

HOUSE BILL REPORT

SB 5093

As Reported By House Committee On:
Law & Justice

Title: An act relating to capital punishment sentencing.

Brief Description: Prescribing procedures for capital punishment sentencing.

Sponsors: Senator Roach.

Brief History:

Committee Activity:

Law & Justice: 3/25/97, 4/1/97 [DP].

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 11 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Costa, Ranking Minority Member; Carrell; Kenney; Lambert; Lantz; Radcliff; Sherstad and Skinner.

Minority Report: Do not pass. Signed by 2 members: Representatives Constantine, Assistant Ranking Minority Member; and Cody.

Staff: Bill Perry (786-7123).

Background: Once a defendant has been convicted of aggravated first-degree murder and sentenced to death, the state supreme court is required to review the sentence. This review is in addition to any other appeal that may be available to the defendant. The court is to answer four questions:

- o Whether there was sufficient evidence to justify the jury's finding beyond a reasonable doubt that there were not sufficient mitigating circumstances to merit leniency;
- o Whether the sentence is "excessive" or "disproportionate" when compared to similar cases;
- o Whether the sentence is the result of passion or prejudice; and
- o Whether the defendant was mentally retarded.

With respect to the question of excessiveness or disproportionality, the state supreme court has held that the death penalty is not disproportionate in a given case if death

sentences have generally been imposed in similar cases, and its imposition is not wanton or freakish. *State v. Rupe*. The court has also remarked:

No question of statutory interpretation has received more careful consideration than what this [excessiveness and proportionality comparison] means and how to best give it effect. We have acknowledged the statute often requires "the comparison of incomparables," and the task is, at times, a "struggle." *State v. Pirkle*.

The U.S. Supreme Court has held that comparative proportionality reviews in death penalty cases are not constitutionally required. Under the Eighth Amendment to the U.S. Constitution, the reviewing court in a death penalty case must inquire whether the punishment is disproportionate to the gravity of the crime in that particular case, but need not make a comparative analysis of what other defendants have received as sentences for similar crimes. That is, the court must look at whether the death penalty is cruel and unusual as a punishment for a particular crime, but need not look at whether other defendants have been sentenced to death under similar circumstances. *Pulley v. Harris*.

Summary of Bill: The statutory requirement that the state supreme court compare a particular death sentence to the sentences given in similar cases is removed.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: The current proportionality review requirement is unworkable and unnecessary. Defendants routinely challenge the constitutionality of the current law. The bill does not reduce the full protection that defendants get from sentence reviews.

Testimony Against: The current system isn't broken and doesn't need to be fixed. Proportionality review has never resulted in overturning a sentence from this state. Changing the law will result in more appeals. The current review is just a matter of fundamental fairness.

Testified: Seth Fine, Snohomish County Prosecuting Attorney's Office and Washington Association of Prosecuting Attorneys (pro); Pam Loginsky, Kitsap County Prosecuting Attorney's Office and Washington Association of Prosecuting Attorneys (pro); and Jeff Ellis, Washington Association of Criminal Defense Lawyers and Washington Defender Association (con).