

State of Arizona
Senate
Forty-seventh Legislature
Second Regular Session
2006

Senate Engrossed
FILED
JANICE K. BREWER
SECRETARY OF STATE

CHAPTER 55
SENATE BILL 1305

AN ACT

AMENDING SECTION 13-703.02, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-703.02, Arizona Revised Statutes, is amended to
3 read:

4 13-703.02. Mental evaluations of capital defendants; hearing;
5 appeal; definitions

6 A. In any case in which the state files a notice of intent to seek the
7 death penalty, a person who is found to have mental retardation pursuant to
8 this section shall not be sentenced to death but shall be sentenced to life
9 or natural life.

10 B. If the state files a notice of intent to seek the death penalty,
11 the court, UNLESS THE DEFENDANT OBJECTS, shall appoint a prescreening
12 psychological expert in order to determine the defendant's intelligence
13 quotient using current community, nationally and culturally accepted
14 intelligence testing procedures. The prescreening psychological expert shall
15 submit a written report of the intelligence quotient determination to the
16 court within ten days of the testing of the defendant. IF THE DEFENDANT
17 OBJECTS TO THE PRESCREENING, THE DEFENDANT WAIVES THE RIGHT TO A PRETRIAL
18 DETERMINATION OF MENTAL RETARDATION STATUS. THE WAIVER DOES NOT PRECLUDE THE
19 DEFENDANT FROM OFFERING EVIDENCE OF THE DEFENDANT'S MENTAL RETARDATION IN THE
20 PENALTY PHASE.

21 C. If the prescreening psychological expert determines that the
22 defendant's intelligence quotient is higher than seventy-five, the notice of
23 intent to seek the death penalty shall not be dismissed on the ground that
24 the defendant has mental retardation. If the prescreening psychological
25 expert determines that the defendant's intelligence quotient is higher than
26 seventy-five, the report shall be sealed by the court and be available only
27 to the defendant. The report shall be released on the motion of any party if
28 the defendant introduces the report in the present case or is convicted of an
29 offense in the present case and the sentence is final. A prescreening
30 determination that the defendant's intelligence quotient is higher than
31 seventy-five does not prevent the defendant from introducing evidence of the
32 defendant's mental retardation or diminished mental capacity as a mitigating
33 factor at the penalty phase of the sentencing proceeding.

34 ~~D. If the prescreening psychological expert determines that the~~
35 ~~defendant's intelligence quotient is seventy five or less, the trial court~~
36 ~~shall appoint one or more additional psychological experts to independently~~
37 ~~determine whether the defendant has mental retardation.~~ If the prescreening
38 psychological expert determines that the defendant's intelligence quotient is
39 seventy-five or less, the trial court, within ten days of receiving the
40 written report, shall order the state and the defendant to each nominate
41 three ~~psychologica~~ experts IN MENTAL RETARDATION, or jointly nominate a
42 single ~~psychologica~~ expert IN MENTAL RETARDATION. The trial court shall
43 appoint one ~~psychologica~~ expert IN MENTAL RETARDATION nominated by the state
44 and one ~~psychologica~~ expert IN MENTAL RETARDATION nominated by the
45 defendant, or a single ~~psychologica~~ expert IN MENTAL RETARDATION jointly

1 nominated by the state and the defendant, none of whom made the prescreening
2 determination of the defendant's intelligence quotient. The trial court, in
3 its discretion, may appoint an additional ~~psychological~~ expert IN MENTAL
4 RETARDATION who was neither nominated by the state nor the defendant, and who
5 did not make the prescreening determination of the defendant's intelligence
6 quotient. Within forty-five days after the trial court orders the state and
7 the defendant to nominate ~~psychological~~ experts IN MENTAL RETARDATION, or on
8 the appointment of such experts, whichever is later, the state and the
9 defendant shall provide to the ~~psychological~~ experts IN MENTAL RETARDATION
10 and the court any available records that may be relevant to the defendant's
11 mental retardation status. The court may extend the deadline for providing
12 records on good cause shown by the state or defendant.

