
HOUSE BILL 2161

State of Washington

54th Legislature

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By Representatives Benton, Goldsmith, Boldt, McMahan, Pelesky, Hargrove and Thompson

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1 AN ACT Relating to capital punishment; amending RCW 69.50.401,
2 69.50.408, 69.50.435, 10.95.040, 10.95.050, 10.95.060, 10.95.070,
3 10.95.090, and 10.95.120; reenacting and amending RCW 9.94A.320; adding
4 a new section to chapter 69.50 RCW; prescribing penalties; and
5 providing an effective date.

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

7 NEW SECTION. **Sec. 1.** A new section is added to chapter 69.50 RCW
8 to read as follows:

9 (1) Except as provided in subsection (2) of this section, any
10 person convicted of an offense under RCW 69.50.401(a)(1)(i) or any
11 violation of RCW 69.50.435(a)(2) shall be sentenced to life
12 imprisonment without possibility of release or parole. A person
13 sentenced to life imprisonment under this section shall not have that
14 sentence suspended, deferred, or commuted by any judicial officer and
15 the indeterminate sentence review board or its successor may not parole
16 such prisoner nor reduce the period of confinement in any manner
17 whatsoever including but not limited to any sort of good-time
18 calculation. The department of social and health services or its

1 successor or any executive official may not permit such prisoner to
2 participate in any sort of release or furlough program.

3 (2) If, pursuant to a special sentencing proceeding held under RCW
4 10.95.050, the trier of fact finds that there are not sufficient
5 mitigating circumstances to merit leniency, the sentence shall be
6 death.

7 **Sec. 2.** RCW 69.50.401 and 1989 c 271 s 104 are each amended to
8 read as follows:

9 (a) Except as authorized by this chapter, it is unlawful for any
10 person to manufacture, deliver, or possess with intent to manufacture
11 or deliver, a controlled substance.

12 (1) Any person who violates this subsection with respect to:

13 (i) a controlled substance classified in Schedule I or II which is
14 a narcotic drug, is guilty of a crime and upon conviction (~~may be~~
15 ~~imprisoned for not more than ten years, or (A) fined not more than~~
16 ~~twenty-five thousand dollars if the crime involved less than two~~
17 ~~kilograms of the drug, or both such imprisonment and fine; or (B) if~~
18 ~~the crime involved two or more kilograms of the drug, then fined not~~
19 ~~more than one hundred thousand dollars for the first two kilograms and~~
20 ~~not more than fifty dollars for each gram in excess of two kilograms,~~
21 ~~or both such imprisonment and fine)) shall be punished in accordance
22 with section 1 of this act;~~

23 (ii) any other controlled substance classified in Schedule I, II,
24 or III, is guilty of a crime and upon conviction may be imprisoned for
25 not more than five years, fined not more than ten thousand dollars, or
26 both;

27 (iii) a substance classified in Schedule IV, is guilty of a crime
28 and upon conviction may be imprisoned for not more than five years,
29 fined not more than ten thousand dollars, or both;

30 (iv) a substance classified in Schedule V, is guilty of a crime and
31 upon conviction may be imprisoned for not more than five years, fined
32 not more than ten thousand dollars, or both.

33 (b) Except as authorized by this chapter, it is unlawful for any
34 person to create, deliver, or possess a counterfeit substance.

35 (1) Any person who violates this subsection with respect to:

36 (i) a counterfeit substance classified in Schedule I or II which is
37 a narcotic drug, is guilty of a crime and upon conviction may be

1 imprisoned for not more than ten years, fined not more than twenty-five
2 thousand dollars, or both;

3 (ii) any other counterfeit substance classified in Schedule I, II,
4 or III, is guilty of a crime and upon conviction may be imprisoned for
5 not more than five years, fined not more than ten thousand dollars, or
6 both;

7 (iii) a counterfeit substance classified in Schedule IV, is guilty
8 of a crime and upon conviction may be imprisoned for not more than five
9 years, fined not more than ten thousand dollars, or both;

10 (iv) a counterfeit substance classified in Schedule V, is guilty of
11 a crime and upon conviction may be imprisoned for not more than five
12 years, fined not more than ten thousand dollars, or both.

