
HOUSE BILL 1739

State of Washington

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By Representatives Carlyle, Walsh, Orwall, Magendanz, Appleton, Fitzgibbon, Hunter, Peterson, S. Hunt, Gregerson, Jinkins, Goodman, Pollet, Farrell, Ormsby, Hudgins, and Cody

Read first time 01/27/15. Referred to Committee on Judiciary.

1 AN ACT Relating to reducing criminal justice expenses by
2 eliminating the death penalty in favor of life incarceration;
3 amending RCW 10.95.030; and repealing RCW 10.95.040, 10.95.050,
4 10.95.060, 10.95.070, 10.95.080, 10.95.090, 10.95.100, 10.95.110,
5 10.95.120, 10.95.130, 10.95.140, 10.95.150, 10.95.160, 10.95.170,
6 10.95.180, 10.95.185, 10.95.190, 10.95.200, and 10.95.900.

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

8 **Sec. 1.** RCW 10.95.030 and 2014 c 130 s 9 are each amended to
9 read as follows:

10 (1) (~~Except as provided in subsections (2) and (3) of this~~
11 ~~section, any~~) (a) A person convicted of the crime of aggravated
12 first degree murder shall be sentenced to life imprisonment without
13 possibility of release or parole. The sentence shall include an order
14 setting restitution requiring the defendant to make restitution to
15 the victim's family and to pay all other forms of restitution
16 authorized by law. Unless precluded by department of corrections
17 policies, the offender shall be required to work throughout the
18 sentence to satisfy the order setting restitution, consistent with
19 the legislative intent stated in RCW 72.09.010.

20 (b) A person sentenced to life imprisonment under this section
21 shall not have that sentence suspended, deferred, or commuted by any

1 judicial officer and the indeterminate sentence review board or its
2 successor may not parole such prisoner nor reduce the period of
3 confinement in any manner whatsoever including but not limited to any
4 sort of good-time calculation. The department of social and health
5 services or its successor or any executive official may not permit
6 such prisoner to participate in any sort of release or furlough
7 program.

8 ~~(2) ((If, pursuant to a special sentencing proceeding held under
9 RCW 10.95.050, the trier of fact finds that there are not sufficient
10 mitigating circumstances to merit leniency, the sentence shall be
11 death. In no case, however, shall a person be sentenced to death if
12 the person had an intellectual disability at the time the crime was
13 committed, under the definition of intellectual disability set forth
14 in (a) of this subsection. A diagnosis of intellectual disability
15 shall be documented by a licensed psychiatrist or licensed
16 psychologist designated by the court, who is an expert in the
17 diagnosis and evaluation of intellectual disabilities. The defense
18 must establish an intellectual disability by a preponderance of the
19 evidence and the court must make a finding as to the existence of an
20 intellectual disability.~~

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

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

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

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

36 ~~(e) "Developmental period" means the period of time between
37 conception and the eighteenth birthday.~~

38 ~~(3))~~(a)(i) Any person convicted of the crime of aggravated first
39 degree murder for an offense committed prior to the person's
40 sixteenth birthday shall be sentenced to a maximum term of life

1 imprisonment and a minimum term of total confinement of twenty-five
2 years.

3 (ii) Any person convicted of the crime of aggravated first degree
4 murder for an offense committed when the person is at least sixteen
5 years old but less than eighteen years old shall be sentenced to a
6 maximum term of life imprisonment and a minimum term of total
7 confinement of no less than twenty-five years. A minimum term of life
8 may be imposed, in which case the person will be ineligible for
9 parole or early release.

10 (b) In setting a minimum term, the court must take into account
11 mitigating factors that account for the diminished culpability of
12 youth as provided in *Miller v. Alabama*, 132 S.Ct. 2455 (2012)
13 including, but not limited to, the age of the individual, the youth's
14 childhood and life experience, the degree of responsibility the youth
15 was capable of exercising, and the youth's chances of becoming
16 rehabilitated.

17 (c) A person sentenced under this subsection shall serve the
18 sentence in a facility or institution operated, or utilized under
19 contract, by the state. During the minimum term of total confinement,
20 the person shall not be eligible for community custody, earned
21 release time, furlough, home detention, partial confinement, work
22 crew, work release, or any other form of early release authorized
23 under RCW 9.94A.728, or any other form of authorized leave or absence
24 from the correctional facility while not in the direct custody of a
25 corrections officer. The provisions of this subsection shall not
26 apply: (i) In the case of an offender in need of emergency medical
27 treatment; or (ii) for an extraordinary medical placement when
28 authorized under RCW 9.94A.728(3).

29 (d) Any person sentenced pursuant to this subsection shall be
30 subject to community custody under the supervision of the department
31 of corrections and the authority of the indeterminate sentence review
32 board. As part of any sentence under this subsection, the court shall
33 require the person to comply with any conditions imposed by the
34 board.

35 (e) No later than five years prior to the expiration of the
36 person's minimum term, the department of corrections shall conduct an
37 assessment of the offender and identify programming and services that
38 would be appropriate to prepare the offender for return to the
39 community. To the extent possible, the department shall make
40 programming available as identified by the assessment.

