**5339 AMH ESLI H2832.1 - NOT FOR FLOOR USE**

**SB 5339** - H AMD **720**

By Representative Eslick

**NOT CONSIDERED 12/23/2019**

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

On page 2, beginning on line 3, after "(2)" strike all material through "~~(3)~~))" on line 33 and insert "If a person is convicted of the crime of aggravated first degree murder based on the aggravating circumstance under RCW 10.95.020(2), ((~~pursuant to~~)) the death penalty review panel recommends pursuing the death penalty, a special sentencing proceeding is held under RCW 10.95.050, and the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. In no case, however, shall a person be sentenced to death if the person had an intellectual disability at the time the crime was committed, under the definition of intellectual disability set forth in (a) of this subsection. A diagnosis of intellectual disability shall be documented by a licensed psychiatrist or licensed psychologist designated by the court, who is an expert in the diagnosis and evaluation of intellectual disabilities. The defense must establish an intellectual disability by a preponderance of the evidence and the court must make a finding as to the existence of an intellectual disability.

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

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

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

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

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

(3)"

Beginning on page 4, line 38, strike all of section 2 and insert the following:

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

(1) If a person is charged with aggravated first degree murder ((~~as defined by~~)) based on the aggravating circumstance under RCW 10.95.020(2), the prosecuting attorney shall forward a request for review along with all relevant materials to the death penalty review panel as provided in section 4 of this act for a determination of whether the death penalty should be sought.

(2) If a majority of the members of the death penalty review panel recommend pursuing the death penalty, the prosecuting attorney shall file written notice of a special sentencing proceeding ((~~to determine whether or not the death penalty should be imposed when there is reason to believe that there are not sufficient mitigating circumstances to merit leniency~~)).

((~~(2)~~)) (3) The notice of special sentencing proceeding shall be filed and served on the defendant or the defendant's attorney within thirty days after the defendant's arraignment upon the charge of aggravated first degree murder unless the court, for good cause shown, extends or reopens the period for filing and service of the notice. Except with the consent of the prosecuting attorney, during the period in which the prosecuting attorney may file the notice of special sentencing proceeding, the defendant may not tender a plea of guilty to the charge of aggravated first degree murder nor may the court accept a plea of guilty to the charge of aggravated first degree murder or any lesser included offense.

((~~(3)~~)) (4) If a notice of special sentencing proceeding is not filed and served as provided in this section, the prosecuting attorney may not request the death penalty.

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

(1) If a defendant is adjudicated guilty of aggravated first degree murder based on the aggravating circumstance under RCW 10.95.020(2), whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, a special sentencing proceeding shall be held if the death penalty review panel recommends pursuing the death penalty and a notice of special sentencing proceeding was filed and served as provided by RCW 10.95.040. No sort of plea, admission, or agreement may abrogate the requirement that a special sentencing proceeding be held.

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

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 10.95 RCW to read as follows:

(1) A death penalty review panel is established. The panel includes the following permanent members:

(a) Four prosecuting attorneys recommended by the Washington association of prosecuting attorneys. Urban and rural areas must be equally represented among the prosecuting attorneys;

(b) The attorney general, or his or her designee; and

(c) The secretary of the department of corrections, or his or her designee.

(2) The prosecuting attorney from the county in which the murder occurred shall serve as an ad hoc member of the panel.

(3) Upon receipt of a request for review, the attorney general shall convene a meeting of the death penalty review panel. The panel shall review all materials submitted from the prosecuting attorney and any materials submitted by defense counsel and shall make a recommendation as to whether the death penalty should be sought after considering:

(a) Whether there are sufficient mitigating circumstances to merit leniency;

(b) Whether imposition of the death penalty measurably contributes to the core purposes of retribution and deterrence of capital crimes by prospective offenders; and

(c) Whether imposition of the death penalty meets the goal of fairness and consistency in the criminal justice system.

(4) The panel shall memorialize its recommendation in a memorandum and submit the recommendation to the prosecuting attorney of the county in which the murder occurred."

Correct the title.

EFFECT: 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 where, at the time of the act resulting in death, the defendant was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes.

Prohibits the imposition of the death penalty unless the death penalty review panel recommends the prosecuting attorney seek it. Establishes operating procedures and requirements for the death penalty review panel (panel). Provides that the panel must be composed of prosecuting attorneys from urban and rural areas, the Attorney General, and the Secretary of the Department of Corrections. Requires recommendations of the panel based on a consideration of: (a) whether there are sufficient mitigating circumstances to merit leniency; (b) whether imposition of the death penalty measurably contributes to the core purposes of retribution and deterrence of capital crimes by prospective offenders; and (c) whether imposition of the death penalty meets the goal of fairness and consistency in the criminal justice system.