors that were properly preserved at trial or claim a fundamental error. Id. at 210.
  \item \textsuperscript{20}Death Row Roster, Fla. Dep’t of CORR., http://www.dc.state.fl.us/activeinmates/deathrowroster.asp (last visited Oct. 21, 2014) (listing two inmates who were sentenced in 1975 and have not been executed). Charles Foster was twenty-eight years old at the time of the offense and is now sixty-eight years old. Id. Douglas Meeks was twenty-one years old at the time of the offense and is now sixty-one years old. Id. Both men are still waiting to be executed. Id.
  \item \textsuperscript{21}See § 921.141(4) (“Such review by the Supreme Court shall have priority over all other cases . . . .”).
  \item \textsuperscript{22}See id. (stating the judgment and sentence of death is subject to automatic review by the Florida Supreme Court. But see also Time on Death Row, Death Penalty Information Center, http://www.deathpenaltyinfo.org/time-death-row (last updated Feb. 10, 2012) (discussing the average time inmates usually spend on death row). Most inmates typically spend over a decade waiting to be executed, proving that it is not an “automatic” process. Time on Death Row, supra.)
\end{itemize}
This comment will discuss Florida’s ineffective appeal process, as well as the issues created from this long-lasting process. Part II provides the origin of the death penalty in the United States and how it has evolved. Part III analyzes Florida’s jury override law and its consequences. Part IV explains the appeal process of a defendant sentenced to death by looking at the direct appeal and state post-conviction stages, as well as the negative impacts of the long process. Part V proposes an amendment to Florida Statute section 921.141 to prohibit the amount of motions for extension of time that can be filed in order to correct the ineffectiveness of the procedure. Part VI will conclude with a brief summary of why Florida Statute section 921.141 should be amended.

II. THE EARLY DEVELOPMENT OF THE DEATH PENALTY IN AMERICA

The death penalty was one of the many punishments the European settlers brought with them to the New World. The United States experience with capital punishment dates back to 1608 when crimes that were punishable by death varied from colony to colony. Although during these early years of capital punishment very few people opposed the death penalty, these few made a great difference. For example, Quakers always opposed the death penalty and due to their efforts in Pennsylvania, the state is considered the birthplace of the American death

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23 See generally Issues, DEATH PENALTY INFORMATION CENTER, http://www.deathpenaltyinfo.org/node/5623/3 (last updated Feb. 10, 2012) (listing all the issues currently present with the death penalty such as arbitrariness, clemency, costs, etc.).
24 See discussion infra Part II A.
25 See discussion infra Part III A–C.
26 See discussion infra Part IV A–C.
27 See discussion infra Part V.
28 See discussion infra Part VI.
29 See ROBERT M. BOHM, DEATHQUEST: AN INTRODUCTION TO THE THEORY AND PRACTICE OF CAPITAL PUNISHMENT IN THE UNITED STATES 1 (Anderson Publishing Co. 1999) (explaining the death penalty in colonial times).
30 See id. (stating the earliest recorded execution in America was that of Captain George Kendall, a councilor for the Virginia colony, in 1608 for being a spy for Spain). The law of the Puritans of the Massachusetts Bay Colony listed twelve death-eligible crimes, while the Quakers originally did not allow capital punishment but later did so only for treason and murder. Id.
31 See id. at 3 (explaining the beginning of the death penalty abolitionists).
penalty abolitionist effort.\textsuperscript{32} Dr. Benjamin Rush ("Rush") was among the first people in the United States to organize a group of people against the death penalty.\textsuperscript{33} Rush believed executions did not dissuade people from carrying out crimes they contemplated committing, but rather that it increased crime.\textsuperscript{34} He was one of the first Americans to propose confinement in a "House of Reform"\textsuperscript{35} as an alternative to a death sentence.\textsuperscript{36}

During the 1700s, anyone convicted of murder, irrespective of circumstances, was to be sentenced to death.\textsuperscript{37} However, with the efforts of abolitionists, Pennsylvania became the first state to consider degrees of murder based on culpability,\textsuperscript{38} and the death penalty would only be imposed for first-degree murder.\textsuperscript{39} In 1838, states began enacting discretionary death penalty statutes for murder, giving the jury the option to sentence a defendant to life or death.\textsuperscript{40}

\textsuperscript{32} See Quakers in Pennsylvania and New Jersey, US\textsc{history.org}, http://www.ushistory.org/us/4b.asp (last updated June 1, 2014) (noting Quakers were pacifists who would not fight in the wars or pay taxes because they believed in total equality).

\textsuperscript{33} See BOHM, supra note 29 at 3 (noting Dr. Benjamin Rush (1747–1813) was a signor of the Declaration of Independence and was also among the founders of the Philadelphia society for Alleviating the Miseries of Public Prisons, which is now known as Pennsylvania Prison Society).

\textsuperscript{34} See id. (questioning the Biblical support for the death penalty and the belief that it would stop others from committing crimes). The capital crimes were justified with a Biblical quotation. Id. at 1.

\textsuperscript{35} See id. at 3 (stating houses of reform would give criminals the opportunity to become law-abiding citizens through moral education).

\textsuperscript{36} See id. (explaining the impact Rush made in the late eighteenth century in his attempts at abolishing capital punishment). Because of the efforts of Rush and his colleagues, the world’s first penitentiary was made in Philadelphia in 1790, which was devoted primarily to reform. Id.

\textsuperscript{37} See BOHM, supra note 29 at 3 (stating all states employed at the time mandatory death penalty statutes).

\textsuperscript{38} BLACK’S LAW DICTIONARY 461 (10th ed. 2009) (defining "culpability" as the mental state that must be proved for a defendant to be held liable).

\textsuperscript{39} See BOHM, supra note 29, at 3–4 (noting Pennsylvania also became the first state to hide executions from the public by conducting the execution in correctional facilities).

