

HOUSE BILL NO. HB0189

Death penalty repeal.

Sponsored by: Representative(s) Pelkey, Barlow, Blake, Brown, Connolly, Flitner, Gierau, Halverson, Miller and Olsen and Senator(s) Anselmi-Dalton and Boner

A BILL

for

1 AN ACT relating to crimes and offenses and criminal
2 procedure; repealing the death penalty; eliminating
3 procedures related to imposition and execution of death
4 sentences; conforming provisions; providing applicability;
5 remanding existing death sentences; and providing for an
6 effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 6-1-304, 6-2-101(b) and (c),
11 6-10-101, 7-6-104(c) (ii), 7-10-101(a), 7-11-103(a),
12 7-11-202, 7-11-206(a), 7-12-303(c) (i) (A) and (B),
13 7-12-305(d) (i), 7-13-107(a) (intro), 7-13-302(a) (intro),
14 7-13-424(a) (intro), 7-13-1003(b) (i), 7-16-205(a) (i),

1 7-18-102(a)(iii)(B), (C), (v)(B) and (C) and
2 14-6-246(a)(iv) and (v) are amended to read:

3

4 **6-1-304. Grading.**

5

6 The penalty for attempt, solicitation or conspiracy is the
7 same as the penalty for the most serious crime which is
8 attempted, solicited or is an object of the conspiracy.
9 ~~except that an attempt, solicitation or conspiracy to~~
10 ~~commit a capital crime is not punishable by the death~~
11 ~~penalty if the capital crime is not committed.~~

12

13 **6-2-101. Murder in the first degree; penalty.**

14

15 (b) A person convicted of murder in the first degree
16 shall be punished by ~~death,~~ life imprisonment without
17 parole or life imprisonment, according to law, except that
18 a person convicted of murder in the first degree who was
19 under the age of eighteen (18) years at the time of the
20 offense shall be punished by life imprisonment.

21

22 (c) For a person convicted of murder in the first
23 degree, ~~in a case in which the state seeks the death~~

1 ~~penalty shall be sentenced in accordance with the~~
2 ~~provisions of W.S. 6-2-102. In all other cases, including~~
3 ~~any case in which the state has determined not to seek the~~
4 ~~death penalty at any stage of the proceeding,~~ the judge
5 shall determine the sentence of life imprisonment without
6 parole or life imprisonment taking into consideration any
7 negotiated plea agreement and any evidence relevant to a
8 determination of sentence which the court deems to have
9 probative value.

10

11 **6-10-101. "Felony" and "misdemeanor" defined.**

12

13 Crimes which may be punished ~~by death or~~ by imprisonment
14 for more than one (1) year are felonies. All other crimes
15 are misdemeanors.

16

17 **7-6-104. Representation of needy persons.**

18

19 (c) A needy person who is entitled to be represented
20 by an attorney under subsection (a) of this section is
21 entitled:

22

1 (ii) To be represented in any appeal to a
2 Wyoming court, and in cases ~~in which the death penalty has~~
3 ~~been imposed or in such other cases as~~ the state public
4 defender deems appropriate, in a writ of certiorari to the
5 United States supreme court, and in proceedings under W.S.
6 7-14-101 through 7-14-108;

7
8 **7-10-101. Right of defendant.**

9
10 (a) A person arrested for an offense ~~not punishable~~
11 ~~by death~~ may be admitted to bail.

12
13 **7-11-103. Peremptory challenges.**

14
15 (a) The defendant may challenge peremptorily, ~~in~~
16 ~~capital cases, twelve (12) jurors,~~ in ~~other felonies~~ felony
17 cases eight (8) jurors, and in ~~misdemeanors~~ misdemeanor
18 cases four (4) jurors. The prosecution may challenge
19 peremptorily, ~~in capital cases, twelve (12) jurors,~~ in
20 ~~other felonies~~ felony cases eight (8) jurors, and in
21 ~~misdemeanors~~ misdemeanor cases four (4) jurors. The number
22 of peremptory challenges allowed to the prosecution shall
23 be multiplied by the number of defendants on trial in each

1 case. Each defendant shall be allowed separate peremptory
2 challenges.

3

4 **7-11-202. Presence of defendant.**

5

6 Except as otherwise provided by this section, the defendant
7 shall be present at the arraignment, at every stage of the
8 trial, including the impaneling of the jury, and the return
9 of the verdict and at the imposition of sentence. ~~In~~
10 ~~prosecution for offenses not punishable by death,~~ The
11 defendant's voluntary absence after the trial has been
12 commenced in his presence shall not prevent continuing the
13 trial to and including the return of the verdict. A
14 corporation may appear by counsel for all purposes. In
15 prosecutions of all misdemeanor cases, the court, with the
16 written consent of the defendant, may permit arraignment,
17 plea, and imposition of sentence in a defendant's absence.
18 The defendant's presence is not required at a reduction of
19 sentence hearing.

20

21 **7-11-206. Separation of jury.**

22

1 (a) In the trial of any criminal case to a jury, the
 2 court may, ~~except for capital cases~~ allow the jurors to
 3 separate during the trial and after the case is submitted
 4 to them.

