

1 SB48  
2 173428-1  
3 By Senator Sanders  
4 RFD: Judiciary  
5 First Read: 07-FEB-17  
6 PFD: 02/01/2017

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

12 This bill would establish standards and  
13 procedures in death penalty cases for the trial  
14 court to determine whether a defendant is an  
15 individual with an intellectual disability.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT

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21 To add Section 13A-5-60 to the Code of Alabama 1975,  
22 to establish procedures in death penalty cases to determine  
23 whether a defendant is an individual with an intellectual  
24 disability.

25 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

26 Section 1. Section 13A-5-60 is added to the Code of  
27 Alabama 1975, to read as follows:

1 §13A-5-60.

2 (a) As used in this section, "an individual with an  
3 intellectual disability" means both of the following:

4 (1) An individual with a significantly subaverage  
5 general intellectual functioning manifested by age 18.

6 (2) An individual with significant limitations in  
7 adaptive functioning manifested by age 18. Significant  
8 limitations in adaptive functioning means significant  
9 limitations in two or more of the following adaptive skill  
10 areas: Communication, self-care, home living, social skills,  
11 community use, self-direction, health and safety, functional  
12 academics, leisure skills, and work skills.

13 (b) The defendant has the burden of proving by clear  
14 and convincing evidence significantly subaverage general  
15 intellectual functioning, significant limitations in adaptive  
16 functioning, and that both of these elements were manifested  
17 before the age of 18. An intelligence quotient of below 70 on  
18 an individually administered, scientifically recognized  
19 standardized intelligence quotient test supports an inference,  
20 but is not determinative, of significantly subaverage general  
21 intellectual functioning. An intelligence quotient of 70 or  
22 above on an individually administered, scientifically  
23 recognized standardized intelligence quotient test supports an  
24 inference, but is not determinative, that the defendant is not  
25 an individual with an intellectual disability. A finding of  
26 significantly subaverage general intellectual functioning is  
27 not sufficient, without evidence of significant limitations in

1 adaptive functioning and without evidence of manifestation  
2 before the age of 18, to establish that the defendant is an  
3 individual with an intellectual disability.

4 (c) The trial court shall make the determination of  
5 whether the defendant is an individual with an intellectual  
6 disability and, therefore, not subject to the death penalty.  
7 The trial court shall articulate findings supporting its  
8 determination.

9 (1) Upon motion of the defendant no later than 90  
10 days before trial, supported by appropriate affidavits and any  
11 other appropriate documentary evidence, the trial court may  
12 order a pretrial hearing to determine whether the defendant is  
13 an individual with an intellectual disability.

14 (2) If the trial court determines that an  
15 evidentiary hearing is necessary, the defendant, if indigent,  
16 shall be appointed a licensed psychologist or licensed  
17 psychiatrist to offer evidence. This subsection shall not  
18 preclude the trial court from appointing such an expert before  
19 determining whether an evidentiary hearing is necessary.

20 (3) The state shall be given the opportunity to have  
21 the defendant examined by a licensed psychologist or licensed  
22 psychiatrist of its own choosing and to present that evidence  
23 at the evidentiary hearing. This subsection does not preclude  
24 the state from offering such evidence in rebuttal to the  
25 defendant's request for an evidentiary hearing. If the state's  
26 psychologist or psychiatrist is unable to obtain the  
27 information necessary to arrive at an opinion because of the

1 defendant's lack of cooperation, then the trial court may  
2 prohibit the defendant's expert from offering any evidence.

3 (d) The prior determination of a state or federal  
4 agency, administrative agency or body, or court that a  
5 defendant is an individual with an intellectual disability  
6 supports an inference that the defendant is an individual with  
7 an intellectual disability. That determination, however, does  
8 not require the trial court to find the defendant to be an  
9 individual with an intellectual disability.

10 (e) If the trial court determines the defendant to  
11 be an individual with an intellectual disability, the trial  
12 court shall notify the state that it may not seek the death  
13 penalty against the defendant.

14 (f) The pretrial determination of the trial court  
15 shall not preclude the defendant from raising any legal  
16 defense under Chapter 3 of this title during trial.

17 (g) The pretrial determination of the trial court  
18 shall not preclude the defendant from presenting evidence of  
19 diminished intellectual capacity as a mitigating circumstance.

20 (h) The determination by the trial court that the  
21 defendant is not an individual with an intellectual disability  
22 shall not be reviewable by interlocutory appeal.

23 Section 2. This section shall not be retroactively  
24 applied to defendants who have been convicted of capital  
25 murder and sentenced to death.

26 Section 3. The provisions of this act are severable.  
27 If any part of this act is declared invalid or

1       unconstitutional, that declaration shall not affect the part  
2       which remains.

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