\textsuperscript{40} See id. at 5. (stating after 1846, Michigan, Rhode Island, and Wisconsin became the first states to abolish the death penalty for all crimes; see also JAN GORECKI, CAPITAL PUNISHMENT, 86 (Columbia Univ. Press, 1983) (stating abolition in Michigan, Rhode Island and Wisconsin has never been repealed); Introduction to the Death Penalty, DEATH PENALTY INFORMATION CENTER, http://www.deathpenaltyinfo.org/part-i-history-death-penalty#intro (last updated Feb. 10, 2012) (stating Michigan abolished the death penalty for all crimes except treason while Rhode Island and Wisconsin abolished the death penalty completely).
Although no other states completely followed in abolishing the death penalty, many states limited the number of death-eligible crimes.\textsuperscript{41}

This revolution in the law was considered a great reform in the administration of capital punishment and a victory for the abolitionists because they believed the death penalty did not deter crimes.\textsuperscript{42} In spite of these discretionary death penalty statutes being considered a victory for the abolitionist, it is this same sentencing discretion, which the United States Supreme Court found to be unconstitutional in \textit{Furman v. Georgia} in 1972.\textsuperscript{43} In \textit{Furman}, the Court held the Georgia death penalty statute to be unconstitutional, and implied that all other statutes might be unconstitutional as well.\textsuperscript{44}

\textbf{A. Reform of the Death Penalty in America}

The first half of the Twentieth Century marked the beginning of the “Progressive Period”\textsuperscript{45} of reform in the United States.\textsuperscript{46} From 1907 to 1917, six states\textsuperscript{47} completely banned

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  \item \textsuperscript{41} See generally \textit{BOHM}, supra note 29, at 5 (noting that the death penalty was used only for the more serious crimes such as murder and treason).
  \item \textsuperscript{42} See \textit{id.} (noting that by the end of the nineteenth century at least twenty jurisdictions had changed their death penalty laws form mandatory to discretionary, allowing the jury to decide whether to decide whether to impose a death sentence); see also \textit{Introduction to the Death Penalty, supra} note 40 (enforcing the abolitionists point in attempting to have discretion when sentencing someone to death). \textit{But see Furman v. Georgia}, 408 U.S. 238, 239 (1972) (holding the death penalty violated the Eight and Fourteenth Amendment because the application of the penalty was discretionary). The Court in \textit{Furman} stated inconsistency was one of the problems of the discretionary death sentencing statute. \textit{BOHM, supra} note 29, at 26.
  \item \textsuperscript{43} See \textit{Furman}, 408 U.S. at 239 (holding the death penalty violated the Eight and Fourteenth Amendment because the application of the death penalty was discretionary); see also \textit{BOHM, supra} note 29, at 26 (stating inconsistency was one of the problems cited by the Court in \textit{Furman}); Discussion \textit{infra} Part III A (explaining \textit{Furman} further).
  \item \textsuperscript{44} See LINDA E. CARTER & ELLEN KREITZBERG, \textit{UNDERSTANDING CAPITAL PUNISHMENT LAW} 41 (LexisNexis, 2004) (explaining the influence the \textit{Furman} decision had on all the other states). After \textit{Furman}, forty death penalty statutes were struck down nationwide and over 600 death sentences were invalidated. \textit{CARTER, supra}.
  \item \textsuperscript{45} See \textit{General Article: The Progressive Movement (1900–1918), PBS, http://www.pbs.org/wgbh/amexperience/features/general-article/eleanor-progressive/} (last updated May 28, 2013) (explaining the Progressive Period, also known as the “Age of Reform,” resulting in many amendments which were the byproduct of an immense social and political disorder and changed the expectations of the role government would play).
  \item \textsuperscript{46} See \textit{BOHM, supra} note 29, at 6 (“Death penalty abolitionists benefitted from the critical examination of American society that characterized the era and achieved a series of successes.”); \textit{Introduction to the Death Penalty, supra} note 40 (explaining how more and more states began moving toward abolishing the death penalty completely rather than enforcing it more harshly).
  \item \textsuperscript{47} \textit{BOHM, supra} note 29, at 6 (listing Kansas, Minnesota, Washington, Oregon, South Dakota, and Missouri as the six states that completely outlawed the death penalty).
\end{itemize}
the death penalty and three\textsuperscript{48} limited it to the rarely committed crimes.\textsuperscript{49} However, the reform did not last long because five of the six dates reinstated the death penalty due to the frenzied atmosphere in the United States as a result of entering World War I.\textsuperscript{50}

From the 1920s to the 1940s, there was resurgence in the use of the death penalty as a result of the Great Depression\textsuperscript{51} and Prohibition.\textsuperscript{52} There were more executions in the 1930s than in any other decade in American history with an average of 167 per year.\textsuperscript{53} However, beginning in the 1950s the number of executions dropped drastically.\textsuperscript{54} By 1963, all mandatory capital punishment laws had been abolished, except for a small number of rarely committed crimes.\textsuperscript{55}

