

FINAL BILL REPORT

HB 1297

C 305 L 98

Synopsis as Enacted

Brief Description: Including the existence of a no contact order as an aggravating circumstance in first degree murder.

Sponsors: Representatives DeBolt, Sheahan, Ballasiotes, Costa, Benson, McMorris, Thompson, Lambert, Radcliff, K. Schmidt, Mitchell, Sherstad, Robertson, Pennington, Hickel, Kastama, Sullivan, Sump, Sheldon, Delvin, Cooke, Morris, Wensman, Mason and Mielke.

House Committee on Law & Justice
Senate Committee on Law & Justice

Background: Crimes Subject to the Death Penalty or Life in Prison. A person convicted of a first-degree murder that is both premeditated and aggravated may be subject to a sentence of death or of life in prison without release.

First-degree murder is the killing of another when committed under one of the following three conditions:

- with premeditated intent;
- with extreme indifference to human life while engaged in conduct creating a grave risk of death; or
- while committing or attempting to commit, or immediate flight from the commission or attempted commission of first- or second-degree robbery, rape, arson, or kidnapping, or first-degree burglary.

The possibility of the death penalty or life imprisonment without possibility of release applies only to the first category of first-degree murder cases: those involving premeditation.

Further, the possibility of the death penalty or life imprisonment without release applies only to premeditated first-degree cases that are also "aggravated." Aggravating circumstances that the prosecution must prove before a sentence of life in prison without release or a sentence of death may be imposed comprise:

- the victim was a law enforcement, corrections, probation or parole officer, firefighter, judge, juror, witness, prosecuting attorney, defense attorney, or news reporter, and the murder was related to the victim's position;

- the offender had been previously convicted of some crime and was in prison or jail, or on leave from prison, or was an escapee from prison;
- the offender paid another to commit the murder, or solicited or agreed to receive payment for the murder;
- the offender committed the murder to conceal a crime or protect the identity of a criminal or to avoid prosecution as a persistent offender;
- the offender committed the murder to obtain, maintain, or advance a position in an organization or group;
- the offender committed the murder as part of a drive-by shooting;
- the offender murdered multiple victims in a single act or as part of a common scheme or plan; or
- the offender committed the murder in the course or furtherance of, or in flight from, robbery in the first or second degree, rape in the first or second degree, residential burglary or burglary in the first or second degree, kidnapping in the first degree, or arson in the first degree.

Following a conviction for aggravated, premeditated first-degree murder, if the prosecutor has sought the death penalty, a special sentencing proceeding is held to determine whether the death penalty will be imposed. At this hearing, the question to be decided is whether there are sufficient "mitigating circumstances" to merit leniency. If there are not sufficient mitigating circumstances to merit leniency, the sentence is life in prison without the possibility of release. If the prosecutor did not seek the death penalty, the sentence is life imprisonment without the possibility of release.

Protection Orders. Under various statutes a person may be ordered by a court to avoid contact with another. Several statutes deal specifically with protection orders issued to prevent contact between members of the same family or household. For purposes of some of these statutes, "family or household members" is defined to include spouses, ex-spouses, persons with a child in common, adults related by blood or marriage or who are living together or have lived together, persons 16 or older who live or have lived together and have or had a dating relationship, persons with a legal parent-child relationship, including a step-relationship, and grandparents and grandchildren.

In the case of an arrest and prosecution for certain crimes committed by one family or household member against another, pre-trial orders may prohibit the defendant from having contact with the alleged victim. Following conviction for one of these offenses, a similar order may be issued as part of the sentence. These "domestic violence" crimes include rape, assault, reckless endangerment, coercion, burglary, trespass, malicious mischief, kidnapping, unlawful imprisonment, and stalking.

Similar kinds of restraining orders may be issued as part of a civil action for marriage dissolution, maintenance, or child support. In addition, a person who alleges past

domestic violence and the likelihood of irreparable injury from future domestic violence may get a no contact order issued against the alleged offender. Temporary ex parte orders may be obtained pending a hearing, and in some instances where efforts at personal service would be demonstrably futile or unduly burdensome, service of notice to the respondent may be made by publication or by mail.

Summary: Two new aggravating circumstances are created for the purpose of qualifying a premeditated first-degree murder conviction for a death sentence or a sentence of life in prison without the possibility of release.

It is an aggravating circumstance if the offender was at the time of the murder the knowing subject of a court order prohibiting contact with or disturbance of the victim.

It is also an aggravating circumstance if the offender and victim were members of the same family or household, and the offender had assaulted or harassed the victim three or more times in a five year period. Convictions for the assaults or harassments are not necessary in order for them to constitute an aggravating circumstance.

Votes on Final Passage:

House 86 7
Senate 37 11 (Senate amended)
House 83 13 (House concurred)

Effective: June 11, 1998