

AN ACT

ENTITLED, An Act to exempt mentally retarded persons from the death penalty and to provide for a determination of mental retardation in such cases.

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

Section 1. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

Notwithstanding any other provision of law, the death penalty may not be imposed upon any person who was mentally retarded at the time of the commission of the offense and whose mental retardation was manifested and documented before the age of eighteen years.

Section 2. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

As used in this Act, mental retardation 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 chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

Not later than ninety days prior to the commencement of trial, the defendant may upon a motion alleging reasonable cause to believe the defendant was mentally retarded at the time of the commission of the offense, apply for an order directing that a mental retardation hearing be conducted prior to trial. If, upon review of the defendant's motion and any response thereto, the court finds reasonable cause to believe the defendant was mentally retarded, it shall promptly conduct a hearing without a jury to determine whether the defendant was mentally retarded. If the court finds after the hearing that the defendant was not mentally retarded at the time of the commission of the offense, the

court shall, prior to commencement of trial, enter an order so stating, but nothing in this paragraph precludes the defendant from presenting mitigating evidence of mental retardation at the sentencing phase of the trial. If the court finds after the hearing that the defendant established mental retardation by a preponderance of the evidence, the court shall prior to commencement of trial, enter an order so stating. 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 without parole.

Section 4. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

If the court enters an order pursuant to section 3 of this Act finding that the defendant was mentally retarded 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 mentally retarded. 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 chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

If a defendant serves notice pursuant to section 3 of this Act, 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 mentally retarded 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.

Section 6. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this Act apply only to offenses alleged to have been committed by the defendant after the effective date of this Act.

Section 7. That chapter 23A-27A be amended by adding thereto a NEW SECTION to read as follows:

The provisions of this Act are essentially and inseparably connected and interdependent.

An Act to exempt mentally retarded persons from the death penalty and to provide for a determination of mental retardation in such cases.

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I certify that the attached Act originated in the

HOUSE as Bill No. 1197

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. 1197
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 _____
Ass. Secretary of State