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## Judiciary Committee

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### HB 2315

**Title:** An act relating to prohibiting plea bargains in multiple capital murder cases.

**Brief Description:** Prohibiting plea bargains in multiple capital murder cases.

**Sponsors:** Representatives Carrell, McMahan, Clements and Campbell.

#### Brief Summary of Bill

- Prohibits a plea bargain in a capital murder case where there was more than one victim.
- Requires a prosecutor to seek the maximum penalty available when there is a conviction in a multiple capital murder case.
- Amends the aggravated first-degree murder statute when there is more than one victim to remove the requirement that the murders were a part of a common scheme or plan or a single act, and to apply regardless of when or where the murders occurred.

**Hearing Date:** 1/23/04

**Staff:** Edie Adams (786-7180).

#### Background:

Washington's capital punishment statute provides a framework and procedural requirements for the imposition of the death penalty. Under the capital punishment statute, a death sentence may be imposed only against those persons convicted of aggravated first-degree murder and only after a special sentencing proceeding has been held to determine whether the death penalty is warranted.

#### Aggravated First-Degree Murder

Aggravated first degree murder means premeditated first-degree murder when any of a specified list of aggravating circumstances exists. Examples of aggravating circumstances include:

- The victim was a police officer performing official duties;
- The murder was committed in the course of, in furtherance of, or in immediate flight from certain crimes, such as first- or second-degree robbery, rape or burglary;
- The murder was committed to conceal the commission of a crime; and
- There was more than one victim and the murders were part of a common scheme or plan, or the result of a single act.

For purpose of the multiple victim aggravating factor, "common scheme or plan" has been interpreted broadly by the Washington Supreme Court to require a "nexus" between the killings. This nexus may exist when an overarching criminal plan connects the murders. *State v. Finch*. The Court has stated that it is not necessary to show a plan to kill the named individuals or even that the killings be committed for precisely the same reasons, only that the killings are "connected by a larger criminal purpose." *State v. Pirtle*. The Court has described the "single act" requirement as applying to "multiple murders in the course of a very short period of time involving one continuous act." *State v. Guloy*.

### Special Sentencing Proceeding

A person convicted of aggravated first-degree murder is subject to the death penalty only through a special sentencing proceeding, which is held only if the prosecutor files a timely notice on the defendant. The prosecutor must file the notice of special sentencing proceeding against a person charged with aggravated first-degree murder when the prosecutor believes there are not sufficient mitigating circumstances to merit leniency. The prosecutor must file the notice within 30 days of the defendant's arraignment.

During the special sentencing proceeding, the jury must determine unanimously that "there are not sufficient mitigating circumstances to merit leniency" in order for the death penalty to be imposed. The jury may consider any mitigating factor in its deliberation. Examples of mitigating factors are set forth in statute and include: extreme mental disturbance or duress at the time of the murder; the defendant was substantially impaired as the result of a mental disease or defect; youth of the defendant; and likelihood of future dangerousness.

If the jury finds that there are sufficient mitigating circumstances to merit leniency, the defendant receives a sentence of life imprisonment without the possibility of release.

### Proportionality Review

All death penalty sentences must be reviewed by the Washington Supreme Court. The Court is required to determine four questions:

- Whether there was sufficient evidence to justify the finding that there were not sufficient mitigating circumstances to merit leniency;
- Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases;
- Whether the sentence was the result of passion or prejudice; and
- Whether the defendant was mentally retarded.

Proportionality review requires the court to determine whether imposition of the death penalty in a particular case is proportionate to the penalty imposed in similar cases. In conducting this review, the Court must consider both the defendant and the crime and may use any reported case that carried the possibility of a death penalty in conducting the review. Proportionality review has two fundamental goals: to avoid "random arbitrariness and imposition of the death sentence in a racially discriminatory manner." *State v. Brown*. The 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 in the present case is not wanton or freakish. *Id.* Four factors are considered by the Court when conducting the proportionality review: the nature of the crime; the aggravating

circumstances; the defendant's criminal history; and the defendant's personal history. *State v. Elledge*.

**Summary of Bill:**

Several revisions are made to the capital punishment law relating to aggravated murder cases involving more than one victim.

A legislative finding is made that plea bargains in multiple capital murder cases deny justice to victims, their families and friends, and the community at large, and that defendants in such cases should be tried, and if found guilty, the death penalty should be presented to the jury as an option.

A plea bargain is not allowed in a capital murder case where there is more than one victim. A prosecutor is required to seek the maximum penalty available if a person is convicted in a multiple capital murder case.

The crime of aggravated first-degree murder when there is more than one victim is amended so that it applies regardless of: (1) when the murders occurred; (2) whether the murders occurred in one or more jurisdictions; and (3) whether the murders were a part of a common scheme or plan or a single or multiple acts of the defendant.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect on July 1, 2004.