
HOUSE BILL 1909

State of Washington

61st Legislature

2009 Regular Session

By Representatives Williams, Carlyle, Chase, Hunt, Hasegawa, Appleton, Darneille, Nelson, Cody, Moeller, Dickerson, Wood, Pedersen, Hudgins, Miloscia, Ormsby, White, Kagi, Santos, and Goodman

Read first time 02/02/09. Referred to Committee on Judiciary.

1 AN ACT Relating to reducing criminal justice expenses by
2 eliminating the death penalty in favor of life incarceration; amending
3 RCW 10.95.030; creating new sections; repealing RCW 10.95.040,
4 10.95.050, 10.95.060, 10.95.070, 10.95.080, 10.95.090, 10.95.100,
5 10.95.110, 10.95.120, 10.95.130, 10.95.140, 10.95.150, 10.95.160,
6 10.95.170, 10.95.180, 10.95.185, 10.95.190, 10.95.200, and 10.95.900;
7 and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** (1) The legislature recognizes that
10 questions about the administration of the death penalty in Washington
11 have existed since a 2003 plea bargain for Gary Leon Ridgway, the
12 acknowledged murderer of forty-eight women. In a March 30, 2006,
13 decision, the Washington supreme court was divided five to four over
14 whether Washington's capital punishment system is applied fairly. The
15 five justice majority concluded that the fact that Ridgway "will live
16 out his life in prison instead of facing the death penalty has caused
17 many in our community to seriously question whether the death penalty
18 can, in fairness, be proportional when applied to any other defendant
19 . . . it is a question best left to the people and to their elected

1 representatives in the Legislature." The four justice dissent
2 reasoned, after review of Washington's death penalty statute over the
3 twenty-five years of its existence, that "the death penalty is like
4 lightning, randomly striking some defendants and not others," and
5 concluded that "no rational explanation exists to explain why some
6 individuals escape the penalty of death and others do not."

7 (2) The legislature finds that historically most death sentences
8 imposed in Washington have been reversed and the death sentence has
9 been rarely imposed. In light of the very substantial pressures that
10 exist upon the criminal justice system, the legislature further finds
11 that the continued allocation of substantial public resources to
12 capital trials and appeals can no longer be sustained. The legislature
13 finds that these resources would be better directed toward maintaining
14 the state's criminal justice system, and concludes that the aims of
15 justice will be served by forever confining to our state's correctional
16 system those whose heinous crimes may formerly have qualified them for
17 the death penalty.

18 **Sec. 2.** RCW 10.95.030 and 1993 c 479 s 1 are each amended to read
19 as follows:

20 (~~((1) Except as provided in subsection (2) of this section,~~) Any
21 person convicted of the crime of aggravated first degree murder shall
22 be sentenced to life imprisonment without possibility of release or
23 parole. A person sentenced to life imprisonment under this section
24 shall not have that sentence suspended, deferred, or commuted by any
25 judicial officer and the indeterminate sentence review board or its
26 successor may not parole such prisoner nor reduce the period of
27 confinement in any manner whatsoever including but not limited to any
28 sort of good-time calculation. The department of social and health
29 services or its successor or any executive official may not permit such
30 prisoner to participate in any sort of release or furlough program.

31 (~~((2) If, pursuant to a special sentencing proceeding held under
32 RCW 10.95.050, the trier of fact finds that there are not sufficient
33 mitigating circumstances to merit leniency, the sentence shall be
34 death. In no case, however, shall a person be sentenced to death if
35 the person was mentally retarded at the time the crime was committed,
36 under the definition of mental retardation set forth in (a) of this
37 subsection. A diagnosis of mental retardation shall be documented by~~)

1 ~~a licensed psychiatrist or licensed psychologist designated by the~~
2 ~~court, who is an expert in the diagnosis and evaluation of mental~~
3 ~~retardation. The defense must establish mental retardation by a~~
4 ~~preponderance of the evidence and the court must make a finding as to~~
5 ~~the existence of mental retardation.~~

6 ~~(a) "Mentally retarded" means the individual has: (i)~~
7 ~~Significantly subaverage general intellectual functioning; (ii)~~
8 ~~existing concurrently with deficits in adaptive behavior; and (iii)~~
9 ~~both significantly subaverage general intellectual functioning and~~
10 ~~deficits in adaptive behavior were manifested during the developmental~~
11 ~~period.~~

12 ~~(b) "General intellectual functioning" means the results obtained~~
13 ~~by assessment with one or more of the individually administered general~~
14 ~~intelligence tests developed for the purpose of assessing intellectual~~
15 ~~functioning.~~

