

House Bill 123

By: Representatives Werkheiser of the 157th, Reeves of the 99th, Silcox of the 53rd, Holcomb of the 101st, 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 in capital offense cases where the death penalty is
3 sought when the accused has intellectual disability; to provide for a definition; to provide for
4 notice of intent to claim intellectual disability; to provide for pretrial determination of
5 intellectual disability; to provide for verdicts; to provide for capital case procedures; to
6 provide for reports investigating reversible error; to provide for a standard of review; to
7 provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Title 17 of the Official Code of Georgia Annotated, relating to criminal procedure, is
11 amended by adding a new Code section to Part 2 of Article 6 of Chapter 7, relating to
12 insanity and mental incompetency, to read as follows:

13 "17-7-128.

14 (a) As used in this Code section, the term 'intellectual disability' shall have the same
15 meaning as set forth in Code Section 17-7-131.

H. B. 123

16 (b) In criminal cases involving a capital offense for which the death penalty is sought, the
17 accused may file a pretrial notice of intent to raise a claim of intellectual disability. Such
18 notice shall state that the accused has intellectual disability.

19 (c) A pretrial hearing on the issue of whether the defendant has intellectual disability:

20 (1) May be conducted upon motion of the defendant, at the discretion of the court; or

21 (2) Shall be conducted upon joint consent motion of the defendant and the state to
22 proceed with a pretrial hearing to determine if the accused has intellectual disability.

23 (d) Such pretrial determination of intellectual disability shall be made by the court sitting
24 as the finder of fact.

25 (e) The defendant shall have the burden of production and persuasion to demonstrate
26 intellectual disability by a preponderance of the evidence and if such pretrial determination
27 does not find the defendant to have intellectual disability, he or she shall not be precluded
28 from raising such issue in further proceedings.

29 (f) If the defendant is found to have intellectual disability, the court shall bar the state from
30 seeking the death penalty. If the court does not find that the defendant has intellectual
31 disability, the defendant may raise the issue of his or her alleged intellectual disability as
32 set forth in paragraph (2) of subsection (b) of Code Section 17-7-131.

33 (g) Either party may seek immediate review of the trial court's determination regarding
34 intellectual disability, as provided in subsection (b) of Code Section 5-6-34."

35 **SECTION 2.**

36 Said title is further amended by revising subsections (b) and (c) and adding a new paragraph
37 to subsection (j) of Code Section 17-7-131, relating to proceedings upon plea of insanity or
38 mental incompetency at time of crime, to read as follows:

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

- 42 (A) Guilty;
- 43 (B) Not guilty;
- 44 (C) Not guilty by reason of insanity at the time of the crime;
- 45 (D) Guilty but mentally ill at the time of the crime, but the finding of guilty but
- 46 mentally ill shall be made only in felony cases; or
- 47 (E) Guilty but with intellectual disability, but the finding of intellectual disability shall
- 48 be made only in felony cases.
- 49 (2)(A) A plea of guilty but mentally ill at the time of the crime or a plea of guilty but
- 50 with intellectual disability shall not be accepted until the defendant has undergone
- 51 examination by a licensed psychologist or psychiatrist and the court has examined the
- 52 psychological or psychiatric reports, held a hearing on the issue of the defendant's
- 53 mental condition, and is satisfied that there is a factual basis that the defendant was
- 54 mentally ill at the time of the offense or has intellectual disability to which the plea is
- 55 entered.
- 56 ~~(2.1)~~(B) A plea of not guilty by reason of insanity at the time of the crime shall not be
- 57 accepted and the defendant adjudicated not guilty by reason of insanity by the court
- 58 without a jury until the defendant has undergone examination by a licensed
- 59 psychologist or psychiatrist and the court has examined the psychological or psychiatric
- 60 reports, has held a hearing on the issue of the defendant's mental condition, and the
- 61 court is satisfied that the defendant was insane at the time of the crime according to the
- 62 criteria of set forth in Code Section 16-3-2 or 16-3-3.
- 63 (C) In criminal cases involving a capital offense for which the death penalty is sought
- 64 and a pretrial notice of intent to raise a claim of intellectual disability has been filed, the
- 65 procedure set forth in Code Section 17-7-128 shall be followed.
- 66 ~~(3)~~(D) In all cases and applicable criminal trials in which the defense of insanity,
- 67 mental illness, or intellectual disability is interposed, the trial judge shall charge the
- 68 jury, in addition to other appropriate charges, the following:

69 ~~(A)(i)~~ I charge you that should you find the defendant not guilty by reason of
 70 insanity at the time of the crime, the defendant will be committed to a state mental
 71 health facility until such time, if ever, that the court is satisfied that he or she should
 72 be released pursuant to ~~law~~: law;

73 ~~(B)(ii)~~ I charge you that should you find the defendant guilty but mentally ill at the
 74 time of the crime, the defendant will be placed in the custody of the Department of
 75 Corrections which will have responsibility for the evaluation and treatment of the
 76 mental health needs of the defendant, which may include, at the discretion of the
 77 Department of Corrections, referral for temporary hospitalization at a facility operated
 78 by the Department of Behavioral Health and Developmental ~~Disabilities~~: Disabilities;
 79 and

80 ~~(C)(iii)~~ I charge you that should you find the defendant guilty but with intellectual
 81 disability, the defendant will be placed in the custody of the Department of
 82 Corrections, which will have responsibility for the evaluation and treatment of the
 83 mental health needs of the defendant, which may include, at the discretion of the
 84 Department of Corrections, referral for temporary hospitalization at a facility operated
 85 by the Department of Behavioral Health and Developmental ~~Disabilities~~: Disabilities'.

