

House Bill 1014

By: Representatives Werkheiser of the 157th, Reeves of the 99th, Silcox of the 53rd, Holcomb of the 81st, Smith of the 18th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure,
2 so as to provide for pretrial proceedings when the accused has an intellectual disability in
3 capital offense cases where the death penalty is sought; to provide for a definition; to provide
4 for notice when the accused will claim an intellectual disability at trial; to provide for a
5 standard of review; to provide for related matters; to repeal conflicting laws; and for other
6 purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
10 amended by revising subsection (b) of Code Section 17-2-4, relating to defendant arrested,
11 held, or present in county other than that in which indictment or accusation is pending, as
12 follows:

13 "(b) A defendant arrested, held, or present in a county other than the county in which a
14 complaint or arrest warrant is pending against that defendant may state in writing a wish
15 to plead guilty, guilty but mentally ill, ~~guilty but with intellectual disability~~, or nolo
16 contendere; to waive venue and trial in the county in which the complaint or warrant was

17 issued; and to consent to disposition of the case in the county in which the defendant was
18 arrested, held, or present, subject to the approval of the prosecuting attorney for each
19 county. Upon receipt of the defendant's statement and the written approval of the
20 prosecuting attorney for each county, the clerk of the court in which the complaint or arrest
21 warrant is pending shall transmit the papers in the proceeding or certified copies thereof
22 to the clerk of the court for the county in which the defendant was arrested, held, or
23 present, and the prosecution shall continue in that county."

24 **SECTION 2.**

25 Said title is further amended in Part 2 of Article 6 of Chapter 7, relating to insanity and
26 mental incompetency, by adding two new Code sections to read as follows:

27 "17-7-127.

28 (a) As used in this Code section, the term 'intellectually disabled' shall have the same
29 meaning as set forth in paragraph (2) of subsection (a) of Code Section 17-7-131.

30 (b) In criminal cases involving a capital offense for which the death penalty is sought, the
31 accused may file a pretrial notice of intent to raise a claim of intellectual disability. Such
32 notice shall state that the accused is intellectually disabled.

33 (c) Upon joint motion of the defendant and the state, the court shall conduct a pretrial
34 hearing to determine if the accused is intellectually disabled. The defendant has the burden
35 of production and persuasion to demonstrate intellectual disability by a preponderance of
36 the evidence. If the court finds that the defendant has an intellectual disability, the court
37 shall bar the state from seeking the death penalty. If the court does not find that the
38 accused is intellectually disabled, the accused may raise the issue of his or her alleged
39 intellectual disability as set forth in Code Section 17-7-131. A court's pretrial
40 determination finding that the accused is not intellectually disabled shall not preclude the
41 accused from raising such issue in further proceedings.

42 17-7-128.

43 (a) As used in this Code section, the term 'intellectually disabled' shall have the same
 44 meaning as set forth in paragraph (2) of subsection (a) of Code Section 17-7-131.

45 (b) When the death penalty is sought and a court has not found in pretrial proceedings that
 46 the accused is intellectually disabled, the accused may raise the issue of his or her alleged
 47 intellectual disability in accordance with the procedures set forth in Code
 48 Section 17-7-131."

49 **SECTION 3.**

50 Said title is further amended by revising paragraph (2) of subsection (a) and subsections (b),
 51 (c), (g), (h), (i), and (j) of Code Section 17-7-131, relating to proceedings upon plea of
 52 insanity or mental incompetency at the time of the crime, as follows:

53 "(2) 'Intellectual disability' or 'intellectually disabled' means having significantly
 54 subaverage general intellectual functioning resulting in or associated with impairments
 55 in adaptive behavior which manifested during the developmental period."

56 "(b)(1) In all cases in which the defense of insanity, mental illness, or intellectual
 57 disability is interposed, the jury, or the court if tried by it, shall find whether the
 58 defendant is:

59 (A) Guilty;

60 (B) Not guilty;

61 (C) Not guilty by reason of insanity at the time of the crime;

62 (D) Guilty but mentally ill at the time of the crime, but the finding of guilty but
 63 mentally ill shall be made only in felony cases; ~~or~~ and

64 (E) ~~Guilty but with~~ Meets the criteria for intellectual disability, but the finding of
 65 intellectual disability shall be made only in felony cases.

66 (2) A plea of guilty but mentally ill at the time of the crime or a plea finding of guilty but
 67 ~~with~~ intellectual disability shall not be accepted until the defendant has undergone

68 examination by a licensed psychologist or psychiatrist and the court has examined the
69 psychological or psychiatric reports, held a hearing on the issue of the defendant's mental
70 condition, and is satisfied that there is a factual basis that the defendant was mentally ill
71 at the time of the offense or has an intellectual disability to which the plea is entered. In
72 criminal cases involving a capital offense for which the death penalty is sought and a
73 pretrial notice of intent to raise a claim of intellectual disability has been filed, the
74 procedure set forth in Code Section 17-7-127 shall be utilized.

