

2 SHB 1234 - S COMM AMD

3 By Committee on Law & Justice

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 10.95.040 and 1981 c 138 s 4 are each amended to read
8 as follows:

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

15 Prior to reaching a decision as to whether or not to file a written
16 notice of a special sentencing procedure, the prosecuting attorney
17 shall seek written advice from the attorney retained by or appointed to
18 represent the accused as to whether or not evidence tending to show
19 mitigating circumstances is available. Necessary delay in making or
20 responding to this request may be considered good cause for the court
21 to extend the time for filing the notice.

22 For crimes committed on or after July 1, 1992, the prosecuting
23 attorney shall request that the defense provide any evidence tending to
24 show that the defendant is mentally retarded. Prosecuting attorneys
25 should decline to file the written notice required by subsection (1) of
26 this section if the review of any evidence supplied by the defense or
27 otherwise available establishes, to the prosecuting attorney's
28 satisfaction, that the defendant is mentally retarded. If the

1 prosecuting attorney determines that the notice should be filed under
2 subsection (1) of this section despite any evidence to the contrary of
3 mental retardation, this evidence may be offered during the penalty
4 phase for the jury's consideration as a mitigating factor under RCW
5 10.95.070(6). This shall not create any right to assert a claim for
6 relief in the event evidence tending to suggest the defendant's mental
7 retardation is found to be insufficient by the jury.

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

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

22 **SHB 1234** - S COMM AMD
23 By Committee on Law & Justice

24
25 On page 1, line 2 of the title, after "retarded;" strike the
26 remainder of the title and insert "and amending RCW 10.95.040."