

1 5151.E AMH ANDE H5116.1

2 **ESB 5151** - H AMD 0389

3 By Representative Anderson

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5 On page 2, after line 14, insert the following:

6 "Sec. 2. RCW 10.95.030 and 1981 c 138 s 3 are each amended to read
7 as follows:

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

20 (2) If, pursuant to a special sentencing proceeding held under RCW
21 10.95.050, the trier of fact finds that there are not sufficient
22 mitigating circumstances to merit leniency, the sentence shall be
23 death. In no case, however, shall a person be sentenced to death if
24 the person was mentally retarded at the time the crime was committed,
25 under the definition of mental retardation set forth in (a) of this
26 subsection. A diagnosis of mental retardation shall be documented by
27 a licensed psychiatrist or licensed psychologist expert in the

1 diagnosis and evaluation of mental retardation. The defense must
2 establish mental retardation by a preponderance of the evidence.

3 (a) "Mentally retarded" means the individual has: (i)
4 significantly subaverage general intellectual functioning; (ii)
5 existing concurrently with deficits in adaptive behavior; and (iii)
6 both significantly subaverage general intellectual functioning and
7 deficits in adaptive behavior were manifested during the developmental
8 period.

9 (b) "General intellectual functioning" means the results obtained
10 by assessment with one or more of the individually administered general
11 intelligence tests developed for the purpose of assessing intellectual
12 functioning.

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

15 (d) "Adaptive behavior" means the effectiveness or degree with
16 which individuals meet the standards of personal independence and
17 social responsibility expected for age and cultural group.

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

20 **"Sec. 3.** RCW 10.95.070 and 1981 c 138 s 7 are each amended to read
21 as follows:

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

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

27 (2) Whether the murder was committed while the defendant was under
28 the influence of extreme mental disturbance;

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

1 (4) Whether the defendant was an accomplice to a murder committed
2 by another person where the defendant's participation in the murder was
3 relatively minor;

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

6 (6) Whether, at the time of the murder, the capacity of the
7 defendant to appreciate the wrongfulness of his or her conduct or to
8 conform his or her conduct to the requirements of law was substantially
9 impaired as a result of mental disease or defect. However, a person
10 found to be mentally retarded under RCW 10.95.030(2) may in no case be
11 sentenced to death;

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

14 (8) Whether there is a likelihood that the defendant will pose a
15 danger to others in the future."

16 "Sec. 4. RCW 10.95.130 and 1981 c 138 s 13 are each amended to
17 read as follows:

18 (1) The sentence review required by RCW 10.95.100 shall be in
19 addition to any appeal. The sentence review and an appeal shall be
20 consolidated for consideration. The defendant and the prosecuting
21 attorney may submit briefs within the time prescribed by the court and
22 present oral argument to the court.

23 (2) With regard to the sentence review required by this act, the
24 supreme court of Washington shall determine:

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

27 (b) Whether the sentence of death is excessive or disproportionate
28 to the penalty imposed in similar cases, considering both the crime and
29 the defendant. For the purposes of this subsection, "similar cases"

1 means cases reported in the Washington Reports or Washington Appellate
2 Reports since January 1, 1965, in which the judge or jury considered
3 the imposition of capital punishment regardless of whether it was
4 imposed or executed, and cases in which reports have been filed with
5 the supreme court under RCW 10.95.120; (~~and~~)

6 (c) Whether the sentence of death was brought about through passion
7 or prejudice; and

8 (d) Whether the defendant was mentally retarded within the meaning
9 of RCW 10.95.030(2)."

10 "Sec. 5. RCW 10.95.140 and 1981 c 138 s 14 are each amended to
11 read as follows:

12 Upon completion of a sentence review:

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

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

18 (b) The court makes an affirmative determination as to (~~either~~)
19 any of the questions posed by RCW 10.95.130(2)(b) (~~(or)~~), (c), or (d).

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

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

25 (b) The court makes a negative determination as to the questions
26 posed by RCW 10.95.130(2)(b) (~~and~~), (c), and (d)."

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4 On page 1, line 1 of the title, after "10.95.180" insert ",

5 10.95.030, 10.95.070, 10.95.130, and 10.95.140"