
SENATE BILL 5787

State of Washington 60th Legislature 2007 Regular Session

By Senators Kline, Murray, Regala, Weinstein, Fairley, Brown, Pridemore, Jacobsen, Franklin, Rockefeller, Kohl-Welles and Spanel

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1 AN ACT Relating to death penalty eligibility for persons who are
2 mentally retarded or have a severe mental disorder; amending RCW
3 10.95.030, 10.95.060, 10.95.070, and 10.95.080; and prescribing
4 penalties.

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

6 **Sec. 1.** RCW 10.95.030 and 1993 c 479 s 1 are each amended to read
7 as follows:

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

1 (2) If, pursuant to a special sentencing proceeding held under RCW
2 10.95.050, the trier of fact finds that there are not sufficient
3 mitigating circumstances to merit leniency, the sentence shall be
4 death, except as provided in subsection (3) of this section.

5 (3) In no case(~~, however,~~) shall a person be sentenced to death
6 if, at the time the crime was committed, the person was mentally
7 retarded (~~(at the time the crime was committed, under the definition of~~
8 mental retardation set forth)) as defined in (a) of this subsection, or
9 had a severe mental disorder as defined in (f) of this subsection. A
10 diagnosis of mental retardation or severe mental disorder shall be
11 documented by a licensed (~~psychiatrist or licensed psychologist~~)
12 mental health professional designated by the court, who is an expert in
13 the diagnosis and evaluation of mental retardation or severe mental
14 disorders. A defendant may bring a pretrial motion for
15 disqualification from death penalty eligibility as a result of mental
16 retardation or severe mental disorder. The defense must establish
17 mental retardation or severe mental disorder by a preponderance of the
18 evidence and the court must make a finding as to the existence of
19 mental retardation or severe mental disorder. If the court denies the
20 motion, the question of whether the defendant was mentally retarded or
21 had a severe mental disorder at the time the crime was committed may be
22 presented to the jury during the special sentencing proceeding. A jury
23 verdict that either factor has been proved will result in disqualifying
24 the defendant from the death penalty.

25 (a) "Mentally retarded" means the individual has: (i)
26 Significantly subaverage general intellectual functioning; (ii)
27 existing concurrently with deficits in adaptive behavior; and (iii)
28 both significantly subaverage general intellectual functioning and
29 deficits in adaptive behavior were manifested during the developmental
30 period.

31 (b) "General intellectual functioning" means the results obtained
32 by assessment with one or more of the individually administered general
33 intelligence tests developed for the purpose of assessing intellectual
34 functioning.

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

37 (d) "Adaptive behavior" means the effectiveness or degree with

1 which individuals meet the standards of personal independence and
2 social responsibility expected for his or her age.

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

5 (f) "Severe mental disorder" means a severe mental illness or
6 defect that significantly impairs a person's capacity to appreciate the
7 wrongfulness of his or her conduct or to conform his or her conduct to
8 the requirements of law. A mental illness or defect manifested
9 primarily by repeated criminal conduct or attributable solely to the
10 effects of voluntary use of alcohol or other drugs does not, standing
11 alone, constitute a severe mental disorder for purposes of this
12 section.

13 **Sec. 2.** RCW 10.95.060 and 1981 c 138 s 6 are each amended to read
14 as follows:

15 (1) At the commencement of the special sentencing proceeding, the
16 trial court shall instruct the jury as to the nature and purpose of the
17 proceeding and as to the consequences of its decision, as provided in
18 RCW 10.95.030.

19 (2) At the special sentencing proceeding both the prosecution and
20 defense shall be allowed to make an opening statement. The prosecution
21 shall first present evidence and then the defense may present evidence.
22 Rebuttal evidence may be presented by each side. Upon conclusion of
23 the evidence, the court shall instruct the jury and then the
24 prosecution and defense shall be permitted to present argument. The
25 prosecution shall open and conclude the argument.