\textsuperscript{48}Id. (listing Tennessee, North Dakota, Arizona as the states that limited the death penalty to treason and first-degree murder of a law enforcement official).
\textsuperscript{49}See Introduction to the Death Penalty, supra note 40; see also BOHM, supra note 29, at 5 (stating the attention was shifting to the growing anti-slavery movement).
\textsuperscript{50}See BOHM, supra note 29, at 6 (listing Arizona, Missouri, Tennessee, and Washington as the states that reinstated the death penalty. Many believe the reinstatement was due to the media-inspired panic about the threat of revolution. Id.\textsuperscript{51}The Great Depression, HISTORY, http://www.history.com/topics/great-depression (last visited Nov. 21, 2014) (“The great depression was the deepest and longest-lasting economic downturn in the history of the Western industrialized world.”).
\textsuperscript{52}See BOHM, supra note 29, at 7 (stating the death penalty abolitionist movement suffered some hardships during these times and very few members were able to keep the movement alive); Prohibition, HISTORY, http://www.history.com/topics/prohibition (last visited Nov. 21, 2014) (discussing prohibition was a time where the manufacture, transportation and sale of intoxicating liquors was banned in the United States from 1920 to 1933). The number of executions was higher than any other year because of the prohibition and Great Depression that was occurring at the time in the United States. BOHM, supra note 29, at 7.
\textsuperscript{53}See VICTOR STREIB, DEATH PENALTY IN A NUTSHELL 4 (Thomson West, 3rd ed. 2008) (noting the highest numbers of executions occurred in 1935 with 199 executions and the rate has not been matched since then); Executions by Year, DEATH PENALTY INFORMATION CENTER, http://www.deathpenaltyinfo.org/executions-year (last updated Feb. 10, 2012) (noting in 2012 the total number of executions was forty-three and in 2013 there were only thirty-nine executions).
\textsuperscript{54}See Introduction to the Death Penalty, supra note 40 (explaining there were 1,289 executions in the 1940s, there were 715 in the 1950s, and the number fell even further, to only 191, from 1960 to 1976). A poll showed only forty-two percent of the people were supporting the death penalty. Id.
\textsuperscript{55}See STREIB, supra note 53, at 6 (explaining the major change came from a decrease in public and political support for the death penalty); see also Introduction to the Death Penalty, supra note 40 (stating support for capital punishment fell at “an all-time low”); 1967: Luis Monge, America’s Last Pre-Furman Execution, EXECUTEDTODAY.COM (June 2, 2012), http://www.executedtoday.com/2012/06/02/1967-luis-monge-americas-last-pre-furman-execution/ (stating Colorado’s execution of Louis Monge, a mass murderer, in 1967 was to be the last execution in the United States for a decade).
Today, there are thirty-two states that still have the death penalty enacted while eighteen states have completely abolished the death penalty.\footnote{See States with and without the death penalty, DEATH PENALTY INFO. CENTER, http://www.deathpenaltyinfo.org/states-and-without-death-penalty (last visited Nov. 21, 2014) (noting Michigan abolished its death penalty statute in 1846 and Maryland was the most recent state to do so in 2013). The majority of the states who have abolished the death penalty are in the northern side of the United States. Id.}

III. JURY OVERRIDE

The jury override\footnote{See LaTour Rey Lafferty, Florida’s Capital Sentencing Jury Override: Whom Should We Trust to Make the Ultimate Ethical Judgment?, 23 FLA. ST. U.L. REV. 463 (1995) (stating in the states that allow the jury override, the judge is allowed to overrule the jury’s verdict of death and impose a life sentence or vice versa).} is a unique procedural device in which the judge, and not the jury, holds the ultimate sentencing responsibility.\footnote{See Scott E. Erlich, The Jury Override: A Blend of Politics and Death, 45 AM. U.L. REV. 1403, 1405 (1996) (analyzing the jury override in the states that allow it, with a focus on Alabama and Florida); see also William J. Bowers et al., The Decision Maker Matters: An Empirical Examination of the Way the Role of the Judge and the Jury Influence Death Penalty Decision-Making, 63 WASH & LEE L. REV. 931, 948 (2006) (discussing how the jury override procedure leads jurors to avoid responsibility). In the states that allow jury override, the judge treats the jury’s verdict as a “recommendation” rather than binding. Erlich, supra.} Allowing the judges to treat the jury verdict in a capital case as a recommendation originated in Florida.\footnote{See Michael L. Radelet, Overriding Jury Sentencing Recommendations in Florida Capital Cases: An Update and Possible Half-Requiem, 2011 MICH. ST. L. REV. 793, 804 (2011) (describing the “Tedder Standard” which holds that in order for the judge to sustain a death sentence after the jury recommended life, the facts should be clear and convincing that virtually no reasonable person could differ); see also Coleman v. State, 64 So. 3d 1210, 1225 (Fla. 2011) (holding counsel rendered ineffective assistance because counsel failed to present available mitigating evidence that would have legally precluded an override of the jury’s life recommendation). In 2011, the Florida Supreme Court wrote that “It takes more than a difference of opinion as to the validity and weight of the evidence presented in aggravation and mitigation to justify a jury override . . . the trial court must . . . consider whether the mitigation evidence could serve as a reasonable basis for a life recommendation.” Coleman, 64 So. 3d at 1225.} The statutory language is clear that the jury’s recommendation is not binding.\footnote{See Fla. STAT. § 921.141(2) (2014) (“After hearing all the evidence, the jury shall deliberate and render an advisory sentence to the court.”).} A judge’s override of a jury verdict for the death penalty is legal in only three states out of the thirty-two that have capital punishment: Alabama, Delaware, and Florida.\footnote{See Judge Override, EQUAL JUSTICE INITIATIVE, http://www.eji.org/deathpenalty/override (last updated Sept. 14, 2014); see also Radelet, supra note 59, at 794 (analyzing the jury override in all states that allow it and proposing a complete ban on the use).}

After receiving the jury’s recommendation, the trial judge possesses the authority to weigh individually aggravating and mitigating factors, and then imposes either life imprisonment
or death. See § 921.141(3) (“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.”); see also Erlich, supra note 58, at 1419–20 (stating the jury’s verdict is by majority vote and is not binding on the court).

63 STREIB, supra note 53, at 91 (discussing how aggravating and mitigating circumstances are used to guide the jury as to what makes a case more or less deserving of a death sentence).

64 U.S. CONST. amend. VI (“the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed . . . .”).

65 Ring v. Arizona, 536 U.S. 584, 588 (2002) (holding defendants are entitled to have a jury determine any fact on which could possibly increase the defendant’s maximum punishment). The defendant sought review of the Supreme Court claiming his death sentence was not consistent with the Sixth Amendment. Id.

66 See id. at 602 (holding a defendant may not be exposed to a penalty exceeding the maximum he would receive if punished according to the facts reflected in the jury verdict alone). But see Sarah A. Mourer, Forgetting Furman: Arbitrary Death Penalty Sentencing Schemes Across The Nation, 22 WM. & MARY BILL OF RTS. J. 1183, 1183–84 (2014) (stating the judge may override the jury verdict even when the judge is unaware of the jury’s factual findings).

