

2023 Regular Session

HOUSE BILL NO. 328

BY REPRESENTATIVE SELDERS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/MENTAL CAPACITY: Provides relative to sentencing of a person with severe mental illness

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 905.5.1(A) through (G) and to
3 enact Code of Criminal Procedure Article 905.5.1(I), relative to sentencing in capital
4 cases; to prohibit the imposition of capital punishment upon a person with a severe
5 mental illness; to provide for definitions; to provide for exceptions; and to provide
6 for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Code of Criminal Procedure Article 905.5.1(A) through (G) is hereby
9 amended and reenacted and Code of Criminal Procedure Article 905.5.1(I) is hereby enacted
10 to read as follows:

11 Art. 905.5.1. Intellectual disability or severe mental illness

12 A. Notwithstanding any other provisions of law to the contrary, no person
13 with an intellectual disability or severe mental illness shall be subjected to a sentence
14 of death.

15 B. Any capital defendant who claims to have an intellectual disability or
16 severe mental illness shall file written notice thereof within the time period for filing
17 of pretrial motions as provided by Article 521 of this Code.

18 C.(1) Any defendant in a capital case making a claim of intellectual
19 disability or severe mental illness shall prove the allegation by a preponderance of
20 the evidence. The jury shall try the issue of intellectual disability or severe mental

1 illness of a capital defendant during the capital sentencing hearing unless the state
2 and the defendant agree that the issue is to be tried by the judge. If the state and the
3 defendant agree, the issue of intellectual disability or severe mental illness of a
4 capital defendant may be tried prior to trial by the judge alone.

5 (2) Any pretrial determination by the judge that a defendant does not have
6 an intellectual disability or severe mental illness shall not preclude the defendant
7 from raising the issue at the penalty phase, nor shall it preclude any instruction to the
8 jury pursuant to this Article.

9 D. Once the issue of intellectual disability or severe mental illness is raised
10 by the defendant, and upon written motion of the district attorney, the defendant shall
11 provide the state, within time limits set by the court, any and all medical,
12 correctional, educational, and military records, raw data, tests, test scores, notes,
13 behavioral observations, reports, evaluations, and any other information of any kind
14 reviewed by any defense expert in forming the basis of his opinion that the defendant
15 has an intellectual disability or severe mental illness.

16 E. By filing a notice relative to a claim of intellectual disability or severe
17 mental illness under this Article, the defendant waives all claims of confidentiality
18 and privilege to, and is deemed to have consented to the release of, any and all
19 medical, correctional, educational, and military records, raw data, tests, test scores,
20 notes, behavioral observations, reports, evaluations, expert opinions, and any other
21 such information of any kind or other records relevant or necessary to an
22 examination or determination under this Article.

23 F. When a defendant makes a claim of intellectual disability or severe mental
24 illness under this Article, the state shall have the right to an independent
25 psychological and psychiatric examination of the defendant. A psychologist or
26 medical psychologist conducting such examination must be licensed by the
27 Louisiana State Board of Examiners of Psychologists or the Louisiana State Board
28 of Medical Examiners, whichever is applicable. If the state exercises this right, and
29 upon written motion of the defendant, the state shall provide the defendant, within

1 time limits set by the court, any and all medical, correctional, educational, and
2 military records, and all raw data, tests, test scores, notes, behavioral observations,
3 reports, evaluations, and any other information of any kind reviewed by any state
4 expert in forming the basis of his opinion that the defendant does not have an
5 intellectual disability or severe mental illness. If the state fails to comply with any
6 such order, the court may impose sanctions as provided by Article 729.5 of this
7 Code.

8 G. If the defendant making a claim of intellectual disability or severe mental
9 illness fails to comply with any order issued pursuant to Paragraph D of this Article,
10 or refuses to submit to or fully cooperate in any examination by experts for the state
11 pursuant to either Paragraph D or F of this Article, upon motion by the district
12 attorney, the court shall neither conduct a pretrial hearing concerning the issue of
13 intellectual disability or severe mental illness nor instruct the jury of the prohibition
14 of executing defendants with intellectual disabilities.

15 * * *

16 I.(1) For the purposes of this Article, a person has a severe mental illness if
17 both of the following conditions are applicable:

18 (a) Before a claim of severe mental illness is raised, the person has been
19 diagnosed with one or more of the following conditions:

20 (i) Schizophrenia or any other psychotic disorder.

21 (ii) Bipolar disorder.

22 (iii) Major depressive disorder.

23 (iv) Delusional disorder.

24 (v) Post-traumatic stress disorder.

25 (vi) Traumatic brain injury.

26 (b) At the time of the offense, the condition or conditions described in
27 Subsubparagraph (1)(a) of this Paragraph, despite not meeting the standard set forth
28 in R.S. 14:14 to establish a defense of insanity, significantly impaired the person's
29 capacity to do any of the following:

- 1 (i) Appreciate the nature, consequences, or wrongfulness of his conduct.
- 2 (ii) Exercise rational judgment in relation to his conduct.
- 3 (iii) Conform his conduct to the requirements of the law.
- 4 (2) A disorder that is primarily manifested by a repeated pattern of criminal
- 5 conduct or solely attributable to the acute effects of voluntary use of alcohol or drugs
- 6 does not constitute a severe mental illness.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 328 Original

2023 Regular Session

Selders

Abstract: Prohibits the death penalty from being imposed upon any person with a severe mental illness.

Present law prohibits the death penalty from being imposed upon any person with an intellectual disability and provides for definitions and procedures to be followed after a capital defendant claims to have a intellectual disability.

Proposed law amends present law to also prohibit the death penalty from being imposed upon any person with a severe mental illness. Further provides that the procedures to be followed for a capital defendant who claims to have an intellectual disability shall also be applied to a capital defendant who claims to have a severe mental illness.

Proposed law provides that a person has a severe mental illness if both of the following conditions are applicable:

- (1) Before a claim of severe mental illness is raised, the person has been diagnosed with one or more of the following conditions:
 - (a) Schizophrenia or any other psychotic disorder.
 - (b) Bipolar disorder.
 - (c) Major depressive disorder.
 - (d) Delusional disorder.
 - (e) Post-traumatic stress disorder.
 - (f) Traumatic brain injury.
- (2) At the time of the offense, the condition or conditions described in proposed law, despite not meeting the standard set forth in present law (R.S. 14:14) to establish a defense of insanity, significantly impaired the person's capacity to do any of the following:
 - (a) Appreciate the nature, consequences, or wrongfulness of his conduct.

- (b) Exercise rational judgment in relation to his conduct.
- (c) Conform his conduct to the requirements of the law.

Proposed law provides that a disorder that is primarily manifested by a repeated pattern of criminal conduct or solely attributable to the acute effects of voluntary use of alcohol or drugs does not constitute a severe mental illness.

(Amends C.Cr.P. Art. 905.5.1(A)-(G); Adds C.Cr.P. Art. 905.5.1(I))