

SB 5339 - H AMD 704

By Representative Maycumber

NOT CONSIDERED 12/23/2019

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

3 On page 2, line 3, after "(2)" strike all material through
4 "~~(3)~~)" on line 33 and insert "If a person is convicted of the crime
5 of aggravated first degree murder based on the aggravating
6 circumstance under RCW 10.95.020(15), (~~pursuant to~~) a special
7 sentencing proceeding is held under RCW 10.95.050, and the trier of
8 fact finds that there are not sufficient mitigating circumstances to
9 merit leniency, the sentence shall be death. In no case, however,
10 shall a person be sentenced to death if the person had an
11 intellectual disability at the time the crime was committed, under
12 the definition of intellectual disability set forth in (a) of this
13 subsection. A diagnosis of intellectual disability shall be
14 documented by a licensed psychiatrist or licensed psychologist
15 designated by the court, who is an expert in the diagnosis and
16 evaluation of intellectual disabilities. The defense must establish
17 an intellectual disability by a preponderance of the evidence and the
18 court must make a finding as to the existence of an intellectual
19 disability.

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

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

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

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

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

6 (3) "

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

9 **"Sec. 2.** RCW 10.95.040 and 1981 c 138 s 4 are each amended to
10 read as follows:

11 (1) If a person is charged with aggravated first degree murder
12 (~~as defined by~~) based on the aggravating circumstance under RCW
13 10.95.020(15), the prosecuting attorney shall file written notice of
14 a special sentencing proceeding to determine whether or not the death
15 penalty should be imposed when there is reason to believe that there
16 are not sufficient mitigating circumstances to merit leniency.

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

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

31 **Sec. 3.** RCW 10.95.050 and 1981 c 138 s 5 are each amended to
32 read as follows:

33 (1) If a defendant is adjudicated guilty of aggravated first
34 degree murder based on the aggravating circumstance under RCW
35 10.95.020(15), whether by acceptance of a plea of guilty, by verdict
36 of a jury, or by decision of the trial court sitting without a jury,
37 a special sentencing proceeding shall be held if a notice of special

1 sentencing proceeding was filed and served as provided by RCW
2 10.95.040. No sort of plea, admission, or agreement may abrogate the
3 requirement that a special sentencing proceeding be held.

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

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

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

33 **Sec. 4.** RCW 10.95.020 and 2003 c 53 s 96 are each amended to
34 read as follows:

35 A person is guilty of aggravated first degree murder, a class A
36 felony, if he or she commits first degree murder as defined by RCW
37 9A.32.030(1)(a), as now or hereafter amended, and one or more of the
38 following aggravating circumstances exist:

1 (1) The victim was a law enforcement officer, corrections
2 officer, or firefighter who was performing his or her official duties
3 at the time of the act resulting in death and the victim was known or
4 reasonably should have been known by the person to be such at the
5 time of the killing;

6 (2) At the time of the act resulting in the death, the person was
7 serving a term of imprisonment, had escaped, or was on authorized or
8 unauthorized leave in or from a state facility or program for the
9 incarceration or treatment of persons adjudicated guilty of crimes;

10 (3) At the time of the act resulting in death, the person was in
11 custody in a county or county-city jail as a consequence of having
12 been adjudicated guilty of a felony;

13 (4) The person committed the murder pursuant to an agreement that
14 he or she would receive money or any other thing of value for
15 committing the murder;

16 (5) The person solicited another person to commit the murder and
17 had paid or had agreed to pay money or any other thing of value for
18 committing the murder;

19 (6) The person committed the murder to obtain or maintain his or
20 her membership or to advance his or her position in the hierarchy of
21 an organization, association, or identifiable group;

22 (7) The murder was committed during the course of or as a result
23 of a shooting where the discharge of the firearm, as defined in RCW
24 9.41.010, is either from a motor vehicle or from the immediate area
25 of a motor vehicle that was used to transport the shooter or the
26 firearm, or both, to the scene of the discharge;

27 (8) The victim was:

28 (a) A judge; juror or former juror; prospective, current, or
29 former witness in an adjudicative proceeding; prosecuting attorney;
30 deputy prosecuting attorney; defense attorney; a member of the
31 indeterminate sentence review board; or a probation or parole
32 officer; and

33 (b) The murder was related to the exercise of official duties
34 performed or to be performed by the victim;

35 (9) The person committed the murder to conceal the commission of
36 a crime or to protect or conceal the identity of any person
37 committing a crime, including, but specifically not limited to, any
38 attempt to avoid prosecution as a persistent offender as defined in
39 RCW 9.94A.030;

1 (10) There was more than one victim and the murders were part of
2 a common scheme or plan or the result of a single act of the person;
3 (11) The murder was committed in the course of, in furtherance
4 of, or in immediate flight from one of the following crimes:
5 (a) Robbery in the first or second degree;
6 (b) Rape in the first or second degree;
7 (c) Burglary in the first or second degree or residential
8 burglary;
9 (d) Kidnapping in the first degree; or
10 (e) Arson in the first degree;
11 (12) The victim was regularly employed or self-employed as a
12 newsreporter and the murder was committed to obstruct or hinder the
13 investigative, research, or reporting activities of the victim;
14 (13) At the time the person committed the murder, there existed a
15 court order, issued in this or any other state, which prohibited the
16 person from either contacting the victim, molesting the victim, or
17 disturbing the peace of the victim, and the person had knowledge of
18 the existence of that order;
19 (14) At the time the person committed the murder, the person and
20 the victim were "family or household members" as that term is defined
21 in RCW 10.99.020(~~(+1)~~) (3), and the person had previously engaged in
22 a pattern or practice of three or more of the following crimes
23 committed upon the victim within a five-year period, regardless of
24 whether a conviction resulted:
25 (a) Harassment as defined in RCW 9A.46.020; or
26 (b) Any criminal assault;
27 (15) The victim was pregnant."

28 Correct the title.

EFFECT: Expands the definition of aggravated first degree murder to include premeditated first degree murder committed against a pregnant victim.

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 involving a pregnant victim.

--- END ---