SENATE COMMITTEE ON PUBLIC SAFETY
Senator Aisha Wahab, Chair
2023 - 2024 Regular

Bill No:	SB 1001	**Hearing Date:**	March 19, 2024
Author:	Skinner		
Version:	February 1, 2024		
Urgency:	No	**Fiscal:**	No
Consultant:	MK		

Subject: ***Death penalty: intellectually disabled persons***

HISTORY

Source: California Anti-Death Penalty Coalition

Prior Legislation: AB 2512 (Stone) Chapter 331, Stats. 2020
SB 1381 (Pavley) Chapter 457, Stats.
SB 3 (Burton) Chapter 700, Stats. 2003
SB 51 (Morrow) 2003, Failed Senate Public Safety
AB 557 (Aroner) 2002; failed on Assembly Concurrence
AB 1512 (Aroner) 2001; not heard in Assembly Appropriations
AB 1455 (Isenberg) 1993-94; failed Assembly Floor

Support: 8th Amendment Project; Alliance for Boys and Men of Color; Amnesty International USA; California Alliance for Youth and Community Justice; California Anti-death Penalty Coalition; California Catholic Conference; Californians for Safety and Justice; California Innocence Coalition; Californians United for A Responsible Budget; Communities United for Restorative Youth Justice (CURYJ); Death Penalty Focus; Disability Rights California; Ella Baker Center for Human Rights; Felony Murder Elimination Project; Full Picture Justice; Initiate Justice (UNREG); Initiate Justice Action; LA Defensa; Lawyers' Committee for Civil Rights of The San Francisco Bay Area; NextGen California; Santa Cruz Barrios Unidos; Sister Warriors Freedom Coalition; Smart Justice California, a Project of Tides Advocacy; The Transformative In-prison Workgroup; Uncommon Law; University of San Francisco School of Law | Racial Justice Clinic; Young Women's Freedom Center

Opposition: California District Attorneys Association

PURPOSE

The purpose of this bill is to make technical amendments to existing law to ensure that people who were diagnosed with an intellectual disability as an adult but can show that they meet the diagnostic criteria for intellectual disability are protected from execution.

Existing law establishes court procedures during death penalty cases regarding the issue of intellectual disability. (Penal Code § 1376.)

Existing law defines "intellectual disability" as the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the end of the developmental period. (Penal Code § 1376 (a).)

This bill provides that "manifested before the end of the developmental period" means that the deficits were present during the developmental period. It does not require a formal diagnosis of intellectual disability, or tests of intellectual functioning in the intellectual disability range, before the end of the developmental period.

This bill states, in the Penal Code, that a person with an intellectual disability is ineligible for the death penalty.

Existing law authorizes a defendant to apply, prior to the commencement of trial, for an order directing that a hearing to determine intellectual disability be conducted when the prosecution in a criminal case seeks the death penalty. (Penal Code § 1376 (b)(1).)

Existing law provides that if the defendant does not request a court hearing, the court shall order a jury hearing to determine if the defendant is a person with an intellectual disability. (Penal Code § 1376 (b)(1).)

Existing law specifies that the jury hearing on intellectual disability shall occur at the conclusion of the guilt phase of the trial in which the jury has found the defendant guilty with a finding that one or more special circumstances, as specified, are true, making the penalty death or life imprisonment without possibility of parole (LWOP). (Penal Code, §§ 190.2; 1376 . (b)(1).)

Existing law provides that the jury or court shall decide only the question of the defendant's intellectual disability. The defendant shall present evidence in support of the claim that they are a person with an intellectual disability. The prosecution shall present its case regarding the issue of whether the defendant is a person with an intellectual disability. Each party may offer rebuttal evidence. The court, for good cause in furtherance of justice, may permit either party to reopen its case to present evidence in support of or opposition to the claim of intellectual disability. Nothing prohibits the court from making orders reasonably necessary to ensure the production of evidence sufficient to determine whether or not the defendant is a person with an intellectual disability, including, but not limited to, the appointment of, and examination of the defendant by, qualified experts. A statement made by the defendant during an examination ordered by the court shall not be admissible in the trial on the defendant's guilt. (Penal Code § 1376 (b)(2).)

This bill deletes that provision saying that noting prohibits the court from making orders reasonably necessary to ensure the production of evidence to determine whether or not the defendant is a person with an intellectual disability including, but not limited to the appointment of and examination of the defendant by experts.

Existing law provides that the burden of proof shall be on the defendant to prove by a preponderance of the evidence that they are a person with an intellectual disability. The jury verdict must be unanimous. (Penal Code § 1376 (b)(3).)

