

**SB 5339 - H AMD 711**

By Representative Caldier

**NOT CONSIDERED 12/23/2019**

1 On page 1, line 11, after "in" strike all material through "of"  
2 and insert "subsections (2) and (3) of"

3 On page 2, beginning on line 3, after "(2)" strike all material  
4 through "~~(3))~~" and insert "If a person is convicted of the crime of  
5 aggravated first degree murder based on the aggravating circumstance  
6 under RCW 10.95.020(11)(b), (~~pursuant to~~) a special sentencing  
7 proceeding is held under RCW 10.95.050, and the trier of fact finds  
8 that there are not sufficient mitigating circumstances to merit  
9 leniency, the sentence shall be death. In no case, however, shall a  
10 person be sentenced to death if the person had an intellectual  
11 disability at the time the crime was committed, under the definition  
12 of intellectual disability set forth in (a) of this subsection. A  
13 diagnosis of intellectual disability shall be documented by a  
14 licensed psychiatrist or licensed psychologist designated by the  
15 court, who is an expert in the diagnosis and evaluation of  
16 intellectual disabilities. The defense must establish an intellectual  
17 disability by a preponderance of the evidence and the court must make  
18 a finding as to the existence of an intellectual disability.

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

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

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

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

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

3 (3) "

4 Beginning on page 4, line 38, strike all of section 2 and insert  
5 the following:

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

8 (1) If a person is charged with aggravated first degree murder  
9 (~~as defined by~~) based on the aggravating circumstance under RCW  
10 10.95.020(11)(b), the prosecuting attorney shall file written notice  
11 of a special sentencing proceeding to determine whether or not the  
12 death penalty should be imposed when there is reason to believe that  
13 there are not sufficient mitigating circumstances to merit leniency.

14 (2) The notice of special sentencing proceeding shall be filed  
15 and served on the defendant or the defendant's attorney within thirty  
16 days after the defendant's arraignment upon the charge of aggravated  
17 first degree murder unless the court, for good cause shown, extends  
18 or reopens the period for filing and service of the notice. Except  
19 with the consent of the prosecuting attorney, during the period in  
20 which the prosecuting attorney may file the notice of special  
21 sentencing proceeding, the defendant may not tender a plea of guilty  
22 to the charge of aggravated first degree murder nor may the court  
23 accept a plea of guilty to the charge of aggravated first degree  
24 murder or any lesser included offense.

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

28 **Sec. 3.** RCW 10.95.050 and 1981 c 138 s 5 are each amended to  
29 read as follows:

30 (1) If a defendant is adjudicated guilty of aggravated first  
31 degree murder based on the aggravating circumstance under RCW  
32 10.95.020(11)(b), whether by acceptance of a plea of guilty, by  
33 verdict of a jury, or by decision of the trial court sitting without  
34 a jury, a special sentencing proceeding shall be held if a notice of  
35 special sentencing proceeding was filed and served as provided by RCW  
36 10.95.040. No sort of plea, admission, or agreement may abrogate the  
37 requirement that a special sentencing proceeding be held.

1 (2) A jury shall decide the matters presented in the special  
2 sentencing proceeding unless a jury is waived in the discretion of  
3 the court and with the consent of the defendant and the prosecuting  
4 attorney.

5 (3) If the defendant's guilt was determined by a jury verdict,  
6 the trial court shall reconvene the same jury to hear the special  
7 sentencing proceeding. The proceeding shall commence as soon as  
8 practicable after completion of the trial at which the defendant's  
9 guilt was determined. If, however, unforeseen circumstances make it  
10 impracticable to reconvene the same jury to hear the special  
11 sentencing proceeding, the trial court may dismiss that jury and  
12 convene a jury pursuant to subsection (4) of this section.

13 (4) If the defendant's guilt was determined by plea of guilty or  
14 by decision of the trial court sitting without a jury, or if a  
15 retrial of the special sentencing proceeding is necessary for any  
16 reason including but not limited to a mistrial in a previous special  
17 sentencing proceeding or as a consequence of a remand from an  
18 appellate court, the trial court shall impanel a jury of twelve  
19 persons plus whatever alternate jurors the trial court deems  
20 necessary. The defense and prosecution shall each be allowed to  
21 peremptorily challenge twelve jurors. If there is more than one  
22 defendant, each defendant shall be allowed an additional peremptory  
23 challenge and the prosecution shall be allowed a like number of  
24 additional challenges. If alternate jurors are selected, the defense  
25 and prosecution shall each be allowed one peremptory challenge for  
26 each alternate juror to be selected and if there is more than one  
27 defendant each defendant shall be allowed an additional peremptory  
28 challenge for each alternate juror to be selected and the prosecution  
29 shall be allowed a like number of additional challenges."

30 Correct the title.

EFFECT: Restores the statutory procedures for imposing the death penalty, but makes those procedures applicable only for sentencing a person convicted of aggravated first degree murder where the murder was committed in the course of, in furtherance of, or in immediate flight from Rape in the first or second degree.

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