

1 SB243  
2 156930-1  
3 By Senator Sanders  
4 RFD: Judiciary  
5 First Read: 21-JAN-14

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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 mental retardation is not subject  
11 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 mental retardation.

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 mental retardation.

24 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

27 §13A-5-60.

1 (a) As used in this section, "an individual with  
2 mental retardation" means both of the following:

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

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

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

1 before the age of 18, to establish that the defendant is an  
2 individual with mental retardation.

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

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

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

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

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

8           (e) If the trial court determines the defendant to  
9 be an individual with mental retardation, the trial court  
10 shall notify the state that it may not seek the death penalty  
11 against the defendant.

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

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

18           (h) The determination by the trial court that the  
19 defendant is not an individual with mental retardation shall  
20 not be reviewable by interlocutory appeal.

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

24           Section 3. The provisions of this act are severable.  
25 If any part of this act is declared invalid or  
26 unconstitutional, that declaration shall not affect the part  
27 which remains.

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