

1987

## Session Law 87-368

Florida Senate & House of Representatives

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1                   A bill to be entitled  
2           An act relating to capital felonies; amending  
3           s. 921.141, F.S., providing an additional  
4           aggravating circumstance for purposes of  
5           imposition of the death penalty, providing an  
6           effective date  
7  
8   Be It Enacted by the Legislature of the State of Florida  
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10           Section 1. Subsection (5) of section 921.141, Florida  
11   Statutes, is amended to read:  
12           921.141 Sentence of death or life imprisonment for  
13   capital felonies, further proceedings to determine sentence --  
14           (5) AGGRAVATING CIRCUMSTANCES --Aggravating  
15   circumstances shall be limited to the following:  
16           (a) The capital felony was committed by a person under  
17   sentence of imprisonment  
18           (b) The defendant was previously convicted of another  
19   capital felony or of a felony involving the use or threat of  
20   violence to the person  
21           (c) The defendant knowingly created a great risk of  
22   death to many persons  
23           (d) The capital felony was committed while the  
24   defendant was engaged, or was an accomplice, in the commission  
25   of, or an attempt to commit, or flight after committing or  
26   attempting to commit, any robbery, sexual battery, arson,  
27   burglary, kidnapping, or aircraft piracy or the unlawful  
28   throwing, placing, or discharging of a destructive device or  
29   bomb  
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1           (e) The capital felony was committed for the purpose  
2   of avoiding or preventing a lawful arrest or effecting an  
3   escape from custody  
4           (f) The capital felony was committed for pecuniary  
5   gain  
6           (g) The capital felony was committed to disrupt or  
7   hinder the lawful exercise of any governmental function or the  
8   enforcement of laws.  
9           (h) The capital felony was especially heinous,  
10   atrocious, or cruel.  
11           (i) The capital felony was a homicide and was  
12   committed in a cold, calculated, and premeditated manner  
13   without any pretense of moral or legal justification  
14           (j) The victim of the capital felony was a law  
15   enforcement officer engaged in the performance of his official  
16   duties.  
17           Section 2. This act shall take effect October 1, 1987  
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SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

<u>ANALYST</u>	<u>STAFF DIRECTOR</u>	<u>REFERENCE</u>	<u>ACTION</u>
1. <u>E. Davis</u>	<u>Liepshutz</u>	1. <u>JCR</u>	<u>Fav.</u>
2. _____	_____	2. _____	_____
3. _____	_____	3. _____	_____
4. _____	_____	4. _____	_____

SUBJECT:

Capital Felonies

BILL NO. AND SPONSOR:

SB 283 by  
Senator Kirkpatrick

I. SUMMARY:

A. Present Situation:

Florida law presently provides that a capital felony trial shall be a bifurcated proceeding. The first portion of the proceeding is a trial to determine the guilt or innocence of the accused. If the defendant is convicted, section 921.141, F.S., provides for the second portion of the proceeding, a separate sentencing proceeding conducted by the court in which evidence is introduced to determine whether the defendant shall be sentenced to death or life imprisonment.

Upon hearing the sentencing evidence the jury then deliberates and renders an advisory sentence to the court. This sentence is based upon aggravating and mitigating circumstances enumerated at s. 921.141(5) and (6), F.S., that existed at the time of the offense. There currently exist nine aggravating and seven mitigating circumstances which the jury and judge may consider at sentencing. s.921.141(5) and (6). The judge, after studying the evidence as well as the aggravating and mitigating circumstances, may then enter a sentence of death or life imprisonment, regardless of the jury's decision. If the court imposes a sentence of death it must set forth written findings demonstrating that sufficient aggravating circumstances existed and that insufficient mitigating circumstances existed to outweigh the aggravating circumstances in making its decision. The court must also consider the trial record and the sentencing proceedings.

B. Effect of Proposed Changes:

This legislation would add another aggravating circumstance for the jury and court to consider: whether the victim of the capital felony was a law enforcement officer killed while performing his official duties.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

None.

B. Government:

The Department of Corrections states that the fiscal impact of this bill can not be determined by their office.

III. COMMENTS:

The United States Supreme Court has ruled

"To be sure, the fact that the murder victim was a peace officer performing his

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regular duties may be regarded as an aggravating circumstance. There is a special interest in affording protection to these public servants who regularly must risk their lives in order to guard the safety of other persons and property."

Roberts v. Louisiana, 431 U.S. 633, 636, 52 L.Ed 2d 637, 97 S.Ct. 1993 (1977).

As of 1985, 26 of the 36 states which have a constitutional death penalty had incorporated the murder of a law enforcement officer into the aggravating circumstances of their capital murder statutes. Those states are: California, Colorado, Georgia, Delaware, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Massachusetts, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and Washington.

The proposed language does not state that the defendant must have known or had reason to know that the victim was a law enforcement officer engaged in performing his official duties. The majority of states do not require this in their statutes, only a minority do.

IV. AMENDMENTS:

None.