

HOUSE BILL NO. HB0166

Death penalty repeal.

Sponsored by: Representative(s) Olsen, Barlow, Blake, Brown, Burkhart, Burlingame, Clifford, Connolly, Crank, Dayton-Selman, Eklund, Eyre, Flitner, Freeman, Harshman, Henderson, Larsen, Lindholm, Nicholas, Olsen, Pelkey, Piiparinen, Roscoe, Schwartz, Tass, Western, Wilson, Yin and Zwonitzer and Senator(s) Anselmi-Dalton, Baldwin, Boner, Case, Gierau, Kost, Landen, Pappas, Rothfuss, Schuler and Von Flatern

A BILL

for

1 AN ACT relating to crimes and offenses and criminal procedure;
 2 repealing the death penalty; eliminating procedures related
 3 to the imposition and execution of death sentences; making
 4 conforming amendments; providing applicability; remanding
 5 existing death sentences; repealing obsolete provisions; and
 6 providing for an 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), 6-10-101,
 11 7-6-104(c)(ii), 7-10-101(a), 7-11-103(a), 7-11-202,

1 7-11-206(a), 7-12-303(c)(i)(A) and (B), 7-12-305(d)(i),
2 7-13-107(a)(intro), 7-13-302(a)(intro), 7-13-424(a)(intro),
3 7-13-1003(b)(i), 7-16-205(a)(i), 7-18-102(a)(iii)(B), (C),
4 (v)(B) and (C), 7-19-107(g) and 14-6-246(a)(iv) and (v) are
5 amended to read:

6

7 **6-1-304. Grading.**

8

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

15

16 **6-2-101. Murder in the first degree; penalty.**

17

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

1

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

12

13 **6-10-101. "Felony" and "misdemeanor" defined.**

14

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

18

19 **7-6-104. Representation of needy persons.**

20

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

23

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

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

9
10 (a) A person arrested for an offense ~~not punishable by~~
11 ~~death~~ may be admitted to bail, except as provided in W.S.
12 7-3-216.

13
14 **7-11-103. Peremptory challenges.**

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

1 defendants on trial in each case. Each defendant shall be
2 allowed separate peremptory 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 to
4 them.

5

6 **7-12-303. New trial; motion for post-conviction testing**
7 **of DNA; motion contents; sufficiency of allegations, consent**
8 **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 court
13 that entered the judgment of conviction against him if the
14 movant asserts under oath and the motion includes a good
15 faith, particularized factual basis containing the following
16 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) and
8 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 plea
19 of guilty to any felony, other than a felony punishable by
20 ~~death or~~ life imprisonment, the court may impose any sentence
21 of imprisonment authorized by law and except as provided in
22 subsection (g) of this section, may in addition provide:

23

1 **7-13-302. Placing person convicted on probation;**
2 **suspension of imposition or execution of sentence; imposition**
3 **of fine; maximum length of probation term.**

4

5 (a) After conviction, plea of no contest or plea of
6 guilty for any offense, except crimes punishable by ~~death-or~~
7 life imprisonment, and following entry of the judgment of
8 conviction, the court may:

9

10 **7-13-424. Medical parole; conditions.**

11

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

20

21 **7-13-1003. Establishment of program; eligibility;**
22 **rulemaking authority.**

23

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

4

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

8

9 **7-16-205. Disposition of earnings; confidentiality of**
10 **amount.**

11

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

17

18 (i) Unless the prisoner is serving a sentence of
19 ~~death or~~ life without the possibility of parole or is subject
20 to mandatory savings under W.S. 25-13-107(b)(i), ten percent
21 (10%) shall be credited to the prisoner's personal savings
22 account within the correctional facility's trust and agency
23 account, until the prisoner's account has a balance of one

1 thousand dollars (\$1,000.00). Once the prisoner's personal
2 savings account balance reaches one thousand dollars
3 (\$1,000.00), the income otherwise distributed to the
4 prisoner's savings account under this paragraph shall be
5 distributed to the prisoner as provided by paragraphs (ii)
6 through (vi) of this subsection. Funds in the prisoner's
7 personal savings account shall be paid to the prisoner upon
8 parole or final discharge;

9

10 **7-18-102. Definitions.**

11

12 (a) As used in this act:

13

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

18

19 (B) Has been convicted of first degree
20 murder; or

21

22 (C) Is serving a term of life imprisonment. +

23 or

1

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

6

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

9

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

12

13 **7-19-107. Central repository; information to be**
14 **submitted; audits; interstate exchanges.**

15

16 (g) The director of the department of corrections, the
17 superintendents of the Wyoming boys' school and Wyoming
18 girls' school and the sheriff of each county shall furnish
19 the division with all information concerning the receipt,
20 escape, ~~execution,~~ death, release, pardon, parole,
21 commutation of sentence, granting of executive clemency or
22 discharge of any individual who has been sentenced to the
23 agency's custody for any offense covered by this act.

1

2 **14-6-246. Sanction levels.**

3

4 (a) Subject to subsection (c) of this section, when a
5 child is adjudicated as a delinquent the juvenile court may,
6 in a disposition hearing, assign the child one (1) of the
7 following sanction levels according to the child's conduct:

8

9 (iv) For a violent felony as defined by W.S.
10 6-1-104(a)(xii), other than a felony punishable by life ~~or~~
11 life without parole, ~~or death,~~ the sanction level is four;

12

13 (v) For a felony punishable under the Wyoming
14 Criminal Code by life ~~or~~ life without parole, ~~or death,~~ the
15 sanction level is five.

16

17 **Section 2.** W.S. 6-2-102, 6-2-103, 6-5-203(c)(iii),
18 6-10-202(a)(i), 7-10-101(b), 7-11-105(a)(iii), 7-11-206(b),
19 7-12-303(c)(i)(C), 7-12-305(d)(ii), 7-13-807, 7-13-901
20 through 7-13-916 and 7-18-102(a)(iii)(D) and (v)(D) are
21 repealed.

22

1 **Section 3.** This act applies to crimes and offenses
2 committed before, on or after the effective date of this act.

3

4 **Section 4.** Any existing death sentence imposed before
5 the effective date of this act shall be remanded to the
6 sentencing court to enter a new sentence of life imprisonment
7 without parole.

8

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

12

13

(END)