

REFERENCE TITLE: death penalty serious mental illness

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SB 1474

Introduced by
Senators Mendez: Diaz, Gabaldón, Hernandez, Sundareshan, Terán;
Representative Salman

AN ACT

AMENDING SECTION 13-753, ARIZONA REVISED STATUTES; RELATING TO THE DEATH PENALTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 13-753, Arizona Revised Statutes, is amended to
3 read:

4 13-753. 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
7 the death penalty, a person who is found to have an intellectual
8 disability **OR TO HAVE HAD A SERIOUS MENTAL ILLNESS AT THE TIME OF THE**
9 **COMMISSION OF THE OFFENSE** pursuant to this section shall not be sentenced
10 to death but shall be sentenced to life or natural life.

11 B. If the state files a notice of intent to seek the death penalty,
12 the court, unless the defendant objects, shall appoint a prescreening
13 psychological expert in order to determine the defendant's intelligence
14 quotient **OR WHETHER THE DEFENDANT HAD A SERIOUS MENTAL ILLNESS AT THE TIME**
15 **OF THE COMMISSION OF THE OFFENSE** using current community, nationally and
16 culturally accepted intelligence **AND MENTAL HEALTH** testing procedures.
17 The prescreening psychological expert shall submit a written report of the
18 intelligence quotient determination **OR THE ASSESSMENT OF WHETHER THE**
19 **DEFENDANT HAD A SERIOUS MENTAL ILLNESS AT THE TIME OF THE COMMISSION OF**
20 **THE OFFENSE, OR BOTH**, to the court within ten days of the testing of the
21 defendant. If the defendant objects to the prescreening, the defendant
22 waives the right to a pretrial determination of status. The waiver does
23 not preclude the defendant from offering evidence of the defendant's
24 intellectual disability **OR SERIOUS MENTAL ILLNESS** in the penalty phase.
25 **ON A SHOWING OF GOOD CAUSE, THE COURT MAY GRANT THE DEFENDANT'S REQUEST TO**
26 **DELAY THE PRESCREENING.**

27 C. If the prescreening psychological expert determines that the
28 defendant's intelligence quotient is higher than seventy-five **OR THAT THE**
29 **DEFENDANT DID NOT HAVE A SERIOUS MENTAL ILLNESS AT THE TIME OF THE**
30 **COMMISSION OF THE OFFENSE**, the notice of intent to seek the death penalty
31 shall not be dismissed on the ground that the defendant has an
32 intellectual disability **OR HAD A SERIOUS MENTAL ILLNESS AT THE TIME OF THE**
33 **COMMISSION OF THE OFFENSE**. If the prescreening psychological expert
34 determines that the defendant's intelligence quotient is higher than
35 seventy-five **OR THAT THE DEFENDANT DID NOT HAVE A SERIOUS MENTAL ILLNESS**
36 **AT THE TIME OF THE COMMISSION OF THE OFFENSE**, the report shall be sealed
37 by the court and be available only to the defendant. The report shall be
38 released on the motion of any party if the defendant introduces the report
39 in the present case or is convicted of an offense in the present case and
40 the sentence is final. A prescreening determination that the defendant's
41 intelligence quotient is higher than seventy-five **OR THAT THE DEFENDANT**
42 **DID NOT HAVE A SERIOUS MENTAL ILLNESS AT THE TIME OF THE COMMISSION OF THE**
43 **OFFENSE** does not prevent the defendant from introducing evidence of the
44 defendant's **SERIOUS MENTAL ILLNESS**, intellectual disability or diminished
45 mental capacity at the penalty phase of the sentencing proceeding.

1 D. If the prescreening psychological expert determines that the
2 defendant's intelligence quotient is seventy-five or less OR THAT THE
3 DEFENDANT HAD A SERIOUS MENTAL ILLNESS AT THE TIME OF THE COMMISSION OF
4 THE OFFENSE, the trial court, within ten days of receiving the written
5 report, shall order the state and the defendant to each nominate three
6 experts in intellectual disabilities OR MENTAL HEALTH, OR BOTH, or jointly
7 nominate a single expert in intellectual disabilities OR MENTAL HEALTH, OR
8 BOTH. The trial court shall appoint one expert in intellectual
9 disabilities OR MENTAL HEALTH, OR BOTH, nominated by the state and one
10 expert in intellectual disabilities OR MENTAL HEALTH, OR BOTH, nominated
11 by the defendant, or a single expert in intellectual disabilities OR
12 MENTAL HEALTH jointly nominated by the state and the defendant, none of
13 whom made the prescreening determination of the defendant's intelligence
14 quotient OR WHETHER THE DEFENDANT HAD A SERIOUS MENTAL ILLNESS AT THE TIME
15 OF THE COMMISSION OF THE OFFENSE. The trial court, in its discretion, may
16 appoint an additional expert in intellectual disabilities OR MENTAL
17 HEALTH, OR BOTH, who was neither nominated by the state nor the defendant,
18 and who did not make the prescreening determination of the defendant's
19 intelligence quotient OR WHETHER THE DEFENDANT HAD A SERIOUS MENTAL
20 ILLNESS AT THE TIME OF THE COMMISSION OF THE OFFENSE. Within forty-five
21 days after the trial court orders the state and the defendant to nominate
22 experts in intellectual disabilities OR MENTAL HEALTH, OR BOTH, or on the
23 appointment of such experts, whichever is later, the state and the
24 defendant shall provide to the experts ~~in intellectual disabilities~~ and
25 the court any available records that may be relevant to the defendant's
26 status. The court may extend the deadline for providing records on good
27 cause shown by the state or defendant.

