

STORAGE NAME: h4247.cp

DATE: April 2, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 4247

RELATING TO: Punishment of Capital Felons

SPONSOR(S): Rep. Crady

COMPANION BILL(S): Compare SB 908, SB 1072

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) CRIME AND PUNISHMENT
 - (2)
 - (3)
 - (4)
 - (5)
-

I. SUMMARY:

The bill prohibits the Florida Supreme Court from commuting a sentence to life when a codefendant accepts a plea offer from the state in exchange for trial testimony and the plea offer allows the defendant to avoid the death penalty.

The bill prohibits proportionality review of a death sentence which now allows the Florida Supreme Court to reduce a death sentence because defendants in similar cases did not receive the death penalty.

The bill adds four new aggravating factors:

1. During the course of committing the capital felony, the defendant inflicted multiple physical injuries upon the victim.
2. The defendant mutilated, dismembered, or sexually abused the victim's body, during or after commission of the capital felony.
3. The victim had an injunction for protection in effect against the defendant when the capital felony was committed.
4. The victim was aware of the impending homicide and asked that his or her life be spared or otherwise requested that the homicide not occur.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

In Furman v. Georgia, 408 U.S. 238 (1972), the United States Supreme Court held that the manner in which judges and juries decided whether to impose the death penalty was without standards, and the arbitrary manner in which the death penalty was decided, violated the prohibition against cruel and unusual punishment in the federal constitution. The Florida Supreme Court recognized that the Florida death penalty statute, like the death penalty statutes in all the states, had the same constitutional defects as the Georgia law that was held unconstitutional by the United States Supreme Court in Furman. As a result, the Florida Supreme Court commuted all those sentenced on Death Row to life. Anderson v. State, 267 So. 2d 8 (Fla. 1972). After the Furman and Anderson decisions, Florida rectified its death-penalty statute, creating section 921.141, to ensure that certain standards or guidelines were met. The United States Supreme Court subsequently upheld the new death penalty statutes. Proffitt v. Florida, 428 U.S. 242 (1976); Gregg v. Georgia, 428 U.S. 153 (1976).

Advisory Opinion by Jury

Section 921.141, F.S., requires that a court conduct a separate sentencing proceeding to determine whether a defendant should be sentenced to death or life imprisonment for committing a capital murder. A jury must consider whether aggravating factors outweigh mitigating factors, and based on those considerations a jury must render an "advisory sentence to the court." The weighing of factors does not mean that the jury should merely decide whether the aggravating factors outnumber the mitigating factors. After the advisory sentence is rendered by the jury the court must weigh all the factors and impose a sentence.

Aggravating and Mitigating Factors

Section 921.141, F.S. restricts aggravating factors to those listed in the statute which include: the murder was committed for pecuniary gain; the victim was less than 12 years old; the capital felony was especially heinous, atrocious, or cruel; and, the defendant knowingly created a great risk of death to many persons. The mitigating factors are not restricted to those listed in the statute. The statutory mitigating factors include: a lack of history of criminal activity; the youthful age of the defendant; the murder was committed while the defendant was under the influence of extreme mental or emotional disturbance; the defendant was an accomplice in the murder and his or her participation was relatively minor.

Proportionality Review

Proportionality review is a court created standard that the Florida Supreme Court uses to consider the totality of the circumstances in a capital case and to compare the case with other capital cases. Proportionality review allows the Florida Supreme Court to reduce a death sentence because defendants in similar cases did not receive the death penalty. This type of review not only entails a comparison between unrelated capital cases, but also a comparison between codefendants charged with the same act. Disparate treatment of a codefendant renders punishment disproportional if the codefendants are equally culpable. Downs v. State, 572 So.2d 895 (Fla.1975).

B. EFFECT OF PROPOSED CHANGES:

The bill prohibits the Florida Supreme Court from commuting a sentence to life when a codefendant accepts a plea offer from the state in exchange for trial testimony and the plea offer allows the defendant to avoid the death penalty.

The bill prohibits proportionality review of a death sentence.

The bill adds four new aggravating factors:

1. During the course of committing the capital felony, the defendant inflicted multiple physical injuries upon the victim.
2. The defendant mutilated, dismembered, or sexually abused the victim's body, during or after commission of the capital felony.
3. The victim had an injunction for protection in effect against the defendant when the capital felony was committed.
4. The victim was aware of the impending homicide and asked that his or her life be spared or otherwise requested that the homicide not occur.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

N/A

- b. Does the bill require or authorize an increase in any fees?

N/A

- c. Does the bill reduce total taxes, both rates and revenues?

N/A

- d. Does the bill reduce total fees, both rates and revenues?

N/A

- e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 941.141, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1. The bill creates four new aggravating factors for the death penalty phase of a trial for a capital offense, and prohibits proportionality review.

Section 2. This section provides that the bill shall take effect upon becoming law, and shall apply to offenses committed on or after the effective date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The Criminal Justice Estimating Conference has not met to discuss the impact of this bill, however, it is anticipated that the bill will have insignificant fiscal impact.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

Article VII, Section 18 of the Florida Constitution does not apply because the bill is a criminal law that is exempt.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not affect any revenue raising authority.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce state tax shared with counties and municipalities.

V. COMMENTS:

The United States Supreme Court has held that proportionality review is not a requirement of the federal constitution. Pulley v. Harris, 104 S.Ct. 871 (1984). However, the Florida Supreme Court has interpreted proportionality review to be grounded in Florida's Constitution:

The requirement that death be administered proportionately has a variety of sources in Florida law, including the Florida Constitution's express prohibition against unusual punishments. Art. I, Sec. 17, Fla. Const. It clearly is "unusual" to impose death based on facts similar to those in cases in which death previously was deemed improper. *Id.* Moreover, proportionality review in death cases rests at least in part on the recognition that death is a uniquely irrevocable penalty, requiring a more intensive level of judicial scrutiny or process than would lesser penalties. Art. I, Sec. 9, Fla. Const.

Proportionality review also arises in part by necessary implication from the mandatory, exclusive jurisdiction this Court has over death appeals. Art. V, Sec. 3(b)(1), Fla. Const. The obvious purpose of this special grant of jurisdiction is to ensure the uniformity of death-penalty law by preventing the disagreement over controlling points of law that may arise when the district courts of appeal are the only appellate courts with mandatory appellate jurisdiction. See id. Thus, proportionality review is a unique and highly serious function of this Court, the purpose of which is to foster uniformity in death-penalty law.

Tillman v. State, 591 So.2d 167 (Fla. 1991)

While it may seem unlikely that the state constitutional provision against unusual punishment compels a proportionality review, it is clear that the court has claimed constitutional authority to perform a proportionality review of all capital cases. It could be possible for the court to recede from its position, especially if HJR 3505, becomes law. (HJR 3505 requires Florida's Cruel and Unusual Clause to be interpreted consistently with the federal prohibition against Cruel or Unusual punishment). On the other hand, the court's review of whether a codefendant received a disproportionate sentence may not be seen by the courts as being based on the state constitution. Although disparate sentences may render a sentence disproportional, the Supreme Court usually addresses disparate

STORAGE NAME: h4247.cp

DATE: April 2, 1998

PAGE 9

sentences separately. The state also has a compelling interest in giving a codefendant a better deal in order to either more effectively prosecute the most culpable codefendant or to increase the chances of conviction for a case that may be difficult to prove.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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