67 See Ring v. Arizona, 536 U.S. 584, 588 (2002) (holding it would be unconstitutional for a judge to decide the aggravating factors).

68 Duncan v. Louisiana, 391 U.S. 145, 156 (1968) (holding that because trial by jury in criminal cases is fundamental to the American scheme of justice, the Fourteenth Amendment guarantees a right of jury trial in all criminal cases which—were they to be tried in a federal court—would come within the Sixth Amendment’s guarantee).

69 Michael Mello, Article, The Jurisdiction To Do Justice: Florida’s Jury Override And The State Constitution, 18 FLA. ST. U.L. REV. 924, 927 (1991); see Erlich, supra note 58, at 1434 (noting the process of jury override makes jurors feel meaningless).
sentenced to death. This inflexible technique led to extensive jury nullification. Because of the rigid Common Law, many jurors acquitted guilty capital defendants in order to avoid the mandatory death sentence. This constant acquittal motivated states to abolish the mandatory death statutes and enact discretionary statutes instead. Meaning jurors were wholeheartedly free to act on their own “judgment, conscience, and absolute discretion.” Today around the United States, the death penalty has a narrow scope and is limited to few crimes, such as murder, espionage and treason.

In *Furman v. Georgia*, the United States Supreme Court held the mandatory death penalty statutes, such as Florida’s, were unconstitutional. Florida’s post-*Furman* statute attempted to set guidelines for the jury, which it could follow in determining what penalty should

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71 See Erlich, *supra* note 58, at 1408 (noting the juries had no choice, but to impose the death penalty even when there was insufficient evidence against the defendant); BLACK’S LAW DICTIONARY 989 (10th ed. 2009) (defining “jury nullification” as a jury’s deliberate rejection of the evidence or refusal to apply the law because the result dictated by law is contrary to the jury’s sense of justice, morality, or fairness.)

72 See McGautha, 402 U.S. at 199 (noting jurors would take the law into their own hands and refused to convict for the capital offense in cases which were “willful, deliberate, and premeditated” but which nevertheless were clearly inappropriate for the death penalty).

73 See id. at 196 (holding the jury’s complete discretion in imposing a life or death sentence did not violate the defendant’s rights); see Erlich, *supra* note 58, at 1408 (“Conferring complete, unguided discretion in the hands of capital juries to impose the appropriate sentence.”).

74 See McGautha, 402 U.S. at 199–202 (1971) (questioning whether there was a constitutional violation with the jury having absolute discretion in sentencing and the court held there was no violation). But see Erlich, *supra* note 58, at 1408 (discussing how the jury had no standards to guide the jury in their decision-making).

75 See STREIB, supra note 53, at 4 (stating many states reduced the crimes that were punishable by death); see also 41 Federal Capital Offenses, PROCON.ORG, http://deathpenalty.procon.org/view.resource.php?resourceID=004927 (last updated Apr. 21, 2014) (listing forty-one capital offenses that are punishable by death, with only two not involving a murder or death of another person, treason and espionage).

76 See FLA. STAT. § 921.141 (1971), invalidated by *Furman*, 408 U.S. 238 (1972); see also Michael Mello and Ruthann Robson, *Judge Over Jury: Florida’s Practice of Imposing Death Over Life in Capital Cases*, 13 FLA. ST. U.L. REV. 31, 36 (1985) (discussing whether Florida should abolish the jury override statute); see also LINDA E. CARTER ET. AL., UNDERSTANDING CAPITAL PUNISHMENT LAW 41 (LexisNexis, 2004) (stating the statutes in *Furman* were unconstitutional because the jury had no choice but to impose the death sentence if the defendant was convicted of a capital felony).
be imposed upon a conviction of a capital felony.\footnote{See Fla. Stat. § 921.141(1) (2014) (providing that the court shall, unless waived, conduct a separate sentencing proceeding before the jury); see also Robson, supra note 76, at 36 (analyzing the amendment to the post-Furman statute).} This statute sets out aggravating and mitigating circumstances to help the jury in its deliberations.\footnote{See § 921.141(2), (5)–(6) (stating the jury must consider whether sufficient aggravating and mitigating circumstances exist); see also Robson, supra note 76, at 36 (analyzing the current statute and its language).} After taking into account all the circumstances, the jury renders an “advisory sentence,” which the judge may choose whether to follow by independently weighing the aggravating and mitigating circumstances.\footnote{See § 921.141(2)–(3) (stating the court must weigh the aggravating and mitigating circumstances, regardless of the recommendation made by the jury); supra text accompanying note 63; see also Robson, supra note 76, at 36 (stating if the judge decides to impose a death sentence, the court must set forth in writing its findings as to the circumstances).} Because the jury’s verdict is not binding on the court, the judge has the discretion and responsibility that was once held by juries.\footnote{See Robson, supra note 76, at 36 (arguing the jury had no guidelines or limits on when to recommend mercy); see also Furman v. Georgia, 408 U.S. 238, 247 (1972).}

**B. Questioning of the Jury’s Verdict**

A defendant sentenced to death has three opportunities to convince a judge to override the jury’s verdict through\footnote{See Death Penalty Appeals Process, CAPITAL PUNISHMENT IN CONTEXT, http://www.capitalpunishmentincontext.org/resources/dpappealsprocess (last updated July 5, 2012) (giving an explanation of the different appeals process for a death-sentenced inmate).} a direct appeal to the Florida Supreme Court,\footnote{See discussion infra Part IV A.} state post-conviction appeals,\footnote{See discussion infra Part IV B.} and executive clemency.\footnote{See discussion infra Part IV C.} Review of the jury’s decision of sentencing the defendant to death questions our trust in the jury and does the opposite of what the Constitution entrusted in the jury.\footnote{See U.S. Const. amend. IV (“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed.”).} The jury’s verdict should not be questioned in three different circumstances after a death sentence has already been issued.\footnote{See U.S. Const. amend. VI; see also Death Penalty Appeals Process, supra note 81 (explaining the issues that may be discussed during each stage of the appeal). The jury’s verdict is questioned during the direct appeal, state post-conviction, and during the executive clemency process. Death Penalty Appeals Process, supra note 81.} Even if the defendant has a jury that is not impartial...
During the first trial, there will be an opportunity to fix this during the direct appeal. This distrust of the jury’s role creates unpredictability in capital sentencing. In Mann v. Dugger, the Eleventh Circuit Court of Appeals reasoned that concerns are triggered when a Florida jury is deceived into believing its role is unimportant. There are some factors that judges have used to justify overriding a death to life sentence in Florida, with the most commonly used factor being mental illness or retardation.

