

# SENATE BILL REPORT

## SB 5093

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As Passed Senate, March 13, 1997

**Title:** An act relating to capital punishment sentencing.

**Brief Description:** Prescribing procedures for capital punishment sentencing.

**Sponsors:** Senator Roach.

**Brief History:**

**Committee Activity:** Law & Justice: 1/23/97, 2/5/97 [DP, DNP].  
Passed Senate, 3/13/97, 33-15.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Roach, Chair; Johnson, Vice Chair; Hargrove, Haugen, Long, McCaslin, Stevens and Zarelli.

**Minority Report:** Do not pass.

Signed by Senators Fairley and Kline.

**Staff:** Marty Lovinger (786-7443)

**Background:** When 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 requirement that the state Supreme Court review a sentence of death for excessiveness or disproportionality is removed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** This provision has never resulted in the overturning of a death sentence, but procedurally it is so confusing that just attempting to comply with the requirement could result in a reversal at the federal court level. This provision results in the unnecessary expenditure of money, time and resources. Even without this provision, there are requirements that sentences of death be reviewed for prejudice. There is no evidence of prejudice in death penalty cases in this state. The death penalty in this state is used sparingly and there would still be an automatic review by the Washington Supreme Court of every case.

**Testimony Against:** All death sentences should be reviewed for unfairness. Removing the required review may make the whole death penalty statute unconstitutional. The review procedure only requires a small effort by the prosecutors. Disproportionality is not being used to open prison doors. Removal of the provision will in itself lead to more appeals. The Washington Supreme Court has now adopted a proportionality test and stayed with it, thus eliminating some of the prior confusion. The current statute has prevented prejudice in who is sentenced to death, so don't change it.

**Testified:** Tom McBride, WA Assn. of Prosecuting Attorneys (pro); Michael Johnson, Pierce County Prosecutor's Office (pro); Neil Fox, WA Assn. of Criminal Defense Lawyers (con); Jeffrey Ellis, Washington Defender Assn. (con).