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**SB-1001 Death penalty: intellectually disabled persons.** (2023-2024)

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**Senate Bill No. 1001**

**CHAPTER 908**

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

[ Approved by Governor September 28, 2024. Filed with Secretary of State September 28, 2024. ]

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1001, Skinner. Death penalty: intellectually disabled persons.

Existing case law holds that execution of a “mentally retarded” person constitutes cruel and unusual punishment under the United States Constitution, rendering an individual with mental retardation ineligible for the death penalty. 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 defines “intellectual disability” for these purposes as 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. 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 requires a court to impanel a new jury to try the issue of intellectual disability if a jury panel was unable to reach a unanimous verdict that the defendant is a person with an intellectual disability.

This bill would define “manifested before the end of the developmental period” to mean that the deficits were present during the development period, and does not require a formal diagnosis, or tests of intellectual functioning in the intellectual disability range, before the end of the developmental period. The bill would codify case law by specifying that individuals with an intellectual disability are ineligible for the death penalty. The bill would specify that the question of intellectual disability is a question of fact that may be stipulated to by the parties, and would require the court to accept the stipulation, unless the court finds that the stipulation is not supported by documentary evidence that provides a factual basis for concluding by a preponderance of the evidence that the person has an intellectual disability. The bill would require the court to state its factual and legal rationale for declining to accept a stipulation of the parties.

This bill would authorize the court to order a defendant or petitioner to submit to testing by a qualified prosecution expert only if the prosecution presents a reasonable factual basis that the intellectual functioning testing presented by the defendant or petitioner is unreliable. If the court enters an order for the defendant or petitioner to submit to testing, the bill would require the prosecution to submit a proposed list of the tests its expert wishes to administer so that the defendant or petitioner may raise any objections before testing is ordered. The bill would require the court, in the event that a jury is unable to reach a unanimous verdict as to whether the defendant is a person with an intellectual disability, to enter a finding that the defendant is ineligible for the death penalty.

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

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

## **SECTION 1.** The Legislature finds and declares all of the following:

(a) It is the intent of the Legislature to codify and expand upon the Court's holding in *Centeno v. Superior Court* (2004) 117 Cal.App.4th 30.

(b) The Legislature takes seriously the United States Supreme Court's acknowledgment that persons with an intellectual disability face a special risk of wrongful execution. The Legislature does not wish to risk the execution of a person with an intellectual disability.

(c) As with Assembly Bill 2512 (2019–20 Regular Session), it is the intent of the Legislature to adopt the professional medical and psychological community's definition and understanding of intellectual disability. Consistent with its public policy goals, the Legislature continues to urge courts to quickly and accurately identify persons with intellectual disability and avoid protracted and unnecessary litigation.

(d) As the United States Supreme Court has explained, the question for the finder of fact in a proceeding under this statute is whether a preponderance of the evidence establishes that the Eighth Amendment of the United States Constitution prohibits the person's execution, regardless of the facts or nature of the crime, any determinations about the person's future dangerousness, or any other factors irrelevant to the question of whether the person has an intellectual disability. Public policy favors exempting individuals who more likely than not have an intellectual disability from execution.

## **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) "Manifested before the end of the developmental period" means that the deficits were present during the developmental period. It does not require a formal diagnosis of intellectual disability, or tests of intellectual functioning in the intellectual disability range, before the end of the developmental period.

(3) "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 a person with intellectual disability.

(4) "The prosecution" refers to the prosecuting agency at trial and to the respondent in a habeas corpus proceeding.

(b) A person with an intellectual disability is ineligible for the death penalty.

(c) (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. 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 enter a finding that the defendant is ineligible for the death penalty pursuant to this section.

(d) 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 unless the defendant elects to present that information at trial.

(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.

(e) 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.

(f) When the defendant has not requested a court hearing as provided in subdivision (c), 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.

(g) 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 prosecution 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.

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

(i) (1) When a court has concluded a hearing under this section is necessary, that court may order a defendant or petitioner to submit to testing by a qualified prosecution expert only if the prosecution presents a reasonable factual basis that the intellectual functioning testing presented by the defendant or petitioner is unreliable. Any order requiring the defendant or petitioner to submit to testing by a qualified prosecution expert shall be limited to tests directly related to the determination of the defendant or petitioner's intellectual functioning. Any such order shall also prohibit the expert from questioning the defendant or petitioner about the facts of the case, shall permit the defendant or petitioner to have their attorney nearby during the examination and to consult with their attorney during the examination if they choose, and shall, upon request by the defendant or petitioner's counsel, require that the prosecution expert's examination be recorded in a manner agreed upon by the parties and the court.

(2) The prosecution shall submit a proposed list of the tests its expert wishes to administer so that the defendant or petitioner may raise any objections before testing is ordered. The Legislature finds and declares that this paragraph is declaratory of existing law.

(j) Intellectual disability is a question of fact. The parties to a trial or habeas proceeding may stipulate that a defendant or petitioner is a person with intellectual disability as defined in clinical standards and in this section. After a prima facie showing of intellectual disability has been made, whenever the prosecution stipulates or concedes that the defendant or petitioner has an intellectual disability, the court shall accept the stipulation or concession unless it finds that the stipulation or concession is not supported by documentary evidence that provides a factual basis for concluding by a preponderance of the evidence that the person has an intellectual disability. If the court declines to accept a stipulation, it must state its factual and legal rationale for

doing so on the record, and it may not rely upon facts or factors that are unrelated or irrelevant to the factual question of whether the defendant or petitioner has an intellectual disability.