
HOUSE BILL 2023

State of Washington 61st Legislature 2009 Regular Session

By Representatives Appleton, Chase, Ormsby, and Darneille

Read first time 02/06/09. Referred to Committee on Public Safety & Emergency Preparedness.

1 AN ACT Relating to ending sentences of life imprisonment without
2 the possibility of release or parole for certain juveniles; amending
3 RCW 10.95.030, 9.94A.537, and 10.95.020; and reenacting and amending
4 RCW 9A.20.021.

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

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

8 (1) Except as provided in subsections (2) and (3) of this section,
9 any person convicted of the crime of aggravated first degree murder
10 shall be sentenced to life imprisonment without possibility of release
11 or parole. A person sentenced to life imprisonment under this section
12 shall not have that sentence suspended, deferred, or commuted by any
13 judicial officer and the indeterminate sentence review board or its
14 successor may not parole such prisoner nor reduce the period of
15 confinement in any manner whatsoever including but not limited to any
16 sort of good-time calculation. The department of social and health
17 services or its successor or any executive official may not permit such
18 prisoner to participate in any sort of release or furlough program.

1 (2) If, pursuant to a special sentencing proceeding held under RCW
2 10.95.050, the trier of fact finds that there are not sufficient
3 mitigating circumstances to merit leniency, the sentence shall be
4 death. In no case, however, shall a person be sentenced to death if
5 the person was mentally retarded at the time the crime was committed,
6 under the definition of mental retardation set forth in (a) of this
7 subsection. A diagnosis of mental retardation shall be documented by
8 a licensed psychiatrist or licensed psychologist designated by the
9 court, who is an expert in the diagnosis and evaluation of mental
10 retardation. The defense must establish mental retardation by a
11 preponderance of the evidence and the court must make a finding as to
12 the existence of mental retardation.

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

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

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

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

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

30 (3)(a) After the effective date of this act, a person who was under
31 fifteen years of age at the time the crime was committed may not be
32 sentenced to life without the possibility of release or parole.

33 (b) In any case where a person was sentenced to life without the
34 possibility of release or parole before the effective date of this act
35 and the person was under fifteen at the time the crime was committed,
36 the person shall be granted a resentencing hearing. The prosecuting
37 attorney for the county in which the person was sentenced shall, and
38 the person may, make a motion for relief from the sentence to the

1 original sentencing court. The sentencing court shall grant the motion
2 if it finds that the person was sentenced to life without the
3 possibility of release or parole and was under the age of fifteen at
4 the time the crime was committed. The court shall immediately set an
5 expedited date for resentencing. At resentencing, the court shall
6 sentence the person within the standard range established in RCW
7 9.94A.510 for offense seriousness level XV unless the court determines
8 that a departure from the guidelines is appropriate pursuant to RCW
9 9.94A.535.

10 **Sec. 2.** RCW 9.94A.537 and 2007 c 205 s 2 are each amended to read
11 as follows:

12 (1) At any time prior to trial or entry of the guilty plea if
13 substantial rights of the defendant are not prejudiced, the state may
14 give notice that it is seeking a sentence above the standard sentencing
15 range. The notice shall state aggravating circumstances upon which the
16 requested sentence will be based.

17 (2) In any case where an exceptional sentence above the standard
18 range was imposed and where a new sentencing hearing is required, the
19 superior court may impanel a jury to consider any alleged aggravating
20 circumstances listed in RCW 9.94A.535(3), that were relied upon by the
21 superior court in imposing the previous sentence, at the new sentencing
22 hearing.

23 (3) The facts supporting aggravating circumstances shall be proved
24 to a jury beyond a reasonable doubt. The jury's verdict on the
25 aggravating factor must be unanimous, and by special interrogatory. If
26 a jury is waived, proof shall be to the court beyond a reasonable
27 doubt, unless the defendant stipulates to the aggravating facts.

28 (4) Evidence regarding any facts supporting aggravating
29 circumstances under RCW 9.94A.535(3) (a) through (y) shall be presented
30 to the jury during the trial of the alleged crime, unless the jury has
31 been impaneled solely for resentencing, or unless the state alleges the
32 aggravating circumstances listed in RCW 9.94A.535(3) (e)(iv), (h)(i),
33 (o), or (t). If one of these aggravating circumstances is alleged, the
34 trial court may conduct a separate proceeding if the evidence
35 supporting the aggravating fact is not part of the res geste of the
36 charged crime, if the evidence is not otherwise admissible in trial of
37 the charged crime, and if the court finds that the probative value of

1 the evidence to the aggravated fact is substantially outweighed by its
2 prejudicial effect on the jury's ability to determine guilt or
3 innocence for the underlying crime.

