
HOUSE BILL 2098

State of Washington

54th Legislature

1995 Regular Session

By Representatives Clements, Skinner, Foreman, Appelwick, Hankins, Sheahan, Huff, Lisk, Honeyford, Elliot, Thompson, Brumsickle, Mulliken, Boldt, Mitchell, McMahan, Radcliff, D. Schmidt, Delvin, Backlund, Smith, Kremen, Pennington, Chandler, Sheldon, Horn, Silver, Beeksma, Blanton, Campbell, G. Fisher, Conway, Ebersole, Costa, Dickerson, Kessler, Johnson, Benton and Chappell

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1 AN ACT Relating to the swift and certain punishment of individuals
2 convicted of committing a terrorist act that results in the death of an
3 innocent person; amending RCW 9A.32.030, 9A.32.050, 10.95.020, and
4 10.95.030; adding a new section to chapter 9A.32 RCW; adding new
5 sections to chapter 10.95 RCW; creating new sections; and declaring an
6 emergency.

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

8 NEW SECTION. **Sec. 1.** The legislature finds that acts of terrorism
9 are increasing at an alarming rate around the world and within the
10 United States. As a result hundreds, even thousands, of innocent
11 civilians are being needlessly maimed and killed and millions of
12 dollars of private and public assets are being senselessly ruined.
13 Acts of terrorism and those who commit such crimes must not and should
14 not be tolerated. Swift and certain punishment of those who take the
15 lives of innocent men, women, and children and destroy their property
16 is not only appropriate, but essential in maintaining public order,
17 securing the safety of our citizens and their possessions, and ensuring
18 that justice is done.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 9A.32 RCW
2 to read as follows:

3 For the purposes of this chapter, "terrorist act" means an act of
4 violence or an act dangerous to human life, including but not limited
5 to murder, assault, assassination, and kidnapping, that is a violation
6 of the laws of the United States or of any state and that is intended
7 to: (1) Intimidate or coerce a civilian population; (2) influence the
8 policy of a branch or level of government by intimidation or coercion;
9 (3) affect the conduct of a branch or level of government by
10 intimidation or coercion; or (4) retaliate against a branch or level of
11 government for a policy or conduct of the government.

12 **Sec. 3.** RCW 9A.32.030 and 1990 c 200 s 1 are each amended to read
13 as follows:

14 (1) A person is guilty of murder in the first degree when:

15 (a) He or she commits or attempts to commit a terrorist act and
16 thereby causes the death of an innocent person; or

17 (b) With a premeditated intent to cause the death of another
18 person, he or she causes the death of such person or of a third person;
19 or

20 (~~(b)~~) (c) Under circumstances manifesting an extreme indifference
21 to human life, he or she engages in conduct which creates a grave risk
22 of death to any person, and thereby causes the death of a person; or

23 (~~(e)~~) (d) He or she commits or attempts to commit the crime of
24 either (1) robbery in the first or second degree, (2) rape in the first
25 or second degree, (3) burglary in the first degree, (4) arson in the
26 first or second degree, or (5) kidnapping in the first or second
27 degree, and in the course of or in furtherance of such crime or in
28 immediate flight therefrom, he or she, or another participant, causes
29 the death of a person other than one of the participants: Except that
30 in any prosecution under this (~~subdivision (1)(e)~~) subsection (1)(d)
31 in which the defendant was not the only participant in the underlying
32 crime, if established by the defendant by a preponderance of the
33 evidence, it is a defense that the defendant:

34 (i) Did not commit the homicidal act or in any way solicit,
35 request, command, importune, cause, or aid the commission thereof; and

36 (ii) Was not armed with a deadly weapon, or any instrument,
37 article, or substance readily capable of causing death or serious
38 physical injury; and

1 (iii) Had no reasonable grounds to believe that any other
2 participant was armed with such a weapon, instrument, article, or
3 substance; and

4 (iv) Had no reasonable grounds to believe that any other
5 participant intended to engage in conduct likely to result in death or
6 serious physical injury.

