HOUSE BILL REPORT
HB 1518

As Reported by House Committee On:
Judiciary

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 History:
Committee Activity:
Judiciary: 2/14/07, 2/27/07 [DPS].

Brief Summary of Substitute Bill

- Establishes a death penalty task force to review Washington's death penalty laws.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Lantz, Chair; Goodman, Vice Chair; Flannigan, Kirby, Moeller, Pedersen and Williams.

Minority Report: Do not pass. Signed by 4 members: Representatives Rodne, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Ahern and Ross.

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

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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.

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 (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; and
- 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." 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. 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.

Since the plea bargain in the Gary Ridgeway case, which involved 48 murders, there has been much debate about whether a death sentence can 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 lightening, randomly striking some defendants and not others."

Summary of Substitute Bill:

A Death Penalty Task Force (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;
- cases where evidence indicates a defense of severe mental disorder could have been offered had such a defense been available and how that defense might have affected the outcome of cases; and
- whether reform of the laws would decrease the chances of the inappropriate imposition of the death penalty.

The Task Force consists of the following 12 members: 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 who is a former Secretary of the Department of Corrections who has witnessed an execution.

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

The following sums are appropriated from the State General Fund to the House of Representatives and Senate for the purposes of the act:
- $25,000 to the House of Representatives and $25,000 to the Senate for the fiscal year ending June 30, 2007; and
- $50,000 to the House of Representatives and $50,000 to the Senate for the fiscal year ending June 30, 2008.

Substitute Bill Compared to Original Bill:

The original bill contained a moratorium on death sentences and did not include the requirement that the Task Force review evidence relating to cases where a defense of severe mental disorder could have been raised. The original bill included two members appointed by the Supreme Court and provided that the Administrative Office of the Courts would provide staffing and support to the Task Force. The original bill did not require that the civilian member be a former Secretary of the Department of Corrections who has witnessed an execution.

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: Available.

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

Staff Summary of Public Testimony:

(In support) This bill is before you in part because of a recent Washington Supreme Court case reviewing the application of the death penalty. The Court found that while the Gary Ridgeway plea bargain raised questions about the proportionality of death sentences, these were questions best left to the Legislature. The Legislature can't delegate this task to any other body. Four justices found that the death penalty is like lightening, randomly striking some defendants and not others, with no apparent rational design. This lack of rationality and how it impacts the guarantee of equal application of the laws is troubling.

The current death penalty statute was enacted in 1981 with the good intention to focus the law on the worst of the worst. After 25 years of experience, there are a whole host of issues that have arisen that call for a new look and a new debate about the death penalty. The Legislature has the duty to examine whether the death penalty is applied fairly. Over 80 percent of the 31 death sentences imposed have been overturned. We need to look at the errors in those cases to determine if they are things that can be fixed or if they are inherent in the system.

The Washington State Bar Association (WSBA) has been studying the death penalty for the past 18 months, but there were a number of issues that the WSBA study could not reach that this study will be able to address. There are some troubling raw statistics relating to the impact of the death penalty laws on minorities. These statistics need to be thoroughly analyzed. There is also evidence that most counties do not seek the death penalty in cases that are eligible for the death penalty. This leads to arbitrariness in implementation of our death penalty laws and should be examined.

There are also substantial issues relating to the costs of capital trials and whether capital punishment is serving the public good. Most people don't know how the system works and would be shocked by the amount of money that taxpayers spend on death cases. The state should take a look at these costs and how they impact local jurisdictions. Local jurisdictions are not being adequately reimbursed for their extraordinary criminal justice costs and are bearing the brunt of handling these death cases.

The impact of racial bias, the fact that the system seems to target people who are mentally ill or suicidal, and the consistent reversal of death sentences all point to systematic problems with the death penalty system. Other states are creating task forces to take a look at their death penalty laws. Washington needs to do the same. Washington's death penalty system falls short of 52 of the 85 recommendations from the recent Illinois death penalty study.

It is a mistake to think that it was fear of the death penalty that motivated Gary Ridgeway because, as you have heard, the death penalty is practically never imposed. Life without the possibility of release is a miserable existence and a good alternative to a death sentence.

(With concerns) Because of potential conflicts of interest, the Administrative Office of the Courts isn't the place to house this Task Force and the Supreme Court should not be involved in appointing members to the Task Force. The Legislature should chose a different body to oversee the Task Force.

(Opposed) This bill is not a good idea. It does not move the debate on this issue forward in any meaningful way. There have already been numerous studies of the death penalty in

Washington, including the recently completed 18-month study by the WSBA. The actual data on death penalty cases show that there is not a statistical basis for saying that we have disproportionately imposed the death penalty based on race. In addition, if you look at the data, you can't make the statistical argument, at least on a collective basis, that there is a difference in imposition of the death penalty between large and small counties.

What this bill is really about is Gary Ridgeway. The Supreme Court recently upheld a death sentence based on the statutory and constitutional grounds that it was not a freakish or wanton imposition of the death penalty. People may not agree that the plea agreement with Gary Ridgeway was the right decision, but no one can say that it was irrational or freakish or wanton. What the Supreme Court said in the *Cross* case is that this is a moral question that is up to the Legislature. This study avoids the moral question of whether or not we should impose death sentences. It is just more of the same thing we have been doing for the past 25 years.

Persons Testifying: (In support) Representative Williams, prime sponsor; Glen Anderson; Rozanne Kants; Mark Larranaga; Ken Davidson, Washington State Bar Association; James Badsen; Kevin Glachom-Coley, Washington State Catholic Conference; Corinne Nelson; Yoshe Revelle; Mark Prothers; Ken Davidson, Washington State Bar Association; and Joanne Moore, Washington State Office of Public Defense.

(With concerns) Jeff Hall, Board for Judicial Administration.

(Opposed) Tom McBride, Washington Association of Prosecuting Attorneys.

Persons Signed In To Testify But Not Testifying: None.