C. Public Policy

As a matter of public policy, the jury override should not be allowed because, as set out in the United States Constitution, a defendant is entitled to have an impartial jury decide whether he should be sentenced to life or death. The jury override is also against public policy because

[The death penalty is the community’s judgment that no lesser sanction will provide an adequate response to the defendant’s outrageous affront to humanity. A jury verdict of death, representing a cross section of the community, reflects the considered view of the community on the ultimate question of life or death; it is a reflection of the community’s conscience.

By overriding the jury’s decision, the judge is essentially overriding the community’s beliefs. It is arguable whether the judge’s experience and expertise will serve as an adequate substitute for the ability of a jury to reflect community sentiment when deciding whether to impose the

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87 Death Penalty Appeals Process, supra note 81 (stating that during the direct appeal process, issues that occurred during trial will be considered).
88 See U.S. CONST. amend. VI (giving the defendant a right to trial by jury); U.S. CONST. amend. VIII (stating cruel and unusual punishments shall not be inflicted).
89 See Mann v. Dugger, 844 F.2d 1446, 1454 (11th Cir. 1988) (stating defendant was convicted of first-degree murder and the jury recommended the death penalty). The jury was told their decision was automatically reviewable and this may have diminished its sense of responsibility therefore not meeting the standard of reliability required by the Eighth Amendment. Id. at 1449.
90 See Radelet, supra note 59, at 821 (listing the factors judges consider as mental illness, questions about premeditation or intent, proportionality, abusive childhood, mitigation outweighed aggravation, and defendant’s age); CARTER, supra note 44, at 265 (stating it is unconstitutional and a violation of the Eighth Amendment to execute a person who is “insane” at the time of execution).
91 See U.S. CONST. amend. VI; see also Lafferty, supra note 57, at 480 (stating the Florida legislature should repeal the jury override).
92 Lafferty, supra note 57, at 480.
93 See Strauder v. W. Va., 100 U.S. 303 (1879) (stating the jury should be drawn from a group composed of the peers or equals of the defendant).
death penalty on a fellow peer.\textsuperscript{94}

\section*{IV. DEATH PENALTY APPEALS PROCESS}

Once sentenced to death, the defendant is sent to death row in a maximum-security prison to await the outcome of the appeals process.\textsuperscript{95} As of October 1, 2014 there are 3,035 death row inmates in the United States in both state and federal prisons.\textsuperscript{96} Most of these death row inmates take full advantage of all post-trial rights.\textsuperscript{97} Thus, a death row prisoner may end up being in a maximum security prison, sitting in solitary, for ten to twenty years, if not more, “slogging through the maze of challenges to his or her sentence.”\textsuperscript{98}

\subsection*{A. The Direct Appeal}

The purpose of the direct appeal process is to correct any errors in the trial court’s findings of fact and law and to determine whether there was any abuse of discretion at the trial court level.\textsuperscript{99} This process is the defendant’s “primary avenue for review.”\textsuperscript{100} The direct appeal of a death-sentence to the Florida Supreme Court is automatic, regardless of whether the

\textsuperscript{94} See Lafferty, supra note 57, at 480–81 (noting Justice Stevens argued that the Constitution prohibits judges from determining the guilt or innocence of an accused absent the defendant's consent, and twelve individual jurors are in a better position to represent the judgment of the community as to whether a sentence of death or life is appropriate in a particular case). \textit{But see} State v. Dixon, 283 So. 2d 1, 8 (Fla. 1973) (holding if the judicial discretion possible and necessary under Florida Statute section 921.141 can be shown to be reasonable and controlled, rather than capricious and discriminatory, the test of \textit{Furman} has been met). The Florida Supreme Court has recognized that a trial judge with experience in the facts of criminality possesses the requisite knowledge to balance the facts of the case against the standard criminal activity. \textit{Dixon}, 283 So. 2d at 7.


\textsuperscript{96} See Facts About the Death Penalty 2 (Oct. 2, 2014), http://www.deathpenaltyinfo.org/documents/FactSheet.pdf (stating current facts on the death penalty throughout the United States, including but not limited to, the number of executions a year per state, death row inmates per state, and death row exonerations per state).

\textsuperscript{97} See STREIB, supra note 53, at 181 (stating all felony convictions can result in elaborate and lengthy challenges but typically only the death row inmates take full advantage of the process).

\textsuperscript{98} See \textit{id.} (stating about two-thirds of the death row inmates who appeal are successful in either reversing their death sentence and getting life imprisonment or having an entirely new trial and sentencing hearing).

\textsuperscript{99} See Florida Death Penalty Assessment Report, supra note 19, at xxi (stating the purpose of appellate review is to ensure that death sentences are not imposed arbitrarily, or based on improper bias); see also FLA. CONST. art. V, § 3 (“The supreme court [s]hall hear appeals from final judgments of trial courts imposing the death penalty . . . .”).

\textsuperscript{100} See Barefoot v. Estelle, 463 U.S. 880, 887 (1983) (“Direct appeal is the primary avenue for review of a conviction or sentence, and death penalty cases are no exception.”).
defendant decides to waive his right to appeal and wants to rush execution; the review does not depend upon acquiescence of the death-sentenced defendant.  

The party who would like to begin the direct appeal process must file a notice of appeal with the lower court within thirty days of the order imposing the death sentence. During this time, both parties will have an opportunity to file appellate briefs and have their oral arguments heard. During the direct appeal, the Florida Supreme Court is required to review the sufficiency of the evidence and the proportionality of the appellant’s death sentence.