7 (2) Murder in the first degree is a class A felony.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.95 RCW
9 to read as follows:

10 A person who is guilty of murder in the first degree as a result of
11 committing or attempting to commit a terrorist act as defined in
12 section 2 of this act is guilty of aggravated first degree murder and
13 must be sentenced to death and the special sentencing provisions of RCW
14 10.95.050 through 10.95.080 shall not apply.

15 **Sec. 5.** RCW 9A.32.050 and 1975-'76 2nd ex.s. c 38 s 4 are each
16 amended to read as follows:

17 (1) A person is guilty of murder in the second degree when:

18 (a) With intent to cause the death of another person but without
19 premeditation, he or she causes the death of such person or of a third
20 person; or

21 (b) He or she commits or attempts to commit any felony other than
22 those enumerated in RCW 9A.32.030(1)((~~e~~)) (d), and, in the course of
23 and in furtherance of such crime or in immediate flight therefrom, he
24 or she, or another participant, causes the death of a person other than
25 one of the participants; except that in any prosecution under this
26 ((~~subdivision~~)) subsection (1)(b) in which the defendant was not the
27 only participant in the underlying crime, if established by the
28 defendant by a preponderance of the evidence, it is a defense that the
29 defendant:

30 (i) Did not commit the homicidal act or in any way solicit,
31 request, command, importune, cause, or aid the commission thereof; and

32 (ii) Was not armed with a deadly weapon, or any instrument,
33 article, or substance readily capable of causing death or serious
34 physical injury; and

35 (iii) Had no reasonable grounds to believe that any other
36 participant was armed with such a weapon, instrument, article, or
37 substance; and

1 (iv) Had no reasonable grounds to believe that any other
2 participant intended to engage in conduct likely to result in death or
3 serious physical injury.

4 (2) Murder in the second degree is a class A felony.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 10.95 RCW
6 to read as follows:

7 (1) All sentence reviews, appeals, or collateral attacks arising
8 from a conviction under RCW 9A.32.030(1)(a) shall be consolidated and
9 shall be filed with the appropriate court within three months from the
10 date the lower court has rendered its judgment or decision or within
11 the time period established by court rule, whichever is earliest.

12 (2) A court shall expedite all sentence reviews, appeals, or
13 collateral attacks arising from a conviction under RCW 9A.32.030(1)(a),
14 shall accord first priority to hearing such reviews, appeals, or
15 attacks, and shall render its judgment or decision within three months
16 from the date the hearing is concluded or within the time period
17 established by court rule, whichever is earliest.

18 (3) The secretary of the department of corrections shall ensure
19 that a person whose conviction under RCW 9A.32.030(1)(a) or whose
20 sentence of death has not been stayed or overturned by a court shall be
21 put to death no later than three months from the date a court of final
22 appeal has rendered its judgment or decision sustaining the conviction
23 or sentence or refusing to stay or overturn the conviction or sentence
24 or within the time period established by court rule, whichever is
25 earliest.

26 **Sec. 7.** RCW 10.95.020 and 1994 c 121 s 3 are each amended to read
27 as follows:

28 A person is guilty of aggravated first degree murder if he or she
29 commits first degree murder as defined by RCW 9A.32.030(1)((~~a~~), ~~as now~~
30 ~~or hereafter amended,~~) (b) and one or more of the following
31 aggravating circumstances exist:

32 (1) The victim was a law enforcement officer, corrections officer,
33 or fire fighter who was performing his or her official duties at the
34 time of the act resulting in death and the victim was known or
35 reasonably should have been known by the person to be such at the time
36 of the killing;

1 (2) At the time of the act resulting in the death, the person was
2 serving a term of imprisonment, had escaped, or was on authorized or
3 unauthorized leave in or from a state facility or program for the
4 incarceration or treatment of persons adjudicated guilty of crimes;

