

# HOUSE BILL REPORT

## EHB 1043

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As Passed House  
February 15, 1993

**Title:** An act relating to method of execution.

**Brief Description:** Specifying the method of execution.

**Sponsors:** Representatives Schmidt, Appelwick, Morris, Long, Ballasiotes, Riley, Springer, Shin, Brough, Eide, Johanson, Fuhrman, Silver and J. Kohl.

**Brief History:**

Reported by House Committee on:  
Judiciary, February 2, 1993, DP;  
Passed House, February 15, 1993, 56-42.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 13 members:  
Representatives Appelwick, Chair; Ludwig, Vice Chair;  
Ballasiotes, Assistant Ranking Minority Member; Campbell;  
Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley;  
Schmidt; and Scott.

**Minority Report:** Do not pass. Signed by 4 members:  
Representatives Padden, Ranking Minority Member; Chappell;  
Tate; and Wineberry.

**Staff:** Bill Perry (786-7123).

**Background:** Washington law provides for the death penalty in certain cases of aggravated first-degree murder. The death penalty may be imposed if in a special sentencing proceeding following conviction it is found that there are not sufficient mitigating circumstances to merit leniency. If, on the other hand, such mitigating circumstances are found, the sentence will be life imprisonment without the possibility of parole.

The death penalty in Washington is carried out by hanging or, at the election of the condemned person, by lethal injection. Up until the execution of Westley Dodd on January 5 of this year, the last execution in this state was by hanging in 1963. No state has hanging as its sole method of execution, and as of last year only two other states had hanging as an optional method. The last hangings in the

other states that still have that method as an option were in the 1940s. Among the 36 states with capital punishment laws in 1992, lethal injection was the most common form of execution. Twenty-two states used lethal injection.

The Washington State Supreme Court has rejected the argument that the state's choice of method of execution provision amounts to cruel and unusual punishment. However, that same argument is now being made in the federal courts, along with the argument that hanging itself is cruel and unusual.

The United States Supreme Court has upheld a change in a state's method of execution statute even when the change was applied retroactively to crimes committed before the change was made. The court rejected arguments that the change amounted to prohibited ex post facto legislation.

**Summary of Bill:** Lethal injection is made the exclusive method of execution for defendants who commit capital offenses after the effective date of this act. If, however, lethal injection is invalidated by the courts, then hanging will become the sole method of execution.

For defendants who have committed, or will commit, a capital offense before the effective date of this act, the presumption regarding the method of execution is reversed. That is, lethal injection will be the method of execution unless the condemned person chooses hanging.

The Office of the Administrator for the Courts is required to study the racial and gender proportionalities of defendants in death penalty cases before and after the change in method of execution takes effect.

**Fiscal Note:** Not requested.

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

**Testimony For:** Hanging is outmoded, and virtually every other state has abandoned it. The current dual method law provides more grounds for appeals than a single method law would. Injection is less traumatic for prison personnel.

**Testimony Against:** Changing the method of execution to injection sanitizes the death penalty and makes it inappropriately less difficult for juries to impose it. Any change in the law will increase legal appeals.

**Witnesses:** Ned Dolejsi, Washington State Catholic Conference (con); James Spaulding and Jack Jones, Department of Corrections; Darrel Lee; and Judge Robert Harris.