Existing law provides that if the jury is unable to reach a unanimous verdict that the defendant is a person with an intellectual disability the courts shall dismiss the jury and order a new jury impaneled to try the issue of intellectual disability. (Penal Code § 1376 (b)(3).)

This bill instead provides that if the jury can't reach a unanimous verdict on whether the defendant has an intellectual disability, the court shall enter a fading that the defendant is ineligible for the death penalty.

Existing law provides that where the hearing is conducted before trial, the following shall apply:

- If the court finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and the criminal trial shall proceed as in any other case in which a sentence of death is not sought by the prosecution. If the defendant is found guilty of first degree murder, with a true finding of one or more special circumstances, the court shall sentence the defendant to confinement in the state prison for LWOP. The jury shall not be informed of the prior proceedings or the finding concerning the defendant's claim of intellectual disability. (Penal Code § 1376 (c)(1).)

- If the court finds that the defendant is not a person with an intellectual disability, the trial court shall proceed as in any other case in which a sentence of death is sought by the prosecution. The jury shall not be informed of the prior proceedings or the finding concerning the defendant's claim of intellectual disability. (Penal Code § 1376 (c)(2).)

This bill clarifies that if the defendant elects to present information at trial regarding they claim of intellectual disability, the defendant may.

Existing law provides that when the hearing is conducted before the jury after the defendant is found guilty with a finding that one or more special circumstances is true, the following shall apply (Penal Code § 1376 (d)):

- If the jury finds that the defendant is a person with an intellectual disability, the court shall preclude the death penalty and sentence the defendant to confinement in the state prison for LWOP; or

- If the jury finds that the defendant does not have an intellectual disability, the trial shall proceed as in any other case in which the death penalty is sought by the prosecution.

Existing law states that in any case in which the defendant has not requested a court hearing prior to trial, and has entered a plea of not guilty by reason of insanity, as specified, the hearing on intellectual disability shall occur at the conclusion of the sanity trial if the defendant is found sane. (Penal Code, § 1376 (e).)

Existing law the results of a test measuring intellectual functioning shall not be changed or adjusted based on race, ethnicity, national origin, or socioeconomic status.. (Penal Code § 1376 (g))

This bill provides that when a court has concluded a hearing under this section is necessary, the court may order a defendant or petitioner to submit to testing by a qualified prosecution expert only if the prosecution presents a reasonable factual basis that the intellectual functioning testing presented by the defendant or petitioner is unreliable.

This bill provides that any order requiring the defendant or petitioner to submit to testing by a qualified prosecution expert shall be limited to tests directly related to the determination of the defendant or petitioner's intellectual functioning

This bill provides that any such order shall prohibit the expert from questioning the defendant or petitioner about the facts of the case, shall permit the defendant or petitioner to have the attorney nearby during the examination and to consult with their attorney during the examination if they choose, and shall require that the prosecutions expert's examination be recorded in a manner agreed upon by the parties and the court.

This bill provides that the prosecution shall submit a proposed list of the tests its expert wishes to administer so that the defendant or petitioner may raise any objections before testing is ordered. The bill provides that this is declaratory of existing law.

This bill provides that intellectual disability is a question of fact. That the parties to a trial or habeas proceeding may stipulate that a defendant or petitioner is a person with intellectual disability as defined in the clinical standards and in this section. Whenever the parties so stipulate, or counsel representing the State concedes that the defendant or petitioner has an intellectual disability, the court shall, within g30 days, accept the stipulation or concession and declare the defendant or petitioner ineligible for the death penalty.

This bill makes the following legislative findings and declarations:

- It is the intent of the Legislature to codify and expand upon the Court's holding in Centeno v. Superior Court (2—4) 117 Ca;. App. 4th 30.
- The Legislature takes seriously the United States Supreme Court's acknowledgement that persons with intellectual disability face a special risk of wrongful execution. The Legislature does not wish to risk the execution of a person with an intellectual disability.
- As with Assembly Bill 2512 (2109-2020 Regular Session). It is the intent of the Legislature to adopt the professional medical and physiological community's definition and understanding of intellectual disability. The Legislature continues to urge courts to quickly and accurately identify person with intellectual disability and avoid protracted and unnecessary.