5 (3) At the time of the act resulting in death, the person was in
6 custody in a county or county-city jail as a consequence of having been
7 adjudicated guilty of a felony;

8 (4) The person committed the murder pursuant to an agreement that
9 he or she would receive money or any other thing of value for
10 committing the murder;

11 (5) The person solicited another person to commit the murder and
12 had paid or had agreed to pay money or any other thing of value for
13 committing the murder;

14 (6) The victim was:

15 (a) A judge; juror or former juror; prospective, current, or former
16 witness in an adjudicative proceeding; prosecuting attorney; deputy
17 prosecuting attorney; defense attorney; a member of the indeterminate
18 sentence review board; or a probation or parole officer; and

19 (b) The murder was related to the exercise of official duties
20 performed or to be performed by the victim;

21 (7) The person committed the murder to conceal the commission of a
22 crime or to protect or conceal the identity of any person committing a
23 crime;

24 (8) There was more than one victim and the murders were part of a
25 common scheme or plan or the result of a single act of the person;

26 (9) The murder was committed in the course of, in furtherance of,
27 or in immediate flight from one of the following crimes:

28 (a) Robbery in the first or second degree;

29 (b) Rape in the first or second degree;

30 (c) Burglary in the first or second degree or residential burglary;

31 (d) Kidnapping in the first degree; or

32 (e) Arson in the first degree;

33 (10) The victim was regularly employed or self-employed as a
34 newsreporter and the murder was committed to obstruct or hinder the
35 investigative, research, or reporting activities of the victim;

36 (11) The murder was committed in the course of, in furtherance of,
37 or in immediate flight from a terrorist act as defined in section 2 of
38 this act.

1 **Sec. 8.** RCW 10.95.030 and 1993 c 479 s 1 are each amended to read
2 as follows:

3 (1) Except as provided in subsection (2) of this section or for a
4 person convicted under RCW 9A.32.030(1)(a), any person convicted of the
5 crime of aggravated first degree murder shall be sentenced to life
6 imprisonment without possibility of release or parole. A person
7 sentenced to life imprisonment under this section shall not have that
8 sentence suspended, deferred, or commuted by any judicial officer and
9 the indeterminate sentence review board or its successor may not parole
10 such prisoner nor reduce the period of confinement in any manner
11 whatsoever including but not limited to any sort of good-time
12 calculation. The department of social and health services or its
13 successor or any executive official may not permit such prisoner to
14 participate in any sort of release or furlough program.

15 (2) If, pursuant to a special sentencing proceeding held under RCW
16 10.95.050, the trier of fact finds that there are not sufficient
17 mitigating circumstances to merit leniency, the sentence shall be
18 death. In no case, however, shall a person be sentenced to death if
19 the person was mentally retarded at the time the crime was committed,
20 under the definition of mental retardation set forth in (a) of this
21 subsection. A diagnosis of mental retardation shall be documented by
22 a licensed psychiatrist or licensed psychologist designated by the
23 court, who is an expert in the diagnosis and evaluation of mental
24 retardation. The defense must establish mental retardation by a
25 preponderance of the evidence and the court must make a finding as to
26 the existence of mental retardation.

27 (a) "Mentally retarded" means the individual has: (i)
28 Significantly subaverage general intellectual functioning; (ii)
29 existing concurrently with deficits in adaptive behavior; and (iii)
30 both significantly subaverage general intellectual functioning and
31 deficits in adaptive behavior were manifested during the developmental
32 period.

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

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

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

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

6 NEW SECTION. **Sec. 9.** This act may be known and cited as the
7 antiterrorist and public safety act of 1995.

8 NEW SECTION. **Sec. 10.** If any provision of this act or its
9 application to any person or circumstance is held invalid, the
10 remainder of the act or the application of the provision to other
11 persons or circumstances is not affected.

12 NEW SECTION. **Sec. 11.** This act is necessary for the immediate
13 preservation of the public peace, health, morals, and safety, or
14 support of the state government and its existing public institutions,
15 and shall take effect immediately.

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