

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 259 Capital Felonies

SPONSOR(S): Weinstein

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Public Safety & Domestic Security Policy Committee</u>	<hr/>	<u>Kramer</u>	<u>Cunningham</u>
2) <u>Criminal & Civil Justice Appropriations Committee</u>	<hr/>	<hr/>	<hr/>
3) <u>Criminal & Civil Justice Policy Council</u>	<hr/>	<hr/>	<hr/>
4) <hr/>	<hr/>	<hr/>	<hr/>
5) <hr/>	<hr/>	<hr/>	<hr/>

SUMMARY ANALYSIS

When a defendant is convicted of capital murder, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or to life imprisonment. After hearing evidence, the jury renders an advisory sentence to the judge based on whether sufficient aggravating circumstances exist, whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and based on these considerations, whether the defendant should be sentenced to life imprisonment or death. The judge is not required to sentence a defendant as recommended by the jury. If the judge sentences a person to death, the judge must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.

The bill adds to the list of aggravating circumstances that can be considered by the jury and judge in the sentencing phase of a capital case that the capital felony was committed by a person subject to an injunction for protection against repeat violence, sexual violence or dating violence or a foreign domestic violence injunction, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Capital sentencing: Section 921.141, F.S., is Florida's death penalty statute. When a defendant is convicted of capital murder, a separate sentencing proceeding is conducted before the trial jury to determine whether the defendant should be sentenced to death or to life imprisonment.¹ After hearing evidence, the jury renders an advisory sentence to the judge based on the following factors:

- Whether sufficient aggravating circumstances exist;
- Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist; and
- Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.²

The judge is not required to sentence a defendant as recommended by the jury. If the judge sentences a person to death, the judge must make written findings that there are sufficient aggravating circumstances and insufficient mitigating circumstances to outweigh the aggravating circumstances.³

The aggravating factors that may be considered are limited by statute. Section 921.141(5), F.S., provides:

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

- 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.
- 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.
- 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,

¹ s. 921.141(1), F.S.

² s. 921.141(2), F.S.

³ s. 921.141(3), F.S.

any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.

- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.
- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- 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.
- The victim of the capital felony was a person less than 12 years of age.
- 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.
- The capital felony was committed by a criminal gang member, as defined in s. 874.03.
- The capital felony was committed by a person designated as a sexual predator pursuant to s. 775.21 or a person previously designated as a sexual predator who had the sexual predator designation removed.

Mitigating factors are not limited by statute but may include:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The victim was a participant in the defendant's conduct or consented to the act.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- 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.
- The age of the defendant at the time of the crime.

- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.⁴

Protective injunctions: Section 784.046, F.S. provides criteria for the issuance by a judge of an injunction for protection against repeat violence,⁵ sexual violence⁶ or dating violence⁷ upon the filing of a petition by the victim. When it appears to the court that an immediate and present danger of violence exists, the court may issue a temporary injunction which may be granted without the respondent being present.⁸ The temporary injunction is effective for not more than 15 days unless the judge finds that there is good cause to continue the injunction. A full hearing must be held before the temporary injunction expires. Any final injunction issued after the full hearing remains in effect until it is modified or dissolved by the judge.⁹

Section 741.315, F.S. provides that an injunction for protection against domestic violence issued by a court of a foreign state must be accorded full faith and credit by the courts of this state and enforced by a law enforcement agency as if it were the order of a Florida court.

Changes made by bill: The bill amends s. 921.141, F.S. to include an additional aggravating circumstance that can be considered by the jury and judge in the sentencing phase of a capital case when the capital felony was committed by a person subject to an injunction issued pursuant to s. 784.046, or a foreign protection order accorded full faith and credit pursuant to s. 741.315, and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

B. SECTION DIRECTORY:

Section 1: Amends s. 921.141, F.S. relating to sentence of death or life imprisonment for capital felonies; further proceedings to determine sentence.

Section 2: Provides effective date of July 1, 2010.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

⁴ s. 91.141(6), F.S.

⁵ "Repeat violence" is defined to mean two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

⁶ Sexual violence" is defined to mean any one incident of:

1. Sexual battery, as defined in chapter 794;
2. A lewd or lascivious act, as defined in chapter 800, committed upon or in the presence of a person younger than 16 years of age;
3. Luring or enticing a child, as described in chapter 787;
4. Sexual performance by a child, as described in chapter 827; or
5. Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

⁷ "Dating violence" is defined to mean violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors:

1. A dating relationship must have existed within the past 6 months;
2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and
3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship.

The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

⁸ s. 784.046(6), F.S.

⁹ s. 784.046(7)(c), F.S.

1. Revenues:

None.

2. Expenditures:

If the additional aggravating factor created by the bill results in more death penalty prosecutions, there may be additional workload for the State Attorneys and Public Defenders who handle death penalty trials. The additional aggravating factor created by the bill may also result in more defendants receiving a death sentence. This may cause an additional workload for the Attorney General's office that handles the direct appeal and any postconviction litigation on behalf of the state as well as the Public Defender's office and Capital Collateral Regional Counsel who represents a death row inmate on direct appeal and postconviction litigation respectively. There may also be an additional workload on the courts in the trial and appellate process of death penalty cases.

It is not possible to calculate any fiscal impact on the Department of Corrections if this bill results in defendants being given a death sentence that would have otherwise been given a life sentence. According to the Department of Corrections, an inmate who is executed serves an average of 12.5 years on death row prior to execution.¹⁰ However, the Department of Corrections does not distinguish between different types of sentences (for example, between a life sentence and a death sentence) in making per diem cost determinations. The department maintains per diem costs by type of facility. Death sentences are served in three maximum security prisons which also house inmates that are serving sentences of a particular term of years and inmates serving life sentences. Therefore, it is not possible to determine whether inmates sentenced to death would cost the department more than if the inmate had been sentenced to life while they are incarcerated. However, if the bill does result in inmates being executed instead of incarcerated for the rest of their life, there may be some savings to the department.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

¹⁰ <http://www.dc.state.fl.us/oth/deathrow/index.html>

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

As drafted the bill adds an aggravating factor to the death penalty statute when the capital felony was committed by a person subject to an injunction issued pursuant to s. 784.046, F.S. Section 784.046, F.S. relates generally to a petition for protection from repeat violence, sexual violence, or dating violence. *Domestic violence* injunctions are referenced in chapter 741. The bill refers to section 741.315, F.S. which relates to protective orders issued in other states but not in this state. If the intent was to create an aggravating circumstance for a person who was the subject of a domestic violence injunction issued in this state, a reference to section 741.30 should be included in the bill.

The bill has an effective date of July 1, 2010. It may be preferable to have a later effective date to provide sufficient time to train judges, prosecutors and defense counsel on the changes made by the bill.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES