

January 23, 2018

TO: Board Of Governors Legislative Committee

FROM: WSBA Civil Rights Law Section

RE: CRLS Public Comment Supporting the SB 6052 (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)

I. Proposal for Action:

Washington legislators in the 2018 legislative session are considering a bill (SB 6052) that would replace the death penalty with a sentence of life imprisonment without possibility of parole as the sentence for aggravated first degree murder.¹ SB 6052 is hereinafter referred to as “the Bill.” On January 10, 2018, the Executive Committee of the WSBA Civil Rights Law Section (CRLS) reviewed the Bill and the required super-majority (75%) unanimously voted as follows:

- a. The Bill, if passed, would have a significant positive impact on the administration of justice and**
- b. The CRLS Executive Committee will make public comments in support of the Bill in accordance with GR 12.1 and the WSBA Legislation and Court Rule Comment Policy.**

II. Description of the Bill and Reasons for Supporting It

A. What the Bill Would Do

The Bill would eliminate the death penalty as a sentencing option in Washington for individuals convicted of the crime of aggravated first degree murder, amending RCW 10.95.030. These individuals instead would be sentenced to life imprisonment without possibility of release or parole. The Bill would also repeal the provisions at RCW 10.95.030(2) authorizing a sentence of death, and repeal other sections of RCW 10.95 related to special sentencing proceedings for the death penalty.²

B. Background

Prior to becoming a Section, for many of the reasons that are discussed below, the WSBA Civil Rights Law (CRL) Committee had abolition of the death penalty in Washington State as a priority issue. The WSBA CRL Section agrees with the former Committee that this issue involves important civil rights issues that satisfy the Section’s mission and justify its support for the Bill.

¹ See <http://app.leg.wa.gov/billsummary?BillNumber=6052&Year=2017>

² Specifically, the Bill repeals the following: RCW 10.95.040, 10.95.050, 10.95.060, 10.95.070, 10.95.080, 10.95.090, 10.95.100, 10.95.110, 10.95.120, 10.95.130, 10.95.140, 10.95.150, 10.95.160, 10.95.170, 10.95.180, 10.95.185, 10.95.190, 10.95.200, and 10.95.900.

Moreover, as discussed in section C. below, the Section believes support for the Bill satisfies the requirements of GR 12.1.

The Bill is a bipartisan effort, and supporters give many different reasons for endorsing the Bill, including court costs, concerns for victim's families, and ethical or religious objections.

Some supporters are interested in improving the administration of justice and saving costs by not wasting large amounts of scarce resources on the few cases where the death penalty is sought, and the costly and lengthy mandatory appeal process when it is imposed. A 2015 study showed that in Washington death penalty cases cost an average of \$1 million more to prosecute than comparable cases where the death penalty is not sought.³ Three King County death penalty cases cost taxpayers almost \$10 million just in trial preparation costs.⁴ Prosecutors in several counties have acknowledged publicly that their counties cannot afford to pursue the death penalty.

Others support the Bill because it better serves the needs of murder victims' families by reducing delays in the infliction of the punishment. Delays in certain punishment in death penalty cases prolong the pain of victims' family members and may cause secondary trauma. Perversely, in the death penalty cases the public focus to be on the perpetrators, turning them into media celebrities while the murder victim and the needs of family members are forgotten. Repealing the death penalty and requiring the offender to serve a sentence of life in prison would give victims' families swift and certain justice.

Still others have social concerns about the imposition of the death penalty due to geographic and racial disparities in the way the death sentence is imposed, flawed convictions, and the lack of proportionality in its imposition. A recent study showed that jurors in Washington are three times more likely to recommend a death sentence for a black defendant than a white defendant in a similar case.⁵ Numerous national studies have also shown that the death penalty is sought more often against people who kill white victims than black or Hispanic victims.⁶ Another telling statistic the implicates both costs and the needs of murder victims' families is that in nearly 80% of cases in Washington where a death sentence was imposed since 1981, excluding those currently on death row whose cases are still being litigated, the death sentence ended up being reversed for some form of legal error.⁷ In those cases of reversed sentences, a large amount of money was wasted seeking the death penalty, only to result in long delays, prolonged pain for victims' families, and, eventually, a sentence of life without the possibility of parole.

