
SENATE BILL 5354

State of Washington

65th Legislature

2017 Regular Session

By Senators Miloscia, Carlyle, Walsh, Darneille, Pedersen, Billig, Kuderer, Hunt, Hasegawa, and Ranker; by request of Attorney General

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 ~~(3))~~(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 birthday shall be sentenced to a maximum term of life
36 imprisonment and a minimum term of total confinement of twenty-five
37 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 sixteen
40 years old but less than eighteen years old shall be sentenced to a

1 maximum term of life imprisonment and a minimum term of total
2 confinement of no less than twenty-five years. A minimum term of life
3 may be imposed, in which case the person will be ineligible for
4 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 days prior to the expiration
37 of the person's minimum term, the department of corrections shall
38 conduct, and the offender shall participate in, an examination of the
39 person, incorporating methodologies that are recognized by experts in
40 the prediction of dangerousness, and including a prediction of the

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