

HOUSE BILL ANALYSIS

SB 5203

Title: An act relating to capital punishment.

Brief Description: Making a defendant's knowledge that a murder victim was pregnant aggravated first degree murder.

Sponsors: Senators Roach, Johnson, Hargrove, Zarelli, Benton, Goings, Oke and Long.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND CORRECTIONS

Staff: Pat Shelledy (786-7149)

Background:

CRIMES SUBJECT TO THE DEATH PENALTY OR LIFE IN PRISON

Only a person convicted of a first-degree murder that is both premeditated and aggravated may be sentenced to death or to 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 death penalty or life imprisonment is a possibility only under some circumstances involving the first of these three conditions, i.e., only under premeditated first-degree murder.

However, not all premeditated first-degree murders are subject to these sentences. Life in prison without the possibility of release is available only if the premeditated first-degree murder is also "aggravated." The death penalty is available only if the murder is "aggravated" and there are not sufficient "mitigating" circumstances to merit leniency. If the prosecutor has decided to seek the death penalty, a special sentencing proceeding is held following a conviction for premeditated aggravated first-degree murder to determine whether the death penalty will be imposed. At this hearing the question to be decided is whether there were sufficient mitigating circumstances to merit leniency. Leniency means life in prison without possibility of release.

AGGRAVATING CIRCUMSTANCES

Aggravating circumstances that the prosecution must prove before a sentence of life in prison without release or a sentence of death may be imposed include:

- 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.

Again, in order to impose the death penalty, the jury must find beyond a reasonable doubt both that the defendant is guilty of aggravated, premeditated first-degree murder and that there are not sufficient mitigating factors to merit leniency. If there is not a finding of a lack of mitigating factors, the sentence is life in prison without the possibility of release.

Summary: An additional aggravating circumstance is provided for purposes of qualifying a premeditated first-degree murder for a sentence of life in prison without possibility of release or a sentence of death. The additional aggravating circumstance is that the defendant knew the victim was pregnant.

Require the Exercise of Rule- Making Powers: No.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.