13 E. Not less than twenty days after receipt of the records provided
14 pursuant to subsection D of this section, or twenty days after the expiration
15 of the deadline for providing the records, whichever is later, each
16 ~~psychological~~ expert IN MENTAL RETARDATION shall examine the defendant using
17 current community, nationally and culturally accepted physical,
18 developmental, psychological and intelligence testing procedures, for the
19 purpose of determining whether the defendant has mental retardation. Within
20 fifteen days of examining the defendant, each ~~psychological~~ expert IN MENTAL
21 RETARDATION shall submit a written report to the trial court that includes
22 the expert's opinion as to whether the defendant has mental retardation.

23 F. If the scores on all the tests for intelligence quotient
24 administered to the defendant are above seventy, the notice of intent to seek
25 the death penalty shall not be dismissed on the ground that the defendant has
26 mental retardation. This does not preclude the defendant from introducing
27 evidence of the defendant's mental retardation or diminished mental capacity
28 ~~as a mitigating factor~~ at the penalty phase of the sentencing proceeding.

29 G. No less than thirty days after the ~~psychological experts'~~ EXPERTS
30 IN MENTAL RETARDATION SUBMIT reports ~~are submitted~~ to the court and before
31 trial, the trial court shall hold a hearing to determine if the defendant has
32 mental retardation. At the hearing, the defendant has the burden of proving
33 mental retardation by clear and convincing evidence. A determination by the
34 trial court that the defendant's intelligence quotient is sixty-five or lower
35 establishes a rebuttable presumption that the defendant has mental
36 retardation. Nothing in this subsection shall preclude a defendant with an
37 intelligence quotient of seventy or below from proving mental retardation by
38 clear and convincing evidence.

39 H. If the trial court finds that the defendant has mental retardation,
40 the trial court shall dismiss the intent to seek the death penalty, shall not
41 impose a sentence of death on the defendant if the defendant is convicted of
42 first degree murder and shall dismiss one of the attorneys appointed under
43 rule 6.2, Arizona rules of criminal procedure unless the court finds that
44 there is good cause to retain both attorneys. If the trial court finds that
45 the defendant does not have mental retardation, the court's finding does not

1 prevent the defendant from introducing evidence of the defendant's mental
2 retardation or diminished mental capacity ~~as a mitigating factor~~ at the
3 penalty phase of the sentencing proceeding.

4 I. Within ten days after the trial court makes a finding on mental
5 retardation, the state or the defendant may file a petition for special
6 action with the Arizona court of appeals pursuant to the rules of procedure
7 for special actions. The filing of the petition for special action is
8 governed by the rules of procedure for special actions, except that the court
9 of appeals shall exercise jurisdiction and decide the merits of the claims
10 raised.

11 J. This section applies to all capital sentencing proceedings.

12 K. For the purposes of this section, unless the context otherwise
13 requires:

14 1. "Adaptive behavior" means the effectiveness or degree to which the
15 defendant meets the standards of personal independence and social
16 responsibility expected of the defendant's age and cultural group.

17 2. "EXPERT IN MENTAL RETARDATION" MEANS A PSYCHOLOGIST OR PHYSICIAN
18 LICENSED PURSUANT TO TITLE 32, CHAPTER 13, 17 OR 19.1 WITH AT LEAST FIVE
19 YEARS' EXPERIENCE IN THE TESTING OR TESTING ASSESSMENT, EVALUATION AND
20 DIAGNOSIS OF MENTAL RETARDATION.

21 ~~2.~~ 3. "Mental retardation" means a condition based on a mental
22 deficit that involves significantly subaverage general intellectual
23 functioning, existing concurrently with significant impairment in adaptive
24 behavior, where the onset of the foregoing conditions occurred before the
25 defendant reached the age of eighteen.

26 ~~3.~~ 4. "Prescreening psychological expert" or ~~"psychological expert"~~
27 means a psychologist licensed pursuant to title 32, chapter 19.1 with at
28 least ~~two~~ FIVE years' experience in the testing, evaluation and diagnosis of
29 mental retardation.

30 ~~4.~~ 5. "Significantly subaverage general intellectual functioning"
31 means a full scale intelligence quotient of seventy or lower. The court in
32 determining the intelligence quotient shall take into account the margin of
33 error for the test administered.

APPROVED BY THE GOVERNOR APRIL 6, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 6, 2006.