13 (c) It is unlawful, except as authorized in this chapter and
14 chapter 69.41 RCW, for any person to offer, arrange, or negotiate for
15 the sale, gift, delivery, dispensing, distribution, or administration
16 of a controlled substance to any person and then sell, give, deliver,
17 dispense, distribute, or administer to that person any other liquid,
18 substance, or material in lieu of such controlled substance. Any
19 person who violates this subsection is guilty of a crime and upon
20 conviction may be imprisoned for not more than five years, fined not
21 more than ten thousand dollars, or both.

22 (d) It is unlawful for any person to possess a controlled substance
23 unless the substance was obtained directly from, or pursuant to, a
24 valid prescription or order of a practitioner while acting in the
25 course of his professional practice, or except as otherwise authorized
26 by this chapter. Any person who violates this subsection is guilty of
27 a crime, and upon conviction may be imprisoned for not more than five
28 years, fined not more than ten thousand dollars, or both, except as
29 provided for in subsection (e) of this section.

30 (e) Except as provided for in subsection (a)(1)(ii) of this section
31 any person found guilty of possession of forty grams or less of
32 marihuana shall be guilty of a misdemeanor.

33 (f) It is unlawful to compensate, threaten, solicit, or in any
34 other manner involve a person under the age of eighteen years in a
35 transaction unlawfully to manufacture, sell, or deliver a controlled
36 substance. A violation of this subsection shall be punished as a class
37 C felony punishable in accordance with RCW 9A.20.021.

38 This section shall not apply to offenses defined and punishable
39 under the provisions of RCW 69.50.410.

1 **Sec. 3.** RCW 69.50.408 and 1989 c 8 s 3 are each amended to read as
2 follows:

3 (a) Any person convicted of a second or subsequent offense under
4 this chapter may be imprisoned for a term up to twice the term
5 otherwise authorized, fined an amount up to twice that otherwise
6 authorized, or both; except for an offense under RCW
7 69.50.401(a)(1)(i), which shall be punished pursuant to section 1 of
8 this act.

9 (b) For purposes of this section, an offense is considered a second
10 or subsequent offense, if, prior to his conviction of the offense, the
11 offender has at any time been convicted under this chapter or under any
12 statute of the United States or of any state relating to narcotic
13 drugs, marihuana, depressant, stimulant, or hallucinogenic drugs.

14 (c) This section does not apply to offenses under RCW 69.50.401(d).

15 **Sec. 4.** RCW 69.50.435 and 1991 c 32 s 4 are each amended to read
16 as follows:

17 (a)(1) Except when (2) of this subsection applies, any person who
18 violates RCW 69.50.401(a) by manufacturing, selling, delivering, or
19 possessing with the intent to manufacture, sell, or deliver a
20 controlled substance listed under that subsection or who violates RCW
21 69.50.410 by selling for profit any controlled substance or counterfeit
22 substance classified in schedule I, RCW 69.50.204, except leaves and
23 flowering tops of marihuana to a person in a school or on a school bus
24 or within one thousand feet of a school bus route stop designated by
25 the school district or within one thousand feet of the perimeter of the
26 school grounds, in a public park or on a public transit vehicle, or in
27 a public transit stop shelter may be punished by a fine of up to twice
28 the fine otherwise authorized by this chapter, but not including twice
29 the fine authorized by RCW 69.50.406, or by imprisonment of up to twice
30 the imprisonment otherwise authorized by this chapter, but not
31 including twice the imprisonment authorized by RCW 69.50.406, or by
32 both such fine and imprisonment. The provisions of this section shall
33 not operate to more than double the fine or imprisonment otherwise
34 authorized by this chapter for an offense.

35 (2) Any person who violates RCW 69.50.401(a)(1)(i) by
36 manufacturing, selling, delivering, or possessing with the intent to
37 manufacture, sell, or deliver a controlled substance listed under that
38 subsection to a person in a school or on a school bus or within one

1 thousand feet of a school bus route stop designated by the school
2 district or within one thousand feet of the perimeter of the school
3 grounds shall be punished pursuant to section 1 of this act.

4 (b) It is not a defense to a prosecution for a violation of this
5 section that the person was unaware that the prohibited conduct took
6 place while in a school or school bus or within one thousand feet of
7 the school or school bus route stop, in a public park, on a public
8 transit vehicle, or in a public transit stop shelter.

9 (c) It is not a defense to a prosecution for a violation of this
10 section or any other prosecution under this chapter that persons under
11 the age of eighteen were not present in the school, the school bus, the
12 public park, or the public transit vehicle, or at the school bus route
13 stop or the public transit vehicle stop shelter at the time of the
14 offense or that school was not in session.

