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HOUSE BILL 1406

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State of Washington

55th Legislature

1997 Regular Session

By Representative Sheahan

Read first time 01/24/97. Referred to Committee on Law & Justice.

1 AN ACT Relating to the death penalty; amending RCW 10.95.030 and  
2 10.95.040; and prescribing penalties.

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

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

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

17 (2) If, pursuant to a special sentencing proceeding held under RCW  
18 10.95.050, the trier of fact finds that there are not sufficient  
19 mitigating circumstances to merit leniency, the sentence shall be death

1 for a person sixteen years of age or older. In no case, however, shall  
2 a person be sentenced to death if the person was mentally retarded at  
3 the time the crime was committed, under the definition of mental  
4 retardation set forth in (a) of this subsection. A diagnosis of mental  
5 retardation shall be documented by a licensed psychiatrist or licensed  
6 psychologist designated by the court, who is an expert in the diagnosis  
7 and evaluation of mental retardation. The defense must establish  
8 mental retardation by a preponderance of the evidence and the court  
9 must make a finding as to the existence of mental retardation.

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

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

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

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

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

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

29 (1) If a person sixteen years of age or older is charged with  
30 aggravated first degree murder as defined by RCW 10.95.020, the  
31 prosecuting attorney shall file written notice of a special sentencing  
32 proceeding to determine whether or not the death penalty should be  
33 imposed when there is reason to believe that there are not sufficient  
34 mitigating circumstances to merit leniency.

35 (2) The notice of special sentencing proceeding shall be filed and  
36 served on the defendant or the defendant's attorney within thirty days  
37 after the defendant's arraignment upon the charge of aggravated first  
38 degree murder unless the court, for good cause shown, extends or

1 reopens the period for filing and service of the notice. Except with  
2 the consent of the prosecuting attorney, during the period in which the  
3 prosecuting attorney may file the notice of special sentencing  
4 proceeding, the defendant may not tender a plea of guilty to the charge  
5 of aggravated first degree murder nor may the court accept a plea of  
6 guilty to the charge of aggravated first degree murder or any lesser  
7 included offense.

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

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