16 ~~(c) "Significantly subaverage general intellectual functioning"~~
17 ~~means intelligence quotient seventy or below.~~

18 ~~(d) "Adaptive behavior" means the effectiveness or degree with~~
19 ~~which individuals meet the standards of personal independence and~~
20 ~~social responsibility expected for his or her age.~~

21 ~~(e) "Developmental period" means the period of time between~~
22 ~~conception and the eighteenth birthday.)~~

23 NEW SECTION. **Sec. 3.** An inmate sentenced to death prior to the
24 effective date of this act, upon motion to the sentencing court, shall
25 be resentenced to a term of life imprisonment without possibility of
26 release or parole. If an inmate sentenced to death prior to the
27 effective date of this act fails to file a motion under this section
28 within sixty days of the effective date of this act, the department of
29 corrections shall file a motion with the sentencing court to resentence
30 the inmate to a term of life imprisonment without possibility of
31 release or parole.

32 NEW SECTION. **Sec. 4.** The following acts or parts of acts are each
33 repealed:

34 (1) RCW 10.95.040 (Special sentencing proceeding--Notice--Filing--
35 Service) and 1981 c 138 s 4;

1 (2) RCW 10.95.050 (Special sentencing proceeding--When held--Jury
2 to decide matters presented--Waiver--Reconvening same jury--Impanelling
3 new jury--Peremptory challenges) and 1981 c 138 s 5;
4 (3) RCW 10.95.060 (Special sentencing proceeding--Jury
5 instructions--Opening statements--Evidence--Arguments--Question for
6 jury) and 1981 c 138 s 6;
7 (4) RCW 10.95.070 (Special sentencing proceeding--Factors which
8 jury may consider in deciding whether leniency merited) and 1993 c 479
9 s 2 & 1981 c 138 s 7;
10 (5) RCW 10.95.080 (When sentence to death or sentence to life
11 imprisonment shall be imposed) and 1981 c 138 s 8;
12 (6) RCW 10.95.090 (Sentence if death sentence commuted, held
13 invalid, or if death sentence established by chapter held invalid) and
14 1981 c 138 s 9;
15 (7) RCW 10.95.100 (Mandatory review of death sentence by supreme
16 court--Notice--Transmittal--Contents of notice--Jurisdiction) and 1981
17 c 138 s 10;
18 (8) RCW 10.95.110 (Verbatim report of trial proceedings--
19 Preparation--Transmittal to supreme court--Clerk's papers--Receipt) and
20 1981 c 138 s 11;
21 (9) RCW 10.95.120 (Information report--Form--Contents--Submission
22 to supreme court, defendant, prosecuting attorney) and 1981 c 138 s 12;
23 (10) RCW 10.95.130 (Questions posed for determination by supreme
24 court in death sentence review--Review in addition to appeal--
25 Consolidation of review and appeal) and 1993 c 479 s 3 & 1981 c 138 s
26 13;
27 (11) RCW 10.95.140 (Invalidation of sentence, remand for
28 resentencing--Affirmation of sentence, remand for execution) and 1993
29 c 479 s 4 & 1981 c 138 s 14;
30 (12) RCW 10.95.150 (Time limit for appellate review of death
31 sentence and filing opinion) and 1988 c 202 s 17 & 1981 c 138 s 15;
32 (13) RCW 10.95.160 (Death warrant--Issuance--Form--Time for
33 execution of judgment and sentence) and 1990 c 263 s 1 & 1981 c 138 s
34 16;
35 (14) RCW 10.95.170 (Imprisonment of defendant) and 1983 c 255 s 1
36 & 1981 c 138 s 17;
37 (15) RCW 10.95.180 (Death penalty--How executed) and 1996 c 251 s
38 1, 1986 c 194 s 1, & 1981 c 138 s 18;

1 (16) RCW 10.95.185 (Witnesses) and 1999 c 332 s 1 & 1993 c 463 s 2;
2 (17) RCW 10.95.190 (Death warrant--Record--Return to trial court)
3 and 1981 c 138 s 19;
4 (18) RCW 10.95.200 (Proceedings for failure to execute on day
5 named) and 1990 c 263 s 2, 1987 c 286 s 1, & 1981 c 138 s 20; and
6 (19) RCW 10.95.900 (Severability--1981 c 138) and 1981 c 138 s 22.

7 NEW SECTION. **Sec. 5.** This act is necessary for the immediate
8 preservation of the public peace, health, or safety, or support of the
9 state government and its existing public institutions, and takes effect
10 immediately.

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