28 E. Not less than twenty days after receipt of the records provided
29 pursuant to subsection D OF THIS SECTION, or twenty days after the
30 expiration of the deadline for providing the records, whichever is later,
31 each expert in intellectual disability OR MENTAL HEALTH, OR BOTH, shall
32 examine the defendant using current community, nationally and culturally
33 accepted physical, developmental, psychological and intelligence testing
34 procedures, for the purpose of determining whether the defendant has an
35 intellectual disability OR HAD A SERIOUS MENTAL ILLNESS AT THE TIME OF THE
36 COMMISSION OF THE OFFENSE. Within fifteen days ~~of~~ AFTER examining the
37 defendant, each expert in intellectual disabilities OR MENTAL HEALTH, OR
38 BOTH, shall submit a written report to the trial court that includes the
39 expert's opinion as to whether the defendant has an intellectual
40 disability OR HAD A SERIOUS MENTAL ILLNESS AT THE TIME OF THE COMMISSION
41 OF THE OFFENSE. ON A SHOWING OF GOOD CAUSE, THE COURT MAY ALLOW AN EXPERT
42 MORE TIME TO REVIEW THE RECORDS BEFORE CONDUCTING THE EXAMINATION.

43 F. If the scores on all the tests for intelligence quotient
44 administered to the defendant are above seventy, the notice of intent to
45 seek the death penalty shall not be dismissed on the ground that the

1 defendant has an intellectual disability. IF THE RESULTS OF THE TESTS FOR
 2 SERIOUS MENTAL ILLNESS ADMINISTERED TO THE DEFENDANT ESTABLISH THAT THE
 3 DEFENDANT DID NOT HAVE A SERIOUS MENTAL ILLNESS AT THE TIME OF THE
 4 COMMISSION OF THE OFFENSE, THE NOTICE TO SEEK THE DEATH PENALTY SHALL NOT
 5 BE DISMISSED ON THE GROUND THAT THE DEFENDANT HAD A SERIOUS MENTAL ILLNESS
 6 AT THE TIME OF THE COMMISSION OF THE OFFENSE. This does not preclude the
 7 defendant from introducing evidence of the defendant's SERIOUS MENTAL
 8 ILLNESS, intellectual disability or diminished mental capacity at the
 9 penalty phase of the sentencing proceeding.

10 G. ~~NO~~ NOT less than thirty days after the experts in intellectual
 11 disabilities OR MENTAL HEALTH, OR BOTH, submit reports to the court and
 12 before trial, the trial court shall hold a hearing to determine ~~if~~ WHETHER
 13 the defendant has an intellectual disability OR HAD A SERIOUS MENTAL
 14 ILLNESS AT THE TIME OF THE COMMISSION OF THE OFFENSE. At the hearing, the
 15 defendant has the burden of proving intellectual disability OR SERIOUS
 16 MENTAL ILLNESS by clear and convincing evidence. A determination by the
 17 trial court that the defendant's intelligence quotient is sixty-five or
 18 lower establishes a rebuttable presumption that the defendant has an
 19 intellectual disability. This subsection does not preclude a defendant
 20 with an intelligence quotient of seventy or below from proving
 21 intellectual disability by clear and convincing evidence.

22 H. If the trial court finds that the defendant has an intellectual
 23 disability OR HAD A SERIOUS MENTAL ILLNESS AT THE TIME OF THE COMMISSION
 24 OF THE OFFENSE, the trial court shall dismiss the intent to seek the death
 25 penalty, shall not impose a sentence of death on the defendant if the
 26 defendant is convicted of first degree murder and shall dismiss one of the
 27 attorneys appointed under rule 6.2, Arizona rules of criminal procedure,
 28 unless the court finds that there is good cause to retain both attorneys.
 29 If the trial court finds that the defendant does not have an intellectual
 30 disability OR DID NOT HAVE A SERIOUS MENTAL ILLNESS AT THE TIME OF THE
 31 COMMISSION OF THE OFFENSE, the court's finding does not prevent the
 32 defendant from introducing evidence of the defendant's SERIOUS MENTAL
 33 ILLNESS, intellectual disability or diminished mental capacity at the
 34 penalty phase of the sentencing proceeding.