There are also grave ethical concerns about imposing the ultimate sentence of death for defendants who may have been wrongly convicted. 161 people nationwide have been exonerated from death

³ See <https://www.seattleu.edu/artsci/departments/criminal/center-for-the-study-of-crime-and-justice/death-penalty-cost-study/>

⁴ See <https://deathpenaltyinfo.org/node/5938>

⁵ See <https://deathpenaltyinfo.org/node/5696>

⁶ See <http://www.ncadp.org/pages/race-of-the-victim>

⁷ See <https://www.seattleu.edu/artsci/departments/criminal/center-for-the-study-of-crime-and-justice/death-penalty-cost-study/> (of the 24 cases that have completed their appellate review, 18 resulted in either the conviction and/or the death sentence being reversed).

row since 1973.⁸ One of those cases occurred in Washington.⁹ The CRLS Executive Committee is aware of evidence showing numerous exonerations of wrongly convicted defendants based on DNA or other evidence, including those on death row. The Committee is also aware of widely publicized recent problems in carrying out executions, in which gruesomely botched executions occurred.

Moreover, there is no evidence that the death penalty deters crime; in fact there are studies indicating that states without the death penalty have lower murder rates.¹⁰

Finally, there are religious, moral, and humanitarian concerns about imposition of the death penalty. In 1948 the United Nations (the UN) adopted, without dissent, the Universal Declaration of Human Rights. The Declaration proclaims the right of every individual to protection from deprivation of life. It also states that no one shall be subjected to cruel or degrading punishment. The death penalty violates both of these fundamental rights. Since then, the UN has passed 10 other protocols or resolutions regarding limitations on death sentences, moratoriums on executions, and abolition of the death penalty. Currently, over two-thirds of the countries in the world – 139 – have now abolished the death penalty in law or practice. Nationally, the trend shows more states are also declining to use the death penalty. 19 states and the District of Columbia have now abolished the death penalty, and 40 states have not carried out an execution between 2013 and 2017. In February 2014, Governor Inslee announced a moratorium on the death penalty in Washington State, explaining that capital punishment was being used inconsistently and unequally.

For these reasons the WSBA CRL Section has voted to take a position of “Support” regarding the Bill.

C. Why the Civil Rights Law Section’s Public Comment Supporting the Bill Satisfies GR 12.1(c)

The CRLS Executive Committee considered the requirement of GR 12.1(c)(2) and determined that the Bill is directly related to the administration of justice. First, the exorbitant costs of the death penalty and its diversion of significant resources from other needs of the legal system, with no proof of concrete benefits, when our State is particularly strapped for resources, directly impacts the administration of justice. Second, arbitrariness and inequities in the death penalty system in Washington and elsewhere show that the death penalty system is irreparably broken, another clear impact on the administration of justice. Third, delays in the death penalty system harm the victims’ families and add uncertainty to the punishment, undermining respect for the law and thereby impacting the administration of justice. Fourth, the death penalty causes the aforementioned harms without deterring crime or improving public safety. Finally, delays and uncertainty for murder victims’ families, prolonged legal proceedings for imposition and appeals of death sentences, legal errors, and botched state executions of persons convicted of murder raises serious moral, ethical, and humanitarian concerns about how justice, in its most fundamental sense, is administered in

⁸ See <https://deathpenaltyinfo.org/innocence-and-death-penalty>

⁹ See <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3282>

¹⁰ See <http://www.deathpenaltyinfo.org/deterrence-states-without-death-penalty-have-had-consistently-lower-murder-rates>; <http://www.deathpenaltyinfo.org/murder-rates-nationally-and-state#MRord>

Washington State. For all these reasons, the WSBA Civil Rights Law Section has determined that the administration of justice in Washington would benefit by repealing the death penalty.

III. Conclusion

The Legislation and Court Rule Comment Policy is satisfied by CRLS taking a public position supporting the Bill because, as described above, we have reviewed the Bill, carefully considered it, and obtained a supermajority vote the Act impacts the administration of justice and that we should support it.