

HOUSE BILL REPORT

SB 5339

As Reported by House Committee On:
Public Safety

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 Carlyle, Walsh, Pedersen, Wellman, Keiser, Lias, Hunt, Kuderer, Nguyen and Saldaña; by request of Attorney General.

Brief History:

Committee Activity:

Public Safety: 3/25/19, 4/1/19 [DP].

Brief Summary of Bill

- Repeals the statutory authority to impose a death sentence and provides that any adult defendant convicted of Aggravated First Degree Murder must be sentenced to life in prison without the possibility of release or parole.

HOUSE COMMITTEE ON PUBLIC SAFETY

Majority Report: Do pass. Signed by 7 members: Representatives Goodman, Chair; Davis, Vice Chair; Appleton, Lovick, Orwall, Pellicciotti and Pettigrew.

Minority Report: Do not pass. Signed by 4 members: Representatives Klippert, Ranking Minority Member; Sutherland, Assistant Ranking Minority Member; Graham and Griffey.

Staff: Kelly Leonard (786-7147).

Background:

Status of the Death Penalty in Washington.

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.

The death penalty existed in Washington from territorial days to 2018, with the exception of several periods in which the death penalty was either legislatively abolished or ruled unconstitutional. Washington's current death penalty statute was enacted in 1981. Since then, 33 persons have received death sentences, and the state has carried out five of those executions. In 2014 the Governor placed a moratorium on executions. In 2018 the Washington Supreme Court issued a decision in *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621, finding that the current death penalty statute is unconstitutional as a result of being imposed in an arbitrary and racially biased manner. The death sentences for the remaining eight defendants awaiting execution were converted to life in prison without the possibility of release or parole.

Aggravated First Degree Murder and the Death Penalty Statute.

Under the death penalty statute, a death sentence may be imposed only against adult defendants convicted of Aggravated First Degree Murder. Aggravated First Degree Murder is premeditated Murder in the first degree when at least one of 14 aggravating circumstances exists. Examples of aggravating circumstances include:

- 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 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.

The statute allows a death sentence only after a special sentencing proceeding. During this proceeding, the jury must determine unanimously that "there are not sufficient mitigating circumstances to merit leniency" in order to impose a death sentence. If the prosecutor does not initiate the special sentencing proceeding or the jury finds sufficient mitigating circumstances to merit leniency, the defendant is sentenced to life in prison without the possibility of release or parole. If the jury imposes a death sentence, the sentence is subject to a mandatory review by the Washington Supreme Court, in addition to other appellate rights.

Prior to 2018, executions were carried out by lethal injection or, at the election of the condemned person, by hanging. Executions occurred at the Washington State Penitentiary in Walla Walla under the supervision of the Superintendent of the Department of Corrections.

As a result of *State v. Gregory*, the only available sentence for an adult defendant convicted of Aggravated First Degree Murder is life in prison without the possibility of release or parole.

Summary of Bill:

The statutory authority for the death penalty is eliminated, and all procedures for imposing and carrying out a death sentence are repealed. An adult defendant convicted of Aggravated First Degree Murder must be sentenced to life in prison without the possibility of release or parole.

Appropriation: None.

Fiscal Note: Not requested.

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) As a result of *State v. Gregory*, Washington has already joined other states and nations in bringing an end to the death penalty. The Washington Supreme Court unanimously found that the death penalty has been imposed in an arbitrary and racially biased manner, making it unconstitutional as applied. All death sentences were converted to life in prison without the possibility of release or parole. The Legislature, however, needs to close the chapter on this issue by repealing the unconstitutional statutes. The Legislature needs to join the other branches of government by grappling with this issue directly.

Leaving unconstitutional laws on the books does not make sense. It confuses the public. It also increases the risk that the Legislature will attempt to rewrite the death penalty statutes again. Yet the Legislature has already failed to "fix" the death penalty statutes on three previous occasions. The courts have struck them down every time. This does not promote finality or fairness, and it is not good public policy.

