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## Judiciary Committee

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### HB 1518

**Title:** An act relating to creating a death penalty task force.

**Brief Description:** Creating a death penalty task force.

**Sponsors:** Representatives Williams, Lantz, Moeller, Appleton, Darneille, Goodman, Hunt, Chase, Miloscia, Ormsby, Hudgins, Pedersen, McDermott and Santos.

Brief Summary of Bill
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| <ul style="list-style-type: none"><li>• Stays the sentence of any person sentenced to death until July 1, 2008.</li><li>• Establishes a death penalty task force to review Washington's death penalty laws.</li></ul> |
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**Hearing Date:** 2/14/07

**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 31 people that have been sentenced to death since 1981, four persons have been executed, and only one of those persons exercised the right to appellate review (other than mandatory review). Twenty persons sentenced to death have had their sentences overturned by either the Washington Supreme Court or the Ninth Circuit Court of Appeals, although one of these cases is on appeal to the United States Supreme Court and two cases are back at the trial court for further proceedings. The grounds for reversal in these cases vary and include: constitutional error, judicial error, prosecutorial or jury misconduct, and ineffective assistance of counsel.

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.

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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.*

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.
- 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 mitigating factor in its deliberation. Examples of mitigating factors are set forth in statute and include: prior criminal activity; extreme mental disturbance or duress 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; 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 sentences are subject to a mandatory review by the Washington Supreme Court that is 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.
- 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*.

Since the plea bargain in the Gary Ridgeway case, which involved 48 murders, there has been much debate about whether a death sentence could ever meet this proportionality test. The Washington Supreme Court recently addressed this issue in *State v. Cross*. Mr. Cross was convicted of killing his wife and two children. He argued that the death penalty in Washington is effectively standardless and that proportionality review does not properly police the use of the death penalty.

In a 5-4 decision, the Court upheld the death sentence for Mr. Cross, finding that "Washington's death penalty is constitutional and nothing about Gary Ridgeway changes that." The Court noted that the proportionality review requires a look at all aggravated first-degree murder prosecutions, not just aberrations such as Gary Ridgeway. The Court stated that although the approach to proportionality analysis has taken many forms, the goal has remained the same: "to ensure that the sentence, in a particular case, is proportional to sentences given in similar cases, is not freakish, wanton or random; and is not based on race or other suspect classifications." The Court held that the death sentence for Mr. Cross met this standard.

The dissent, after a review of the historical application of proportionality review, determined that there is no rational framework for conducting proportionality review and that the administration of the death penalty in Washington defies any rational explanation. Comparing Mr. Cross's death sentence to Ridgeway and other mass murderers, as well as other cases of aggravated first-degree murder, the dissent found that "the penalty of death is not imposed generally in similar cases." Noting that the worst mass murderers in Washington's history have all escaped the death penalty, the dissent found that the death penalty "is like lightning, randomly striking some defendants and not others."

### **Summary of Bill:**

A death penalty task force is created to conduct a review of Washington's death penalty laws to determine the following:

- The uniformity of prosecutors' decisions to charge aggravated first-degree murder, and the criteria used in those charging decisions.
- The impact of race, ethnicity, gender, and economic status on charging decisions.
- Whether the death penalty law is applied randomly or arbitrarily.
- The costs of capital trials and appeals.
- Whether reform of the laws would decrease the chances of the inappropriate imposition of the death penalty.

The Task Force consists of the following 14 members: two members appointed by the Supreme Court; four legislative members; one representative of the Governor's office; two criminal defense lawyers and two prosecutors with experience in death penalty cases; one member appointed by the Washington Association of Sheriffs and Police Chiefs; one member from a crime victim's organization; and one civilian member.

The Task Force must report its findings and recommendations to the Governor, Washington Supreme Court, and Legislature by January 1, 2008.

The Administrative Office of the Courts (AOC) will provide staffing and support to the Task Force. The following sums are appropriated from the state General Fund to the AOC for staffing

and support services: \$50,000 for the fiscal year ending June 30, 2007; and \$100,000 for the fiscal year ending June 30, 2008.

**Appropriation:** The sum of \$50,000 for the fiscal year ending June 30, 2007 and \$100,000 for the fiscal year ending June 30, 2008.

**Fiscal Note:** Requested on February 9, 2007.

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