

SB 5339 - H AMD 644

By Representative Graham

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 32, after "eighteenth" strike
4 "birthday.

5 ~~(3))~~" and insert "birthday)) If a person convicted of aggravated
6 murder does not object to a sentence of death and waives his or her
7 rights to appeal pursuant to a special sentencing hearing under RCW
8 10.95.050, then the sentence shall be death.

9 (3) "

10 On page 4, after line 37, insert the following:

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

13 (1) If a person is charged with aggravated first degree murder as
14 defined by RCW 10.95.020, the prosecuting attorney shall file written
15 notice of a special sentencing (~~(proceeding)~~) hearing to determine
16 whether or not the death penalty should be imposed (~~(when there is~~
17 ~~reason to believe that there are not sufficient mitigating~~
18 ~~circumstances to merit leniency)~~).

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

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

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

6 (1) If a defendant is adjudicated guilty of aggravated first
7 degree murder, whether by acceptance of a plea of guilty, by verdict
8 of a jury, or by decision of the trial court sitting without a jury,
9 a special sentencing (~~(proceeding)~~) hearing shall be held if a notice
10 of special sentencing (~~(proceeding)~~) hearing was filed and served as
11 provided by RCW 10.95.040. No sort of plea, admission, or agreement
12 may abrogate the requirement that a special sentencing (~~(proceeding)~~)
13 hearing be held.

14 (2) (~~A jury shall decide the matters presented in the special~~
15 ~~sentencing proceeding unless a jury is waived in the discretion of~~
16 ~~the court and with the consent of the defendant and the prosecuting~~
17 ~~attorney.~~

18 ~~(3) If the defendant's guilt was determined by a jury verdict,~~
19 ~~the trial court shall reconvene the same jury to hear the special~~
20 ~~sentencing proceeding. The proceeding shall commence as soon as~~
21 ~~practicable after completion of the trial at which the defendant's~~
22 ~~guilt was determined. If, however, unforeseen circumstances make it~~
23 ~~impracticable to reconvene the same jury to hear the special~~
24 ~~sentencing proceeding, the trial court may dismiss that jury and~~
25 ~~convene a jury pursuant to subsection (4) of this section.~~

26 ~~(4) If the defendant's guilt was determined by plea of guilty or~~
27 ~~by decision of the trial court sitting without a jury, or if a~~
28 ~~retrial of the special sentencing proceeding is necessary for any~~
29 ~~reason including but not limited to a mistrial in a previous special~~
30 ~~sentencing proceeding or as a consequence of a remand from an~~
31 ~~appellate court, the trial court shall impanel a jury of twelve~~
32 ~~persons plus whatever alternate jurors the trial court deems~~
33 ~~necessary. The defense and prosecution shall each be allowed to~~
34 ~~peremptorily challenge twelve jurors. If there is more than one~~
35 ~~defendant, each defendant shall be allowed an additional peremptory~~
36 ~~challenge and the prosecution shall be allowed a like number of~~
37 ~~additional challenges. If alternate jurors are selected, the defense~~
38 ~~and prosecution shall each be allowed one peremptory challenge for~~
39 ~~each alternate juror to be selected and if there is more than one~~

1 ~~defendant each defendant shall be allowed an additional peremptory~~
2 ~~challenge for each alternate juror to be selected and the prosecution~~
3 ~~shall be allowed a like number of additional challenges)) (a) At the~~
4 special sentencing hearing, the court shall afford the opportunity
5 for the defendant to object to a death sentence. If he or she objects
6 or does not waive his or her right to appeal the sentence, then the
7 court shall sentence the defendant to life imprisonment without the
8 possibility of release or parole under RCW 10.95.030.

9 (b) If the defendant does not object to the death sentence and he
10 or she voluntarily waives his or her right to appeal the sentence,
11 then the court shall sentence the defendant to death.

12 (3) In a special sentencing hearing under this section, the court
13 shall:

14 (a) Inform the defendant of his or her rights and of the
15 consequences of the hearing; and

16 (b) Prior to accepting a waiver under subsection (2)(b) of this
17 section, find the defendant is fully aware of his or her rights and
18 the consequences of his or her decisions.

19 **Sec. 4.** RCW 10.95.160 and 1990 c 263 s 1 are each amended to
20 read as follows:

21 (1) If a death sentence is (~~affirmed and the case remanded to~~
22 ~~the trial court as provided in RCW 10.95.140(2)) imposed pursuant to~~
23 a special sentencing hearing under RCW 10.95.050, a death warrant
24 shall forthwith be issued by the clerk of the trial court, which
25 shall be signed by a judge of the trial court and attested by the
26 clerk thereof under the seal of the court. The warrant shall be
27 directed to the superintendent of the state penitentiary and shall
28 state the conviction of the person named therein and the judgment and
29 sentence of the court, and shall appoint a day on which the judgment
30 and sentence of the court shall be executed by the superintendent,
31 which day shall not be less than thirty nor more than ninety days
32 from the date the trial court receives the remand from the supreme
33 court of Washington.

34 (2) If the date set for execution under subsection (1) of this
35 section is stayed by a court of competent jurisdiction for any
36 reason, the new execution date is automatically set at thirty
37 judicial days after the entry of an order of termination or vacation
38 of the stay by such court unless the court invalidates the
39 conviction, sentence, or remands for further judicial proceedings.

1 The presence of the inmate under sentence of death shall not be
2 required for the court to vacate or terminate the stay according to
3 this section."

4 Renumber the remaining section consecutively, correct any
5 internal references accordingly, and correct the title.

6 On page 5, beginning on line 1, strike all of subsections (1) and
7 (2)

8 Renumber the remaining subsections consecutively and correct the
9 title.

10 On page 5, beginning on line 14, strike all of subsection (6)

11 Renumber the remaining subsections consecutively and correct the
12 title.

13 On page 5, line 32, after "14;" insert "and"

14 On page 5, line 34, after "15" strike ";" and insert "."

15 Beginning on page 5, line 35, strike all of subsections (13)
16 through (18)

17 Correct the title.

EFFECT: (1) Requires the court to sentence a defendant convicted of aggravated first degree murder to death if: (a) The prosecuting attorney files a notice of a special sentencing hearing; (b) the defendant does not object to the death sentence; (c) the defendant waives his or her rights to appeal the sentence; and (d) the court finds the defendant is fully aware of his or her rights and the consequences of his or her decision.

(2) Restores the statutory procedures for issuing a death warrant and carrying out a death sentence.

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