15 (d) It is an affirmative defense to a prosecution for a violation
16 of this section that the prohibited conduct took place entirely within
17 a private residence, that no person under eighteen years of age or
18 younger was present in such private residence at any time during the
19 commission of the offense, and that the prohibited conduct did not
20 involve delivering, manufacturing, selling, or possessing with the
21 intent to manufacture, sell, or deliver any controlled substance in RCW
22 69.50.401(a) for profit. The affirmative defense established in this
23 section shall be proved by the defendant by a preponderance of the
24 evidence. This section shall not be construed to establish an
25 affirmative defense with respect to a prosecution for an offense
26 defined in any other section of this chapter.

27 (e) In a prosecution under this section, a map produced or
28 reproduced by any municipal, school district, county, or transit
29 authority engineer for the purpose of depicting the location and
30 boundaries of the area on or within one thousand feet of any property
31 used for a school, school bus route stop, public park, or public
32 transit vehicle stop shelter, or a true copy of such a map, shall under
33 proper authentication, be admissible and shall constitute prima facie
34 evidence of the location and boundaries of those areas if the governing
35 body of the municipality, school district, county, or transit authority
36 has adopted a resolution or ordinance approving the map as the official
37 location and record of the location and boundaries of the area on or
38 within one thousand feet of the school, school bus route stop, public
39 park, or public transit vehicle stop shelter. Any map approved under

1 this section or a true copy of the map shall be filed with the clerk of
2 the municipality or county, and shall be maintained as an official
3 record of the municipality or county. This section shall not be
4 construed as precluding the prosecution from introducing or relying
5 upon any other evidence or testimony to establish any element of the
6 offense. This section shall not be construed as precluding the use or
7 admissibility of any map or diagram other than the one which has been
8 approved by the governing body of a municipality, school district,
9 county, or transit authority if the map or diagram is otherwise
10 admissible under court rule.

11 (f) As used in this section the following terms have the meanings
12 indicated unless the context clearly requires otherwise:

13 (1) "School" has the meaning under RCW 28A.150.010 or 28A.150.020.
14 The term "school" also includes a private school approved under RCW
15 28A.195.010;

16 (2) "School bus" means a school bus as defined by the
17 superintendent of public instruction by rule which is owned and
18 operated by any school district and all school buses which are
19 privately owned and operated under contract or otherwise with any
20 school district in the state for the transportation of students. The
21 term does not include buses operated by common carriers in the urban
22 transportation of students such as transportation of students through
23 a municipal transportation system;

24 (3) "School bus route stop" means a school bus stop as designated
25 on maps submitted by school districts to the office of the
26 superintendent of public instruction;

27 (4) "Public park" means land, including any facilities or
28 improvements on the land, that is operated as a park by the state or a
29 local government;

30 (5) "Public transit vehicle" means any motor vehicle, street car,
31 train, trolley vehicle, or any other device, vessel, or vehicle which
32 is owned or operated by a transit authority and which is used for the
33 purpose of carrying passengers on a regular schedule;

34 (6) "Transit authority" means a city, county, or state
35 transportation system, transportation authority, public transportation
36 benefit area, public transit authority, or metropolitan municipal
37 corporation within the state that operates public transit vehicles;

38 (7) "Stop shelter" means a passenger shelter designated by a
39 transit authority.

1 Indecent Liberties (with forcible
2 compulsion) (RCW 9A.44.100(1)(a))
3 Endangering life and property by
4 explosives with threat to human being
5 (RCW 70.74.270)
6 Over 18 and deliver narcotic from Schedule
7 III, IV, or V or a nonnarcotic from
8 Schedule I-V to someone under 18 and
9 3 years junior (RCW 69.50.406)
10 Controlled Substance Homicide (RCW
11 69.50.415)
12 Sexual Exploitation (RCW 9.68A.040)
13 Inciting Criminal Profiteering (RCW
14 9A.82.060(1)(b))
15 Vehicular Homicide, by being under the
16 influence of intoxicating liquor or
17 any drug (RCW 46.61.520)

18 VIII Arson 1 (RCW 9A.48.020)
19 Promoting Prostitution 1 (RCW 9A.88.070)
20 Selling for profit (controlled or
21 counterfeit) any controlled substance
22 (RCW 69.50.410)
23 ~~((Manufacture, deliver, or possess with
24 intent to deliver heroin or cocaine
25 (RCW 69.50.401(a)(1)(i))))~~
26 Manufacture, deliver, or possess with
27 intent to deliver methamphetamine
28 (RCW 69.50.401(a)(1)(ii))
29 Vehicular Homicide, by the operation of
30 any vehicle in a reckless manner (RCW
31 46.61.520)