4 (5) If the superior court conducts a separate proceeding to
5 determine the existence of aggravating circumstances listed in RCW
6 9.94A.535(3) (e)(iv), (h)(i), (o), or (t), the proceeding shall
7 immediately follow the trial on the underlying conviction, if possible.
8 If any person who served on the jury is unable to continue, the court
9 shall substitute an alternate juror.

10 (6) If the jury finds, unanimously and beyond a reasonable doubt,
11 one or more of the facts alleged by the state in support of an
12 aggravated sentence, the court may sentence the offender pursuant to
13 RCW 9.94A.535 to a term of confinement up to the maximum allowed under
14 RCW 9A.20.021 for the underlying conviction if it finds, considering
15 the purposes of this chapter, that the facts found are substantial and
16 compelling reasons justifying an exceptional sentence, except that no
17 individual under fifteen years of age at the time the offense was
18 committed may be sentenced to life without the possibility of release
19 or parole.

20 **Sec. 3.** RCW 9A.20.021 and 2003 c 288 s 7 and 2003 c 53 s 63 are
21 each reenacted and amended to read as follows:

22 (1) Felony. Unless a different maximum sentence for a classified
23 felony is specifically established by a statute of this state, no
24 person convicted of a classified felony shall be punished by
25 confinement or fine exceeding the following:

26 (a) For a class A felony, by confinement in a state correctional
27 institution for a term of life imprisonment, or by a fine in an amount
28 fixed by the court of fifty thousand dollars, or by both such
29 confinement and fine, except that no individual under fifteen years of
30 age at the time the offense was committed may be sentenced to life
31 without the possibility of release or parole;

32 (b) For a class B felony, by confinement in a state correctional
33 institution for a term of ten years, or by a fine in an amount fixed by
34 the court of twenty thousand dollars, or by both such confinement and
35 fine;

36 (c) For a class C felony, by confinement in a state correctional

1 institution for five years, or by a fine in an amount fixed by the
2 court of ten thousand dollars, or by both such confinement and fine.

3 (2) Gross misdemeanor. Every person convicted of a gross
4 misdemeanor defined in Title 9A RCW shall be punished by imprisonment
5 in the county jail for a maximum term fixed by the court of not more
6 than one year, or by a fine in an amount fixed by the court of not more
7 than five thousand dollars, or by both such imprisonment and fine.

8 (3) Misdemeanor. Every person convicted of a misdemeanor defined
9 in Title 9A RCW shall be punished by imprisonment in the county jail
10 for a maximum term fixed by the court of not more than ninety days, or
11 by a fine in an amount fixed by the court of not more than one thousand
12 dollars, or by both such imprisonment and fine.

13 (4) This section applies to only those crimes committed on or after
14 July 1, 1984.

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

17 A person is guilty of aggravated first degree murder, a class A
18 felony, if he or she commits first degree murder as defined by RCW
19 9A.32.030(1)(a), as now or hereafter amended, was age fifteen or older
20 at the time the murder was committed, and one or more of the following
21 aggravating circumstances exist:

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

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

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

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

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

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

7 (7) The murder was committed during the course of or as a result of
8 a shooting where the discharge of the firearm, as defined in RCW
9 9.41.010, is either from a motor vehicle or from the immediate area of
10 a motor vehicle that was used to transport the shooter or the firearm,
11 or both, to the scene of the discharge;

12 (8) The victim was:

13 (a) A judge; juror or former juror; prospective, current, or former
14 witness in an adjudicative proceeding; prosecuting attorney; deputy
15 prosecuting attorney; defense attorney; a member of the indeterminate
16 sentence review board; or a probation or parole officer; and

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

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

23 (10) There was more than one victim and the murders were part of a
24 common scheme or plan or the result of a single act of the person;

25 (11) The murder was committed in the course of, in furtherance of,
26 or in immediate flight from one of the following crimes:

27 (a) Robbery in the first or second degree;

28 (b) Rape in the first or second degree;

29 (c) Burglary in the first or second degree or residential burglary;

30 (d) Kidnapping in the first degree; or

31 (e) Arson in the first degree;

32 (12) The victim was regularly employed or self-employed as a
33 newsreporter and the murder was committed to obstruct or hinder the
34 investigative, research, or reporting activities of the victim;

35 (13) At the time the person committed the murder, there existed a
36 court order, issued in this or any other state, which prohibited the
37 person from either contacting the victim, molesting the victim, or

1 disturbing the peace of the victim, and the person had knowledge of the
2 existence of that order;

3 (14) At the time the person committed the murder, the person and
4 the victim were "family or household members" as that term is defined
5 in RCW 10.99.020(~~(+1)~~) (3), and the person had previously engaged in
6 a pattern or practice of three or more of the following crimes
7 committed upon the victim within a five-year period, regardless of
8 whether a conviction resulted:

9 (a) Harassment as defined in RCW 9A.46.020; or

10 (b) Any criminal assault.

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