

Initiative Measure No. 26

AN ACT Relating to the death penalty; amending RCW 9.82.010, RCW 10.95.020, RCW 10.95.030 and Repealing RCW 10.95.040, 10.95.050, 10.95.060, 10.95.070, 10.95.080, 10.95.090, 10.95.100, 10.95.110, 10.95.120, 10.95.130, 10.95.140, 10.95.150, 10.95.160, 10.95.170, 10.95.180, 10.95.185, 10.95.190, 10.95.200, and 10.95.900. This initiative repeals the death penalty in all cases and replaces it with life in prison without possibility of parole. Also, creation of new sections.

PART I

INTENT

NEW SECTION. **Sec. 1** The people intend to stop capital punishment as being the maximum sentence in Washington State for reasons including:

(1) Capital punishment is financially detrimental to society and does not benefit our economy.

(2) The death penalty does not provide closure needed for the victims families but instead produces more emotional and psychological damage due to the drawn out process of trials and appeals that can take years.

(3) Death penalty as the maximum sentence given to the accused and is final and cannot be undone. There is no absolute way to know that a person is guilty and it is undeniable that mistakes have been made. Innocent people have been put on trial and sentenced to death.

(4) Capital punishment is not a deterrent for crime. Statistics show that states without capital punishment have significantly lower murder rates.

(5) Capital Punishment is morally wrong and causes a second person to become a victim.

PART II

DEFINITIONS

Sec. 2. RCW 10.95.020 is amended to read as follows:
Unless the context clearly requires otherwise, definitions of

terms shall be as indicated where used in this chapter:

(1) The victim was a law enforcement officer, corrections officer, or firefighter who was performing his or her official duties at the time of the act resulting in death

and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of

any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

(10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

(c) Burglary in the first or second degree or residential burglary;

(d) Kidnapping in the first degree; or

(e) Arson in the first degree;

(12) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim;

(13) At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;

(14) At the time the person committed the murder, the person and the victim were "family or household members" as that term is defined in *RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:

(a) Harassment as defined in RCW 9A.46.020; or

(b) Any criminal assault.

Sec. 3. RCW 9.82.010 is amended to read as follows:

Unless the context clearly requires otherwise, definitions of the terms shall be as indicated where used in this chapter:

- (1) Treason against the people of the state consists in:
 - (a) Levying war against the people of the state or,
 - (b) Adhering to its enemies or,
 - (c) Giving them aid and comfort
- (2) Treason is a class felony (~~(and punishable by death.)~~)
- (3) No person shall be convicted for treason unless upon the testimony of two witnesses to the same overt act or by confession in open court.

PART III Repeals

NEW SECTION **Sec. 1.** The following sections are to be repealed and removed from the Washington state constitution:

- (1) RCW 10.95.040 (Special sentencing proceeding – Notice – Filing – Service) and 1981 c 138 § 4;
- (2) RCW 10.95.050 (Special sentencing proceeding – When held – Jury to decide matters presented – Waiver – Reconvening same jury – Impanelling new jury – Peremptory challenges) and 1981 c 138 § 5;
- (3) RCW 10.95.060 (Special sentencing proceeding – Jury instructions – Opening statements – Evidence – Arguments – Question for jury) and 1981 c 138 § 6;
- (4) RCW 10.95.070 (Special sentencing proceeding – Factors which jury may consider in deciding whether leniency merited) and 2010 c 94 § 4; 1993 c 479 § 2; 1981 c 138 § 7;
- (5) RCW 10.95.080 (When sentence to death or sentence to life imprisonment shall be imposed) and 1981 c 138 § 8;
- (6) RCW 10.95.090 (Sentence if death sentence commuted, held invalid, or if death sentence established by chapter held invalid) and 1981 c 138 § 9;
- (7) RCW 10.95.100 (Mandatory review of death sentence by supreme court – Notice – Transmittal – Contents of notice – Jurisdiction) and 1981 c 138 § 10;
- (8) RCW 10.95.110 (Verbatim report of trial proceedings – Preparation – Transmittal to supreme court – Clerk's papers – Receipt) and 1981 c 138 § 11;
- (9) RCW 10.95.120 (Information report – Form – Contents – Submission to supreme court, defendant, prosecuting attorney) and 1981 c 138 § 12;
- (10) RCW 10.95.130 (Questions posed for determination by supreme court in death sentence review – Review in addition to

appeal – Consolidation of review and appeal) and 2010 c 94 § 5; 1993 c 479 § 3; 1981 c 138 § 13;

(11) RCW 10.95.140 (Invalidation of sentence, remand for resentencing – Affirmation of sentence, remand for execution) and 1993 c 479 § 4; 1981 c 138 § 14;

(12) RCW 10.95.150 (Time limit for appellate review of death sentence and filing opinion) and 1988 c 202 § 17; 1981 c 138 § 15;

(13) RCW 10.95.160 (Death warrant – Issuance – Form – Time for execution of judgment and sentence) and 1990 c 263 § 1; 1981 c 138 § 16;

(14) RCW 10.95.170 (Imprisonment of defendant) and 1983 c 255 § 1; 1981 c 138 § 17;

(15) RCW 10.95.180 (Death penalty – How executed) and 1996 c 251 § 1; 1986 c 194 § 1; 1981 c 138 § 18;

(16) RCW 10.95.185 (Witnesses) and 1999 c 332 § 1; 1993 c 463 § 2;

(17) RCW 10.95.900 (Death warrant – Record – Return to trial court) and 1981 c 138 § 19;

(18) RCW 10.95.200 (Proceedings for failure to execute on day named) and 1990 c 263 § 2; 1987 c 286 § 1; 1981 c 138 § 20;

(19) RCW 10.95.900 (Severability – 1981 c 138) and 1981 c 138 § 22;

PART IV

Sentences for Aggravated First Degree Murder and Treason

NEW SECTION **Sec. 1.** RCW 10.95.030 and 2012 c 94 s 3 and each amended to read as follows:

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

(2) If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are

not sufficient mitigating circumstances to merit leniency, (~~the sentence shall be death.~~) In no case, however, shall a person be sentenced to death if the person had an intellectual disability at the time the crime was committed, under the definition of intellectual disability set forth in (a) of this subsection. A diagnosis of intellectual disability shall be documented by a licensed psychiatrist or licensed psychologist designated by the court, who is an expert in the diagnosis and evaluation of intellectual disabilities. The defense must establish an intellectual disability by a preponderance of the evidence and the court must make a finding as to the existence of an intellectual disability.

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

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

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

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

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

Sec. 2.

(3) Except as provided in subsection (2) of this section, any person convicted of the crime of treason shall be sentenced to life imprisonment without possibility of release or parole.