32 VII Burglary 1 (RCW 9A.52.020)
33 Vehicular Homicide, by disregard for the
34 safety of others (RCW 46.61.520)
35 Introducing Contraband 1 (RCW 9A.76.140)
36 Indecent Liberties (without forcible
37 compulsion) (RCW 9A.44.100(1) (b) and
38 (c))

1 Child Molestation 2 (RCW 9A.44.086)
2 Dealing in depictions of minor engaged in
3 sexually explicit conduct (RCW
4 9.68A.050)
5 Sending, bringing into state depictions of
6 minor engaged in sexually explicit
7 conduct (RCW 9.68A.060)
8 Involving a minor in drug dealing (RCW
9 69.50.401(f))
10 Reckless Endangerment 1 (RCW 9A.36.045)
11 Unlawful Possession of a Firearm in the
12 first degree (RCW 9.41.040(1)(a))

13 VI Bribery (RCW 9A.68.010)
14 Manslaughter 2 (RCW 9A.32.070)
15 Rape of a Child 3 (RCW 9A.44.079)
16 Intimidating a Juror/Witness (RCW
17 9A.72.110, 9A.72.130)
18 Damaging building, etc., by explosion with
19 no threat to human being (RCW
20 70.74.280(2))
21 Endangering life and property by
22 explosives with no threat to human
23 being (RCW 70.74.270)
24 Incest 1 (RCW 9A.64.020(1))
25 ~~((Manufacture, deliver, or possess with~~
26 ~~intent to deliver narcotics from~~
27 ~~Schedule I or II (except heroin or~~
28 ~~cocaine) (RCW 69.50.401(a)(1)(i)))~~
29 Intimidating a Judge (RCW 9A.72.160)
30 Bail Jumping with Murder 1 (RCW
31 9A.76.170(2)(a))
32 Theft of a Firearm (RCW 9A.56.300)

1 V Persistent prison misbehavior (RCW
2 9.94.070)
3 Criminal Mistreatment 1 (RCW 9A.42.020)
4 Rape 3 (RCW 9A.44.060)
5 Sexual Misconduct with a Minor 1 (RCW
6 9A.44.093)
7 Child Molestation 3 (RCW 9A.44.089)
8 Kidnapping 2 (RCW 9A.40.030)
9 Extortion 1 (RCW 9A.56.120)
10 Incest 2 (RCW 9A.64.020(2))
11 Perjury 1 (RCW 9A.72.020)
12 Extortionate Extension of Credit (RCW
13 9A.82.020)
14 Advancing money or property for
15 extortionate extension of credit (RCW
16 9A.82.030)
17 Extortionate Means to Collect Extensions
18 of Credit (RCW 9A.82.040)
19 Rendering Criminal Assistance 1 (RCW
20 9A.76.070)
21 Bail Jumping with class A Felony (RCW
22 9A.76.170(2)(b))
23 Sexually Violating Human Remains (RCW
24 9A.44.105)
25 Delivery of imitation controlled substance
26 by person eighteen or over to person
27 under eighteen (RCW 69.52.030(2))
28 Possession of a Stolen Firearm (RCW
29 9A.56.310)

30 IV Residential Burglary (RCW 9A.52.025)
31 Theft of Livestock 1 (RCW 9A.56.080)
32 Robbery 2 (RCW 9A.56.210)
33 Assault 2 (RCW 9A.36.021)
34 Escape 1 (RCW 9A.76.110)
35 Arson 2 (RCW 9A.48.030)
36 Commercial Bribery (RCW 9A.68.060)
37 Bribing a Witness/Bribe Received by
38 Witness (RCW 9A.72.090, 9A.72.100)
39 Malicious Harassment (RCW 9A.36.080)

