

SENATE BILL REPORT

SB 5456

As of November 10, 2011

Title: An act relating to reducing criminal justice expenses by eliminating the death penalty in favor of life incarceration.

Brief Description: Eliminating the death penalty.

Sponsors: Senators Murray, Regala, Kohl-Welles, Kline, Harper, White, Chase, Nelson, Fraser and Prentice.

Brief History:

Committee Activity: Judiciary: 2/09/11.

SENATE COMMITTEE ON JUDICIARY

Staff: Juliana Roe (786-7438)

Background: Washington has had some form of capital punishment since territorial days, with the exception of several periods where the death penalty was either legislatively abolished or ruled unconstitutional. Washington's current death penalty statute was enacted in 1981. Of the 30 people that have been sentenced to death since 1981, five have been executed.

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. All death sentences must be reviewed, on the record, by the Supreme Court of Washington. The Court in the mandatory review must 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.

Washington utilizes two methods of execution: lethal injection and hanging. Lethal injection is used unless the inmate under sentence of death chooses hanging as the preferred execution method.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Thirty-five other states and the federal government have the death penalty; 15 states have abolished it. In recent years, the U.S. Supreme Court has banned execution of mentally retarded and juvenile offenders. In addition, the Court has held that a death sentence is only appropriate for murder convictions.

Summary of Bill: The death penalty is abolished in the state of Washington.

Appropriation: None.

Fiscal Note: Available

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: There are various reasons the death penalty should be abolished. (1) The death penalty is not a deterrent. Studies have found that there is a lower murder rate in those states in which there is no death penalty and that there is a higher murder rate in those states in which the death penalty is used. (2) The cost of the death penalty is prohibitive. The average cost of a death penalty case in 2007 was \$467,000. Death penalty cases, compared to life without the possibility of parole cases, increase costs across the board. The money associated with these costs could be better used in programs for prevention, e.g. drugs or alcohol, or funding law enforcement. (3) There is race disproportionality in the application of the death penalty. A person is more likely to be subject to the death penalty if the victim was white. (4) Persons with mental health issues are at a disadvantage. It is very difficult to prove that a person is not guilty by reason of insanity. Persons with mental illnesses are disadvantaged in their ability to respond to the crime charged. This is of most concern when it involves the death penalty. (5) The death penalty is morally wrong. We should not be in the business of taking lives. The state should protect its citizens and have respect for human life. There are effective sentencing alternatives, such as life without the possibility of parole. The death penalty reflects a spirit of vengeance and perpetuates a climate of violence. It focuses on the murderer rather than the victim. (6) There is no room for error when the death penalty is involved. If a person is executed and it is later found that that person was innocent, that "mistake" cannot be reversed. While it is not something that has happened in Washington, we should attempt to stop that from ever being a problem in the future. (7) The death penalty is a long, drawn-out process that re-victimizes the victims' family members. A penalty of life without the possibility of parole provides certainty and finality allowing the families to move on with their lives. Death penalty cases often languish due to years of appeals and provide uncertainty to victims' families.

CON: Some crimes deserve the death penalty. This goes beyond the victim's family as the ultimate victim is the person who was killed. We need justice for the innocent. This goes beyond cost. It is for the greater good to punish crimes. Just because crimes still happen does not mean that punishment is not a deterrent.

OTHER: The fact that the bill merely repeals the death penalty and does not include a set of findings is commendable.

There are several issues to discuss with regard to comments made about the death penalty. (1) Death penalty cases are not race specific. (2) There are no innocent people on death row. (3) The disproportionality in death penalty cases between counties is insignificant. When we looked at the four largest counties and compared them to the other 35 counties, we found that 16 percent of the aggravated murder cases in the four largest counties resulted in the imposition of the death penalty whereas 14 percent of the aggravated murder cases in the 35 other counties resulted in the imposition of the death penalty. (4) The cost of death penalty cases could be lessened.

Persons Testifying: PRO: Senator Murray, prime sponsor; Shankar Narayan, ACLU; Mark Larranaga, Washington Association of Criminal Defense Attorneys, Washington Defenders Association; David Lord, Disability Rights Washington, National Alliance for Mental Illness, Mental Health America; Teresa Mathis, Nemesio Domingo, citizens; Megan Jackson, Washington Coalition to Abolish the Death Penalty; Chris Boerger, North West Washington Synod of Free ELCA; John Geiss, Washington State Catholic Conference; Paul Benz, Episcopal Church; John Rosenberg, Good Shepherd Lutheran Church.

CON: Rebecca Faust, citizen.

OTHER: Tom McBride, Washington Association of Prosecuting Attorneys.