

# HOUSE BILL REPORT

## SB 6052

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**As Reported by House Committee On:**  
Judiciary

**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 History:**

**Committee Activity:**

Judiciary: 2/20/18, 2/22/18 [DP].

**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.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass. Signed by 7 members: Representatives Jinkins, Chair; Kilduff, Vice Chair; Goodman, Hansen, Kirby, Orwall and Valdez.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Rodne, Ranking Minority Member; Graves, Assistant Ranking Minority Member; Haler, Klippert, Muri and Shea.

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

**Background:**

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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.*

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.

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.

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#### **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.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

## **Staff Summary of Public Testimony:**

(In support) It is time for the state to explore the moral, social, economic, and criminal justice issues raised by the death penalty. The number one determining factor for whether the death penalty is sought is the financial resources and predisposition of the local prosecutor. The death penalty cannot be applied with consistency and equity, and this has profound moral implications.

The death penalty system does not work in this state. It does not promote public safety and is not a deterrent to crime. The death penalty is disproportionately applied, and it is very expensive and resource intensive. This takes resources away from other criminal justice efforts. Even when the death penalty is successfully sought, the sentences have been reversed in approximately 75 percent of the cases since 1997. Offenders sentenced to death stay on appeal for too long, often for 20 years, and this does not serve the interests of the families because they do not get closure. The system would be stronger without the death penalty because there would be finality to these cases within three years.

The death penalty abases human dignity, and it is cruel and unnecessary. Citizens have the right to be protected, and there should be an appropriate penalty for these crimes, but you cannot balance the scales of justice by taking one life for another. The legal system is far from perfect. Bias and human error have led to the conviction of innocent people, including those on death row. Nationally over 160 people have been exonerated after being sentenced to death. The risk of executing an innocent person is too high. When there is a wrongful conviction, that person's life is destroyed and the victim does not get justice.

Families who have lost loved ones have a wide range of feelings, and for many of them life in prison does provide closure. What a family member of a victim wants should not be the basis for determining the public policy that is right for society. Pursuing the death penalty takes resources away from other cases, and that money could be better used on services to families or to address drug and mental health issues to prevent future murders.

The idea that the death penalty should be retained as leverage is the worst reason to keep the death penalty. The state should not be threatening someone with death in order to get a guilty plea. This is a tough and emotional issue, but the Legislature should not divert this to the voters. The public has entrusted the Legislature with the role of making decisions for a more just society. More than one-third of the states have abolished the death penalty, and it is time for Washington to do the same.

(Opposed) This bill enhances the legal protection for murderers, ends their responsibility for murders that they committed, and adds to the danger faced by law enforcement officers. Hardly a week goes by that a law enforcement officer is not killed in the United States. The monster that murdered Jayme Biendl was already serving a life sentence without the possibility of parole. Abolishing the death penalty would take away any penalty for such an action. These murderers deserve no mercy and do not deserve to live out their lives in the comfort of a prison while their victims are buried in the ground.

The presence and threat of the death penalty has led some murderers to plead guilty, thus sparing families the pain and suffering of having to relive the experience through the trial

process. If the death penalty is eliminated, this important negotiating tool is lost. Defendants will now take their cases to trial, rather than taking life without parole as part of a plea bargain. There is fear that they could eventually get out of prison and cause further harm to the families. There is also concern that the Governor could issue a pardon or commute a life sentence. In a case in Kitsap County involving a six-year-old who was abducted and murdered, the defendant pleaded guilty and the presence of the death penalty played a role in that outcome.

The majority of the membership of Washington Association of Sheriffs and Police Chiefs opposes this bill. Having the death penalty as an option creates a dynamic that serves the families of victims. The rule of law depends upon clear policy direction from the Legislature. Policy must be determined based on thoughtful discussion that brings people together, rather than dividing them.

**Persons Testifying:** (In support) Senator Carlyle; Bob Ferguson, Office of the Attorney General; Dan Satterberg; Daniel Mueggenborg, Archdiocese of Seattle; Teresa Mathis; Nemesio Domingo; Elisabeth Smith, American Civil Liberties Union of Washington; Pete Collins, Seattle University; Lara Zarowsky, Innocence Project Northwest; Glen Anderson; Bob Zeigler; and James Basden.

(Opposed) Joe Winkler; Brad Tower, Washington Coalition of Crime Victims Advocates; Lew Cox, Violent Crime Victim Services; Lisa Hamm; and Steve Strachan, Washington Association of Sheriffs and Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** None.