

SB 5339 - H AMD 720

By Representative Eslick

NOT CONSIDERED 12/23/2019

1 On page 1, line 11, after "in" strike all material through
2 "~~(3))~~" and insert "subsections (2) and (3)"

3 On page 2, beginning on line 3, after "(2)" strike all material
4 through "~~(3))~~" on line 33 and insert "If a person is convicted of
5 the crime of aggravated first degree murder based on the aggravating
6 circumstance under RCW 10.95.020(2), (~~pursuant to~~) the death
7 penalty review panel recommends pursuing the death penalty, a special
8 sentencing proceeding is held under RCW 10.95.050, and the trier of
9 fact finds that there are not sufficient mitigating circumstances to
10 merit leniency, the sentence shall be death. In no case, however,
11 shall a person be sentenced to death if the person had an
12 intellectual disability at the time the crime was committed, under
13 the definition of intellectual disability set forth in (a) of this
14 subsection. A diagnosis of intellectual disability shall be
15 documented by a licensed psychiatrist or licensed psychologist
16 designated by the court, who is an expert in the diagnosis and
17 evaluation of intellectual disabilities. The defense must establish
18 an intellectual disability by a preponderance of the evidence and the
19 court must make a finding as to the existence of an intellectual
20 disability.

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

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

31 (c) "Significantly subaverage general intellectual functioning"
32 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 (3) "

7 Beginning on page 4, line 38, strike all of section 2 and insert
8 the following:

9 "Sec. 2. RCW 10.95.040 and 1981 c 138 s 4 are each amended to
10 read as follows:

11 (1) If a person is charged with aggravated first degree murder
12 (~~as defined by~~) based on the aggravating circumstance under RCW
13 10.95.020(2), the prosecuting attorney shall forward a request for
14 review along with all relevant materials to the death penalty review
15 panel as provided in section 4 of this act for a determination of
16 whether the death penalty should be sought.

17 (2) If a majority of the members of the death penalty review
18 panel recommend pursuing the death penalty, the prosecuting attorney
19 shall file written notice of a special sentencing proceeding (~~to~~
20 determine whether or not the death penalty should be imposed when
21 there is reason to believe that there are not sufficient mitigating
22 circumstances to merit leniency)).

23 (~~(2)~~) (3) The notice of special sentencing proceeding shall be
24 filed and served on the defendant or the defendant's attorney within
25 thirty days after the defendant's arraignment upon the charge of
26 aggravated first degree murder unless the court, for good cause
27 shown, extends or reopens the period for filing and service of the
28 notice. Except with the consent of the prosecuting attorney, during
29 the period in which the prosecuting attorney may file the notice of
30 special sentencing proceeding, the defendant may not tender a plea of
31 guilty to the charge of aggravated first degree murder nor may the
32 court accept a plea of guilty to the charge of aggravated first
33 degree murder or any lesser included offense.

34 (~~(3)~~) (4) If a notice of special sentencing proceeding is not
35 filed and served as provided in this section, the prosecuting
36 attorney may not request the death penalty.

1 **Sec. 3.** RCW 10.95.050 and 1981 c 138 s 5 are each amended to
2 read as follows:

3 (1) If a defendant is adjudicated guilty of aggravated first
4 degree murder based on the aggravating circumstance under RCW
5 10.95.020(2), whether by acceptance of a plea of guilty, by verdict
6 of a jury, or by decision of the trial court sitting without a jury,
7 a special sentencing proceeding shall be held if the death penalty
8 review panel recommends pursuing the death penalty and a notice of
9 special sentencing proceeding was filed and served as provided by RCW
10 10.95.040. No sort of plea, admission, or agreement may abrogate the
11 requirement that a special sentencing proceeding be held.

12 (2) A jury shall decide the matters presented in the special
13 sentencing proceeding unless a jury is waived in the discretion of
14 the court and with the consent of the defendant and the prosecuting
15 attorney.

16 (3) If the defendant's guilt was determined by a jury verdict,
17 the trial court shall reconvene the same jury to hear the special
18 sentencing proceeding. The proceeding shall commence as soon as
19 practicable after completion of the trial at which the defendant's
20 guilt was determined. If, however, unforeseen circumstances make it
21 impracticable to reconvene the same jury to hear the special
22 sentencing proceeding, the trial court may dismiss that jury and
23 convene a jury pursuant to subsection (4) of this section.

24 (4) If the defendant's guilt was determined by plea of guilty or
25 by decision of the trial court sitting without a jury, or if a
26 retrial of the special sentencing proceeding is necessary for any
27 reason including but not limited to a mistrial in a previous special
28 sentencing proceeding or as a consequence of a remand from an
29 appellate court, the trial court shall impanel a jury of twelve
30 persons plus whatever alternate jurors the trial court deems
31 necessary. The defense and prosecution shall each be allowed to
32 peremptorily challenge twelve jurors. If there is more than one
33 defendant, each defendant shall be allowed an additional peremptory
34 challenge and the prosecution shall be allowed a like number of
35 additional challenges. If alternate jurors are selected, the defense
36 and prosecution shall each be allowed one peremptory challenge for
37 each alternate juror to be selected and if there is more than one
38 defendant each defendant shall be allowed an additional peremptory
39 challenge for each alternate juror to be selected and the prosecution
40 shall be allowed a like number of additional challenges.

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

3 (1) A death penalty review panel is established. The panel
4 includes the following permanent members:

5 (a) Four prosecuting attorneys recommended by the Washington
6 association of prosecuting attorneys. Urban and rural areas must be
7 equally represented among the prosecuting attorneys;

8 (b) The attorney general, or his or her designee; and

9 (c) The secretary of the department of corrections, or his or her
10 designee.

11 (2) The prosecuting attorney from the county in which the murder
12 occurred shall serve as an ad hoc member of the panel.

13 (3) Upon receipt of a request for review, the attorney general
14 shall convene a meeting of the death penalty review panel. The panel
15 shall review all materials submitted from the prosecuting attorney
16 and any materials submitted by defense counsel and shall make a
17 recommendation as to whether the death penalty should be sought after
18 considering:

19 (a) Whether there are sufficient mitigating circumstances to
20 merit leniency;

21 (b) Whether imposition of the death penalty measurably
22 contributes to the core purposes of retribution and deterrence of
23 capital crimes by prospective offenders; and

24 (c) Whether imposition of the death penalty meets the goal of
25 fairness and consistency in the criminal justice system.

26 (4) The panel shall memorialize its recommendation in a
27 memorandum and submit the recommendation to the prosecuting attorney
28 of the county in which the murder occurred."

29 Correct the title.

EFFECT: Restores the statutory procedures for imposing the death
penalty, but makes those procedures applicable only for sentencing a
person convicted of aggravated first degree murder where, at the time
of the act resulting in death, the defendant was serving a term of
imprisonment, had escaped, or was on authorized or unauthorized leave
in or from a state facility or program for the incarceration or
treatment of persons adjudicated guilty of crimes.

Prohibits the imposition of the death penalty unless the death
penalty review panel recommends the prosecuting attorney seek it.
Establishes operating procedures and requirements for the death
penalty review panel (panel). Provides that the panel must be
composed of prosecuting attorneys from urban and rural areas, the
Attorney General, and the Secretary of the Department of Corrections.

Requires recommendations of the panel based on a consideration of:
(a) whether there are sufficient mitigating circumstances to merit leniency; (b) whether imposition of the death penalty measurably contributes to the core purposes of retribution and deterrence of capital crimes by prospective offenders; and (c) whether imposition of the death penalty meets the goal of fairness and consistency in the criminal justice system.

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