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**SENATE BILL 5047**

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**State of Washington****67th Legislature****2021 Regular Session****By** Senators Carlyle and Muzzall; by request of Attorney General

Prefiled 12/31/20.

1       AN ACT Relating to reducing criminal justice expenses by  
2 eliminating the death penalty and instead requiring life imprisonment  
3 without possibility of release or parole as the sentence for  
4 aggravated first degree murder; amending RCW 10.95.030; and repealing  
5 RCW 10.95.040, 10.95.050, 10.95.060, 10.95.070, 10.95.080, 10.95.090,  
6 10.95.100, 10.95.110, 10.95.120, 10.95.130, 10.95.140, 10.95.150,  
7 10.95.160, 10.95.170, 10.95.180, 10.95.185, 10.95.190, and 10.95.200.

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

9       **Sec. 1.** RCW 10.95.030 and 2015 c 134 s 5 are each amended to  
10 read as follows:

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

1 permit such prisoner to participate in any sort of release or  
2 furlough program.

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

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

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

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

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

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

33 (+)) (a) (i) Any person convicted of the crime of aggravated first  
34 degree murder for an offense committed prior to the person's  
35 ((sixteenth)) 16th birthday shall be sentenced to a maximum term of  
36 life imprisonment and a minimum term of total confinement of  
37 ((twenty-five)) 25 years.

38 (ii) Any person convicted of the crime of aggravated first degree  
39 murder for an offense committed when the person is at least  
40 ((sixteen)) 16 years old but less than ((eighteen)) 18 years old

1 shall be sentenced to a maximum term of life imprisonment and a  
2 minimum term of total confinement of no less than (~~twenty-five~~) 25  
3 years. A minimum term of life may be imposed, in which case the  
4 person will be ineligible for parole or early release.

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

12 (c) A person sentenced under this subsection shall serve the  
13 sentence in a facility or institution operated, or utilized under  
14 contract, by the state. During the minimum term of total confinement,  
15 the person shall not be eligible for community custody, earned  
16 release time, furlough, home detention, partial confinement, work  
17 crew, work release, or any other form of early release authorized  
18 under RCW 9.94A.728, or any other form of authorized leave or absence  
19 from the correctional facility while not in the direct custody of a  
20 corrections officer. The provisions of this subsection shall not  
21 apply: (i) In the case of an offender in need of emergency medical  
22 treatment; or (ii) for an extraordinary medical placement when  
23 authorized under RCW 9.94A.728~~((3))~~ (1)(c).

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

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

36 (f) No later than ~~((one hundred eighty))~~ 180 days prior to the  
37 expiration of the person's minimum term, the department of  
38 corrections shall conduct, and the offender shall participate in, an  
39 examination of the person, incorporating methodologies that are  
40 recognized by experts in the prediction of dangerousness, and

1 including a prediction of the probability that the person will engage  
2 in future criminal behavior if released on conditions to be set by  
3 the board. The board may consider a person's failure to participate  
4 in an evaluation under this subsection in determining whether to  
5 release the person. The board shall order the person released, under  
6 such affirmative and other conditions as the board determines  
7 appropriate, unless the board determines by a preponderance of the  
8 evidence that, despite such conditions, it is more likely than not  
9 that the person will commit new criminal law violations if released.  
10 If the board does not order the person released, the board shall set  
11 a new minimum term not to exceed five additional years. The board  
12 shall give public safety considerations the highest priority when  
13 making all discretionary decisions regarding the ability for release  
14 and conditions of release.

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

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

32 (i) An offender released or discharged under this section may be  
33 returned to the institution at the discretion of the board if the  
34 offender is found to have violated a condition of community custody.  
35 The offender is entitled to a hearing pursuant to RCW 9.95.435. The  
36 board shall set a new minimum term of incarceration not to exceed  
37 five years.

38        NEW SECTION.    **Sec. 2.**    The following acts or parts of acts are  
39 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 Impaneling 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; and  
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.

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