

# SENATE BILL REPORT

## SB 5339

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As Passed Senate, February 15, 2019

**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, Liias, Hunt, Kuderer, Nguyen and Saldaña; by request of Attorney General.

**Brief History:**

**Committee Activity:** Law & Justice: 2/05/19, 2/07/19 [DP, DNP, w/oRec].

**Floor Activity:**

Passed Senate: 2/15/19, 28-19.

**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; Kuderer and Salomon.

**Minority Report:** Do not pass.

Signed by Senators Holy and Wilson, L..

**Minority Report:** That it be referred without recommendation.

Signed by Senator Padden, Ranking Member.

**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.

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 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. If the jury finds 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. 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.

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. A moratorium on executions was put in place by the Governor in 2014.

In October 2018, the Court declared Washington's death penalty to be unconstitutional, concluding that the death penalty was administered in an arbitrary and racially biased manner. In coming to its conclusion, the court relied on statistical evidence showing

significant county by county variation in decisions to seek or impose the death penalty and black defendants were four and a half times more likely to be sentenced to death than similarly situated white defendants. Notwithstanding, the court found the death penalty is not per se unconstitutional and left open the possibility the Legislature could enact a carefully drafted statute that would satisfy constitutional analysis—see *State v. Gregory*, 192 Wn.2d 1, 427 P.3d 621 (2018).

**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:** Not requested.

**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: We have had a long and public discourse over the last 10 to 15 years including initiatives and efforts to raise understanding about the legal, policy, and financial implications of the death penalty. There is growing recognition that the data shows the death penalty is applied in a manner that is not consistent. The recent court ruling has made it clear that the current application is unconstitutional and is incapable of being applied in a fair and unbiased manner. Closing the book on this chapter is a responsible public policy step.

Racial disparities in application of the death penalty are most pronounced for African Americans. Further, since 1973, 173 people on death row have been exonerated around the country. We should permanently remove the possibility that a person could be unjustly put to death. Funds that are spent on the death penalty could better be spent on other services.

From the inside perspective of secretary of DOC, there are hundreds of men in prison that have committed identical crimes to those sentence to life without parole (LWOP). Those men are indistinguishable from those that have been sentenced to death, yet the cost of those on death row is far in excess. It takes over 100 personnel to carry out an execution, which takes a toll on those who participate.

Victims need the finality that a sentence of LWOP will impose. There are mechanisms to punish a person convicted to LWOP who engages in another crime. Persons can be sent to intensive management unit which has no contact with human beings. Profound de-socialization has a deterrent impact. For a person on LWOP, the prison is their home. That generally dictates their behavior and in many ways they are better behaved than an inmate with two years to serve.

The Supreme Court has declared the law to be unconstitutional. We should show respect to that decision and remove the law from the books. It is also important to remove it from the law to avoid confusion to the public.

**Persons Testifying:** PRO: Senator Reuven Carlyle, Prime Sponsor; Eric Gonzales-Alfaro, ACLU-Washington; Nemisio Domingo, Family Member; Dick Morgan, Former DOC Secretary; Paul Benz, Faith Action Network; Noah Purcell, Solicitor General of the State of Washington; Glen Anderson, Olympia Committee for Alternatives to the Death Penalty; Jacob Johns, citizen.

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