

HOUSE BILL No. 2349

By Representative Nichols

2-12

AN ACT concerning the death penalty; relating to mental retardation; amending K.S.A. 21-4623 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 21-4623 is hereby amended to read as follows: 21-4623. ~~(a) If, under K.S.A. 21-4624 and amendments thereto, the county or district attorney has filed a notice of intent to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death and the defendant is convicted of the crime of capital murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is mentally retarded. If the court determines that there is not sufficient reason to believe that the defendant is mentally retarded, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 21-4624 through 21-4627, 21-4629 and 21-4631 and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is mentally retarded, the court shall conduct a hearing to determine whether the defendant is mentally retarded.~~

~~—(b)— At the hearing, the court shall determine whether the defendant is mentally retarded. The court shall order a psychiatric or psychological examination of the defendant. For that purpose, the court shall appoint two licensed physicians or licensed psychologists, or one of each, qualified by training and practice to make such examination, to examine the defendant and report their findings in writing to the judge within 10 days after the order of examination is issued. The defendant shall have the right to present evidence and cross-examine any witnesses at the hearing. No statement made by the defendant in the course of any examination provided for by this section, whether or not the defendant consents to the examination, shall be admitted in evidence against the defendant in any criminal proceeding.~~

~~—(c)— If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is not mentally retarded, the defendant shall be sentenced in accordance with K.S.A. 21-4624 through 21-4627, 21-4629 and 21-4631 and amendments thereto.~~

1 ~~—(d) If, at the conclusion of a hearing pursuant to this section, the court~~
2 ~~determines that the defendant is mentally retarded, the court shall sen-~~
3 ~~tence the defendant as otherwise provided by law, and no sentence of~~
4 ~~death shall be imposed hereunder.~~

5 (a) *No person with mental retardation is eligible for the death penalty.*

6 (b) *Mental retardation shall be determined at a pre-trial hearing pur-*
7 *suant to sections 2 and 3, and amendments thereto.*

8 ~~(c)~~ (c) As used in this section, “mentally retarded” means ~~having sig-~~
9 ~~nificantly subaverage general intellectual functioning, as defined by~~
10 ~~K.S.A. 76-12b01 and amendments thereto, to an extent which substan-~~
11 ~~tially impairs one’s capacity to appreciate the criminality of one’s conduct~~
12 ~~or to conform one’s conduct to the requirements of law~~ *a disability char-*
13 *acterized by significant limitations both in intellectual functioning and in*
14 *adaptive behavior as expressed in conceptual, social and practical adap-*
15 *tive skills which originates before the age of 18.*

16 New Sec. 2. (a) If the defense counsel has a good faith belief that
17 the defendant in a capital case has mental retardation, counsel shall file
18 a motion with the court, requesting a finding that the defendant is not
19 death-eligible because of mental retardation. Such a motion shall be filed
20 within 180 days after the prosecution files notice of intent to seek the
21 death penalty, unless the information in support of the motion came to
22 the counsel’s attention at a later date.

23 (b) Upon receipt of such a motion, the trial court shall conduct a
24 hearing for the presentation of evidence regarding the defendant’s pos-
25 sible mental retardation. Both the defense and the prosecution shall have
26 the opportunity to present evidence, including expert testimony. After
27 considering the evidence, the court shall find the defendant is not death-
28 eligible if it finds, by a preponderance of the evidence, that the defendant
29 has mental retardation. If the defendant is not death-eligible because of
30 mental retardation, the trial may proceed as a noncapital trial, and, if
31 convicted, the defendant may be sentenced to any penalty under state
32 law, other than death.

33 (c) If the court finds that the defendant is death-eligible, the case
34 may proceed as a capital trial. The jury shall not be informed of the prior
35 proceedings or the judge’s findings concerning the defendant’s claim of
36 mental retardation.

37 (d) If the capital trial results in a verdict of guilty to a capital charge,
38 the parties shall be entitled to present evidence to the jury on the issue
39 of whether the defendant has mental retardation. Having heard the evi-
40 dence and arguments, the jury shall be asked to render a special verdict
41 on the issue of mental retardation. The special verdict shall ask the jury
42 to answer the question: “Do you unanimously find, beyond a reasonable
43 doubt, that the defendant does not have mental retardation?” If the jury

1 answers “yes,” the case shall proceed to a penalty phase under K.S.A. 21-
2 4624, and amendments thereto. If the jury answers the question “no,”
3 the defendant may be sentenced to any penalty available under state law,
4 other than death.

5 New Sec. 3. (a) In cases in which the defendant has been convicted
6 of first-degree murder, sentenced to death and is in custody pending
7 execution of the sentence of death, the following procedures apply:

8 (1) Notwithstanding any other provisions of law or rule of court, a
9 defendant may seek appropriate relief from the defendant’s death sen-
10 tence upon the ground that the defendant was an individual with mental
11 retardation at the time of the commission of the capital offense; and

12 (2) a motion seeking appropriate relief from a death sentence on the
13 ground that the defendant was an individual with mental retardation shall
14 be filed:

15 (A) Within 180 days of the effective date of this act; or

16 (B) within 180 days of the imposition of the sentence of death if the
17 trial was in progress at the time of the enactment of this act. For purposes
18 of this section, a trial is considered to be in progress if the process of jury
19 selection has begun.

20 (b) The petition seeking relief from a sentence of death under this
21 section shall be in substantial compliance with K.S.A. 21-4624, and
22 amendments thereto. Upon receipt of a petition under this section, the
23 court shall invite a response from the county or district attorney. Follow-
24 ing briefing from the parties, the court shall conduct a hearing on the
25 petition in compliance with K.S.A. 21-4624, and amendments thereto.

26 (c) Findings by a trial court under this section that a defendant either
27 is or is not entitled to relief may be appealed to the supreme court.

28 Sec. 4. K.S.A. 21-4623 is hereby repealed.

29 Sec. 5. This act shall take effect and be in force from and after its
30 publication in the statute book.

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