86 (c) Except as provided in paragraph (4) of this subsection, ~~In~~ all criminal trials in any of
 87 the courts of this state wherein an accused shall contend that he or she was insane, mentally
 88 ill, or ~~intellectually disabled~~ had intellectual disability at the time the act or acts charged
 89 against him or her were committed, the trial judge shall instruct the jury that they may
 90 consider, in addition to verdicts of 'guilty' and 'not guilty,' the additional verdicts of 'not
 91 guilty by reason of insanity at the time of the crime,' 'guilty but mentally ill at the time of
 92 the crime,' and 'guilty but with intellectual disability.' The defendant may:

93 (1) ~~The defendant may be~~ Be found 'not guilty by reason of insanity at the time of the
 94 crime' if he or she meets the criteria of Code Section 16-3-2 or 16-3-3 at the time of the

95 commission of the crime. If the court or jury should make such finding, it shall so
96 specify in its verdict.

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

101 (3) Be guilty but with intellectual disability if the jury, or court acting as trier of facts,
102 both convicts the defendant beyond a reasonable doubt and finds by a preponderance of
103 the evidence that the defendant has intellectual disability. ~~The defendant may be found~~
104 ~~'guilty but with intellectual disability' if the jury, or court acting as trier of facts, finds~~
105 ~~beyond a reasonable doubt that the defendant is guilty of the crime charged and is with~~
106 ~~intellectual disability.~~ If the court or jury should make such finding, it shall so specify
107 in its verdict.

108 (4) After July 1, 2025, when the death penalty has been sought and the defendant
109 contends he or she has intellectual disability, the court shall instruct the jury that it shall
110 consider whether it finds beyond a reasonable doubt that the defendant is guilty of the
111 crime charged. If the jury convicts the defendant of such capital crime, the defendant
112 shall then present evidence regarding his or her alleged intellectual disability. The State
113 shall have the opportunity to present evidence in response, and the defendant may offer
114 evidence in rebuttal. Following the presentation of evidence, the court shall instruct the
115 jury that if the jury finds by a preponderance of the evidence that the defendant has
116 intellectual disability, such jury shall enter a separate finding of 'intellectual disability'
117 and so specify in its verdict. If the jury does not find by a preponderance of the evidence
118 that the defendant has intellectual disability, such jury shall enter a separate finding of 'no
119 intellectual disability.' When the jury returns a finding of 'no intellectual disability,' there
120 shall be a capital sentencing proceeding as provided for in Code Section 17-10-30."

121 "(3) In the trial of any case in which the death penalty is sought which commences on or
122 after July 1, 2025, should the judge find in accepting a plea of guilty but with intellectual
123 disability, or the jury or court find in its verdict that the defendant is guilty of the crime
124 charged but with intellectual disability, the death penalty shall not be imposed and the
125 court shall sentence the defendant to imprisonment for life."

126 **SECTION 3.**

127 Said title is further amended by revising subsection (d) of Code Section 17-7-171, relating
128 to time for a demand for speedy trial in capital cases, discharge and acquittal when no trial
129 held before end of two court terms of demand, counting of terms in cases in which death
130 penalty is sought, and special pleas of incompetency, as follows:

131 "(d) If a defendant files a pretrial notice of intent to raise a claim of intellectual disability
132 pursuant to Code Section 17-7-128 or a special plea of incompetency to stand trial pursuant
133 to Code Section 17-7-130 or if the court, pursuant to Code Section 17-7-129, conducts a
134 trial on the competency of the defendant, the period of time during which such matter is
135 pending shall not be included in the computation of determining whether a demand for
136 speedy trial has been satisfied."

137 **SECTION 4.**

138 Said title is further amended by revising subsection (b) of Code Section 17-10-35.1, relating
139 to the review of pretrial proceedings when death penalty is sought, reports investigating
140 reversible error, transmittal of reports to Supreme Court, orders regarding review, Attorney
141 General assistance, res judicata, applicability, and waiver of rights, as follows:

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

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

- 147 (1) Any proceedings with respect to change of venue;
148 (2) Any proceedings with respect to recusal of the trial judge;
149 (3) Any challenge to the jury array;
150 (4) Any motion to suppress evidence;
151 (5) Any motion for psychiatric or other medical evaluation; ~~and~~
152 (6) Any proceedings with respect to a pretrial determination of intellectual disability; and
153 ~~(6)(7)~~ Any other matter deemed appropriate by the Supreme Court.

154 **SECTION 5.**

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