5
 6 **7-12-303. New trial; motion for post-conviction**
 7 **testing of DNA; motion contents; sufficiency of**
 8 **allegations, consent to DNA sample; definitions.**

9
 10 (c) A person convicted of a felony offense may,
 11 preliminary to the filing of a motion for a new trial, file
 12 a motion for post-conviction DNA testing in the district
 13 court that entered the judgment of conviction against him
 14 if the movant asserts under oath and the motion includes a
 15 good faith, particularized factual basis containing the
 16 following information:

17
 18 (i) Why DNA evidence is material to:

19
 20 (A) The identity of the perpetrator of, or
 21 accomplice to, the crime; or

22
 23 (B) A sentence enhancement. ~~;~~ ~~or~~

1

2 **7-12-305. Review by the court; hearing on motion,**
3 **findings; order.**

4

5 (d) The movant shall be required to present a prima
6 facie case showing that the evidence supports findings
7 consistent with the facts asserted under W.S. 7-12-303(c)
8 and DNA testing of the specified evidence would, assuming
9 exculpatory results, establish:

10

11 (i) The actual innocence of the movant of the
12 offense for which the movant was convicted. ~~or~~

13

14 **7-13-107. Split sentence of incarceration in county**
15 **jail followed by probation; civil liability of county**
16 **officers and employees.**

17

18 (a) Following a defendant's conviction of, or his
19 plea of guilty to any felony, other than a felony
20 punishable by ~~death or~~ life imprisonment, the court may
21 impose any sentence of imprisonment authorized by law and
22 except as provided in subsection (g) of this section, may
23 in addition provide:

1

2 **7-13-302. Placing person convicted on probation;**
3 **suspension of imposition or execution of sentence;**
4 **imposition of fine.**

5

6 (a) After conviction or plea of guilty for any
7 offense, except crimes punishable by ~~death or~~ life
8 imprisonment, and following entry of the judgment of
9 conviction, the court may:

10

11 **7-13-424. Medical parole; conditions.**

12

13 (a) Notwithstanding any other provision of law
14 restricting the grant of parole, except for inmates
15 sentenced to ~~death or~~ life imprisonment without parole, the
16 board may grant a medical parole to any inmate meeting the
17 conditions specified in this section. The board shall
18 consider a medical parole upon receipt of written
19 certification by a licensed treating physician that, within
20 a reasonable degree of certainty, one (1) of the following
21 circumstances exist:

22

1 **7-13-1003. Establishment of program; eligibility;**
2 **rulemaking authority.**

3

4 (b) In addition to any other eligibility requirements
5 adopted by the department, an inmate is eligible for
6 placement in the youthful offender program only if he:

7

8 (i) Is serving a sentence of imprisonment at a
9 state penal institution for any offense other than a felony
10 punishable by ~~death or~~ life imprisonment;

11

12 **7-16-205. Disposition of earnings; confidentiality of**
13 **amount.**

14

15 (a) Payment for services performed by any prisoner
16 under W.S. 7-16-202 shall be deposited in the trust and
17 agency account at the institution and shall be disbursed
18 for the purposes provided in this subsection and in the
19 order specified:

20

21 (i) Unless the prisoner is serving a sentence of
22 ~~death or~~ life without the possibility of parole or is
23 subject to mandatory savings under W.S. 25-13-107(b)(i),

1 ten percent (10%) shall be credited to the prisoner's
2 personal savings account within the correctional facility's
3 trust and agency account, until the prisoner's account has
4 a balance of one thousand dollars (\$1,000.00). Once the
5 prisoner's personal savings account balance reaches one
6 thousand dollars (\$1,000.00), the income otherwise
7 distributed to the prisoner's savings account under this
8 paragraph shall be distributed to the prisoner as provided
9 by paragraphs (ii) through (vi) of this subsection. Funds
10 in the prisoner's personal savings account shall be paid to
11 the prisoner upon parole or final discharge;

12

13 **7-18-102. Definitions.**

14

15 (a) As used in this act:

16

17 (iii) "Inmate" means an adult serving a felony
18 sentence in any state penal institution or any correctional
19 facility operated pursuant to a contract under W.S.
20 7-22-102, excluding any inmate who:

21

22 (B) Has been convicted of first degree
23 murder; or

1

2 (C) Is serving a term of life
3 imprisonment. ~~;~~ ~~or~~

4

5 (v) "Offender" means an adult who has entered a
6 plea of guilty or has been convicted of a misdemeanor
7 punishable by imprisonment or a felony, excluding any
8 person who:

9

10 (B) Has been convicted of, or pled guilty
11 to, first degree murder; or

12

13 (C) Has been convicted of, or pled guilty
14 to, a crime punishable by life imprisonment. ~~;~~ ~~or~~

15

16 **14-6-246. Sanction levels.**

17

18 (a) Subject to subsection (c) of this section, when a
19 child is adjudicated as a delinquent the juvenile court
20 may, in a disposition hearing, assign the child one (1) of
21 the following sanction levels according to the child's
22 conduct:

23

1 (iv) For a violent felony as defined by W.S.
2 6-1-104(a)(xii), other than a felony punishable by life, or
3 life without parole, ~~or death~~, the sanction level is four;
4

5 (v) For a felony punishable under the Wyoming
6 Criminal Code by life, or life without parole, ~~or death~~,
7 the sanction level is five.
8

9 **Section 2.** W.S. 6-2-102, 6-2-103, 6-5-203(c)(iii),
10 6-10-202(a)(i), 7-10-101(b), 7-11-105(a)(iii), 7-11-206(b),
11 7-12-303(c)(i)(C), 7-12-305(d)(ii), 7-13-807, 7-13-901
12 through 7-13-916 and 7-18-102(a)(iii)(D) and (v)(D) are
13 repealed.
14

15 **Section 3.** This act applies to crimes and offenses
16 committed before, on or after the effective date of this
17 act.
18

19 **Section 4.** Any existing death sentence imposed before
20 the effective date of this act shall be remanded to the
21 sentencing court to enter a new sentence of life
22 imprisonment without parole.
23

1 **Section 5.** This act is effective immediately upon
2 completion of all acts necessary for a bill to become law
3 as provided by Article 4, Section 8 of the Wyoming
4 Constitution.

5

6

(END)