It is the responsibility of the Legislature and other branches of government to create and maintain a system that is fair and just and serves all people. Part of moving forward is ensuring truth in sentencing—life in prison without the possibly possibility of release or parole should remain as such. The state needs to do more for victims and families, and the state needs to work towards criminal justice reform to promote public safety. The Legislature needs to elevate the discourse on this issue and seek appropriate punishments for serious offenses.

There have been 156 exonerations of people on death row across the country, and many more have received reductions or changes to sentences because of partial innocence. Even in Washington, innocent people have served time on death row. We now know that innocent people have been executed in this country. Wrongful convictions are often caused by human error and mistakes. Despite reforms, it is impossible to completely perfect the criminal justice system. Wrongful convictions will occur. The death penalty is absolute and cannot be undone. If there is a mistaken execution, there is no way to make that right.

In our society, many people are uncomfortable with expressing issues of morality and issues of faith. However, some of the primary proponents of this bill are sincerely motivated by moral and religious beliefs. The state should not lower itself to the same level of a convicted murderer. Taking a life is absolute and irreversible. It is wrong.

All human life is sacred, from conception to natural death, because all persons are made in God's image. The Catholic Church opposes capital punishment but is also deeply concerned for the families and loved ones of victims of violence crimes. Our society must commit to helping victims heal and protecting them from harm. However, the death penalty perpetuates a cycle of violence. Taking another life does not balance the scales of justice. Life in prison without the possibility of release or parole is an appropriate sentence for the most serious of offenses.

Jewish leaders and communities also oppose capital punishment. Humanity has evolved in its understanding of what actually promotes healing. The laws of thousands of years ago are not appropriate for today, and the recent court decision and this legislation are wisely moving our society towards greater justice and peace.

Many former and current employees of the Department of Corrections (DOC) have been directly involved in carrying out executions. The state should consider what it means for state employees to kill other human beings. Employees have done their best to take care of themselves before, during, and after executions. Many have had to wrestle with—or even put aside—personal and religious beliefs in order to continue with their jobs. Ultimately, the death penalty is not about whether one person deserves to live or die. It is about whether the government should be making that decision. The death penalty is wrong, and it is wrong to ask state employees to carry it out.

The use of lethal injection to carry out executions is deeply concerning for health care professionals. By allowing lethal injections to go forward, health care practitioners employed with the DOC have been put in untenable positions. Executions are, by definition, unethical medical practice. They violate the Hippocratic Oath and professional ethics. The most recent execution in Washington resulted in the Director of Health Services resigning from the DOC. Further, a lethal injection is a complex medical procedure, and it is difficult to carry it out properly without causing pain and suffering. All other medical procedures undergo scientific scrutiny, testing, and refinement. As a result of ethical concerns, however, lethal injections have not and will not undergo this process. This means every execution is a human experiment.

Many crime victims do not support the death penalty. Even after losing a loved one, many families do not want to perpetuate violence. In addition, many crime victims have also felt that resources and attention were diverted away from their cases to capital cases. They were left to feel that their loved one was less important. The state has put a lot of resources into capital cases, but it is now clear that the death penalty does not deliver on its promise. It does not bring about any more healing or justice.

Recent surveys demonstrate that the majority of Washingtonians no longer support the death penalty. The vast majority prefer life in prison as punishment. This holds true even amongst conservative voters. It is time to end this practice and repeal these statutes. The rest of the

developed world, and even many developing countries, have already abolished the death penalty.

(Opposed) None.

Persons Testifying: Senator Carlyle, prime sponsor; Representative Orwall; Attorney General Bob Ferguson; Eusebio Elizondo, Archdiocese of Seattle; Yohanna Kinberg, Congregation Kol Ami; Nemesio Domingo; Lara Zarkowsky, Innocence Project Northwest; Teresa Mathis; David Avolio, Episcopal Bishop's Task Force on the Death Penalty; Dawud H. Al-Malik, Fellowship of Reconciliation; Andrew Villeneuve, Northwest Progressive Institute; Glen Anderson, Committee for Alternatives to the Death Penalty; Eldon Vail; and Marc Stern.

Persons Signed In To Testify But Not Testifying: None.