

SENATE BILL REPORT

SB 6283

As of January 26, 2012

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

Brief Description: Reducing criminal justice expenses by eliminating the death penalty in favor of life incarceration.

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

Brief History:

Committee Activity: Judiciary: 1/25/12.

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 when 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 then, 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 the answers to 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 substantially impaired as a result of mental disease or defect or found to have an intellectual disability.

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.

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.

Thirty-five other states and the federal government use 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: Public policy should not be static. It is appropriate for us as a Legislature to look at the death penalty to determine if the time has come to join other states in eliminating this policy. We should focus on what is really the ultimate goal. We can agree that public safety is one of the greatest goals. Does implementation of the death penalty provide for public safety? No, it does not. Can it be accomplished in another way? Yes. By imposing life without the possibility of parole we accomplish that same safety goal. A family member's murder causes terrible pain that never goes away. Execution will not heal our pain, and the death penalty does not provide us with solace. We want the person identified, prosecuted, and off the streets so that no one else can be hurt. We want swift and sure justice. The death penalty is a very long process. That long ordeal creates more pain for the family. Our system is not perfect, and the potential for error is still present. Life without the possibility of parole is a good alternative. Precise fiscal analysis is very difficult here. The death penalty is about six to ten times more costly than life without the possibility of parole. Costs have exceeded \$2 million per case just at the trial level. That is money better used in other ways. Opinions vary on this issue, but our responsibility is to analyze and determine the best interests of the public. Life without the possibility of parole will force the perpetrator to face the reality of his or her crime. It has more potential to hold that perpetrator accountable for his or her actions than does an execution. Many other states have abolished the death penalty. It's time for Washington to end capital punishment.

The current death penalty scheme has been around for approximately 30 years. There have been about 300 cases that have been eligible for the death penalty. There were 82 cases in which the death penalty was sought. Thirty-two of those cases resulted in a sentence of death. In these cases there have been errors and reversals that have resulted in many sentences being changed to life without the possibility of parole. In the end, there have been five executions. Three of those cases resulted from volunteers, meaning they waived their appeals. Only two people went through the entire trial and appellate process, ending in an execution. An incredible amount of money has been expended on the death penalty that has

netted five executions. Life without the possibility of parole cases cost significantly less than death penalty cases.

The Catholic church opposes the death penalty because it merely adds violence to violence. Taking one life for that of another does not balance the scales of justice. Life without the possibility of parole is a more appropriate sentence. In looking at the death penalty, the Legislature should determine several things in regards to its motive: is it public safety, revenge, deterrence?; are innocent people being executed?; is it being fairly applied against racial and economic groups? Tragedy is not solved by state sanctioned homicide.

My sister was murdered. At the time, because of my sister's murder, I championed the death penalty. I wanted justice for my family. My family endured over 20 years of excruciating pain, sadness, and media attention surrounding her murder, and that was due to the long, drawn-out process that coincides with a death penalty sentence. Had the defendant been sentenced to life without the possibility of parole, we would have been spared 20 years of additional suffering. My emotions carried the day then, but I now know that there was a better sentence – life. To kill someone for killing someone makes little sense. It merely speaks of anger and frustration. We should not answer violence with violence.

Persons with mental illnesses are often accused of murder. There are people who have mental illnesses who do not understand that they've committed a crime. These people often don't take their medication and refuse mental health services because they don't believe they are ill. These types of people should not be subject to the death penalty.

The manner in which the death penalty is imposed is erratic. It is the prosecutors who choose whether to impose the death penalty. The problem with that is that prosecutors are subject to a variety of other factors in making charging decisions, such as public pressure, politics, available resources, and professional ambition. There is no proportionality as to how the death penalty is imposed. A recent study found that there is no rational connection between the seriousness of a crime and who is sentenced to death. Race, geography, and the size of a county's budget play a major role in who receives the ultimate punishment. The death penalty should be imposed proportionately to cases that are similar, and it is not. Whether to impose the death penalty should not be a decision that is made by one prosecutor, since it is the state's policy and not the individual's.

In Washington, there were approximately 300 cases in which the penalty of death was possible. Only two of those 300 persons have actually been executed. Therefore, 298 families have been denied justice. Our system is not working. It is wasting money and taking away good resources.

Just because the death penalty is legal in Washington State does not mean that it is right. The fact is that, when it comes to justice, we can never be 100 percent sure. This becomes even more imperative when a person is facing the finality of the ultimate sentence – death. I sat on death row for 23 years and was finally granted clemency because new evidence came to light in my case.

The American Law Institute (ALI) created the modern framework for the death penalty statutes in 1962. It was broadly adopted throughout the United States (U.S.) and by the U.S.

Supreme Court. In 2009, the ALI conducted a comprehensive study on the death penalty. Pursuant to the study, the ALI disavowed its previous statements about the death penalty and its present structure, in light of intractable institutional obstacles to ensure a minimally adequate system to administer capital punishment. It has been proven that there is racial disparity and great expense, and there is mounting evidence that we have executed innocent persons. The death penalty is not intellectually or economically defensible.

OTHER: The question that the Legislature needs to decide is whether or not it, as a policy, wants to have the death penalty in Washington. It must ask itself whether the death penalty is a moral and ethical application of imposing penalties. You don't have to decide whether you believe disproportionality is happening or whether innocent persons are on death row. You need to stay focused on the task at hand.

Persons Testifying: PRO: Sen. Regala, prime sponsor; Father Michael Ryan, WA State Catholic Conference; Mark Larranaga, ACLU; Farrell Adrian, National Alliance on Mental Illness; Judge David Nichols; Gerald Hankerson, NAACP; Tom Ewell, Friends Committee on WA Public Policy; Karil Klingbeil, Tim Ford, Yoshe Revelle, citizens.

OTHER: Tom McBride, WA Assn. of Prosecuting Attorneys.