

2 **E2SHB 2319** - S AMD TO S AMD (S-5375.4/94) - 505

3 By Senators Nelson, Amondson, Roach, McDonald, L. Smith, Schow and
4 Anderson

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6 On page 144, after line 26 of the amendment, insert the following:

7 **"PART VI. VICTIMS' RIGHTS**

8 NEW SECTION. **Sec. 601.** A new section is added to chapter 43.330
9 RCW to read as follows:

10 Funding for block grants under chapter . . . , Laws of 1994 (this
11 act) shall not be derived from any reduction of appropriations for
12 criminal justice training or services, consolidated juvenile services
13 funds, or from crime victim services, including funding allocated to
14 support the provision of crime victims' services under chapter 7.68,
15 43.101, 43.280, 70.123, 70.125, or 82.14 RCW; or from federal funding
16 designated to fund services for crime victims under the Victims of
17 Crime Act of 1984 (P.L. 98-473).

18 **Sec. 602.** RCW 10.95.060 and 1981 c 138 s 6 are each amended to
19 read as follows:

20 (1) At the commencement of the special sentencing proceeding, the
21 trial court shall instruct the jury as to the nature and purpose of the
22 proceeding and as to the consequences of its decision, as provided in
23 RCW 10.95.030.

24 (2) At the special sentencing proceeding both the prosecution and
25 defense shall be allowed to make an opening statement. The prosecution
26 shall first present evidence and then the defense may present evidence.
27 Rebuttal evidence may be presented by each side. Upon conclusion of
28 the evidence, the court shall instruct the jury and then the
29 prosecution and defense shall be permitted to present argument. The
30 prosecution shall open and conclude the argument.

31 (3) The court shall admit any relevant evidence which it deems to
32 have probative value regardless of its admissibility under the rules of
33 evidence, including hearsay evidence and evidence of the defendant's
34 previous criminal activity regardless of whether the defendant has been
35 charged or convicted as a result of such activity. For purposes of

1 this section and pursuant to Article I, section 35 of the state
2 Constitution, the term "relevant evidence" shall include a statement by
3 the deceased victim's representative as identified by the prosecuting
4 attorney. The defendant shall be accorded a fair opportunity to rebut
5 or offer any hearsay evidence.

6 In addition to evidence of whether or not there are sufficient
7 mitigating circumstances to merit leniency, if the jury sitting in the
8 special sentencing proceeding has not heard evidence of the aggravated
9 first degree murder of which the defendant stands convicted, both the
10 defense and prosecution may introduce evidence concerning the facts and
11 circumstances of the murder.

12 (4) Upon conclusion of the evidence and argument at the special
13 sentencing proceeding, the jury shall retire to deliberate upon the
14 following question: "Having in mind the crime of which the defendant
15 has been found guilty, are you convinced beyond a reasonable doubt that
16 there are not sufficient mitigating circumstances to merit leniency?"

17 In order to return an affirmative answer to the question posed by
18 this subsection, the jury must so find unanimously.

19 **Sec. 603.** RCW 10.95.070 and 1993 c 479 s 2 are each amended to
20 read as follows:

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

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

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

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

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

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

34 (6) Whether, at the time of the murder, the capacity of the
35 defendant to appreciate the wrongfulness of his or her conduct or to
36 conform his or her conduct to the requirements of law was substantially
37 impaired as a result of mental disease or defect. However, a person

1 found to be mentally retarded under RCW 10.95.030(2) may in no case be
2 sentenced to death;

3 (7) Whether the age of the defendant at the time of the crime calls
4 for leniency; (~~and~~)

5 (8) Whether there is a likelihood that the defendant will pose a
6 danger to others in the future; and

7 (9) Pursuant to Article I, section 35 of the state Constitution, a
8 statement by the deceased victim's representative as identified by the
9 prosecuting attorney.

10 **Sec. 604.** RCW 7.69.030 and 1993 c 350 s 6 are each amended to read
11 as follows:

12 There shall be a reasonable effort made to ensure that victims,
13 survivors of victims, and witnesses of crimes have the following
14 rights:

15 (1) With respect to victims of violent or sex crimes, to receive,
16 at the time of reporting the crime to law enforcement officials, a
17 written statement of the rights of crime victims as provided in this
18 chapter. The written statement shall include the name, address, and
19 telephone number of a county or local crime victim/witness program, if
20 such a crime victim/witness program exists in the county;

21 (2) To be informed by local law enforcement agencies or the
22 prosecuting attorney of the final disposition of the case in which the
23 victim, survivor, or witness is involved;

24 (3) To be notified by the party who issued the subpoena that a
25 court proceeding to which they have been subpoenaed will not occur as
26 scheduled, in order to save the person an unnecessary trip to court;

27 (4) To receive protection from harm and threats of harm arising out
28 of cooperation with law enforcement and prosecution efforts, and to be
29 provided with information as to the level of protection available;

30 (5) To be informed of the procedure to be followed to apply for and
31 receive any witness fees to which they are entitled;

32 (6) To be provided, whenever practical, a secure waiting area
33 during court proceedings that does not require them to be in close
34 proximity to defendants and families or friends of defendants;

35 (7) To have any stolen or other personal property expeditiously
36 returned by law enforcement agencies or the superior court when no
37 longer needed as evidence. When feasible, all such property, except
38 weapons, currency, contraband, property subject to evidentiary

