

## AN ACT

ENTITLED, An Act to update certain language regarding capital punishment and to revise the mandatory sentence for persons with an intellectual disability convicted of murder in the first degree.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

Section 1. That § 23A-27A-26.1 be amended to read:

23A-27A-26.1. Notwithstanding any other provision of law, the death penalty may not be imposed upon any person who was intellectually disabled at the time of the commission of the offense and whose intellectual disability was manifested and documented before the age of eighteen years.

Section 2. That § 23A-27A-26.2 be amended to read:

23A-27A-26.2. As used in §§ 23A-27A-26.1 to 23A-27A-26.7, inclusive, intellectual disability means significant subaverage general intellectual functioning existing concurrently with substantial related deficits in applicable adaptive skill areas. An intelligence quotient exceeding seventy on a reliable standardized measure of intelligence is presumptive evidence that the defendant does not have significant subaverage general intellectual functioning.

Section 3. That § 23A-27A-26.3 be amended to read:

23A-27A-26.3. Not later than ninety days before the commencement of trial, the defendant may upon a motion alleging reasonable cause to believe the defendant was intellectually disabled at the time of the commission of the offense, apply for an order directing that an intellectual disability hearing be conducted before trial. If, upon review of the defendant's motion and any response to the defendant's motion, the court finds reasonable cause to believe the defendant was intellectually disabled, the court shall promptly conduct a hearing without a jury to determine whether the defendant was intellectually disabled. If the court finds after the hearing that the defendant was not

intellectually disabled at the time of the commission of the offense, the court shall, before commencement of trial, enter an order stating the court's finding. Nothing in this paragraph precludes the defendant from presenting mitigating evidence of an intellectual disability at the sentencing phase of the trial. If the court finds after the hearing that the defendant established an intellectual disability by a preponderance of the evidence, the court shall before commencement of trial, enter an order stating the court's finding. Unless the order is reversed on appeal, a separate sentencing proceeding under this section may not be conducted if the defendant is thereafter convicted of murder in the first degree. If a separate sentencing proceeding is not conducted, the court, upon conviction of a defendant for the crime of murder in the first degree, shall sentence the defendant to life imprisonment.

Section 4. That § 23A-27A-26.4 be amended to read:

23A-27A-26.4. If the court enters an order pursuant to § 23A-27A-26.3 finding that the defendant was intellectually disabled at the time of the commission of the offense, the state may appeal as of right from the order. Upon entering such an order, the court shall afford the state a reasonable period of time, which may not be less than ten days, to determine whether to take an appeal from the order finding that the defendant was intellectually disabled. The taking of an appeal by the state stays the effectiveness of the court's order and any order fixing a date for trial.

Section 5. That § 23A-27A-26.5 be amended to read:

23A-27A-26.5. If a defendant serves notice pursuant to § 23A-27A-26.3, the state may make application, upon notice to the defendant, for an order directing that the defendant submit to an examination by a psychiatrist, licensed psychologist, or licensed psychiatric social worker designated by the state's attorney, for the purpose of rebutting evidence offered by the defendant. Counsel for the state and the defendant have the right to be present at the examination. A videotaped recording of the examination shall be made available to the defendant and the state's attorney promptly after

its conclusion. The state's attorney shall promptly serve on the defendant a written copy of the findings and evaluation of the examiner. If a defendant is subjected to an examination pursuant to an order issued in accordance with this section, any statement made by the defendant for the purpose of the examination is inadmissible in evidence against the defendant in any criminal action or proceeding on every issue other than that of whether the defendant was intellectually disabled at the time of the commission of the offense, but such statement is admissible upon such an issue whether or not it would otherwise be deemed a privileged communication.

An Act to update certain language regarding capital punishment and to revise the mandatory sentence for persons with an intellectual disability convicted of murder in the first degree.

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I certify that the attached Act  
originated in the

HOUSE as Bill No. 1077

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1077

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

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STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State