1 (f) No later than one hundred eighty days prior to the expiration
2 of the person's minimum term, the department of corrections shall
3 conduct, and the offender shall participate in, an examination of the
4 person, incorporating methodologies that are recognized by experts in
5 the prediction of dangerousness, and including a prediction of the
6 probability that the person will engage in future criminal behavior
7 if released on conditions to be set by the board. The board may
8 consider a person's failure to participate in an evaluation under
9 this subsection in determining whether to release the person. The
10 board shall order the person released, under such affirmative and
11 other conditions as the board determines appropriate, unless the
12 board determines by a preponderance of the evidence that, despite
13 such conditions, it is more likely than not that the person will
14 commit new criminal law violations if released. If the board does not
15 order the person released, the board shall set a new minimum term not
16 to exceed five additional years. The board shall give public safety
17 considerations the highest priority when making all discretionary
18 decisions regarding the ability for release and conditions of
19 release.

20 (g) In a hearing conducted under (f) of this subsection, the
21 board shall provide opportunities for victims and survivors of
22 victims of any crimes for which the offender has been convicted to
23 present statements as set forth in RCW 7.69.032. The procedures for
24 victim and survivor of victim input shall be developed by rule. To
25 facilitate victim and survivor of victim involvement, county
26 prosecutor's offices shall ensure that any victim impact statements
27 and known contact information for victims of record and survivors of
28 victims are forwarded as part of the judgment and sentence.

29 (h) An offender released by the board is subject to the
30 supervision of the department of corrections for a period of time to
31 be determined by the board. The department shall monitor the
32 offender's compliance with conditions of community custody imposed by
33 the court, department, or board, and promptly report any violations
34 to the board. Any violation of conditions of community custody
35 established or modified by the board are subject to the provisions of
36 RCW 9.95.425 through 9.95.440.

37 NEW SECTION. **Sec. 2.** The following acts or parts of acts are
38 each repealed:

1 (1) RCW 10.95.040 (Special sentencing proceeding—Notice—Filing—
2 Service) and 1981 c 138 s 4;

3 (2) RCW 10.95.050 (Special sentencing proceeding—When held—Jury
4 to decide matters presented—Waiver—Reconvening same jury—
5 Impanelling new jury—Peremptory challenges) and 1981 c 138 s 5;

6 (3) RCW 10.95.060 (Special sentencing proceeding—Jury
7 instructions—Opening statements—Evidence—Arguments—Question for
8 jury) and 1981 c 138 s 6;

9 (4) RCW 10.95.070 (Special sentencing proceeding—Factors which
10 jury may consider in deciding whether leniency merited) and 2010 c 94
11 s 4, 1993 c 479 s 2, & 1981 c 138 s 7;

12 (5) RCW 10.95.080 (When sentence to death or sentence to life
13 imprisonment shall be imposed) and 1981 c 138 s 8;

14 (6) RCW 10.95.090 (Sentence if death sentence commuted, held
15 invalid, or if death sentence established by chapter held invalid)
16 and 1981 c 138 s 9;

17 (7) RCW 10.95.100 (Mandatory review of death sentence by supreme
18 court—Notice—Transmittal—Contents of notice—Jurisdiction) and 1981
19 c 138 s 10;

20 (8) RCW 10.95.110 (Verbatim report of trial proceedings—
21 Preparation—Transmittal to supreme court—Clerk's papers—Receipt)
22 and 1981 c 138 s 11;

23 (9) RCW 10.95.120 (Information report—Form—Contents—Submission
24 to supreme court, defendant, prosecuting attorney) and 1981 c 138 s
25 12;

26 (10) RCW 10.95.130 (Questions posed for determination by supreme
27 court in death sentence review—Review in addition to appeal—
28 Consolidation of review and appeal) and 2010 c 94 s 5, 1993 c 479 s
29 3, & 1981 c 138 s 13;

30 (11) RCW 10.95.140 (Invalidation of sentence, remand for
31 resentencing—Affirmation of sentence, remand for execution) and 1993
32 c 479 s 4 & 1981 c 138 s 14;

33 (12) RCW 10.95.150 (Time limit for appellate review of death
34 sentence and filing opinion) and 1988 c 202 s 17 & 1981 c 138 s 15;

35 (13) RCW 10.95.160 (Death warrant—Issuance—Form—Time for
36 execution of judgment and sentence) and 1990 c 263 s 1 & 1981 c 138 s
37 16;

38 (14) RCW 10.95.170 (Imprisonment of defendant) and 1983 c 255 s 1
39 & 1981 c 138 s 17;

1 (15) RCW 10.95.180 (Death penalty—How executed) and 1996 c 251 s
2 1, 1986 c 194 s 1, & 1981 c 138 s 18;

3 (16) RCW 10.95.185 (Witnesses) and 1999 c 332 s 1 & 1993 c 463 s
4 2;

5 (17) RCW 10.95.190 (Death warrant—Record—Return to trial court)
6 and 1981 c 138 s 19;

7 (18) RCW 10.95.200 (Proceedings for failure to execute on day
8 named) and 1990 c 263 s 2, 1987 c 286 s 1, & 1981 c 138 s 20; and

9 (19) RCW 10.95.900 (Severability—1981 c 138) and 1981 c 138 s 22.

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