Under the proportionality review, the Court must consider the totality of the circumstances in the case at hand compared to other cases in which the death penalty was also imposed. The Court may also review trial and fundamental errors that were properly preserved at trial. The Florida Supreme Court must render a judgment within two years after the filing of the notice of appeal. If the Court affirms the conviction and sentence, the

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101 See James Robertson v. State of Florida, 143 So. 3d 907 (Fla. 2014) (arguing the only way for the court to ensure that a death sentence is not “arbitrarily or capriciously” imposed is by providing meaningful appellate review of each death sentence). But see Death Sentence Reviews are Automatic, even if it’s Against the Client’s Wishes, The Florida Bar News, THE FLORIDA BAR (AUG. 15, 2014), http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/c04196e7daa71a685257d310045d3be?OpenDocument [hereinafter Death Sentence Reviews are Automatic] (“Dissenters argued nothing outweighs an attorney’s obligation to abide by the client’s wishes, even if the client wishes to waive appeals and hurry execution.”).

102 See FLA. R. APP. P. 9.140(b)(3) (“The defendant shall file the notice . . . with the . . . lower tribunal at any time between rendition of a final judgment and thirty days following rendition of a written order imposing sentence.”); see also Florida Death Penalty Assessment Report, supra note 19, at 208 (explaining the direct appeal process in Florida).

103 See FLA. R. APP. P. 9.142(a)(4) (“Oral argument will be scheduled after the filing of the defendant's reply brief.”).

104 FLA. R. APP. P. 9.142(a)(5) (“On direct appeal in death penalty cases, whether or not insufficiency of the evidence or proportionality is an issue presented for review, the court shall review these issues and, if necessary, remand for the appropriate relief.”).

105 See Anderson v. State, 863 So. 2d 169, 187–88 (Fla. 2003) (“In conducting this review, this Court considers the totality of the circumstances in a case as compared to other cases in which the death penalty has been imposed, thereby providing for uniformity in the application of the death penalty.”).

106 See The Florida Death Penalty Assessment Report, supra note 19, at 209–10 (noting trial errors may be reviewed when they are properly preserved at trial with an objection and presented in the appellate brief). Fundamental error is one where the verdict of guilty could not have been obtained without the error. Id.

107 See FLA. STAT. §921.141(4) (2014) (“The judgment of conviction and sentence of death shall be subject to automatic review by the Supreme Court of Florida and disposition rendered within two years after the filing of a notice of appeal.”).
appellant has ninety days to file a petition for a writ\textsuperscript{108} of certiorari\textsuperscript{109} with the United States Supreme Court.\textsuperscript{110}

B. State Post-Conviction

Many capital defendants receive inadequate counsel at trial and on direct appeal.\textsuperscript{111} Therefore, the state-post conviction stage is very important in the fair administration of justice because often times it is not possible to discover the inadequacy of counsel or crucial evidence until the direct appeal process is over.\textsuperscript{112} The multiple rounds of proceedings that a death row inmate goes through does not mean any court ever rules on the merits of the case.\textsuperscript{113} However, why should the defendant be entitled to a “full and fair judicial review” a second time?\textsuperscript{114}

Any person sentenced to death whose conviction has been affirmed, may file a motion seeking post-conviction relief.\textsuperscript{115} Once the appeal has been filed, the Chief Judge of the Florida

\textsuperscript{108} BLACK’S LAW DICTIONARY 1845 (10th ed. 2009) (defining “writ” as a written order commanding the addressee to do or refrain from doing some specific act).

\textsuperscript{109} Id. at 275 (defining “certiorari” as a writ issued by an appellate court directing a lower court to deliver the record in the case for review).

\textsuperscript{110} See 28 U.S.C. § 1257 (“Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari.”); SUP. CT. R. 13 (“[A] petition for a writ of certiorari to review a judgment in any case . . . is timely when it is filed . . . within ninety days after entry of the judgment.”).

\textsuperscript{111} See STREIB, supra note 53, at 229 (stating many death penalty cases have inexperienced or incompetent attorneys assigned with minimal fees and no support); CARTER, supra note 44, at 216 (stating there is a two prong test to evaluate the performance of counsel). First a defendant must show that his lawyer was deficient in his performance. CARTER, supra note 44, at 216. Second, a defendant must show that he was prejudiced because of the lawyer’s failings. Id. There are “many reported cases of defense attorneys being asleep or drunk during key parts of the trials and sentencing hearings.” STREIB, supra note 53, at 229. A solution to this would be setting minimum standards for appointing counsel in death cases. Id.

\textsuperscript{112} See STREIB, supra note 53, at 247 (stating attorneys attempt to delay their clients case in order to keep them alive longer which leads to missed deadlines and it results in a loss of consideration of the issues that would have been raised by the defendant).

\textsuperscript{113} See The Florida Death Penalty Assessment Report, supra note 19, at 215 (stating the legislature has done this in order to avoid frivolous claims in federal court).

\textsuperscript{114} See discussion infra Part V; The Florida Death Penalty Assessment Report, supra note 19, at xiv (stating that in order to avoid convictions of innocent persons, the rate of eyewitness misidentifications and of false confessions must be reduced).

