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HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS

BILL #: HB 1439

RELATING TO: Capital Felony Sentencing

SPONSOR(S): Representative Pruitt

COMPANION BILL(S): none

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

(1) CRIME AND PUNISHMENT
(2) FAMILY LAW & CHILDREN
(3) CRIMINAL JUSTICE APPROPRIATIONS
(4)
(5)

I. SUMMARY:

Florida statutes require 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 bill creates an additional aggravating factor for the courts and juries to consider when the murder was committed by a person who was court ordered to stay away from the victim.

II. SUBSTANTIVE ANALYSIS:

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 Considered in Death Penalty Phase

Section 921.141, F.S. restricts aggravating factors to the following factors specified by the statute:

> (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; kidnaping; 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 street gang member, as defined in s. 874.03.

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.

Domestic Violence Injunction

Section 741.30 F.S., authorizes a person to file a sworn request for an injunction for protection against domestic violence if the person requesting the injunction either:

1. Is the victim of domestic violence, or

2. Has reasonable cause to believe that he or she may become the victim of any act of domestic violence.

Temporary Injunction

A court may grant a temporary injunction without a hearing and based solely on the sworn request for an injunction, if it appears to the court that an immediate and present danger of domestic violence exists. The temporary injunction is valid for up to 15 days, and the court issued injunction may grant the following:

1. Restrain the person who the injunction was filed against from committing any acts of domestic violence.
2. Award the temporary exclusive use and possession of the dwelling that the parties share.
3. Grant temporary custody of minor children.

Final Judgement on an Injunction

A full hearing must be set before the temporary injunction expires (15 days) and both sides have a right to present evidence regarding the "final" injunction which remains in effect until modified or dissolved. A judge may order the following relief as a condition of the "final" injunction:

1. Restrain the person who the injunction was filed against from committing any acts of domestic violence.
2. Award the temporary exclusive use and possession of the dwelling that the parties share.
3. Grant temporary custody of minor children.
4. Establish temporary support for minor children.
5. Order treatment, intervention, or counseling.
6. Order such other relief as the court deems necessary for the protection of a victim of domestic violence, including injunctions or directives to law enforcement agencies.

At the full hearing, the person requesting the injunction need only demonstrate that there exists reasonable cause to believe that he/she is about to become a victim of domestic violence. Rey v. Perez-Gurri, 662 So. 2d 1328 (3rd DCA 1995). A person who violates any of the requirements of an injunction commits a misdemeanor of the first degree. A person can, alternatively, be held in contempt for violating a court order. A contempt proceeding may result in the imposition of county jail time, and it requires a much lower burden of proof than a criminal charge. A person facing a possible jail sentence for a misdemeanor is entitled to a jury trial, but a jury never hears a contempt proceeding.

Injunction for Repeat Violence

Section 784.046, F.S., authorizes a victim of violence or stalking to obtain an injunction to prohibit the offender from having contact with the victim if the victim seeds the injunction within six months of the most recent incident of violence or stalking. Like an injunction for domestic violence the court may issue a temporary injunction based on affidavits alone that may last for up to 15 days. The final injunction remains in effect until modified or dissolved.

B. EFFECT OF PROPOSED CHANGES:

The bill creates an additional aggravating factor for the jury and the court to consider during the penalty phase of a capital first degree murder case. The additional factor allows the jury and the judge to consider whether the murder was committed by a person who was court ordered to stay away from the victim. The no contact orders specifically include injunctions for protection against domestic violence and injunctions for protection against repeat violence. Other court orders that

could also be considered as aggravating factors include conditions of bond or court ordered supervision that require an offender to stay away from a victim.

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?

No.

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

No.

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

No.

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

No.

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

No.

3. Personal Responsibility:

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

      No.

   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?

      No.

   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 921.141, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Creates additional aggravating factor for the violation of a court order protecting the victim to be considered during the sentencing phase of a capital murder case.

Section 2: Creates an effective date of July 1, 1999.

III. FISCAL ANALYSIS & 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 consider the fiscal impact of the bill. However, the bill does not increase the number of prison beds needed by the Department of Corrections. It is anticipated that the fiscal impact will be insignificant.

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 bill specifically includes as an aggravating factor injunctions issued out of state for domestic violence, but not specifically included are other types of out of state court orders that require an offender to have no conduct with a victim.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

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