1 Threats to Bomb (RCW 9.61.160)
2 Willful Failure to Return from Furlough
3 (RCW 72.66.060)
4 Hit and Run « Injury Accident (RCW
5 46.52.020(4))
6 Vehicular Assault (RCW 46.61.522)
7 Manufacture, deliver, or possess with
8 intent to deliver narcotics from
9 Schedule III, IV, or V or
10 nonnarcotics from Schedule I-V
11 (except marijuana or
12 methamphetamines) (RCW
13 69.50.401(a)(1)(ii) through (iv))
14 Influencing Outcome of Sporting Event (RCW
15 9A.82.070)
16 Use of Proceeds of Criminal Profiteering
17 (RCW 9A.82.080 (1) and (2))
18 Knowingly Trafficking in Stolen Property
19 (RCW 9A.82.050(2))
20 III Criminal Mistreatment 2 (RCW 9A.42.030)
21 Extortion 2 (RCW 9A.56.130)
22 Unlawful Imprisonment (RCW 9A.40.040)
23 Assault 3 (RCW 9A.36.031)
24 Assault of a Child 3 (RCW 9A.36.140)
25 Custodial Assault (RCW 9A.36.100)
26 Unlawful possession of firearm in the
27 second degree (RCW 9.41.040(1)(b))
28 Harassment (RCW 9A.46.020)
29 Promoting Prostitution 2 (RCW 9A.88.080)
30 Willful Failure to Return from Work
31 Release (RCW 72.65.070)
32 Burglary 2 (RCW 9A.52.030)
33 Introducing Contraband 2 (RCW 9A.76.150)
34 Communication with a Minor for Immoral
35 Purposes (RCW 9.68A.090)
36 Patronizing a Juvenile Prostitute (RCW
37 9.68A.100)
38 Escape 2 (RCW 9A.76.120)
39 Perjury 2 (RCW 9A.72.030)

1 Bail Jumping with class B or C Felony (RCW
2 9A.76.170(2)(c))
3 Intimidating a Public Servant (RCW
4 9A.76.180)
5 Tampering with a Witness (RCW 9A.72.120)
6 Manufacture, deliver, or possess with
7 intent to deliver marijuana (RCW
8 69.50.401(a)(1)(ii))
9 Delivery of a material in lieu of a
10 controlled substance (RCW
11 69.50.401(c))
12 Manufacture, distribute, or possess with
13 intent to distribute an imitation
14 controlled substance (RCW
15 69.52.030(1))
16 Recklessly Trafficking in Stolen Property
17 (RCW 9A.82.050(1))
18 Theft of livestock 2 (RCW 9A.56.080)
19 Securities Act violation (RCW 21.20.400)

20 II Unlawful Practice of Law (RCW 2.48.180)
21 Malicious Mischief 1 (RCW 9A.48.070)
22 Possession of Stolen Property 1 (RCW
23 9A.56.150)
24 Theft 1 (RCW 9A.56.030)
25 Trafficking in Insurance Claims (RCW
26 48.30A.015)
27 Unlicensed Practice of a Profession or
28 Business (RCW 18.130.190(7))
29 Health Care False Claims (RCW 48.80.030)
30 Possession of controlled substance that is
31 either heroin or narcotics from
32 Schedule I or II (RCW 69.50.401(d))
33 Possession of phencyclidine (PCP) (RCW
34 69.50.401(d))
35 Create, deliver, or possess a counterfeit
36 controlled substance (RCW
37 69.50.401(b))

1 Computer Trespass 1 (RCW 9A.52.110)
2 Escape from Community Custody (RCW
3 72.09.310)
4 I Theft 2 (RCW 9A.56.040)
5 Possession of Stolen Property 2 (RCW
6 9A.56.160)
7 Forgery (RCW 9A.60.020)
8 Taking Motor Vehicle Without Permission
9 (RCW 9A.56.070)
10 Vehicle Prowl 1 (RCW 9A.52.095)
11 Attempting to Elude a Pursuing Police
12 Vehicle (RCW 46.61.024)
13 Malicious Mischief 2 (RCW 9A.48.080)
14 Reckless Burning 1 (RCW 9A.48.040)
15 Unlawful Issuance of Checks or Drafts (RCW
16 9A.56.060)
17 Unlawful Use of Food Stamps (RCW 9.91.140
18 (2) and (3))
19 False Verification for Welfare (RCW
20 74.08.055)
21 Forged Prescription (RCW 69.41.020)
22 Forged Prescription for a Controlled
23 Substance (RCW 69.50.403)
24 Possess Controlled Substance that is a
25 Narcotic from Schedule III, IV, or V
26 or Non-narcotic from Schedule I-V
27 (except phencyclidine) (RCW
28 69.50.401(d))

29 **Sec. 6.** RCW 10.95.040 and 1981 c 138 s 4 are each amended to read
30 as follows:

31 (1) If a person is charged with aggravated first degree murder as
32 defined by RCW 10.95.020 or a violation of RCW 69.50.401(a)(1)(i)
33 subject to section 1 of this act, the prosecuting attorney shall file
34 written notice of a special sentencing proceeding to determine whether
35 or not the death penalty should be imposed when there is reason to
36 believe that there are not sufficient mitigating circumstances to merit
37 leniency.

