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**Judiciary Committee**

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**SB 6052**

**Title:** An act relating to reducing criminal justice expenses by eliminating the death penalty and instead requiring life imprisonment without possibility of release or parole as the sentence for aggravated first degree murder.

**Brief Description:** Reducing criminal justice expenses by eliminating the death penalty and instead requiring life imprisonment without possibility of release or parole as the sentence for aggravated first degree murder.

**Sponsors:** Senators Walsh, Carlyle, Kuderer, McCoy, Pedersen, Billig, Dhingra, Cleveland, Lias, Darneille, Keiser, Hunt, Wellman, Chase, Miloscia, Saldaña and Hasegawa; by request of Attorney General.

**Brief Summary of Bill**

- Eliminates the death penalty and provides that all persons convicted of Aggravated First Degree Murder must be sentenced to life in prison without the possibility of release or parole.

**Hearing Date:** 2/20/18

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

**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 33 people that have been sentenced to death since 1981, five persons have been executed, and eight persons are currently under a death sentence. A moratorium on executions was put in place by the Governor in 2014.

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*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.*

Under the death penalty 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 14 aggravating circumstances exists. Examples of aggravating circumstances include, among others:

- the victim was a police officer performing official duties, or a judge, juror, witness, or attorney and the murder was related to the victim's 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 in exchange for money or to conceal the commission of a crime;
- the person committed the murder to obtain or maintain a position in the hierarchy of an organization; or
- there was more than one victim and the murders were part of a common scheme or plan, or the result of a single act.

#### 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. 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 relevant factor in its deliberation.

Examples of mitigating factors are set forth in statute and include:

- the defendant's prior criminal activity;
- any extreme mental disturbance suffered by the defendant at the time of the murder;
- whether the defendant was substantially impaired as the result of a mental disease or defect;
- whether the defendant acted under duress or domination of another;
- the youth of the defendant; and
- the defendant's 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.

#### Mandatory Review.

All death sentences are subject to a mandatory review by the Washington Supreme Court (Court), in addition to other appellate rights. The Court in the mandatory review 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 had an intellectual disability.

As part of the review, the Court engages in a comparative proportionality review to determine whether imposition of the death penalty in a particular case is proportionate to the penalty imposed in similar cases, considering any reported case that carried the possibility of a death penalty. The Court considers four factors when conducting the comparative proportionality review: the nature of the crime; the aggravating circumstances; the defendant's criminal history; and the defendant's personal history. Comparative proportionality review has two fundamental goals: "to avoid random arbitrariness and imposition of the death sentence in a racially discriminatory manner." 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.

#### Execution of a Death Sentence.

The death penalty in Washington is carried out by lethal injection or, at the election of the condemned person, by hanging. The execution of an inmate under a death sentence occurs at the Washington State Penitentiary in Walla Walla under the supervision of the Superintendent and in accordance with a Department of Corrections policy governing capital punishment procedures.

#### **Summary of Bill:**

The death penalty is eliminated, and all statutory procedures for imposing and carrying out a sentence of death are repealed.

A person convicted of Aggravated First Degree Murder must be sentenced to life without the possibility of release or parole.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.