

1 SB219  
2 78556-1  
3 By Senator Sanders  
4 RFD: Judiciary  
5 First Read: 12-JAN-10

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8 SYNOPSIS: Under existing law, the U.S. Supreme Court  
9 has ruled that a capital murder defendant who is  
10 mentally retarded is not subject to the death  
11 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 mentally  
15 retarded, and to provide for retroactive effect.  
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17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

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 mentally retarded, and to provide for  
24 retroactive effect.

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, "mentally retarded"  
3 means both of the following:

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

6 (2) Significant limitations in adaptive functioning  
7 manifested by age 18. Significant limitations in adaptive  
8 functioning means significant limitations in two or more of  
9 the following adaptive skill areas: Communication, self-care,  
10 home living, social skills, community use, self-direction,  
11 health and safety, functional academics, leisure skills, and  
12 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 mentally retarded. A finding of significantly subaverage  
26 general intellectual functioning is not sufficient, without  
27 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 act shall be retroactively applied  
20 to defendants who have been convicted of capital murder and  
21 sentenced to death.

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