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**SENATE BILL 5149**

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**State of Washington**

**68th Legislature**

**2023 Regular Session**

**By** Senator Wagoner

Prefiled 01/04/23.

1 AN ACT Relating to ensuring that offenders who are incarcerated  
2 and commit murder may be charged with the death penalty; amending RCW  
3 10.95.040; adding a new section to chapter 10.95 RCW; and prescribing  
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 10.95.040 and 1981 c 138 s 4 are each amended to  
7 read as follows:

8 (1) If a person is charged with aggravated first degree murder  
9 and the murder occurred while the person was already serving a term  
10 of incarceration as ((defined by)) provided in RCW 10.95.020(2), the  
11 prosecuting attorney must forward a request for review along with all  
12 relevant materials to the death penalty review panel as provided in  
13 section 2 of this act for a determination of whether the death  
14 penalty should be sought.

15 (2) If a majority of the members of the death penalty review  
16 panel recommend pursuing the death penalty, the prosecuting attorney  
17 shall file written notice of a special sentencing proceeding to  
18 determine whether or not the death penalty should be imposed ((when  
19 there is reason to believe that there are not sufficient mitigating  
20 circumstances to merit leniency)).

1       (~~(+2)~~) (3) The notice of special sentencing proceeding shall be  
2 filed and served on the defendant or the defendant's attorney within  
3 (~~(thirty)~~) 30 days after the defendant's arraignment upon the charge  
4 of aggravated first degree murder unless the court, for good cause  
5 shown, extends or reopens the period for filing and service of the  
6 notice. Except with the consent of the prosecuting attorney, during  
7 the period in which the prosecuting attorney may file the notice of  
8 special sentencing proceeding, the defendant may not tender a plea of  
9 guilty to the charge of aggravated first degree murder nor may the  
10 court accept a plea of guilty to the charge of aggravated first  
11 degree murder or any lesser included offense.

12       (~~(+3)~~) (4) If a notice of special sentencing proceeding is not  
13 filed and served as provided in this section, the prosecuting  
14 attorney may not request the death penalty.

15       NEW SECTION.   **Sec. 2.** A new section is added to chapter 10.95  
16 RCW to read as follows:

17       (1) A death penalty review panel is established. The panel  
18 includes the following permanent members:

19       (a) Four prosecuting attorneys recommended by the Washington  
20 association of prosecuting attorneys. Urban and rural areas must be  
21 equally represented among the prosecuting attorneys;

22       (b) The attorney general, or his or her designee; and

23       (c) The secretary of the department of corrections, or his or her  
24 designee.

25       (2) The prosecuting attorney from the county in which the murder  
26 occurred shall serve as an ad hoc member of the panel.

27       (3) Upon receipt of a request for review, the attorney general  
28 shall convene a meeting of the death penalty review panel. The panel  
29 shall review all materials submitted from the prosecuting attorney  
30 and any materials submitted by defense counsel and shall make a  
31 recommendation as to whether the death penalty should be sought after  
32 considering:

33       (a) Whether there are sufficient mitigating circumstances to  
34 merit leniency;

35       (b) Whether imposition of the death penalty measurably  
36 contributes to the core purposes of retribution and deterrence of  
37 capital crimes by prospective offenders; and

38       (c) Whether imposition of the death penalty meets the goal of  
39 fairness and consistency in the criminal justice system.

1           (4) The panel shall memorialize its recommendation in a  
2 memorandum and submit the recommendation to the prosecuting attorney  
3 of the county in which the murder occurred.

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