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**SENATE BILL 5354**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Senators Miloscia, Carlyle, Walsh, Darneille, Pedersen, Billig, Kuderer, Hunt, Hasegawa, Ranker, Keiser, and Wellman; by request of Attorney General

AN ACT Relating to reducing criminal justice expenses by eliminating the death penalty and instead requiring life imprisonment without possibility of release or parole as the sentence for aggravated first degree murder; amending RCW 10.95.030; and repealing RCW 10.95.040, 10.95.050, 10.95.060, 10.95.070, 10.95.080, 10.95.090, 10.95.100, 10.95.110, 10.95.120, 10.95.130, 10.95.140, 10.95.150, 10.95.160, 10.95.170, 10.95.180, 10.95.185, 10.95.190, and 10.95.200.

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

**Sec.**  RCW 10.95.030 and 2015 c 134 s 5 are each amended to read as follows:

(1) Except as provided in subsection((~~s~~)) (2) ((~~and (3)~~)) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the indeterminate sentence review board or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good‑time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

(2) ((~~If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. In no case, however, shall a person be sentenced to death if the person had an intellectual disability at the time the crime was committed, under the definition of intellectual disability set forth in (a) of this subsection. A diagnosis of intellectual disability shall be documented by a licensed psychiatrist or licensed psychologist designated by the court, who is an expert in the diagnosis and evaluation of intellectual disabilities. The defense must establish an intellectual disability by a preponderance of the evidence and the court must make a finding as to the existence of an intellectual disability.~~

~~(a) "Intellectual disability" means the individual has: (i) Significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior; and (iii) both significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period.~~

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

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

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

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

~~(3)~~))(a)(i) Any person convicted of the crime of aggravated first degree murder for an offense committed prior to the person's sixteenth birthday shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of twenty-five years.

(ii) Any person convicted of the crime of aggravated first degree murder for an offense committed when the person is at least sixteen years old but less than eighteen years old shall be sentenced to a maximum term of life imprisonment and a minimum term of total confinement of no less than twenty-five years. A minimum term of life may be imposed, in which case the person will be ineligible for parole or early release.

(b) In setting a minimum term, the court must take into account mitigating factors that account for the diminished culpability of youth as provided in *Miller v. Alabama*, 132 S.Ct. 2455 (2012) including, but not limited to, the age of the individual, the youth's childhood and life experience, the degree of responsibility the youth was capable of exercising, and the youth's chances of becoming rehabilitated.

(c) A person sentenced under this subsection shall serve the sentence in a facility or institution operated, or utilized under contract, by the state. During the minimum term of total confinement, the person shall not be eligible for community custody, earned release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release authorized under RCW 9.94A.728, or any other form of authorized leave or absence from the correctional facility while not in the direct custody of a corrections officer. The provisions of this subsection shall not apply: (i) In the case of an offender in need of emergency medical treatment; or (ii) for an extraordinary medical placement when authorized under RCW 9.94A.728((~~(3)~~)) (1)(c).

(d) Any person sentenced pursuant to this subsection shall be subject to community custody under the supervision of the department of corrections and the authority of the indeterminate sentence review board. As part of any sentence under this subsection, the court shall require the person to comply with any conditions imposed by the board.

(e) No later than five years prior to the expiration of the person's minimum term, the department of corrections shall conduct an assessment of the offender and identify programming and services that would be appropriate to prepare the offender for return to the community. To the extent possible, the department shall make programming available as identified by the assessment.

(f) No later than one hundred eighty days prior to the expiration of the person's minimum term, the department of corrections shall conduct, and the offender shall participate in, an examination of the person, incorporating methodologies that are recognized by experts in the prediction of dangerousness, and including a prediction of the probability that the person will engage in future criminal behavior if released on conditions to be set by the board. The board may consider a person's failure to participate in an evaluation under this subsection in determining whether to release the person. The board shall order the person released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the person will commit new criminal law violations if released. If the board does not order the person released, the board shall set a new minimum term not to exceed five additional years. The board shall give public safety considerations the highest priority when making all discretionary decisions regarding the ability for release and conditions of release.

(g) In a hearing conducted under (f) of this subsection, the board shall provide opportunities for victims and survivors of victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim and survivor of victim input shall be provided by rule. To facilitate victim and survivor of victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record and survivors of victims are forwarded as part of the judgment and sentence.

(h) An offender released by the board is subject to the supervision of the department of corrections for a period of time to be determined by the board. The department shall monitor the offender's compliance with conditions of community custody imposed by the court or board and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

(i) An offender released or discharged under this section may be returned to the institution at the discretion of the board if the offender is found to have violated a condition of community custody. The offender is entitled to a hearing pursuant to RCW 9.95.435. The board shall set a new minimum term of incarceration not to exceed five years.

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

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

(2) RCW 10.95.050 (Special sentencing proceeding—When held—Jury to decide matters presented—Waiver—Reconvening same jury—Impanelling new jury—Peremptory challenges) and 1981 c 138 s 5;

(3) RCW 10.95.060 (Special sentencing proceeding—Jury instructions—Opening statements—Evidence—Arguments—Question for jury) and 1981 c 138 s 6;

(4) RCW 10.95.070 (Special sentencing proceeding—Factors which jury may consider in deciding whether leniency merited) and 2010 c 94 s 4, 1993 c 479 s 2, & 1981 c 138 s 7;

(5) RCW 10.95.080 (When sentence to death or sentence to life imprisonment shall be imposed) and 1981 c 138 s 8;

(6) RCW 10.95.090 (Sentence if death sentence commuted, held invalid, or if death sentence established by chapter held invalid) and 1981 c 138 s 9;

(7) RCW 10.95.100 (Mandatory review of death sentence by supreme court—Notice—Transmittal—Contents of notice—Jurisdiction) and 1981 c 138 s 10;

(8) RCW 10.95.110 (Verbatim report of trial proceedings—Preparation—Transmittal to supreme court—Clerk's papers—Receipt) and 1981 c 138 s 11;

(9) RCW 10.95.120 (Information report—Form—Contents—Submission to supreme court, defendant, prosecuting attorney) and 1981 c 138 s 12;

(10) RCW 10.95.130 (Questions posed for determination by supreme court in death sentence review—Review in addition to appeal—Consolidation of review and appeal) and 2010 c 94 s 5, 1993 c 479 s 3, & 1981 c 138 s 13;

(11) RCW 10.95.140 (Invalidation of sentence, remand for resentencing—Affirmation of sentence, remand for execution) and 1993 c 479 s 4 & 1981 c 138 s 14;

(12) RCW 10.95.150 (Time limit for appellate review of death sentence and filing opinion) and 1988 c 202 s 17 & 1981 c 138 s 15;

(13) RCW 10.95.160 (Death warrant—Issuance—Form—Time for execution of judgment and sentence) and 1990 c 263 s 1 & 1981 c 138 s 16;

(14) RCW 10.95.170 (Imprisonment of defendant) and 1983 c 255 s 1 & 1981 c 138 s 17;

(15) RCW 10.95.180 (Death penalty—How executed) and 1996 c 251 s 1, 1986 c 194 s 1, & 1981 c 138 s 18;

(16) RCW 10.95.185 (Witnesses) and 1999 c 332 s 1 & 1993 c 463 s 2;

(17) RCW 10.95.190 (Death warrant—Record—Return to trial court) and 1981 c 138 s 19; and

(18) RCW 10.95.200 (Proceedings for failure to execute on day named) and 1990 c 263 s 2, 1987 c 286 s 1, & 1981 c 138 s 20.

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