1 analysis, and property of which ownership is disputed, shall be
2 photographed and returned to the owner within ten days of being taken;

3 (8) To be provided with appropriate employer intercession services
4 to ensure that employers of victims, survivors of victims, and
5 witnesses of crime will cooperate with the criminal justice process in
6 order to minimize an employee's loss of pay and other benefits
7 resulting from court appearance;

8 (9) To access to immediate medical assistance and not to be
9 detained for an unreasonable length of time by a law enforcement agency
10 before having such assistance administered. However, an employee of
11 the law enforcement agency may, if necessary, accompany the person to
12 a medical facility to question the person about the criminal incident
13 if the questioning does not hinder the administration of medical
14 assistance;

15 (10) With respect to victims of violent and sex crimes, to have a
16 crime victim advocate from a crime victim/witness program present at
17 any prosecutorial or defense interviews with the victim. This
18 subsection applies if practical and if the presence of the crime victim
19 advocate does not cause any unnecessary delay in the investigation or
20 prosecution of the case. The role of the crime victim advocate is to
21 provide emotional support to the crime victim;

22 (11) With respect to victims and survivors of victims, to be
23 physically present in court during trial, or if subpoenaed to testify,
24 to be scheduled as early as practical in the proceedings in order to be
25 physically present during trial after testifying and not to be excluded
26 solely because they have testified;

27 (12) With respect to victims and survivors of victims, to be
28 informed by the prosecuting attorney of the date, time, and place of
29 the trial and of the sentencing hearing for felony convictions upon
30 request by a victim or survivor;

31 (13) To submit a victim impact statement or report to the court,
32 with the assistance of the prosecuting attorney if requested, which
33 shall be included in all presentence reports and permanently included
34 in the files and records accompanying the offender committed to the
35 custody of a state agency or institution;

36 (14) With respect to victims and survivors of victims, to present
37 a statement personally or by representation, at ~~((the))~~ all sentencing
38 hearings for felony convictions, including special sentencing

1 proceedings in cases where the prosecution has requested the death
2 penalty; and

3 (15) With respect to victims and survivors of victims, to entry of
4 an order of restitution by the court in all felony cases, even when the
5 offender is sentenced to confinement, unless extraordinary
6 circumstances exist which make restitution inappropriate in the court's
7 judgment.

8 NEW SECTION. Sec. 605. The legislature finds that treatment of
9 the emotional problems of victims and families of victims of sex
10 offenses and victims of violent offenses may be impaired by lengthy
11 delay in trial of the accused and the resulting delay in testimony of
12 the victim or the victim's representative. The trauma of the abusive
13 or violent incident is likely to be exacerbated by requiring testimony
14 from a victim who has substantially completed therapy and is forced to
15 relive the incident. The legislature finds that it is necessary to
16 prevent, to the extent reasonably possible, lengthy and unnecessary
17 delays in trial of a person charged with a sex offense or of a violent
18 offense.

19 NEW SECTION. Sec. 606. A new section is added to chapter 10.46
20 RCW to read as follows:

21 When a defendant is charged with a violent offense as defined in
22 RCW 9.94A.030 which constitutes a violation of RCW 9A.64.020 or chapter
23 9.68, 9.68A, 9A.32, 9A.36, 9A.40, 9A.42, 9A.44, or 9A.46 RCW, neither
24 the defendant nor the prosecuting attorney may agree to extend the
25 originally scheduled trial date unless, after a hearing, the court
26 finds that there are substantial and compelling reasons for a
27 continuance of the trial date and that the benefit of the postponement
28 outweighs the detriment to the victim or, if the victim is deceased, to
29 the victim's family. At the hearing the court shall consider the
30 testimony of lay witnesses and of expert witnesses, if available,
31 regarding the impact of the continuance on the victim. Whenever the
32 court grants the request for a continuance, the court shall set forth
33 the reasons for its decision in written findings of fact and
34 conclusions of law.

35 NEW SECTION. Sec. 607. A new section is added to chapter 10.19
36 RCW to read as follows:

1 Notwithstanding superior court criminal rule CrR 3.2, a criminal
2 defendant shall not be bailable if the court determines by a
3 preponderance of the evidence that the defendant is likely to pose a
4 danger to the safety of any other person or the community at large if
5 the defendant is released.

6 NEW SECTION. Sec. 608. Section 607 of this act shall take effect
7 if the proposed amendment to Article I, section 20 of the state
8 Constitution authorizing the courts to refuse bail when the accused is
9 likely upon release to pose a danger is validly submitted to and is
10 approved and ratified by the voters at the next general election. If
11 the proposed amendment is not so approved and ratified, section 607 of
12 this act is void in its entirety."

13 Renumber the remaining parts and sections consecutively and correct
14 internal references accordingly.

15 **E2SHB 2319** - S AMD TO S AMD (S-5375.4/94)
16 By Senator

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18 On page 159, line 30 of the title amendment, after "28A.190.040,"
19 insert "10.95.060, 10.95.070, 7.69.030,"

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21 By Senators Nelson, Amondson, Roach, McDonald, L. Smith, Schow and
22 Anderson

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24 On page 160, line 7 of the title amendment, after "28A.600 RCW;"
25 insert "adding a new section to chapter 43.330 RCW; adding a new
26 section to chapter 10.46 RCW; adding a new section to chapter 10.19
27 RCW;"

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