35 I. Within ten days after the trial court makes a finding on
 36 intellectual disability OR SERIOUS MENTAL ILLNESS, the state or the
 37 defendant may file a petition for special action with the Arizona court of
 38 appeals pursuant to the rules of procedure for special actions. The
 39 filing of the petition for special action is governed by the rules of
 40 procedure for special actions, except that the court of appeals shall
 41 exercise jurisdiction and decide the merits of the claims raised.

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

1 K. ANY STATEMENT MADE DURING AN EVALUATION OR HEARING CONDUCTED
2 PURSUANT TO THIS SECTION IS NOT ADMISSIBLE IN ANY CRIMINAL PROCEEDING TO
3 DETERMINE THE DEFENDANT'S GUILT BUT EITHER PARTY MAY CALL AN EXAMINER AS A
4 WITNESS IN THE CRIMINAL PROCEEDING.

5 ~~K. L. For the purposes of this section, unless the context~~
6 ~~otherwise requires:~~

7 1. "ACTIVE SYMPTOMS" MEANS SYMPTOMS OF THE DISORDERS LISTED IN
8 PARAGRAPH 6, SUBDIVISION (b) OF THIS SUBSECTION AND INCLUDES ANY OF THE
9 FOLLOWING:

10 (a) DELUSIONS.

11 (b) HALLUCINATIONS.

12 (c) EXTREMELY DISORGANIZED THINKING.

13 (d) MANIA.

14 (e) VERY SIGNIFICANT DISRUPTIONS OF CONSCIOUSNESS, MEMORY,
15 PERCEPTION AND ENVIRONMENT.

16 ~~1.~~ 2. "Adaptive behavior" means the effectiveness or degree to
17 which the defendant meets the standards of personal independence and
18 social responsibility expected of the defendant's age and cultural group.

19 ~~2.~~ 3. "Expert in intellectual disabilities" means a psychologist
20 or physician licensed pursuant to title 32, chapter 13, 17 or 19.1 with at
21 least five years' experience in the testing or testing assessment,
22 evaluation and diagnosis of intellectual disabilities.

23 ~~3.~~ 4. "Intellectual disability" means a condition based on a
24 mental deficit that involves significantly subaverage general intellectual
25 functioning, existing concurrently with significant impairment in adaptive
26 behavior, where the onset of the foregoing conditions occurred before the
27 defendant reached ~~the age of~~ eighteen YEARS OF AGE.

28 ~~4.~~ 5. "Prescreening psychological expert" means a psychologist
29 licensed pursuant to title 32, chapter 19.1 with at least five years'
30 experience in the testing, evaluation and diagnosis of intellectual
31 disabilities.

32 6. "SERIOUS MENTAL ILLNESS":

33 (a) MEANS ACTIVE SYMPTOMS OF A SERIOUS MENTAL ILLNESS THAT
34 SUBSTANTIALLY IMPAIR THE DEFENDANT'S CAPACITY TO DO ANY OF THE FOLLOWING:

35 (i) APPRECIATE THE NATURE, CONSEQUENCES OR WRONGFULNESS OF THE
36 DEFENDANT'S CONDUCT.

37 (ii) EXERCISE RATIONAL JUDGMENT IN RELATION TO THE DEFENDANT'S
38 CONDUCT.

39 (iii) CONFORM THE DEFENDANT'S CONDUCT TO THE REQUIREMENTS OF THE
40 LAW.

41 (b) INCLUDES ONE OR MORE OF THE FOLLOWING DISORDERS AS CLASSIFIED
42 IN THE MOST RECENT EDITION OF THE DIAGNOSTIC AND STATISTICAL MANUAL OF
43 MENTAL DISORDERS PUBLISHED BY THE AMERICAN PSYCHIATRIC ASSOCIATION:

44 (i) SCHIZOPHRENIA SPECTRUM AND OTHER PSYCHOTIC DISORDERS.

45 (ii) BIPOLAR DISORDER.

1 (iii) MAJOR DEPRESSIVE DISORDER.

2 (iv) DELUSIONAL DISORDER.

3 (v) POSTTRAUMATIC STRESS DISORDER.

4 (vi) TRAUMATIC BRAIN INJURY.

5 (c) DOES NOT INCLUDE A DISORDER MANIFESTED PRIMARILY BY REPEATED
6 CRIMINAL CONDUCT OR ATTRIBUTABLE SOLELY TO THE ACUTE EFFECTS OF THE
7 VOLUNTARY USE OF ALCOHOL OR OTHER DRUGS.

8 ~~5.~~ 7. "Significantly subaverage general intellectual functioning"
9 means a full scale intelligence quotient of seventy or lower. The court
10 in determining the intelligence quotient shall take into account the
11 margin of error for the test administered.