

WASHINGTON DEFENDER ASSOCIATION
WASHINGTON ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

March 11, 2020

Governor Jay Inslee
Office of the Governor
PO Box 40002
Olympia, WA 98504-0002

Re: Veto Request EHB 1687, Section 1

Dear Governor Inslee:

The Washington Association of Criminal Defense Lawyers (WACDL) and the Washington Defender Association (WDA) urge you to veto Section 1 of EHB 1687: Limiting defenses based on victim identity. EHB 1687's elimination of the diminished capacity defense is inconsistent with the law in Washington, which permits diminished capacity as a defense for all crimes requiring proof a requisite mental state, and this bill denies persons suffering from mental illness the ability to adequately present their defense. Section 1 of this bill denies individuals suffering from mental illness the ability to use diminished capacity as a defense based on an alleged victim's gender identity or sexual orientation. WACDL and WDA oppose Section 1 of the bill but do not oppose Section 2 of the bill. Section 2 does not address the use of diminished capacity, but only clarifies that the use of force is not justified based on the discovery of a person's gender identity or sexual orientation.

In Washington, persons with mental illness have long been considered either not culpable of a crime, or culpable only of a lesser crime. ¹ Under RCW 9A.08.010(1), in order to be convicted of a crime, a criminal defendant must have the requisite mental state to commit that particular crime, and that mental state must be proven beyond a reasonable doubt for a person to be found guilty. The issue in diminished capacity cases focuses on whether a defendant possessed the required mental state to commit the charged crime.

Since 1983, the Washington Supreme Court has held that jurors should be instructed on diminished capacity when there is substantial evidence of a person's diminished capacity that negates his knowledge or intent to commit a crime.² In order to submit a diminished capacity instruction to jurors three requirements must be met: (1) the crime charged must include a particular mental state as an element; (2) the defendant must present evidence of a mental disorder; and (3) expert testimony must logically and reasonably connect the defendant's alleged mental condition with the asserted inability to form the mental state required for the crime charged.³

Washington Defender Association • 110 Prefontaine Pl. S., Suite 610 • Seattle, WA 98104 • 206-623-4321

WDA is a non-profit organization created in 1983 to promote, assist, and encourage public defense systems which ensure that all accused persons in every court receive effective assistance of counsel

Washington Association of Criminal Defense Lawyers • 1511 Third Ave, Suite 503; Seattle, WA 98101 • 206-623-1302

WACDL is a non-profit organization working to improve the quality & administration of justice by protecting & insuring by rule of law those individual rights guaranteed by the Washington and Federal Constitutions

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Whether a person suffers from diminished capacity requires evidence from qualified mental health professionals that not only does a person suffer from a mental disorder, but that sufficient nexus exists between that diagnosed mental disorder and the defendant's inability to form the required mental state to commit the crime. Once such evidence is presented in a case, the trier of fact—either a judge or jury—determines if the evidence sufficiently proved that a person's capacity to form the required mental state to commit the crime was diminished.

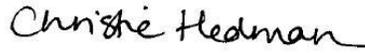
WACDL and WDA request you veto Section 1 of EHB 1687.

For more information, please contact Amy Hirotaka at amy@wacdl.org or 206-623-1302.

Sincerely,



Amy Hirotaka
Executive Director, WACDL



Christie Hedman
Executive Director, WDA