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HOUSE BILL 2668

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State of Washington

54th Legislature

1996 Regular Session

By Representatives Hargrove, Sheahan, McMahan, Sterk, Delvin and Thompson

Read first time 01/16/96. Referred to Committee on Law & Justice.

1 AN ACT Relating to capital punishment sentencing; and amending RCW  
2 10.95.040, 10.95.130, and 10.95.140.

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

4 **Sec. 1.** RCW 10.95.040 and 1981 c 138 s 4 are each amended to read  
5 as follows:

6 (1) If a person is charged with aggravated first degree murder as  
7 defined by RCW 10.95.020, the prosecuting attorney shall file written  
8 notice of a special sentencing proceeding to determine whether or not  
9 the death penalty should be imposed when there is reason to believe  
10 that there are not sufficient mitigating circumstances to merit  
11 leniency.

12 (2) The notice of special sentencing proceeding shall be filed and  
13 served on the defendant or the defendant's attorney within (~~thirty~~)  
14 forty-five days after the defendant's arraignment upon the charge of  
15 aggravated first degree murder (~~unless the court, for good cause~~  
16 ~~shown, extends or reopens the period for filing and service of the~~  
17 ~~notice~~). The prosecuting attorney may use any method of service that  
18 is reasonably likely to provide notice to the defendant or the  
19 defendant's attorney. Service may not be considered inadequate if,

1 within the time allowed for service, the defendant or the defendant's  
2 attorney received actual notice of the prosecuting attorney's intent to  
3 request the death penalty. Except with the consent of the prosecuting  
4 attorney, during the period in which the prosecuting attorney may file  
5 the notice of special sentencing proceeding, the defendant may not  
6 tender a plea of guilty to the charge of aggravated first degree murder  
7 nor may the court accept a plea of guilty to the charge of aggravated  
8 first degree murder or any lesser included offense.

9 (3) The time period in which the prosecuting attorney may file the  
10 notice of special sentencing proceeding may be extended or reopened by  
11 the court for any of the following reasons:

12 (a) Upon a showing of good cause;

13 (b) Upon a showing that the prosecuting attorney is actively  
14 pursuing an investigation into the crime and the defendant's history in  
15 order to appropriately exercise discretion on whether to seek the death  
16 penalty and necessary information cannot be timely obtained for reasons  
17 beyond the control of the prosecuting attorney;

18 (c) Upon a showing of newly discovered evidence about the defendant  
19 or the crime which by due diligence could not have been discovered  
20 within forty-five days after the defendant's arraignment upon the  
21 charge of aggravated first degree murder; or

22 (d) Upon the request of the defendant or the defendant's attorney.

23 (4) If a notice of special sentencing proceeding is not filed and  
24 served as provided in this section, the prosecuting attorney may not  
25 request the death penalty.

26 **Sec. 2.** RCW 10.95.130 and 1993 c 479 s 3 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  
30 consolidated for consideration. The defendant and the prosecuting  
31 attorney may submit briefs within the time prescribed by the court and  
32 present oral argument to the court.

33 (2) With regard to the sentence review required by ~~((this act))~~  
34 chapter 138, Laws of 1981, the supreme court of Washington shall  
35 determine:

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

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

9       ~~(c))~~ Whether the sentence of death was brought about through  
10 passion or prejudice; and

11       ~~((d))~~ (c) Whether the defendant was mentally retarded within the  
12 meaning of RCW 10.95.030(2).

13       **Sec. 3.** RCW 10.95.140 and 1993 c 479 s 4 are each amended to read  
14 as follows:

15       Upon completion of a sentence review:

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

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

21       (b) The court makes an affirmative determination as to any of the  
22 questions posed by RCW 10.95.130(2) (b)~~((7))~~ or (c)~~((7 or d))~~.

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

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

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

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