
SUBSTITUTE HOUSE BILL 1234

State of Washington 52nd Legislature 1991 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Anderson, Miller, Appelwick, Wineberry, Paris, Scott, Hargrove, Ludwig, D. Sommers, Broback, R. Meyers, Belcher, Prince, H. Myers, Riley, Locke, Forner, Ballard, Ferguson, Horn, Dellwo, Wang, Roland, R. Johnson, O'Brien, Jacobsen, R. Fisher, Phillips, Ogden, Rasmussen, Leonard and Cooper).

Read first time February 13, 1991.

1 AN ACT Relating to imposing the death penalty upon the mentally
2 retarded; and amending RCW 10.95.030, 10.95.070, 10.95.130, and
3 10.95.140.

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

5 **Sec. 1.** RCW 10.95.030 and 1981 c 138 s 3 are each amended to read
6 as follows:

7 (1) Except as provided in subsection (2) of this section, any
8 person convicted of the crime of aggravated first degree murder shall
9 be sentenced to life imprisonment without possibility of release or
10 parole. A person sentenced to life imprisonment under this section
11 shall not have that sentence suspended, deferred, or commuted by any
12 judicial officer and the (~~board of prison terms and paroles~~)
13 indeterminate sentence review board or its successor may not parole
14 such prisoner nor reduce the period of confinement in any manner
15 whatsoever including but not limited to any sort of good-time

1 calculation. The department of social and health services or its
2 successor or any executive official may not permit such prisoner to
3 participate in any sort of release or furlough program.

4 (2) If, pursuant to a special sentencing proceeding held under RCW
5 10.95.050, the trier of fact finds that there are not sufficient
6 mitigating circumstances to merit leniency, the sentence shall be
7 death. In no case, however, shall a person be sentenced to death if
8 the person was mentally retarded at the time the crime was committed,
9 under the definition of mental retardation set forth in (a) of this
10 subsection. A diagnosis of mental retardation shall be documented by
11 a licensed psychiatrist or licensed psychologist expert in the
12 diagnosis and evaluation of mental retardation. The defense must
13 establish mental retardation by a preponderance of the evidence.

14 (a) "Mentally retarded" means the individual has: (i)
15 significantly subaverage general intellectual functioning; (ii)
16 existing concurrently with deficits in adaptive behavior; and (iii)
17 both significantly subaverage general intellectual functioning and
18 deficits in adaptive behavior were manifested during the developmental
19 period.

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

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

26 (d) "Adaptive behavior" means the effectiveness or degree with
27 which individuals meet the standards of personal independence and
28 social responsibility expected for age and cultural group.

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

1 **Sec. 2.** RCW 10.95.070 and 1981 c 138 s 7 are each amended to read
2 as follows:

3 In deciding the question posed by RCW 10.95.060(4), the jury, or
4 the court if a jury is waived, may consider any relevant factors,
5 including but not limited to the following:

6 (1) Whether the defendant has or does not have a significant
7 history, either as a juvenile or an adult, of prior criminal activity;

8 (2) Whether the murder was committed while the defendant was under
9 the influence of extreme mental disturbance;

10 (3) Whether the victim consented to the act of murder;

11 (4) Whether the defendant was an accomplice to a murder committed
12 by another person where the defendant's participation in the murder was
13 relatively minor;

14 (5) Whether the defendant acted under duress or domination of
15 another person;

16 (6) Whether, at the time of the murder, the capacity of the
17 defendant to appreciate the wrongfulness of his or her conduct or to
18 conform his or her conduct to the requirements of law was substantially
19 impaired as a result of mental disease or defect. However, a person
20 found to be mentally retarded under RCW 10.95.030(2) may in no case be
21 sentenced to death;

22 (7) Whether the age of the defendant at the time of the crime calls
23 for leniency; and

24 (8) Whether there is a likelihood that the defendant will pose a
25 danger to others in the future.

26 **Sec. 3.** RCW 10.95.130 and 1981 c 138 s 13 are each amended to read
27 as follows:

28 (1) The sentence review required by RCW 10.95.100 shall be in
29 addition to any appeal. The sentence review and an appeal shall be

1 consolidated for consideration. The defendant and the prosecuting
2 attorney may submit briefs within the time prescribed by the court and
3 present oral argument to the court.

4 (2) With regard to the sentence review required by this act, the
5 supreme court of Washington shall determine:

6 (a) Whether there was sufficient evidence to justify the
7 affirmative finding to the question posed by RCW 10.95.060(4); and

8 (b) Whether the sentence of death is excessive or disproportionate
9 to the penalty imposed in similar cases, considering both the crime and
10 the defendant. For the purposes of this subsection, "similar cases"
11 means cases reported in the Washington Reports or Washington Appellate
12 Reports since January 1, 1965, in which the judge or jury considered
13 the imposition of capital punishment regardless of whether it was
14 imposed or executed, and cases in which reports have been filed with
15 the supreme court under RCW 10.95.120; (~~and~~)

16 (c) Whether the sentence of death was brought about through passion
17 or prejudice; and

18 (d) Whether the defendant was mentally retarded within the meaning
19 of RCW 10.95.030(2).

20 **Sec. 4.** RCW 10.95.140 and 1981 c 138 s 14 are each amended to read
21 as follows:

22 Upon completion of a sentence review:

23 (1) The supreme court of Washington shall invalidate the sentence
24 of death and remand the case to the trial court for resentencing in
25 accordance with RCW 10.95.090 if:

26 (a) The court makes a negative determination as to the question
27 posed by RCW 10.95.130(2)(a); or

28 (b) The court makes an affirmative determination as to (~~either~~)
29 any of the questions posed by RCW 10.95.130(2)(b) (~~(or)~~), (c), or (d).

1 (2) The court shall affirm the sentence of death and remand the
2 case to the trial court for execution in accordance with RCW 10.95.160
3 if:

4 (a) The court makes an affirmative determination as to the question
5 posed by RCW 10.95.130(2)(a); and

6 (b) The court makes a negative determination as to the questions
7 posed by RCW 10.95.130(2)(b) (~~and~~), (c), and (d).