

STORAGE NAME: h1157a.cp
DATE: March 15, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: HB 1157
RELATING TO: The Death Penalty
SPONSOR(S): Representative Pruitt
TIED BILL(S): None

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

- (1) CRIME AND PUNISHMENT YEAS 6 NAYS 0
 - (2) CRIMINAL JUSTICE APPROPRIATIONS
 - (3)
 - (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 sufficient aggravating circumstances exist and whether sufficient mitigating circumstances exist which outweigh the existing aggravating circumstances. Based on those considerations a jury must render an "advisory sentence to the court." The bill creates an additional aggravating circumstance 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.

The fiscal impact of the bill is indeterminate.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. 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 that the manner in which the death penalty was decided upon, violated the prohibition against cruel and unusual punishment of the federal constitution. The Florida Supreme Court recognized that the Florida death penalty statute, like the death penalty statutes in all other 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 mitigating circumstances outweigh aggravating circumstances, and based on those considerations a jury must render an "advisory sentence to the court." The weighing of circumstances does not mean that the jury should merely decide whether the mitigating circumstances outnumber the aggravating circumstances. After the advisory sentence is rendered by the jury, the court must weigh all the circumstances and impose a sentence.

Aggravating and Mitigating Circumstances

Section 921.141(5), F.S. restricts **aggravating circumstances** to the following factors:

- (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.

© 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.

Section 921.141(6), F.S., provides the following statutory **mitigating circumstances**:

- (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.

Mitigating factors are not limited to only those mitigating factors listed in the statute. Hitchcock v. Dugger, 481 U.S. 393 (1987).

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 is in imminent danger of becoming 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 may provide the following relief:

1. Restraining the respondent from committing any acts of domestic violence;
2. Awarding the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner; and
3. Granting temporary custody of minor children on the same basis as provided for in s. 61.13, Florida Statutes.

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. Restraining the person who the injunction was filed against from committing any acts of domestic violence;
2. Awarding the temporary exclusive use and possession of the dwelling that the parties share or excluding the respondent from the residence of the petitioner;
3. Granting temporary custody of or temporary visitation rights with, minor children on the same basis as provided for in s. 61.13, Florida Statutes;
4. Establishing temporary support for minor children as provided for in chapter 61;
5. Ordering treatment, intervention, counseling, or participation in a certified batterer’s class for the respondent;
6. Referring a petitioner to a certified domestic violence center, and
7. Ordering 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 or 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.

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 seeks 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.

C. EFFECT OF PROPOSED CHANGES:

The bill creates an additional aggravating circumstance 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 under an active court order 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 which 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.

D. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 921.141, Florida Statutes, to create an additional aggravating factor to be considered during the sentencing phase of a capital murder case for a murder committed while the defendant was in willful violation of a court order protecting the victim.

Section 2: Creates an effective date of July 1, 2000.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

N/A

2. Expenditures:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

N/A

D. FISCAL COMMENTS:

If additional defendants are sentenced to death because of the additional aggravating factor provided for in this bill, then the courts, prison system, public defenders, prosecutors and Capital Collateral Regional Councils will experience increased costs. Any such impact is indeterminate since it is impossible to determine how many individuals would be affected.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill is exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

STORAGE NAME: h1157a.cp

DATE: March 15, 2000

PAGE 7

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

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

Staff Director:

David M. De La Paz

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