

**SB 5339 - H AMD 714**

By Representative Van Werven

**NOT CONSIDERED 12/23/2019**

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

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(15), (~~pursuant to~~) a special  
7 sentencing proceeding is held under RCW 10.95.050, and the trier of  
8 fact finds that there are not sufficient mitigating circumstances to  
9 merit leniency, the sentence shall be death. In no case, however,  
10 shall a person be sentenced to death if the person had an  
11 intellectual disability at the time the crime was committed, under  
12 the definition of intellectual disability set forth in (a) of this  
13 subsection. A diagnosis of intellectual disability shall be  
14 documented by a licensed psychiatrist or licensed psychologist  
15 designated by the court, who is an expert in the diagnosis and  
16 evaluation of intellectual disabilities. The defense must establish  
17 an intellectual disability by a preponderance of the evidence and the  
18 court must make a finding as to the existence of an intellectual  
19 disability.

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

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

30 (c) "Significantly subaverage general intellectual functioning"  
31 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(15), the prosecuting attorney shall file written notice of  
14 a special sentencing proceeding to determine whether or not the death  
15 penalty should be imposed when there is reason to believe that there  
16 are not sufficient mitigating circumstances to merit leniency.

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

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

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

33 (1) If a defendant is adjudicated guilty of aggravated first  
34 degree murder based on the aggravating circumstance under RCW  
35 10.95.020(15), whether by acceptance of a plea of guilty, by verdict  
36 of a jury, or by decision of the trial court sitting without a jury,  
37 a special sentencing proceeding shall be held if a notice of special

1 sentencing proceeding was filed and served as provided by RCW  
2 10.95.040. No sort of plea, admission, or agreement may abrogate the  
3 requirement that a special sentencing proceeding be held.

4 (2) A jury shall decide the matters presented in the special  
5 sentencing proceeding unless a jury is waived in the discretion of  
6 the court and with the consent of the defendant and the prosecuting  
7 attorney.

8 (3) If the defendant's guilt was determined by a jury verdict,  
9 the trial court shall reconvene the same jury to hear the special  
10 sentencing proceeding. The proceeding shall commence as soon as  
11 practicable after completion of the trial at which the defendant's  
12 guilt was determined. If, however, unforeseen circumstances make it  
13 impracticable to reconvene the same jury to hear the special  
14 sentencing proceeding, the trial court may dismiss that jury and  
15 convene a jury pursuant to subsection (4) of this section.

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

33 **Sec. 4.** RCW 10.95.020 and 2003 c 53 s 96 are each amended to  
34 read as follows:

35 A person is guilty of aggravated first degree murder, a class A  
36 felony, if he or she commits first degree murder as defined by RCW  
37 9A.32.030(1)(a), as now or hereafter amended, and one or more of the  
38 following aggravating circumstances exist:

1 (1) The victim was a law enforcement officer, corrections  
2 officer, or firefighter who was performing his or her official duties  
3 at the time of the act resulting in death and the victim was known or  
4 reasonably should have been known by the person to be such at the  
5 time of the killing;

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

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

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

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

19 (6) The person committed the murder to obtain or maintain his or  
20 her membership or to advance his or her position in the hierarchy of  
21 an organization, association, or identifiable group;

22 (7) The murder was committed during the course of or as a result  
23 of a shooting where the discharge of the firearm, as defined in RCW  
24 9.41.010, is either from a motor vehicle or from the immediate area  
25 of a motor vehicle that was used to transport the shooter or the  
26 firearm, or both, to the scene of the discharge;

27 (8) The victim was:

28 (a) A judge; juror or former juror; prospective, current, or  
29 former witness in an adjudicative proceeding; prosecuting attorney;  
30 deputy prosecuting attorney; defense attorney; a member of the  
31 indeterminate sentence review board; or a probation or parole  
32 officer; and

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

35 (9) The person committed the murder to conceal the commission of  
36 a crime or to protect or conceal the identity of any person  
37 committing a crime, including, but specifically not limited to, any  
38 attempt to avoid prosecution as a persistent offender as defined in  
39 RCW 9.94A.030;

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

3 (11) The murder was committed in the course of, in furtherance  
4 of, or in immediate flight from one of the following crimes:

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

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

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

9 (d) Kidnapping in the first degree; or

10 (e) Arson in the first degree;

11 (12) The victim was regularly employed or self-employed as a  
12 newsreporter and the murder was committed to obstruct or hinder the  
13 investigative, research, or reporting activities of the victim;

14 (13) At the time the person committed the murder, there existed a  
15 court order, issued in this or any other state, which prohibited the  
16 person from either contacting the victim, molesting the victim, or  
17 disturbing the peace of the victim, and the person had knowledge of  
18 the existence of that order;

19 (14) At the time the person committed the murder, the person and  
20 the victim were "family or household members" as that term is defined  
21 in RCW 10.99.020(~~(+1)~~) (3), and the person had previously engaged in  
22 a pattern or practice of three or more of the following crimes  
23 committed upon the victim within a five-year period, regardless of  
24 whether a conviction resulted:

25 (a) Harassment as defined in RCW 9A.46.020; or

26 (b) Any criminal assault;

27 (15) The murder was committed on the premises of a public or  
28 private school of any grades kindergarten through twelve or  
29 institution of higher education."

30 Correct the title.

**EFFECT:** Expands the definition of aggravated first degree murder to include premeditated first degree murder committed on the premises of a public or private school of any grades kindergarten through twelve (K-12 school) or institution of higher education.

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 committed on the premises of a K-12 school or institution of higher education.

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