

# HOUSE BILL REPORT

## SSB 5348

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**As Reported By House Committee On:**  
Criminal Justice & Corrections

**Title:** An act relating to aggravating circumstances for aggravated first degree murder.

**Brief Description:** Adding additional circumstances for the commission of aggravated first degree murder.

**Sponsors:** Senate Committee on Law & Justice (originally sponsored by Senators Roach, Long, Zarelli, Wood, Bauer, McCaslin, Johnson, Oke, Rossi, Swecker, Benton, Anderson, Hargrove, Patterson, Goings, Heavey, Snyder, Winsley, Strannigan, Schow and Rasmussen).

**Brief History:**

**Committee Activity:**

Criminal Justice & Corrections: 3/28/97, 4/2/97 [DP].

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### HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

**Majority Report:** Do pass. Signed by 11 members: Representatives Ballasiotes, Chairman; Benson, Vice Chairman; Koster, Vice Chairman; O'Brien, Assistant Ranking Minority Member; Blalock; Cairnes; Delvin; Hickel; Mitchell; Robertson and Sullivan.

**Minority Report:** Do not pass. Signed by 1 member: Representative Dickerson.

**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.

### **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 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.

### **HARASSMENT AND ASSAULT**

A person is guilty of the crime of harassment— if (a) the person knowingly threatens: (1) to cause bodily injury in the future to the person threatened or another person; (2) to cause physical damage to the property of another person; (3) to subject the person threatened or any other person to physical confinement or restraint; or (4) maliciously to do any other act that is intended to substantially harm the person threatened or another person; and (b) the person threatened is placed in reasonable fear that the threat will be carried out.

There are several degrees of assault: assault in the first, second, third, and fourth degrees; and assault of a child in the first, second, and third degree.

**Summary of Bill:** Two additional aggravating factors are added to the list of aggravating factors that can subject an offender convicted of premeditated first-degree murder to a sentence of life in prison without the possibility of release or to a sentence of death.

First, an aggravating circumstance exists if, at the time of the murder, an order existed that prohibited the perpetrator from either contacting, molesting, or disturbing the peace of the victim and the perpetrator knew that the order existed.

Second, an aggravating circumstance exists if, at the time of the murder, the perpetrator and the victim were family or household members,– and the perpetrator had previously engaged in a pattern or practice of three or more crimes of harassment or any criminal assault upon the victim within a five-year period. The pattern or practice of harassing or assaultive behavior did not have to result in convictions.

**Appropriation:** None.

**Fiscal Note:** Requested on March 14, 1997.

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

**Testimony For:** Most domestic violence homicides occur when the victim is leaving the relationship because the abuser realizes that he or she can no longer control the victim. When a protection order is in place or the abuser has a history of abusing the victim, the possibility of life in prison or the imposition of the death penalty is appropriate when the abuser engages in the premeditated murder of the victim.

**Testimony Against:** This law is unconstitutional because our highest court has held that aggravating factors that may be used to sustain imposition of the death penalty must apply to a narrow class of cases and persons. This bill would apply the death penalty to a broad category of premeditated first-degree murder cases. The bill will also aggravate the public's and victim's family's perception that justice is not being rendered because of the substantial delays between imposition of death penalty sentences and executions. This bill will not deter murders in domestic violence cases. If you want to reduce domestic violence, provide assistance to the perpetrators and the victims.

**Testified:** Bernardean Broadous, Thurston County Prosecuting Attorneys Office (pro); James Powers, Thurston County Prosecuting Attorneys Office (pro); Michele Fischer (pro); and Michael Small, Washington Association of Criminal Defense Lawyers (con).