

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE SENATE BILL 5625**

Chapter 479, Laws of 1993

53rd Legislature  
1993 Regular Session

DEATH PENALTY--MENTALLY RETARDED PERSON MAY NOT BE  
SENTENCED TO DEATH

EFFECTIVE DATE: 7/25/93

Passed by the Senate April 18, 1993  
YEAS 38 NAYS 3

JOEL PRITCHARD

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**President of the Senate**

Passed by the House April 9, 1993  
YEAS 70 NAYS 28

BRIAN EBERSOLE

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**Speaker of the  
House of Representatives**

Approved May 17, 1993

MIKE LOWRY

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**Governor of the State of Washington**

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5625** as passed by the Senate and the House of Representatives on the dates hereon set forth.

MARTY BROWN

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**Secretary**

FILED

May 17, 1993 - 2:15 p.m.

**Secretary of State  
State of Washington**

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**SUBSTITUTE SENATE BILL 5625**

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AS AMENDED BY THE HOUSE

Passed Legislature - 1993 Regular Session

**State of Washington                      53rd Legislature                      1993 Regular Session**

**By** Senate Committee on Law & Justice (originally sponsored by Senators Prentice, Hargrove, Rinehart, A. Smith, Williams, Moyer, Drew, Prince, Erwin, Skratek and McAuliffe)

Read first time 02/26/93.

1            AN ACT Relating to imposing the death penalty upon the mentally  
2 retarded; and amending RCW 10.95.030, 10.95.070, 10.95.130, and  
3 10.95.140.

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

5            **Sec. 1.** RCW 10.95.030 and 1981 c 138 s 3 are each amended to read  
6 as follows:

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

1 (2) If, pursuant to a special sentencing proceeding held under RCW  
2 10.95.050, the trier of fact finds that there are not sufficient  
3 mitigating circumstances to merit leniency, the sentence shall be  
4 death. In no case, however, shall a person be sentenced to death if  
5 the person was mentally retarded at the time the crime was committed,  
6 under the definition of mental retardation set forth in (a) of this  
7 subsection. A diagnosis of mental retardation shall be documented by  
8 a licensed psychiatrist or licensed psychologist designated by the  
9 court, who is an expert in the diagnosis and evaluation of mental  
10 retardation. The defense must establish mental retardation by a  
11 preponderance of the evidence and the court must make a finding as to  
12 the existence of mental retardation.

13 (a) "Mentally retarded" means the individual has: (i)  
14 significantly subaverage general intellectual functioning; (ii)  
15 existing concurrently with deficits in adaptive behavior; and (iii)  
16 both significantly subaverage general intellectual functioning and  
17 deficits in adaptive behavior were manifested during the developmental  
18 period.

19 (b) "General intellectual functioning" means the results obtained  
20 by assessment with one or more of the individually administered general  
21 intelligence tests developed for the purpose of assessing intellectual  
22 functioning.

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

25 (d) "Adaptive behavior" means the effectiveness or degree with  
26 which individuals meet the standards of personal independence and  
27 social responsibility expected for his or her age.

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

30 **Sec. 2.** RCW 10.95.070 and 1981 c 138 s 7 are each amended to read  
31 as follows:

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

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

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

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

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

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

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

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

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

17 **Sec. 3.** RCW 10.95.130 and 1981 c 138 s 13 are each amended to read  
18 as follows:

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

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

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

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

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

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

3        **Sec. 4.** RCW 10.95.140 and 1981 c 138 s 14 are each amended to read  
4 as follows:

5        Upon completion of a sentence review:

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

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

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

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

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

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

Passed the Senate April 18, 1993.

Passed the House April 9, 1993.

Approved by the Governor May 17, 1993.

Filed in Office of Secretary of State May 17, 1993.