

SENATE BILL REPORT

HB 2668

As of February 20, 1996

Title: An act relating to capital punishment sentencing.

Brief Description: Prescribing procedures for capital punishment sentencing.

Sponsors: Representatives Hargrove, Sheahan, McMahan, Sterk, Delvin and Thompson.

Brief History:

Committee Activity: Law & Justice: 2/22/96.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Marty Lovinger (786-7443)

Background: In order to seek the death penalty, a prosecutor must file notice of the intent to do so within 30 days of the arraignment of the defendant. The notice must also be served on the defendant. The 30-day period may be extended, or if already passed, reopened upon a showing of "good cause." The state Supreme Court has held that this requirement is not satisfied by "substantial compliance," and that good cause for an extension may not include anything other than an external impediment to the prosecutor meeting the requirement. Actual notice (by phone or in person) does not meet the requirement of "serving" notice, which must be done in writing, and inadvertence in meeting the 30-day requirement does not constitute good cause for an extension. *State v. Dearborne*, 125 Wn.2d 173 (1994), and *State v. Luvene*, 127 Wn.2d 690 (1995).

Once a defendant has been convicted of aggravated first-degree murder and sentenced to death, the Supreme Court is required to review the sentence. This review is in addition to any other appeal that may be available to the defendant. The court is to determine, among other things, whether the sentence is "excessive" or "disproportionate" when compared to similar cases.

The state Supreme 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 is not wanton or freakish. *State v. Rupe*, 108 Wn.2d 735 (1987). The court has also remarked:

No question of statutory interpretation has received more careful consideration than what this [excessiveness and proportionality comparison] means and how to best give it effect. We have acknowledged the statute often requires "the comparison of incomparables," and the task is, at times, a "struggle." *State v. Pirkle*, 127 Wn.2d 628 (1995).

The U.S. Supreme Court has held that proportionality reviews in death penalty cases are not constitutionally required. *Pulley v. Harris*, 79 L. Ed. 2d 29 (1984).

Summary of Bill: The period following arraignment during which a prosecutor must serve the defendant with notice of intent to seek the death penalty is increased to 45 days. Any method of service "reasonably likely to provide notice to the defendant or the defendant's attorney" is permissible. Actual notice to the defendant or the defendant's attorney within the time limit satisfies this requirement, if service in writing is made within the time limit.

A statutory list of permissible reasons to exceed the 45-day notice requirement is provided. The court may extend or reopen the period if

- there is good cause; or
- the prosecutor is actively pursuing an investigation and necessary information cannot be timely obtained for reasons beyond the control of the prosecutor; or
- there is newly discovered evidence which the prosecutor could not have discovered through due diligence; or
- the defendant requests an extension or reopening.

The requirement that the state Supreme Court review a sentence of death for excessiveness or disproportionality is removed.

Appropriation: None.

Fiscal Note: Available.

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