1 (2) The notice of special sentencing proceeding shall be filed and
2 served on the defendant or the defendant's attorney within thirty days
3 after the defendant's arraignment upon the charge of aggravated first
4 degree murder or a violation of RCW 69.50.401(a)(1)(i) subject to
5 section 1 of this act unless the court, for good cause shown, extends
6 or reopens the period for filing and service of the notice. Except
7 with the consent of the prosecuting attorney, during the period in
8 which the prosecuting attorney may file the notice of special
9 sentencing proceeding, the defendant may not tender a plea of guilty to
10 the charge of aggravated first degree murder or a violation of RCW
11 69.50.401(a)(1)(i) subject to section 1 of this act nor may the court
12 accept a plea of guilty to the charge of aggravated first degree murder
13 or any lesser included offense or a violation of RCW 69.50.401(a)(1)(i)
14 subject to section 1 of this act or any lesser included offense.

15 (3) If a notice of special sentencing proceeding is not filed and
16 served as provided in this section, the prosecuting attorney may not
17 request the death penalty.

18 **Sec. 7.** RCW 10.95.050 and 1981 c 138 s 5 are each amended to read
19 as follows:

20 (1) If a defendant is adjudicated guilty of aggravated first
21 degree murder or a violation of RCW 69.50.401(a)(1)(i) subject to
22 section 1 of this act, whether by acceptance of a plea of guilty, by
23 verdict of a jury, or by decision of the trial court sitting without a
24 jury, a special sentencing proceeding shall be held if a notice of
25 special sentencing proceeding was filed and served as provided by RCW
26 10.95.040. No sort of plea, admission, or agreement may abrogate the
27 requirement that a special sentencing proceeding be held.

28 (2) A jury shall decide the matters presented in the special
29 sentencing proceeding unless a jury is waived in the discretion of the
30 court and with the consent of the defendant and the prosecuting
31 attorney.

32 (3) If the defendant's guilt was determined by a jury verdict, the
33 trial court shall reconvene the same jury to hear the special
34 sentencing proceeding. The proceeding shall commence as soon as
35 practicable after completion of the trial at which the defendant's
36 guilt was determined. If, however, unforeseen circumstances make it
37 impracticable to reconvene the same jury to hear the special sentencing

1 proceeding, the trial court may dismiss that jury and convene a jury
2 pursuant to subsection (4) of this section.

3 (4) If the defendant's guilt was determined by plea of guilty or
4 by decision of the trial court sitting without a jury, or if a retrial
5 of the special sentencing proceeding is necessary for any reason
6 including but not limited to a mistrial in a previous special
7 sentencing proceeding or as a consequence of a remand from an appellate
8 court, the trial court shall impanel a jury of twelve persons plus
9 whatever alternate jurors the trial court deems necessary. The defense
10 and prosecution shall each be allowed to peremptorily challenge twelve
11 jurors. If there is more than one defendant, each defendant shall be
12 allowed an additional peremptory challenge and the prosecution shall be
13 allowed a like number of additional challenges. If alternate jurors
14 are selected, the defense and prosecution shall each be allowed one
15 peremptory challenge for each alternate juror to be selected and if
16 there is more than one defendant each defendant shall be allowed an
17 additional peremptory challenge for each alternate juror to be selected
18 and the prosecution shall be allowed a like number of additional
19 challenges.

20 **Sec. 8.** RCW 10.95.060 and 1981 c 138 s 6 are each amended to read
21 as follows:

22 (1) At the commencement of the special sentencing proceeding, the
23 trial court shall instruct the jury as to the nature and purpose of the
24 proceeding and as to the consequences of its decision, as provided in
25 RCW 10.95.030 or section 1 of this act.

26 (2) At the special sentencing proceeding both the prosecution and
27 defense shall be allowed to make an opening statement. The prosecution
28 shall first present evidence and then the defense may present evidence.
29 Rebuttal evidence may be presented by each side. Upon conclusion of
30 the evidence, the court shall instruct the jury and then the
31 prosecution and defense shall be permitted to present argument. The
32 prosecution shall open and conclude the argument.