75 ~~(2.1)~~(3) A plea of not guilty by reason of insanity at the time of the crime shall not be
76 accepted and the defendant adjudicated not guilty by reason of insanity by the court
77 without a jury until the defendant has undergone examination by a licensed psychologist
78 or psychiatrist and the court has examined the psychological or psychiatric reports, has
79 held a hearing on the issue of the defendant's mental condition, and the court is satisfied
80 that the defendant was insane at the time of the crime according to the criteria of Code
81 Section 16-3-2 or 16-3-3.

82 ~~(3)~~(4) In all cases and applicable criminal trials in which the defense of insanity, mental
83 illness, or intellectual disability is interposed, the trial judge shall charge the jury, in
84 addition to other appropriate charges, the following:

85 (A) I charge you that should you find the defendant not guilty by reason of insanity at
86 the time of the crime, the defendant will be committed to a state mental health facility
87 until such time, if ever, that the court is satisfied that he or she should be released
88 pursuant to law.

89 (B) I charge you that should you find the defendant guilty but mentally ill at the time
90 of the crime, the defendant will be placed in the custody of the Department of
91 Corrections which will have responsibility for the evaluation and treatment of the
92 mental health needs of the defendant, which may include, at the discretion of the
93 Department of Corrections, referral for temporary hospitalization at a facility operated
94 by the Department of Behavioral Health and Developmental Disabilities.

95 ~~(C) I charge you that should you find the defendant guilty but with intellectual~~
 96 ~~disability, the defendant will be placed in the custody of the Department of Corrections,~~
 97 ~~which will have responsibility for the evaluation and treatment of the mental health~~
 98 ~~needs of the defendant, which may include, at the discretion of the Department of~~
 99 ~~Corrections, referral for temporary hospitalization at a facility operated by the~~
 100 ~~Department of Behavioral Health and Developmental Disabilities.~~

101 (c)(1) Except as provided in paragraph (2) of this subsection, in all criminal trials in
 102 any of the courts of this state wherein an accused shall contend that he or she was insane,
 103 mentally ill, or intellectually disabled at the time the act or acts charged against him or
 104 her were committed, the trial judge shall instruct the jury that they may consider, in
 105 addition to verdicts of 'guilty' and 'not guilty,' the additional verdicts of 'not guilty by
 106 reason of insanity at the time of the crime,' 'guilty but mentally ill at the time of the
 107 crime,' and 'guilty but with intellectual disability.' whether the defendant meets the
 108 criteria for intellectual disability.

109 ~~(1)(A)~~ (A) The defendant may be found 'not guilty by reason of insanity at the time of the
 110 crime' if he or she meets the criteria of Code Section 16-3-2 or 16-3-3 at the time of the
 111 commission of the crime. If the court or jury should make such finding, it shall so
 112 specify in its verdict.

113 ~~(2)(B)~~ (B) The defendant may be found 'guilty but mentally ill at the time of the crime' if
 114 the jury, or court acting as trier of facts, finds beyond a reasonable doubt that the
 115 defendant is guilty of the crime charged and was mentally ill at the time of the
 116 commission of the crime. If the court or jury should make such finding, it shall so
 117 specify in its verdict.

118 ~~(3)(C)~~ (C) The jury may determine that the defendant meets the criteria for intellectual
 119 disability if the jury, or court acting as trier of facts, both convict the defendant beyond
 120 a reasonable doubt and finds by a preponderance of the evidence that the defendant has
 121 an intellectual disability. ~~The defendant may be found 'guilty but with intellectual~~

122 ~~disability' if the jury, or court acting as trier of facts, finds beyond a reasonable doubt~~
123 ~~that the defendant is guilty of the crime charged and is with intellectual disability. If~~
124 ~~the court or jury should make such finding, it shall so specify in its verdict.~~

125 (2) When the death penalty has been sought and the defendant contends he or she is
126 intellectually disabled, the court shall instruct the jury that it shall first consider whether
127 it finds beyond a reasonable doubt that the defendant is guilty of the crime charged. If
128 the jury convicts the defendant of such capital crime, after presentation of evidence
129 regarding the defendant's intellectual disability as provided in subsection (c) of Code
130 Section 17-7-127, the court shall instruct the jury that if the jury finds by a preponderance
131 of the evidence that the defendant is intellectually disabled, it shall return a verdict of
132 'guilty' and it shall enter a separate finding of 'intellectually disabled' and so specify in its
133 verdict. If the jury does not find by a preponderance of the evidence that the defendant
134 is intellectually disabled, it shall return a verdict of 'guilty' and so specify in its verdict."

135 "(g)(1) Whenever a defendant is found guilty but mentally ill at the time of a felony ~~or~~
136 ~~guilty but has intellectual disability~~, or enters a plea to that effect that is accepted by the
137 court, the court shall sentence him or her in the same manner as a defendant found guilty
138 of the offense, except as otherwise provided in subsection (j) of this Code section. A
139 defendant who is found guilty but mentally ill at the time of the felony ~~or guilty but has~~
140 ~~intellectual disability~~ shall be committed to an appropriate penal facility and shall be
141 evaluated then treated, if indicated, within the limits of state funds appropriated therefor,
142 in such manner as is psychiatrically indicated for his or her mental illness or intellectual
143 disability.

