
SENATE BILL 5476

State of Washington 61st Legislature 2009 Regular Session

By Senators Murray, McDermott, Kline, Regala, and Kohl-Welles

Read first time 01/23/09. Referred to Committee on Judiciary.

1 AN ACT Relating to abolition of the death penalty; amending RCW
2 10.95.030; and repealing RCW 10.95.040, 10.95.050, 10.95.060,
3 10.95.070, 10.95.080, 10.95.090, 10.95.100, 10.95.110, 10.95.120,
4 10.95.130, 10.95.140, 10.95.150, 10.95.160, 10.95.170, 10.95.180,
5 10.95.185, 10.95.190, 10.95.200, and 10.95.900.

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

7 **Sec. 1.** RCW 10.95.030 and 1993 c 479 s 1 are each amended to read
8 as follows:

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

1 ~~((2) If, pursuant to a special sentencing proceeding held under~~
2 ~~RCW 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 NEW SECTION. Sec. 2. The following acts or parts of acts are each
31 repealed:

32 (1) RCW 10.95.040 (Special sentencing proceeding--Notice--Filing--
33 Service) and 1981 c 138 s 4;

34 (2) RCW 10.95.050 (Special sentencing proceeding--When held--Jury
35 to decide matters presented--Waiver--Reconvening same jury--Impanelling
36 new jury--Peremptory challenges) and 1981 c 138 s 5;

1 (3) RCW 10.95.060 (Special sentencing proceeding--Jury
2 instructions--Opening statements--Evidence--Arguments--Question for
3 jury) and 1981 c 138 s 6;
4 (4) RCW 10.95.070 (Special sentencing proceeding--Factors which
5 jury may consider in deciding whether leniency merited) and 1993 c 479
6 s 2 & 1981 c 138 s 7;
7 (5) RCW 10.95.080 (When sentence to death or sentence to life
8 imprisonment shall be imposed) and 1981 c 138 s 8;
9 (6) RCW 10.95.090 (Sentence if death sentence commuted, held
10 invalid, or if death sentence established by chapter held invalid) and
11 1981 c 138 s 9;
12 (7) RCW 10.95.100 (Mandatory review of death sentence by supreme
13 court--Notice--Transmittal--Contents of notice--Jurisdiction) and 1981
14 c 138 s 10;
15 (8) RCW 10.95.110 (Verbatim report of trial proceedings--
16 Preparation--Transmittal to supreme court--Clerk's papers--Receipt) and
17 1981 c 138 s 11;
18 (9) RCW 10.95.120 (Information report--Form--Contents--Submission
19 to supreme court, defendant, prosecuting attorney) and 1981 c 138 s 12;
20 (10) RCW 10.95.130 (Questions posed for determination by supreme
21 court in death sentence review--Review in addition to appeal--
22 Consolidation of review and appeal) and 1993 c 479 s 3 & 1981 c 138 s
23 13;
24 (11) RCW 10.95.140 (Invalidation of sentence, remand for
25 resentencing--Affirmation of sentence, remand for execution) and 1993
26 c 479 s 4 & 1981 c 138 s 14;
27 (12) RCW 10.95.150 (Time limit for appellate review of death
28 sentence and filing opinion) and 1988 c 202 s 17 & 1981 c 138 s 15;
29 (13) RCW 10.95.160 (Death warrant--Issuance--Form--Time for
30 execution of judgment and sentence) and 1990 c 263 s 1 & 1981 c 138 s
31 16;
32 (14) RCW 10.95.170 (Imprisonment of defendant) and 1983 c 255 s 1
33 & 1981 c 138 s 17;
34 (15) RCW 10.95.180 (Death penalty--How executed) and 1996 c 251 s
35 1, 1986 c 194 s 1, & 1981 c 138 s 18;
36 (16) RCW 10.95.185 (Witnesses) and 1999 c 332 s 1 & 1993 c 463 s 2;
37 (17) RCW 10.95.190 (Death warrant--Record--Return to trial court)
38 and 1981 c 138 s 19;

1 (18) RCW 10.95.200 (Proceedings for failure to execute on day
2 named) and 1990 c 263 s 2, 1987 c 286 s 1, & 1981 c 138 s 20; and
3 (19) RCW 10.95.900 (Severability--1981 c 138) and 1981 c 138 s 22.

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