33 (3) The court shall admit any relevant evidence which it deems to
34 have probative value regardless of its admissibility under the rules of
35 evidence, including hearsay evidence and evidence of the defendant's
36 previous criminal activity regardless of whether the defendant has been
37 charged or convicted as a result of such activity. The defendant shall
38 be accorded a fair opportunity to rebut or offer any hearsay evidence.

1 In addition to evidence of whether or not there are sufficient
2 mitigating circumstances to merit leniency, if the jury sitting in the
3 special sentencing proceeding has not heard evidence of the aggravated
4 first degree murder or the violation of RCW 69.50.401(a)(1)(i) subject
5 to section 1 of this act of which the defendant stands convicted, both
6 the defense and prosecution may introduce evidence concerning the facts
7 and circumstances of the murder or drug offense.

8 (4) Upon conclusion of the evidence and argument at the special
9 sentencing proceeding, the jury shall retire to deliberate upon the
10 following question: "Having in mind the crime of which the defendant
11 has been found guilty, are you convinced beyond a reasonable doubt that
12 there are not sufficient mitigating circumstances to merit leniency?"

13 In order to return an affirmative answer to the question posed by
14 this subsection, the jury must so find unanimously.

15 **Sec. 9.** RCW 10.95.070 and 1993 c 479 s 2 are each amended to read
16 as follows:

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

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

22 (2) Whether the murder or drug offense was committed while the
23 defendant was under the influence of extreme mental disturbance;

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

25 (4) Whether the defendant was an accomplice to a murder or drug
26 offense committed by another person where the defendant's participation
27 in the murder or drug offense was relatively minor;

28 (5) Whether the defendant acted under duress or domination of
29 another person;

30 (6) Whether, at the time of the murder or drug offense, the
31 capacity of the defendant to appreciate the wrongfulness of his or her
32 conduct or to conform his or her conduct to the requirements of law was
33 substantially impaired as a result of mental disease or defect.
34 However, a person found to be mentally retarded under RCW 10.95.030(2)
35 may in no case be sentenced to death;

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

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

3 **Sec. 10.** RCW 10.95.090 and 1981 c 138 s 9 are each amended to
4 read as follows:

5 If any sentence of death imposed pursuant to this chapter is
6 commuted by the governor, or held to be invalid by a final judgment of
7 a court after all avenues of appeal have been exhausted by the parties
8 to the action, or if the death penalty established by this chapter is
9 held to be invalid by a final judgment of a court which is binding on
10 all courts in the state, the sentence for aggravated first degree
11 murder or for a violation of RCW 69.50.401(a)(1)(i) subject to section
12 1 of this act if there was an affirmative response to the question
13 posed by RCW 10.95.060(4) shall be life imprisonment as provided in RCW
14 10.95.030(1) or section 1(1) of this act.

15 **Sec. 11.** RCW 10.95.120 and 1981 c 138 s 12 are each amended to
16 read as follows:

17 In all cases in which a person is convicted of aggravated first
18 degree murder or a violation of RCW 69.50.401(a)(1)(i) subject to
19 section 1 of this act, the trial court shall, within thirty days after
20 the entry of the judgment and sentence, submit a report to the clerk of
21 the supreme court of Washington, to the defendant or his or her
22 attorney, and to the prosecuting attorney which provides the
23 information specified under subsections (1) through (8) of this
24 section. The report shall be in the form of a standard questionnaire
25 prepared and supplied by the supreme court of Washington and shall
26 include the following:

- 27 (1) Information about the defendant, including the following:
- 28 (a) Name, date of birth, gender, marital status, and race and/or
29 ethnic origin;
 - 30 (b) Number and ages of children;
 - 31 (c) Whether his or her parents are living, and date of death where
32 applicable;
 - 33 (d) Number of children born to his or her parents;
 - 34 (e) The defendant's educational background, intelligence level,
35 and intelligence quotient;
 - 36 (f) Whether a psychiatric evaluation was performed, and if so,
37 whether it indicated that the defendant was:

