

## HOUSE BILL NO. HB0145

Death penalty repeal-2.

Sponsored by: Representative(s) Olsen, Barlow, Brown, Burkhart, Connolly, Dayton, Flitner, Harshman, Lindholm, Miller, Pelkey, Schwartz and Wilson and Senator(s) Anselmi-Dalton, Boner, Landen, Pappas and Rothfuss

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,  
 12 7-11-206(a), 7-12-303(c)(i)(A) and (B), 7-12-305(d)(i),  
 13 7-13-107(a)(intro), 7-13-302(a)(intro), 7-13-424(a)(intro),  
 14 7-13-1003(b)(i), 7-16-205(a)(i), 7-18-102(a)(iii)(B), (C),

1 (v)(B) and (C), 7-19-107(g) and 14-6-246(a)(iv) and (v) are  
2 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. ~~except~~  
9 ~~that an attempt, solicitation or conspiracy to commit a~~  
10 ~~capital crime is not punishable by the death penalty if the~~  
11 ~~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 parole  
17 or life imprisonment according to law, except that a person  
18 convicted of murder in the first degree who was under the age  
19 of eighteen (18) years at the time of the offense shall be  
20 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 penalty~~

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

9  
10 **6-10-101. "Felony" and "misdemeanor" defined.**

11  
12 Crimes which may be punished ~~by death or~~ by imprisonment for  
13 more than one (1) year are felonies. All other crimes are  
14 misdemeanors.

15  
16 **7-6-104. Representation of needy persons.**

17  
18 (c) A needy person who is entitled to be represented by  
19 an attorney under subsection (a) of this section is entitled:

20  
21 (ii) To be represented in any appeal to a Wyoming  
22 court, and in cases ~~in which the death penalty has been~~  
23 ~~imposed or in such other cases as~~ the state public defender

1 deems appropriate, in a writ of certiorari to the United  
2 States supreme court, and in proceedings under W.S. 7-14-101  
3 through 7-14-108;

4

5 **7-10-101. Right of defendant.**

6

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

9

10 **7-11-103. Peremptory challenges.**

11

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

22

23 **7-11-202. Presence of defendant.**

1

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

16

17 **7-11-206. Separation of jury.**

18

19 (a) In the trial of any criminal case to a jury, the  
20 court may, ~~except for capital cases~~ allow the jurors to  
21 separate during the trial and after the case is submitted to  
22 them.

23

1           7-12-303. New trial; motion for post-conviction testing  
2 of DNA; motion contents; sufficiency of allegations, consent  
3 to DNA sample; definitions.

4

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

12

13                   (i) Why DNA evidence is material to:

14

15                           (A) The identity of the perpetrator of, or  
16 accomplice to, the crime; or

17

18                           (B) A sentence enhancement. ~~or~~

19

20           7-12-305. Review by the court; hearing on motion,  
21 findings; order.

22

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

6

7 (i) The actual innocence of the movant of the  
8 offense for which the movant was convicted ~~;~~ ~~or~~

9

10 **7-13-107. Split sentence of incarceration in county**  
11 **jail followed by probation; civil liability of county**  
12 **officers and employees.**

13

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

19

20 **7-13-302. Placing person convicted on probation;**  
21 **suspension of imposition or execution of sentence; imposition**  
22 **of fine.**

23

1           (a) After conviction or plea of guilty for any offense,  
2 except crimes punishable by ~~death or~~ life imprisonment, and  
3 following entry of the judgment of conviction, the court may:  
4

5           **7-13-424. Medical parole; conditions.**  
6

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

16           **7-13-1003. Establishment of program; eligibility;  
17 rulemaking authority.**  
18

19           (b) In addition to any other eligibility requirements  
20 adopted by the department, an inmate is eligible for placement  
21 in the youthful offender program only if he:  
22

1           (i) Is serving a sentence of imprisonment at a  
2 state penal institution for any offense other than a felony  
3 punishable by ~~death or~~ life imprisonment;  
4

5           **7-16-205. Disposition of earnings; confidentiality of**  
6 **amount.**

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

14           (i) Unless the prisoner is serving a sentence of  
15 ~~death or~~ life without the possibility of parole or is subject  
16 to mandatory savings under W.S. 25-13-107(b)(i), ten percent  
17 (10%) shall be credited to the prisoner's personal savings  
18 account within the correctional facility's trust and agency  
19 account, until the prisoner's account has a balance of one  
20 thousand dollars (\$1,000.00). Once the prisoner's personal  
21 savings account balance reaches one thousand dollars  
22 (\$1,000.00), the income otherwise distributed to the  
23 prisoner's savings account under this paragraph shall be

1 distributed to the prisoner as provided by paragraphs (ii)  
2 through (vi) of this subsection. Funds in the prisoner's  
3 personal savings account shall be paid to the prisoner upon  
4 parole or final discharge;

5

6 **7-18-102. Definitions.**

7

8 (a) As used in this act:

9

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

14

15 (B) Has been convicted of first degree  
16 murder; or

17

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

19 or

20

21 (v) "Offender" means an adult who has entered a  
22 plea of guilty or has been convicted of a misdemeanor

1 punishable by imprisonment or a felony, excluding any person  
2 who:

3  
4 (B) Has been convicted of, or pled guilty to,  
5 first degree murder; or

6  
7 (C) Has been convicted of, or pled guilty to,  
8 a crime punishable by life imprisonment. ~~;~~ ~~or~~

9  
10 **7-19-107. Central repository; information to be**  
11 **submitted; audits; interstate exchanges.**

12  
13 (g) The director of the department of corrections, the  
14 superintendents of the Wyoming boys' school and Wyoming  
15 girls' school and the sheriff of each county shall furnish  
16 the division with all information concerning the receipt,  
17 escape, ~~execution,~~—death, release, pardon, parole,  
18 commutation of sentence, granting of executive clemency or  
19 discharge of any individual who has been sentenced to the  
20 agency's custody for any offense covered by this act.

21

22 **14-6-246. Sanction levels.**

23

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

5

6           (iv) For a violent felony as defined by W.S.  
7 6-1-104(a)(xii), other than a felony punishable by life, ~~or~~  
8 life without parole, ~~or death~~, the sanction level is four;

9

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

13

14           **Section 2.** W.S. 6-2-102, 6-2-103, 6-5-203(c)(iii),  
15 6-10-202(a)(i), 7-10-101(b), 7-11-105(a)(iii), 7-11-206(b),  
16 7-12-303(c)(i)(C), 7-12-305(d)(ii), 7-13-807, 7-13-901  
17 through 7-13-916 and 7-18-102(a)(iii)(D) and (v)(D) are  
18 repealed.

19

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

22

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

5

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

9

10

(END)