

SENATE BILL REPORT

HB 1297

As Reported By Senate Committee On:
Law & Justice, January 21, 1998

Title: An act relating to aggravating circumstances in first degree murder.

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.

Brief History:

Committee Activity: Law & Justice: 1/21/98 [DPA, DNPA].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Goings, Hargrove, Long, McCaslin, Stevens and Zarelli.

Minority Report: Do not pass as amended.

Signed by Senators Fairley, Kline and Thibaudeau.

Staff: Aldo Melchiori (786-7439)

Background: A person convicted of first-degree murder may be sentenced to death or life in prison only if the murder is both premeditated and aggravated.

Murder in the first degree is committed when a person causes the death of another (a) with premeditated intent; (b) under circumstances manifesting extreme indifference to human life, when the offender engages in conduct which creates a grave risk of death; or (c) during the commission of robbery in the first degree, rape in the first or second degree, burglary in the first degree, arson in the first or second degree, or kidnaping in the first or second degree.

Life imprisonment is available as punishment for first-degree murder only if the murder is also aggravated— by one of 12 specific factors. The death penalty is available only if the murder is both aggravated, and there are insufficient mitigating— circumstances to merit leniency.

If a prosecutor files the charge of aggravated first degree murder and decides to seek the death penalty, notice is given and special sentencing procedures are undertaken if the defendant is found guilty. In the special sentencing proceeding, circumstances mitigating the defendant's conduct are presented. If the circumstances presented merit leniency, the

sentence is life imprisonment without the possibility of release. If the circumstances presented do not merit leniency, the death penalty may be imposed.

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 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 of Amended Bill: 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.

An aggravating circumstance exists when the victim was in a family or household member relationship with the offender or an accomplice of the offender, and (1) at the time of the murder, a no contact or restraining order was in place; (2) before the murder, the order had been properly served on the offender; and (3) the murder violated the terms of the order.

An aggravating circumstance exists for aggravated murder in the first degree when, at the time of the murder, there existed a court order issued by any state which prohibited contact or disturbing the peace of the victim and the perpetrator had knowledge of the order. At the time of the murder, the victim and the perpetrator must have been family members and the perpetrator must have engaged in a pattern or practice of three or more offenses of enumerated crimes within a five-year period, regardless of whether a conviction resulted.

Amended Bill Compared to Original Bill: The court order must restrict contact with the specific victim. The perpetrator must have engaged in a pattern or practice of harassment or criminal assault.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: None.

Testimony Against: None.

Testified: No one.