1 (i) Able to distinguish right from wrong;
2 (ii) Able to perceive the nature and quality of his or her act;
3 and
4 (iii) Able to cooperate intelligently with his or her defense;
5 (g) Any character or behavior disorders found or other pertinent
6 psychiatric or psychological information;
7 (h) The work record of the defendant;
8 (i) A list of the defendant's prior convictions including the
9 offense, date, and sentence imposed; and
10 (j) The length of time the defendant has resided in Washington and
11 the county in which he or she was convicted.
12 (2) Information about the trial, including:
13 (a) The defendant's plea;
14 (b) Whether defendant was represented by counsel;
15 (c) Whether there was evidence introduced or instructions given as
16 to defenses to aggravated first degree murder or a violation of RCW
17 69.50.401(a)(1)(i) subject to section 1 of this act, including
18 excusable homicide, justifiable homicide, insanity, duress, entrapment,
19 alibi, intoxication, or other specific defense;
20 (d) Any other offenses charged against the defendant and tried at
21 the same trial and whether they resulted in conviction;
22 (e) What aggravating circumstances were alleged against the
23 defendant and which of these circumstances was found to have been
24 applicable; and
25 (f) Names and charges filed against other defendant(s) if tried
26 jointly and disposition of the charges.
27 (3) Information concerning the special sentencing proceeding,
28 including:
29 (a) The date the defendant was convicted and date the special
30 sentencing proceeding commenced;
31 (b) Whether the jury for the special sentencing proceeding was the
32 same jury that returned the guilty verdict, providing an explanation if
33 it was not;
34 (c) Whether there was evidence of mitigating circumstances;
35 (d) Whether there was, in the court's opinion, credible evidence
36 of the mitigating circumstances as provided in RCW 10.95.070;
37 (e) The jury's answer to the question posed in RCW 10.95.060(4);
38 (f) The sentence imposed.

1 (4) In the case of aggravated first degree murder, information
2 about the victim, including:
3 (a) Whether he or she was related to the defendant by blood or
4 marriage;
5 (b) The victim's occupation and whether he or she was an employer
6 or employee of the defendant;
7 (c) Whether the victim was acquainted with the defendant, and if
8 so, how well;
9 (d) The length of time the victim resided in Washington and the
10 county;
11 (e) Whether the victim was the same race and/or ethnic origin as
12 the defendant;
13 (f) Whether the victim was the same sex as the defendant;
14 (g) Whether the victim was held hostage during the crime and if
15 so, how long;
16 (h) The nature and extent of any physical harm or torture
17 inflicted upon the victim prior to death;
18 (i) The victim's age; and
19 (j) The type of weapon used in the crime, if any.
20 (5) Information about the representation of the defendant,
21 including:
22 (a) Date counsel secured;
23 (b) Whether counsel was retained or appointed, including the
24 reason for appointment;
25 (c) The length of time counsel has practiced law and nature of his
26 or her practice; and
27 (d) Whether the same counsel served at both the trial and special
28 sentencing proceeding, and if not, why not.
29 (6) General considerations, including:
30 (a) Whether the race and/or ethnic origin of the defendant,
31 victim, or any witness was an apparent factor at trial;
32 (b) What percentage of the county population is the same race
33 and/or ethnic origin of the defendant;
34 (c) Whether members of the defendant's or victim's race and/or
35 ethnic origin were represented on the jury;
36 (d) Whether there was evidence that such members were
37 systematically excluded from the jury;
38 (e) Whether the sexual orientation of the defendant, victim, or
39 any witness was a factor in the trial;

1 (f) Whether any specific instruction was given to the jury to
2 exclude race, ethnic origin, or sexual orientation as an issue;

3 (g) Whether there was extensive publicity concerning the case in
4 the community;

5 (h) Whether the jury was instructed to disregard such publicity;

6 (i) Whether the jury was instructed to avoid any influence of
7 passion, prejudice, or any other arbitrary factor when considering its
8 verdict or its findings in the special sentencing proceeding;

9 (j) The nature of the evidence resulting in such instruction; and

10 (k) General comments of the trial judge concerning the
11 appropriateness of the sentence considering the crime, defendant, and
12 other relevant factors.

13 (7) Information about the chronology of the case, including the
14 date that:

15 (a) The defendant was arrested;

16 (b) Trial began;

17 (c) The verdict was returned;

18 (d) Post-trial motions were ruled on;

19 (e) Special sentencing proceeding began;

20 (f) Sentence was imposed;

21 (g) Trial judge's report was completed; and

22 (h) Trial judge's report was filed.

23 (8) The trial judge shall sign and date the questionnaire when it
24 is completed.

25 NEW SECTION. **Sec. 12.** This act shall take effect July 1, 1996,
26 and apply to crimes committed on and after July 1, 1996.

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