\textsuperscript{115} See FLA. R. CRIM. P. 3.851(a), (d)(1) (“This rule shall apply to all motions and petitions for any type of post-conviction or collateral relief brought by a prisoner in state custody who has been sentenced to death and whose conviction and death sentence have been affirmed on direct appeal.”). The appeal must be filed within one year of the judgment and sentence becoming final. FLA. R. CRIM. P. 3.851(d)(1).
Supreme Court must then assign the case to a post-conviction judge within thirty days.\textsuperscript{116} The assigned judge has to hold a status hearing and a status conference within ninety days, and at least ninety days thereafter, until the evidentiary hearing is held.\textsuperscript{117} Once a post-conviction counsel has been appointed, the inmate’s trial counsel must provide the new counsel with all information pertaining to the case within forty-five days.\textsuperscript{118}

The lower court may grant an extension of time for the filing of the post-conviction motion upon a showing of “good cause” as to why the attorney could not file the motion within the one-year time limit.\textsuperscript{119} Motions that were timely filed may also be amended or supplemented outside of the one-year time limit by filing a motion to amend no later than thirty days before the evidentiary hearing.\textsuperscript{120} The movant may appeal to the Florida Supreme Court within thirty days from the date the court rendered its order and if the Court affirms, the movant may file a writ of certiorari with the United States Supreme Court.\textsuperscript{121} Once the United States Supreme Court declines review or affirms the order, the state post-conviction appeal is complete, which may take an indefinite amount of time due to the lenient time limits and motions that may be filed.\textsuperscript{122}

\textsuperscript{116} See FLA. R. CRIM. P. 3.851(c)(1) (“Within thirty days of the issuance of mandate affirming a judgment and sentence of death on direct appeal, the chief judge shall assign the case to a judge qualified under the Rules of Judicial Administration to conduct capital proceedings.”).
\textsuperscript{117} See FLA. R. CRIM. P. 3.851(c)(2) (“The assigned judge shall conduct a status conference not later than ninety days after the judicial assignment, and shall hold status conferences at least every ninety days thereafter until the evidentiary hearing has been completed or the motion has been ruled on without a hearing.”).
\textsuperscript{118} See FLA. R. CRIM. P. 3.851(c)(4) (“Within forty-five days of appointment of post-conviction counsel, the defendant's trial counsel shall provide to post-conviction counsel all information pertaining to the defendant's capital case which was obtained during the representation of the defendant.”).
\textsuperscript{119} See FLA. R. CRIM. P. 3.851(d)(5) (“An extension of time may be granted by the Supreme Court of Florida for the filing of post-conviction pleadings if the prisoner's counsel makes a showing of good cause for counsel's inability to file the post-conviction pleadings within the one-year period established by this rule.”).
\textsuperscript{120} See FLA. R. CRIM. P. 3.851(f)(4)–(5) (“A motion filed under this rule may be amended up to thirty days prior to the evidentiary hearing upon motion and good cause shown.”). The court has thirty days from the receipt of the transcripts to render its ruling. \textit{Id.}
\textsuperscript{121} See 28 U.S.C. § 1257 (2014) (“Final judgments . . . rendered by the highest court of a State . . . may be reviewed by the Supreme Court by writ of certiorari . . . .”).
\textsuperscript{122} See \textit{The Florida Death Penalty Assessment Report, supra} note 19, at 221–22.
C. Executive Clemency

The final attempt for a death row inmate to receive a pardon from his or her criminal offense is through executive clemency. In order to begin the clemency proceedings, a death-sentenced inmate must file an application for executive clemency within one year after the Florida Supreme Court issues a mandate on direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later. Under the state’s clemency statute, the Governor is empowered to pardon an individual’s criminal offense or commute an individual’s death sentence. The exercise of the clemency power is governed by fundamental principles of justice, fairness, and mercy, and not by political considerations.

Most states do not have standards on granting or denying clemency. A characteristic of clemency is that a governor may grant clemency for any reason it chooses. This also leads

123 See id. at 244 (stating the governor has the power to grant reprieves of not more than sixty days and to deny clemency applications at any time for any reason).
124 See Fla. Stat. § 940.03 (2014) ("An application for executive clemency for a person who is sentenced to death must be filed within [one] year after the date the Supreme Court issues a mandate on a direct appeal or the United States Supreme Court denies a petition for certiorari, whichever is later."); The Florida Death Penalty Assessment Report, supra note 19, at 239.
125 See CARTER, supra note 43, at 253 (stating a pardon absolves the defendant of the conviction and sentence); James R. Acker & Charles S. Lanier, May God—Or the Governor—Have Mercy: Executive Clemency and Executions in Modern Death-Penalty Systems, 36 CRIM. L. BULL. 200, 204 (2000) ("A pardon effectively nullifies both a conviction and a sentence. The recipient of a pardon normally is not exonerated of wrong doing; the more common interpretation is that guilt is not erased but the offender is simply forgiven.");
126 See CARTER, supra note 43, at 253 (stating a commutation is a reduction in the sentence); see also The Florida Death Penalty Assessment Report, supra note 19, at 39 (stating the governor may grant a commutation of a death sentence to life imprisonment with the approval of two other members of the Board of Executive Clemency); Michael L. Radelet & Barbara A. Zsembik, Executive Clemency in Post Furman Capital Cases, 27 U. RICH. L. REV. 289, 289 (1993) (describing a commutation as reducing the severity of punishment). A commutation is the most common form of clemency in death penalty cases. CARTER, supra note 43, at 253–54.
127 See Fla. Stat. § 940.01(1) (2014) ("the Governor may . . . with the approval of two members of the Cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.").
128 See The Florida Death Penalty Assessment Report, supra note 19, at 236 (stating the process was intended evaluate the fairness and judiciousness of the penalty in the context of the circumstances of the crime and the individual and whether a persons should be sentenced to death).
129 See CARTER, supra note 43, at 257 (stating it is rare for a state to have such standards).
130 See Id. (stating the governor does not need any reason to grant or deny the clemency and there does not have to be consistency from one case to the next).
to great criticism because of the political nature of clemency.\textsuperscript{131}

V. AMENDMENT TO FLORIDA STATUTE SECTION 921.141

Death penalty laws have been around ever since the Eighteenth Century B.C.\textsuperscript{132} As seen by the current death penalty statutes and criminal procedural statutes in Florida, an appeal can basically last as long as the defendant would like.\textsuperscript{133} Although the statutes do set out time limits on when things need to be done, there are no limits on the times a party can file a motion for extension of time and all the party has to do is show “good cause.”\textsuperscript{134} However, what exactly does “good cause” mean and what will be sufficient?\textsuperscript{135} It is a completely discretionary term that depends on the totality of the circumstances.\textsuperscript{136} Thus, opening the door for the appeal process to drag on for an extended period of time.\textsuperscript{137} This may also be among the reasons why death-sentenced inmates often have inadequate counsel representing them.\textsuperscript{138} Through these multiple judicial proceedings, the death-sentenced inmate is ultimately getting at least two bites at the apple because they have the opportunity of having their case heard on multiple occasions.\textsuperscript{139}

