

1 SB368  
2 129061-2  
3 By Senator Sanders  
4 RFD: Judiciary  
5 First Read: 06-APR-11

SYNOPSIS: Under existing law, the U.S. Supreme Court has ruled that a capital murder defendant who is mentally retarded is not subject to the death sentence.

This bill would establish standards and procedures in death penalty cases for the trial court to determine whether a defendant is mentally retarded.

A BILL  
TO BE ENTITLED  
AN ACT

To add Section 13A-5-60 to the Code of Alabama 1975, to establish procedures in death penalty cases to determine whether a defendant is mentally retarded.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

§13A-5-60.

1 (a) As used in this section, "mentally retarded"  
2 means both of the following:

3 (1) Significantly subaverage general intellectual  
4 functioning manifested by age 18.

5 (2) Significant limitations in adaptive functioning  
6 manifested by age 18. Significant limitations in adaptive  
7 functioning means significant limitations in two or more of  
8 the following adaptive skill areas: Communication, self-care,  
9 home living, social skills, community use, self-direction,  
10 health and safety, functional academics, leisure skills, and  
11 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 mentally retarded. A finding of significantly subaverage  
25 general intellectual functioning is not sufficient, without  
26 evidence of significant limitations in adaptive functioning

1 and without evidence of manifestation before the age of 18, to  
2 establish that the defendant is mentally retarded.

3 (c) The trial court shall make the determination of  
4 whether the defendant is mentally retarded and, therefore, not  
5 subject to the death penalty. The trial court shall articulate  
6 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 mentally retarded.

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 mentally retarded supports an inference that the  
4 defendant is mentally retarded. That determination, however,  
5 does not require the trial court to find the defendant to be  
6 mentally retarded.

7           (e) If the trial court determines the defendant to  
8 be mentally retarded, the trial court shall notify the state  
9 that it may not seek the death penalty against the defendant.

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

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

16          (h) The determination by the trial court that the  
17 defendant is not mentally retarded shall not be reviewable by  
18 interlocutory appeal.

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

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