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AB-2512 Death penalty: person with an intellectual disability. (2019-2020)

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Assembly Bill No. 2512

CHAPTER 331

An act to amend Section 1376 of the Penal Code, relating to criminal procedure.

[Approved by Governor September 30, 2020. Filed with Secretary of State September 30, 2020.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2512, Mark Stone. Death penalty: person with an intellectual disability.

Existing law authorizes a defendant to apply, prior to the commencement of trial, for an order directing that a hearing to determine intellectual disability be conducted when the prosecution in a criminal case seeks the death penalty. Existing law requires the court to order a hearing to determine whether the defendant has an intellectual disability upon the submission of a declaration by a qualified expert stating the expert's opinion that the defendant is a person with an intellectual disability. Existing law defines "intellectual disability" for these purposes as a condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before 18 years of age.

This bill would change the definition of "intellectual disability" to include conditions that manifest before the end of the developmental period, as defined by clinical standards. The bill would also prohibit the results of a test measuring intellectual functioning to be changed or adjusted based on race, ethnicity, national origin, or socioeconomic status. The bill would require the court to order a hearing to determine whether the defendant is a person with an intellectual disability upon a prima facie showing, as defined, that the defendant is a person with an intellectual disability.

The bill would authorize a person in custody pursuant to a judgment of death to apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for a writ of habeas corpus and would specify the procedure for making the determination as to whether the defendant is a person with an intellectual disability.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. The United States Supreme Court has recognized that it is unconstitutional to execute a person with an intellectual disability. It is the intent of the Legislature that California adopt the professional medical community's definition and understanding of intellectual disability. It is the further intent of the Legislature that individuals with intellectual disabilities be accurately and quickly identified to avoid protracted and unnecessary litigation.

SEC. 2. Section 1376 of the Penal Code is amended to read:

1376. (a) As used in this section, the following definitions shall apply:

(1) "Intellectual disability" means the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period, as defined by clinical standards.

(2) "Prima facie showing of intellectual disability" means that the defendant's allegation of intellectual disability is based on the type of evidence typically relied on by a qualified expert in diagnosing intellectual disability, as defined in current clinical standards, or when a qualified expert provides a declaration diagnosing the defendant as intellectually disabled.

(b) (1) When the prosecution seeks the death penalty, the defendant may, at a reasonable time prior to the commencement of trial, apply for an order directing that a hearing to determine intellectual disability be conducted. Upon a prima facie showing that the defendant is a person with an intellectual disability, the court shall order a hearing to determine whether the defendant is a person with an intellectual disability. At the request of the defendant, the court shall conduct the hearing without a jury prior to the commencement of the trial. The defendant's request for a court hearing prior to trial shall constitute a waiver of a jury hearing on the issue of intellectual disability. If the defendant does not request a court hearing, the court shall order a jury hearing to determine if the defendant is a person with an intellectual disability. The jury hearing on intellectual disability shall occur at the conclusion of the phase of the trial in which the jury has found the defendant guilty with a finding that one or more of the special circumstances enumerated in Section 190.2 are true. Except as provided in paragraph (3), the same jury shall make a finding that the defendant is a person with an intellectual disability or that the defendant does not have an intellectual disability.

(2) For the purposes of the procedures set forth in this section, the court or jury shall decide only the question of the defendant's intellectual disability. The defendant shall present evidence in support of the claim that they are a person with an intellectual disability. The prosecution shall present its case regarding the issue of whether the defendant is a person with an intellectual disability. Each party may offer rebuttal evidence. The court, for good cause in furtherance of justice, may permit either party to reopen its case to present evidence in support of or opposition to the claim of intellectual disability. Nothing in this section shall prohibit the court from making orders reasonably necessary to ensure the production of evidence sufficient to determine whether or not the defendant is a person with an intellectual disability, including, but not limited to, the appointment of, and examination of the defendant by, qualified experts. A statement made by the defendant during an examination ordered by the court shall not be admissible in the trial on the defendant's guilt.

(3) At the close of evidence, the prosecution shall make its final argument, and the defendant shall conclude with their final argument. The burden of proof shall be on the defense to prove by a preponderance of the evidence that the defendant is a person with an intellectual disability. The jury shall return a verdict that either the defendant is a person with an intellectual disability or the defendant does not have an intellectual disability. The verdict of the jury shall be unanimous. When the jury is unable to reach a unanimous verdict that the defendant is a person with an intellectual disability, and does not reach a unanimous verdict that the defendant does not have an intellectual disability, the court shall dismiss the jury and order a new jury impaneled to try the issue of intellectual disability. The issue of guilt shall not be tried by the new jury.

(c) When the hearing is conducted before the court prior to the commencement of the trial, the following shall apply:

(1) If the court finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and the criminal trial thereafter shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of murder in the first degree, with a finding that one or more of the special circumstances enumerated in Section 190.2 are true, the court shall sentence the defendant to confinement in the state prison for life without the possibility of parole. The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of intellectual disability.

(2) If the court finds that the defendant does not have an intellectual disability, the trial court shall proceed as in any other case in which a sentence of death is sought by the prosecution. The jury shall not be informed of the prior proceedings or the findings concerning the defendant's claim of intellectual disability.

(d) When the hearing is conducted before the jury after the defendant is found guilty with a finding that one or more of the special circumstances enumerated in Section 190.2 are true, the following shall apply:

(1) If the jury finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and shall sentence the defendant to confinement in the state prison for life without the possibility of parole.

(2) If the jury finds that the defendant does not have an intellectual disability, the trial shall proceed as in any other case in which a sentence of death is sought by the prosecution.

(e) When the defendant has not requested a court hearing as provided in subdivision (b), and has entered a plea of not guilty by reason of insanity under Sections 190.4 and 1026, the hearing on intellectual disability shall occur at the conclusion of the sanity trial if the defendant is found sane.

(f) A person in custody pursuant to a judgment of death may apply for an order directing that a hearing to determine intellectual disability be conducted as part of a petition for a writ of habeas corpus. When the claim of intellectual disability is raised in a petition for habeas corpus and a petitioner makes a prima facie showing of intellectual disability, the reviewing court shall issue an order to show cause if the petitioner has met the prima facie standard. The petitioner bears the burden of proving by a preponderance of the evidence that the petitioner is a person with an intellectual disability. The state may present its case regarding the issue of whether the petitioner is a person with an intellectual disability. Each party may offer rebuttal evidence. During an evidentiary hearing under this subdivision, an expert may testify about the contents of out-of-court statements, including documentary evidence and statements from witnesses when those types of statements are accepted by the medical community as relevant to a diagnosis of intellectual disability if the expert relied upon these statements as the basis for their opinion.

(g) The results of a test measuring intellectual functioning shall not be changed or adjusted based on race, ethnicity, national origin, or socioeconomic status.