

1 HB385
2 108002-2
3 By Representative Hall
4 RFD: Judiciary
5 First Read: 21-JAN-10

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8 SYNOPSIS: Under existing law, the United States
9 Supreme Court has ruled that a capital murder
10 defendant who is an individual with an intellectual
11 disability is not subject to the death penalty.

12 This bill would provide the procedures for
13 the determination by the judge or by a jury as to
14 whether a defendant is an individual with an
15 intellectual disability and is not subject to the
16 death penalty when the defendant has been charged
17 with a capital offense.

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19 A BILL
20 TO BE ENTITLED
21 AN ACT

22
23 Relating to capital offenses; to provide procedures
24 for the determination of an individual with an intellectual
25 disability under certain conditions.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. (a) As used in this act, the following
2 words shall have the following meanings:

3 (1) INTELLECTUAL DISABILITY. Significantly
4 subaverage general intellectual functioning, existing
5 concurrently with significant limitations in adaptive
6 functioning, both of which were manifested before the age of
7 18.

8 (2) SIGNIFICANT LIMITATIONS IN ADAPTIVE FUNCTIONING.
9 Significant limitations in two or more of the following
10 adaptive skill areas:

11 a. Self-care, which means the ability to take care
12 of the basic life needs for food, hygiene, and appearance.

13 b. Receptive and expressive language, which means
14 the ability to both understand others and to express ideas or
15 information to others either verbally or non-verbally.

16 c. Learning, which means the ability to acquire new
17 behaviors, perceptions, and information and to apply
18 experiences to new situations.

19 d. Self-direction, which means the ability to manage
20 one's social and personal life and the ability to make
21 decisions necessary to protect one's self.

22 e. Capacity of independent living, which means age
23 appropriate ability to live without assistance.

24 f. Economic self-sufficiency, which means the
25 ability to maintain adequate employment and financial support.

26 (3) SIGNIFICANTLY SUBAVERAGE GENERAL INTELLECTUAL
27 FUNCTIONING. An intelligence quotient of 70 or below.

1 (b) Notwithstanding any provision of law to the
2 contrary, a defendant who is an individual with an
3 intellectual disability may not be sentenced to death.

4 (c) Upon motion of the defendant, no later than 90
5 days before trial, supported by appropriate affidavits, the
6 court shall order a pretrial hearing to determine if the
7 defendant is an individual with an intellectual disability.
8 The defendant shall have the burden of production and
9 persuasion to demonstrate he or she is an individual with an
10 intellectual disability by a preponderance of the evidence. If
11 the court determines the defendant is an individual with an
12 intellectual disability, the court shall declare the case
13 non-capital, and the state may not seek the death penalty
14 against the defendant.

15 (d) A pretrial determination of the court under
16 subsection (c) shall not preclude the defendant from raising
17 any legal defense during the trial.

18 (e) If the court does not find the defendant is an
19 individual with an intellectual disability in the pretrial
20 proceeding, upon the introduction of evidence of the defendant
21 as an individual with an intellectual disability during the
22 sentencing hearing, the court shall submit a special issue to
23 the jury as to whether the defendant is an individual with an
24 intellectual disability. The defendant shall have the burden
25 of production and persuasion to demonstrate he or she is an
26 individual with an intellectual disability to the jury by a
27 preponderance of the evidence. This special issue shall be

1 considered and answered by the jury prior to the consideration
2 of aggravating or mitigating factors and the determination of
3 sentence. If the jury determines the defendant is an
4 individual with an intellectual disability, the court shall
5 declare the case non-capital and the defendant shall be
6 sentenced to life imprisonment. If the jury determines that
7 the defendant is not an individual with an intellectual
8 disability, the jury may consider any evidence of an
9 intellectual disability presented during the sentencing
10 hearing when determining aggravating or mitigating factors and
11 the defendant's sentence.

12 (f) This section does not preclude the sentencing of
13 an offender who is an individual with an intellectual
14 disability to any other sentence for the crime of murder in
15 the first degree.

16 Section 2. The court shall give appropriate
17 instructions in accordance with this act in those cases in
18 which the jury is required to consider evidence of the
19 defendant who is an individual with an intellectual disability
20 pursuant to this act.

21 Section 3. In cases in which the defendant has been
22 convicted of capital murder, has been sentenced to death, and
23 is in the custody of the state awaiting imposition of the
24 death penalty, the following procedures shall apply:

25 A motion seeking appropriate relief from a death
26 sentence on the ground that the defendant has an intellectual
27 disability shall be filed:

1 a. On or before January 31, 2011, if the defendant's
2 conviction and sentence of death were entered prior to the
3 effective date of this act.

4 b. Within 120 days of the imposition of a sentence
5 of death, if the defendant's trial was in progress on the
6 effective date of this act. For purposes of this section, a
7 trial is considered to be in progress if the process of jury
8 selection has begun.

9 Section 4. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.