

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

283B0439

SENATE BILL NO. 71

Introduced by: Senators Rusch, Blare, Cronin, Ewing, Foster, Heinert, Kennedy, Nesiba, Partridge, Schoenbeck, Smith (VJ), Soholt, Solano, Steinhauer, and Wismer and Representatives Johns, Barthel, Beal, Bordeaux, Brunner, Chase, Cwach, Deutsch, Duba, Duvall, Glanzer, Hansen, Healy, Johnson (David), Lake, Lesmeister, Marty, McCleerey, Mills, Mulally, Otten (Herman), Peterson (Kent), Pischke, Pourier, Randolph, Reed, Ring, Saba, Schoenfish, Smith (Jamie), Sullivan, Wiese, Willadsen, York, and Zikmund

1 FOR AN ACT ENTITLED, An Act to prohibit capital punishment of any person with severe
2 mental illness.

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

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

5 23A-27A-26.1. Notwithstanding any other ~~provision of~~ law, the death penalty may not be
6 imposed upon any person who was intellectually disabled at the time of the commission of the
7 offense and whose intellectual disability was manifested and documented before the age of
8 eighteen years; or upon any person who was severely mentally ill at the time of the commission
9 of the offense and whose severe mental illness was manifested and documented prior to the
10 commission of the offense.

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

12 23A-27A-26.2. As used in §§ 23A-27A-26.1 to 23A-27A-26.7, inclusive, ~~intellectual;~~



1 (1) Intellectual disability means significant subaverage general intellectual functioning
2 existing concurrently with substantial related deficits in applicable adaptive skill
3 areas. An intelligence quotient exceeding seventy on a reliable standardized measure
4 of intelligence is presumptive evidence that the defendant does not have significant
5 subaverage general intellectual functioning; and

6 (2) Severe mental illness means substantial organic or psychiatric disorder of thought,
7 mood, perception, orientation, or memory which significantly impairs judgment,
8 behavior, or ability to cope with the basic demands of life. Epilepsy, other forms of
9 developmental disability, alcohol or substance abuse, brief periods of intoxication,
10 or criminal behavior do not, alone, constitute severe mental illness for purposes of
11 this subdivision.

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

13 23A-27A-26.3. Not later than ninety days before the commencement of trial, ~~the~~ a defendant
14 may, upon a motion alleging reasonable cause to believe the defendant was intellectually
15 disabled or severely mental ill at the time of the commission of the offense, apply for an order
16 directing that an intellectual disability or severe mental illness hearing be conducted before trial.
17 If, upon review of the defendant's motion and any response to the defendant's motion, the court
18 finds reasonable cause to believe the defendant was intellectually disabled or severely mentally
19 ill, the court shall promptly conduct a hearing without a jury to determine whether the defendant
20 was intellectually disabled or severely mentally ill.

21 If the court finds after the hearing that the defendant was not intellectually disabled or
22 severely mentally ill at the time of the commission of the offense, the court shall, before
23 commencement of trial, enter an order stating the court's finding. Nothing in this ~~paragraph~~
24 section precludes the defendant from presenting mitigating evidence of an intellectual disability

1 or severe mental illness at the sentencing phase of the trial. If the court finds after the hearing
2 that the defendant established an intellectual disability or a severe mental illness by a
3 preponderance of the evidence, the court shall, before commencement of trial, enter an order
4 stating the court's finding.

5 Unless the court's order is reversed on appeal, a separate sentencing proceeding under this
6 section may not be conducted if the defendant is ~~thereafter~~ convicted of murder in the first
7 degree after entry of the court's order. If a separate sentencing proceeding is not conducted, the
8 court, upon conviction of a defendant for the crime of murder in the first degree, shall sentence
9 the defendant to life imprisonment.

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

11 23A-27A-26.4. If ~~the~~ a court enters an order ~~pursuant to~~ in accordance with § 23A-27A-26.3
12 finding that the defendant was intellectually disabled or severely mentally ill at the time of the
13 commission of the offense, the state may appeal as of right from the order. Upon entering ~~such~~
14 ~~an~~ the order, the court shall ~~afford~~ allow the state ~~a reasonable period of time, which may not~~
15 ~~be~~ less than ten days; to determine whether to take an appeal from the order ~~finding that the~~
16 ~~defendant was intellectually disabled. The taking of an.~~ An appeal by the state under this section
17 stays the ~~effectiveness of the~~ court's order and any order ~~fixing~~ setting a date for trial.

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

19 23A-27A-26.5. If a defendant ~~serves notice pursuant to~~ files a motion under § 23A-27A-
20 26.3, the state may make application, upon notice to the defendant, for an order directing that
21 the defendant submit to an examination by a psychiatrist, licensed psychologist, or licensed
22 psychiatric social worker designated by the state's attorney, for the purpose of rebutting any
23 evidence offered by the defendant. Counsel for the state and the defendant ~~have the right to~~ may
24 be present at the examination. A videotaped recording of the examination shall be made

1 available to the defendant and the state's attorney promptly after its conclusion. The state's
2 attorney shall promptly serve on the defendant a written copy of the findings and evaluation of
3 the examiner. ~~If a defendant is subjected to an examination pursuant to an order issued in~~
4 ~~accordance with this section, any~~

5 Any statement made by the defendant for the purpose of the during an examination under
6 this section is inadmissible in admissible as evidence against the defendant in any criminal
7 action or proceeding on every issue other than that of only as to whether the defendant was
8 intellectually disabled or severely mentally ill at the time of the commission of the offense, but
9 such statement is admissible upon such an issue or as to whether or not it the statement would
10 otherwise be deemed a privileged communication.

11 Section 6. That § 23A-27A-26.6 be amended to read:

12 23A-27A-26.6. ~~The~~ For any claim of intellectual disability, the provisions of §§ 23A-27A-
13 26.1 to 23A-27A-26.7, inclusive, apply only to offenses any offense alleged to have been
14 committed by the defendant after July 1, 2000, and for any claim of severe mental illness, only
15 to any offense alleged to have been committed by the defendant after July 1, 2019.