144 (2) If at any time following the defendant's conviction as a guilty but mentally ill ~~or~~
145 ~~guilty but with intellectual disability offender~~ it is determined that a temporary transfer
146 to the Department of Behavioral Health and Developmental Disabilities is clinically
147 indicated for his or her mental illness or intellectual disability, then the defendant shall
148 be transferred to the Department of Behavioral Health and Developmental Disabilities

149 pursuant to procedures set forth in regulations of the Department of Corrections and the
150 Department of Behavioral Health and Developmental Disabilities. In all such cases, the
151 legal custody of the defendant shall be retained by the Department of Corrections. Upon
152 notification from the Department of Behavioral Health and Developmental Disabilities
153 to the Department of Corrections that hospitalization at a Department of Behavioral
154 Health and Developmental Disabilities facility is no longer clinically indicated for his or
155 her mental illness ~~or intellectual disability~~, the Department of Corrections shall transfer
156 the defendant back to its physical custody and shall place such individual in an
157 appropriate penal institution.

158 (h) If a defendant who is found guilty but mentally ill at the time of a felony ~~or guilty but~~
159 ~~with intellectual disability~~ is placed on probation under the 'State-wide Probation Act,'
160 Article 2 of Chapter 8 of Title 42, the court may require that the defendant undergo
161 available outpatient medical or psychiatric treatment or seek similar available voluntary
162 inpatient treatment as a condition of probation. Persons required to receive such services
163 may be charged fees by the provider of the services.

164 (i) In any case in which the defense of insanity is interposed or a plea of guilty but
165 mentally ill at the time of the felony ~~or a plea of guilty but with intellectual disability~~ is
166 made and an examination is made of the defendant pursuant to Code Section 17-7-130.1
167 or paragraph (2) of subsection (b) of this Code section, upon the defendant's being found
168 guilty or guilty but mentally ill at the time of the crime ~~or guilty but with intellectual~~
169 ~~disability~~, a copy of any such examination report shall be forwarded to the Department of
170 Corrections with the official sentencing document. The Department of Behavioral Health
171 and Developmental Disabilities shall forward, in addition to its examination report, any
172 records maintained by such department that it deems appropriate pursuant to an agreement
173 with the Department of Corrections, within ten business days of receipt by the Department
174 of Behavioral Health and Developmental Disabilities of the official sentencing document
175 from the Department of Corrections.

176 ~~(j)(1) In the trial of any case in which the death penalty is sought which commences on~~
 177 ~~or after July 1, 1988, should the judge find in accepting a plea of guilty but mentally~~
 178 ~~retarded, or the jury or court find in its verdict that the defendant is guilty of the crime~~
 179 ~~charged but mentally retarded, the death penalty shall not be imposed and the court shall~~
 180 ~~sentence the defendant to imprisonment for life.~~

181 ~~(2) In the trial of any case in which the death penalty is sought which commences on or~~
 182 ~~after July 1, 2017, should the judge find in accepting a plea of guilty but with intellectual~~
 183 ~~disability, or the jury or court find in its verdict that the defendant is guilty of the crime~~
 184 ~~charged but with intellectual disability, the death penalty shall not be imposed and the~~
 185 ~~court shall sentence the defendant to imprisonment for life."~~

186 **SECTION 4.**

187 Said title is further amended by revising subsection (d) of Code Section 17-7-171, relating
 188 to the time for a demand for speedy trial in capital cases, as follows:

189 "(d) If a defendant files a pretrial notice of intent to raise a claim of intellectual disability
 190 pursuant to Code Section 17-7-127, a special plea of incompetency to stand trial pursuant
 191 to Code Section 17-7-130, or if the court, pursuant to Code Section 17-7-129, conducts a
 192 trial on the competency of the defendant, the period of time during which such matter is
 193 pending shall not be included in the computation of determining whether a demand for
 194 speedy trial has been satisfied."

195 **SECTION 5.**

196 Said title is further amended by revising subsection (b) of Code Section 17-10-35.1, relating
 197 to the review of pretrial proceedings when the death penalty is sought, as follows:

198 "(b) The reports of the trial judge, prosecutor, prosecuting attorney, and defendant under
 199 subsection (a) of this Code section shall be in the form of standard questionnaires prepared
 200 and supplied by the Supreme Court. Such questionnaires shall be designed to determine

201 whether there is arguably any existence of reversible error with respect to any of the
202 following matters:

203 (1) Any proceedings with respect to change of venue;

204 (2) Any proceedings with respect to recusal of the trial judge;

205 (3) Any challenge to the jury array;

206 (4) Any motion to suppress evidence;

207 (5) Any motion for psychiatric or other medical evaluation; ~~and~~

208 (6) Any proceedings with respect to a pretrial determination of an intellectual disability;

209 and

210 (7) Any other matter deemed appropriate by the Supreme Court."

211 **SECTION 6.**

212 All laws and parts of laws in conflict with this Act are repealed.