

# SENATE BILL REPORT

## SB 6052

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As Passed Senate, February 14, 2018

**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 Walsh, Carlyle, Kuderer, McCoy, Pedersen, Billig, Dhingra, Cleveland, Lias, Darneille, Keiser, Hunt, Wellman, Chase, Miloscia, Saldaña and Hasegawa; by request of Attorney General.

**Brief History:**

**Committee Activity:** Law & Justice: 1/22/18, 1/25/18 [DP, DNP].

**Floor Activity:**

Passed Senate: 2/14/18, 26-22.

**Brief Summary of Bill**

- Eliminates the death penalty and provides that all persons convicted of Aggravated First Degree Murder must be sentenced to life in prison without the possibility of release or parole.

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### SENATE COMMITTEE ON LAW & JUSTICE

**Majority Report:** Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Darneille and Frockt.

**Minority Report:** Do not pass.

Signed by Senators Padden, Ranking Member; Angel, Assistant Ranking Member; Wilson.

**Staff:** Shani Bauer (786-7468)

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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.*

**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 33 people that have been sentenced to death since 1981, five persons have been executed, and nine persons are currently under a death sentence. A moratorium on executions was put in place by the Governor in 2014.

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;
- the person committed the murder to obtain or maintain a position in the hierarchy of an organization; and
- 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 relevant factor in its deliberation. Examples of mitigating factors are set forth in statute and include:

- the defendant's prior criminal activity;
- any extreme mental disturbance suffered by the defendant 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;
- the youth of the defendant; and
- the defendant's 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.

Mandatory Review. All death sentences are subject to a mandatory review by the Washington Supreme Court (Court), 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 had an intellectual disability.

As part of the review, the Court engages in a comparative proportionality review to determine whether imposition of the death penalty in a particular case is proportionate to the penalty imposed in similar cases, considering any reported case that carried the possibility of a death penalty. The Court considers four factors when conducting the comparative proportionality review: the nature of the crime; the aggravating circumstances; the defendant's criminal history; and the defendant's personal history. Comparative 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.

Execution of a Death Sentence. The death penalty in Washington is carried out by lethal injection or, at the election of the condemned person, by hanging. The execution of an inmate under a death sentence occurs at the Washington State Penitentiary in Walla Walla under the supervision of the superintendent and in accordance with a Department of Corrections policy governing capital punishment procedures.

**Summary of Bill:** The death penalty is eliminated, and all statutory procedures for imposing and carrying out a sentence of death are repealed.

A person convicted of Aggravated First Degree Murder must be sentenced to life without the possibility of release or parole.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony:** PRO: After observing years of having the death penalty, talking with families, and attending executions, it is clear that Washington's criminal justice system would be better without it. The death penalty is not necessary for safety and is not a deterrent to crime. Life without parole is a death sentence and in many circumstances is less preferable to the inmate than death. The financial and emotional toll of a lengthy legal battle for both the taxpayer and the family is not worth it. People that are in favor of the death penalty support the death penalty that they wish we had and not the one we actually have. The current system is unworkable and does not serve victims' needs. Further, the prosecution is disproportionate depending on the county of conviction. Many small counties do not have the resources to fund a death penalty case and therefore will not ask for it. It is inequitable for an offender to get the death penalty or not depending simply on where he or

she lives. Even the larger counties that have the funds to prosecute a death penalty case end up siphoning resources from other criminal justice endeavors. This does a disservice to other victims and families. The money could be better spent elsewhere than on the prosecution of one case.

Jurisprudence around the death penalty is unique. It requires at least two attorneys assigned during the duration of the case and two attorneys during the appeal. Courts look for perfection due to the high stakes of the case. An appeal goes directly to the Supreme Court and then to Federal court. After those are complete, there is a round of habeas corpus appeals. Throughout all of these appeals, the victims' families are in fear that the case will be overturned and thrown out. Families would get more finality from a verdict of life without parole (LWOP). Studies show that the death penalty costs \$1 million to \$1.5 million more than a verdict of LWOP. Since 1997, 75 percent of death penalty cases have been reversed. A program with a 25 percent success rate that costs millions of dollars and is not a deterrent to crime should be repealed.

All human life is sacred. The death penalty is injurious to humanity and a victim's ability to heal. It somehow perpetuates the idea that the death of a perpetrator can somehow balance out the death of the victim.

CON: The citizens of Washington State should be the ones that make the decision as to whether we should continue to have the death penalty. Some people do things so horrible that they deserve the death penalty. Money should not be part of that conversation. Life without parole is not a relief to the families of the victims. Monsters need to be dealt with accordingly. The murderer of the Monroe Corrections Officer, Jayme Biendl, was already serving life in prison. The death penalty was the only punishment left for that offender.

For a victim's family, death is finality. So long as the murderer is alive, even though he is in prison, he still gets a life. He gets to have friends and visitors, eat meals, watch television, and have a community. The victim does not have that opportunity. The Governor's moratorium saved offenders who were scheduled to be executed. This was devastating for the families of their victims.

Justice is not attainable when it is a case of aggravated first degree murder. The only security the system can provide is safety and certainty that the person can never be allowed to do this again. That certainty is only provided through the death of the killer. Eliminating the death penalty will cost more in the end because prosecutors will have no leverage to get a person to plead guilty with life without parole. This process saves the victims from having to go through a painful trial.

The majority of the police chiefs and sheriffs in the state oppose legislation to remove the death penalty.

**Persons Testifying:** PRO: Senator Maureen Walsh, Prime Sponsor; Daniel Mueggenborg, Bishop Achdiocese of Seattle; Teresa Mathis, citizen; Nemesio Domingo, citizen; Elisabeth Smith, ACLU of Washington; Pete Collins, Seattle University; Lara Zarowsky, Innocence Project Northwest; Bob Ferguson, Attorney General; Dan Satterberg, King County Prosecuting Attorney; Glen Anderson, citizen.

CON: Brad Tower, Washington Coalition of Crime Victims Advocates; Gary Simpson, citizen; Jessie Trapp, citizen; Mark Roe, Snohomish County Prosecuting Attorney; Dave McEachran, Whatcom County Prosecuting Attorney; Steve Strachan, Washington Association of Sheriffs & Police Chiefs.

**Persons Signed In To Testify But Not Testifying:** No one.