26 (3) The court shall admit any relevant evidence which it deems to
27 have probative value regardless of its admissibility under the rules of
28 evidence, including hearsay evidence and evidence of the defendant's
29 previous criminal activity regardless of whether the defendant has been
30 charged or convicted as a result of such activity. The defendant shall
31 be accorded a fair opportunity to rebut or offer any hearsay evidence.

32 In addition to evidence of whether or not there are sufficient
33 mitigating circumstances to merit leniency, and evidence relating to
34 whether the defendant was mentally retarded or had a severe mental
35 disorder, if the jury sitting in the special sentencing proceeding has
36 not heard evidence of the aggravated first degree murder of which the

1 defendant stands convicted, both the defense and prosecution may
2 introduce evidence concerning the facts and circumstances of the
3 murder.

4 (4)(a) Upon conclusion of the evidence and argument at the special
5 sentencing proceeding, the jury shall retire to deliberate upon the
6 following question: "Having in mind the crime of which the defendant
7 has been found guilty, are you convinced beyond a reasonable doubt that
8 there are not sufficient mitigating circumstances to merit leniency?"

9 (b) If the defendant has filed a motion seeking disqualification
10 from death penalty eligibility based on either mental retardation,
11 severe mental disorder, or both, the jury will also deliberate on the
12 following question: "Has the defendant proved by a preponderance of
13 the evidence that, at the time of the crime, the defendant was mentally
14 retarded or suffered from a severe mental disorder?"

15 (c) In order to return an affirmative answer to the questions posed
16 by this subsection, the jury must so find unanimously.

17 **Sec. 3.** RCW 10.95.070 and 1993 c 479 s 2 are each amended to read
18 as follows:

19 In deciding the question posed by RCW 10.95.060(4)(a), the jury, or
20 the court if a jury is waived, may consider any relevant factors,
21 including but not limited to the following:

22 (1) Whether the defendant has or does not have a significant
23 history, either as a juvenile or an adult, of prior criminal activity;

24 (2) Whether the murder was committed while the defendant was under
25 the influence of extreme mental disturbance;

26 (3) Whether the victim consented to the act of murder;

27 (4) Whether the defendant was an accomplice to a murder committed
28 by another person where the defendant's participation in the murder was
29 relatively minor;

30 (5) Whether the defendant acted under duress or domination of
31 another person;

32 (6) Whether, at the time of the murder, the capacity of the
33 defendant to appreciate the wrongfulness of his or her conduct or to
34 conform his or her conduct to the requirements of law was
35 (~~substantially~~) impaired as a result of mental disease or defect(~~-~~
36 ~~However, a person found to be mentally retarded under RCW 10.95.030(2)~~
37 ~~may in no case be sentenced to death~~));

1 (7) Whether, at the time of the murder, the defendant had
2 significant intellectual impairments, but which do not constitute
3 mental retardation;

4 (8) Whether the age of the defendant at the time of the crime calls
5 for leniency; and

6 (~~(8)~~) (9) Whether there is a likelihood that the defendant will
7 pose a danger to others in the future.

8 **Sec. 4.** RCW 10.95.080 and 1981 c 138 s 8 are each amended to read
9 as follows:

10 (1) If a jury answers affirmatively the question posed by RCW
11 10.95.060(4)(a) and negatively the question posed by RCW
12 10.95.060(4)(b), or when a jury is waived as allowed by RCW
13 10.95.050(2) and the trial court answers affirmatively the question
14 posed by RCW 10.95.060(4)(a) and negatively the question posed by RCW
15 10.95.060(4)(b), the defendant shall be sentenced to death. The trial
16 court may not suspend or defer the execution or imposition of the
17 sentence.

18 (2) If the jury does not return an affirmative answer to the
19 question posed in RCW 10.95.060(4)(a), or if the jury does return an
20 affirmative answer to the question posed in RCW 10.95.060(4)(b), the
21 defendant shall be sentenced to life imprisonment as provided in RCW
22 10.95.030(1).

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