The community is forgetting the purpose and rationale behind the death penalty, which is to punish those who have committed heinous, atrocious and cruel acts.\textsuperscript{140} Thus, it is becoming

\textsuperscript{131} See id. at 263 (stating the governor may fear not being reelected, or of being perceived as soft on crime if he or she commutes death sentences). Only governors who have granted large-scale commutations were those who were leaving office. \textit{Id.}
\textsuperscript{132} See \textit{Introduction to the Death Penalty}, supra note 19, at (stating the rules do not indicate a filing deadline for clemency applications).
\textsuperscript{133} See FLA. R. CRIM. P. 3.851; FLA. STAT. § 921.141(4) (2014).
\textsuperscript{134} See FLA. R. CRIM. P. 3.851 (d)(5); discussion supra Part IV A-B.
\textsuperscript{135} See \textit{BLACK’S LAW DICTIONARY} 266 (10th ed. 2009) (defining “good cause” a legally sufficient reason).
\textsuperscript{136} See \textit{id.}
\textsuperscript{137} See \textit{STREIB}, supra note 53, at 183 (stating the death row inmate and his or her lawyers can be expected to squeeze every last drop out of the appeals process).
\textsuperscript{138} See supra text accompanying note 112.
\textsuperscript{139} See discussion supra Part IV A-C.
\textsuperscript{140} See \textit{STREIB}, supra note 53, at 10 (stating the most significant and pervasive justification for the American death penalty is retribution); \textit{see also} \textit{BOHM}, supra note 29 at 169 (stating retributive motives are to some extent a product of religious teachings). “The horrible murders for which death can be imposed are so shocking as to inflame strong passions to strike back, to make the murderer suffer as the victims suffered.” \textit{STREIB, supra} note 53, at 10. Justice Potter Stewart held retribution was psychologically necessary in order to maintain social stability. \textit{BOHM, supra} note 29 at 170. On the other hand, Justice Marshall associated retribution with vengeance. \textit{Id.}
moot to have the death penalty if essentially these inmates are receiving a life sentence instead.\textsuperscript{141} The purpose of this comment is not to say death-row inmates do not deserve an appeal process, to the contrary, death-row inmates should have an effective appeal process that does not require them to be in a maximum-security prison for decades, unaware of what the outcome will be.\textsuperscript{142}

Florida Statute section 921.141 should be amended to include a subsection limiting the amount of motions for extensions of time that can be filed, regardless of good cause because a person’s life is at stake and it should not take ten to twenty years to execute them or to then decide they will be released.\textsuperscript{143} The statute already states the decision must be rendered within two years after filing the notice of appeal, and it must only add what exigent circumstances would be sufficient to grant a motion for extension of time.\textsuperscript{144} The statute should set out expressed circumstances and limitations.\textsuperscript{145} This will make the appeal process more effective and efficient by reducing the amount of time the death-sentenced inmate spend awaiting execution, which also leads to a decrease in the resources and money that will be needed for death row inmates as well.\textsuperscript{146} This process should not take an indefinite amount of time to complete.\textsuperscript{147}

\textsuperscript{141} See Death Row Roster, supra note 20 (showing the time inmates have spent on death row).
\textsuperscript{142} See STREIB, supra note 53, at 181 (noting the death row inmate may spend ten, fifteen, or twenty years going through the appeals process).
\textsuperscript{143} See id.; supra text accompanying note 99.
\textsuperscript{144} FLA. STAT. § 921.141(4) (2014).
\textsuperscript{145} See id.
\textsuperscript{146} See BOHM, supra note 29 at 109 (stating the average cost per execution for the entire process in the United States ranges from two million to three million dollars); see also Florida Death Penalty Assessment Report, supra note 19, at xii (stating the cost of a capital case resulting in a death sentence far exceeds the cost of a case resulting in a life sentence). For example, the state of Florida spent ten million dollars to execute serial murderer Ted Bundy. BOHM, supra note 29 at 109.
\textsuperscript{147} The Florida Death Penalty Assessment Report, supra note 19, at 221–22; discussion supra Part IV A-C.
V. CONCLUSION

The goal is to make the death penalty and the appeals process more effective in order for everyone, the community and the defendant, to benefit by amending Florida Statute section 921.141.148 The death penalty appeals process in Florida, as it is currently imposed, is ineffective.149 Cardona is the perfect example of how a person sentenced to death can live through the appeals process hoping for a miracle after having committed the brutal murder of her three-year-old son.150 If the statute is amended, the appeals process will be more operative and it will be doing what it is supposed to do, finding all errors that may have been committed at the trial level without having to take ten to twenty years.151

Florida, nor any other state, needs someone like Cardona, to be sitting in a jail cell while others have died because of the defendant’s cruel acts.152 It is not unfair for a person sentenced to death to have set time limits on when they will need to file things and get things done for their appeals process. Instead, it would be unfair for the community to have to pay for the long-lasting appeal process.153

The community will benefit from the amendment because families of victims, taxpayers, and the general public, will be confident in the successful carrying out of the laws.154 The defendant sentenced to death will also benefit from the amendment because he or she can be sure that if a mistake was made it will timely reveal itself during the appeals process.155 The defendant also benefits because they will not have to be sitting in solitary confinement for over

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148 See discussion supra Part V.
149 See discussion supra Part IV A-B.
150 See discussion supra Part I.
151 See discussion supra Part IV.
152 See discussion supra Part I.
153 See discussion supra Part IV.
154 See discussion supra Part IV.
155 See id.
twenty years uncertain of what will happen.\textsuperscript{156} This cannot drag on for any longer; the amendment needs to be made in order to fix the problem that has been occurring for so long.\textsuperscript{157}

\textsuperscript{156} See id.
\textsuperscript{157} See id.