
HOUSE BILL 1911

State of Washington

58th Legislature

2003 Regular Session

By Representatives O'Brien, Chase, Moeller, Lantz, Delvin, Romero, Wood, McIntire, Cody, Murray, Darneille, Ruderman, Edwards, Simpson, Miloscia and McDermott

Read first time 02/14/2003. Referred to Committee on Judiciary.

1 AN ACT Relating to aggravated first degree murder; amending RCW
2 10.95.030, 10.95.070, and 10.95.130; 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

1 death. In no case, however, shall a person be sentenced to death if at
2 the time the crime was committed, 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, mentally ill as
5 defined in RCW 71.05.020 and 71.24.025, or had a developmental
6 disability as defined in RCW 71A.10.020. A diagnosis of mental
7 retardation, mental illness, or developmentally disabled shall be
8 documented by a licensed psychiatrist or licensed psychologist
9 designated by the court, who is an expert in the diagnosis and
10 evaluation of mental retardation. The defense must establish mental
11 retardation, mental illness, or developmentally disabled by a
12 preponderance of the evidence and the court must make a finding as to
13 the existence of mental retardation.

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

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

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

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

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

31 **Sec. 2.** RCW 10.95.070 and 1993 c 479 s 2 are each amended to read
32 as follows:

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

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

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

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

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

7 (5) Whether the defendant acted under duress or domination of
8 another person;

9 (6) Whether, at the time of the murder, the capacity of the
10 defendant to appreciate the wrongfulness of his or her conduct or to
11 conform his or her conduct to the requirements of law was substantially
12 impaired as a result of mental disease or defect. However, a person
13 found to be mentally retarded, mentally ill, or developmentally
14 disabled under RCW 10.95.030(2) may in no case be sentenced to death;

15 (7) Whether the age of the defendant at the time of the crime calls
16 for leniency; and

17 (8) Whether there is a likelihood that the defendant will pose a
18 danger to others in the future.

19 **Sec. 3.** RCW 10.95.130 and 1993 c 479 s 3 are each amended to read
20 as follows:

21 (1) The sentence review required by RCW 10.95.100 shall be in
22 addition to any appeal. The sentence review and an appeal shall be
23 consolidated for consideration. The defendant and the prosecuting
24 attorney may submit briefs within the time prescribed by the court and
25 present oral argument to the court.

26 (2) With regard to the sentence review required by chapter 138,
27 Laws of 1981, the supreme court of Washington shall determine:

28 (a) Whether there was sufficient evidence to justify the
29 affirmative finding to the question posed by RCW 10.95.060(4); and

30 (b) Whether the sentence of death is excessive or disproportionate
31 to the penalty imposed in similar cases, considering both the crime and
32 the defendant. For the purposes of this subsection, "similar cases"
33 means cases reported in the Washington Reports or Washington Appellate
34 Reports since January 1, 1965, in which the judge or jury considered
35 the imposition of capital punishment regardless of whether it was
36 imposed or executed, and cases in which reports have been filed with
37 the supreme court under RCW 10.95.120;

1 (c) Whether the sentence of death was brought about through passion
2 or prejudice; and

3 (d) Whether the defendant was mentally retarded, mentally ill, or
4 developmentally disabled, within the meaning of RCW 10.95.030(2).

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