COMMENTS

1. Need for This Bill

According the author:

> While executions are not presently taking place, California's death penalty law remains, as well as protections that apply to the implementation of the death penalty. One of those protections is a requirement of the 8th Amendment which prohibits cruel and unusual punishments, among such punishments are the execution of anyone who is intellectually disabled. SB 1001 enacts safeguard to help ensure that California does not execute people who are intellectually disabled. Specifically SB 1001 establishes a process that retains the requirement that intellectual disability be present during a person's developmental stage but allows for the person to obtain a diagnosis of intellectual disability past that time period.

2. Atkins v. Virginia

In Atkins v. Virginia (2002) 536 U.S. 304, 321 (Atkins), the United States Supreme Court held that the Eighth Amendment forbids the execution of an intellectually disabled defendant. It is cruel and unusual punishment to impose the death penalty on a defendant with intellectual disability, then referred to as "mentally retarded." (Atkins, supra, 536 U.S. at p. 321; Hall v. Florida (2014) 572 U.S. 701.) "No legitimate penological purpose is served by executing the intellectually disabled." (Hall v. Florida, supra, 572 U.S. at p. 708, citing Atkins, supra, 536 U.S. at p. 320.)

> In defining intellectual disability, the Atkins court referenced two clinical definitions: The American Association on Mental Retardation (AAMR) [now the American Association of Intellectual and Developmental Disabilities (AAIDD)] defines mental retardation as follows: 'Mental retardation refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18.' [Citation.] [¶] The American Psychiatric Association's definition is similar: 'The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). Mental Retardation has many different etiologies and may be seen as a final common pathway of various pathological processes that affect the functioning of the central nervous system.' [Citation.] 'Mild' mental retardation is typically used to describe people with an IQ level of 50–55 to approximately 70. [Citation.] (Atkins, supra, 536 U.S. at p. 308, fn. 3.) Atkins left it up to the states to "'develop appropriate ways'" to ensure that intellectually disabled defendants are not sentenced to death. (Id. at p. 317.)

In response to Atkins, the California Legislature enacted Penal Code section 1376. (In re Hawthorne (2005) 35 Cal.4th 40, 44.) Section 1376 defines intellectual disability, formerly "mental retardation," as "the condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before 18 years of age." (Pen. Code, § 1376, subd. (a); see Stats. 2012, Chapter 448 [the Shriver "RWord" Act, which revised various statutes to replace references to "mental retardation" with the term "intellectual disability"], 457 [similarly replacing references to "mental retardation"].).)

3. Manifested before end of developmental period

Initially, intellectual disability, prohibiting capital punishment, was defined in Penal Code section 1376 as manifesting before age 18

The Legislature derived this standard from the two clinical definitions referenced by the high court in Atkins, supra, 536 U.S. at page 309, footnote 3. (In re Hawthorne (2005) 35 Cal.4th 40, 47-48.) However, one of the standards has since changed:

Intellectual disability has long been categorized as a developmental condition with an onset prior to the end of the developmental period. Although U.S. federal law (Developmental Disabilities Act of 2000; PL 106-402) has defined the end of the developmental period to be age 22 years for developmental disabilities, the end of the developmental period for intellectual disability had historically been set at age 18 years (see: Schalock et al., 2010; American Psychiatric Association, 2000). In its most recent revision of the Diagnostic and Statistical Manual for Mental Disorders, the American Psychiatric Association has left the chronological age of cut-off defining the "developmental period" up to the clinician and their clinical judgement (see: American Psychiatric Association, 2013). < https://www.apa.org/pi/disability/resources/publications/newsletter/2016/09/intellectualdisability > [as of March 31, 2020].)

AB 2512 (Stone) Chapter 331, Stats. 2020 updated the definition of "intellectual disability" to include conditions that manifest before the end of the developmental period, as defined by clinical standards. AB 2512 did not however define "manifested before the end of the developmental period" so this bill is defining that phrase as the deficits were present during the developmental period. It further states that it does not require a formal diagnosis of intellectual disability, or tests of intellectual function in in the intellectual disability range, before the end of the developmental period.

This bill makes a clear statement of law in the Penal Code that a person with an intellectual disability is ineligible for the death penalty

4. *Centeno v. Superior Court*

In *Centeno v. Superior Court* (2004) 117 Cal.App.4th 30, the California Supreme Court addressed and limited the scope of permissible testing by prosecution experts in capital cases in which intellectual disability is raised. The trial court in *Centeno* placed additional limitations on the prosecution expert's examination of the defendant, which the California Supreme Court noted served to protect the defendant's Fifth Amendment rights.

This bill codifies the holding in *Centeno* stating that the court may order a defendant or petitioner to submit to testing by a qualified prosecution expert only if the prosecution presents a reasonable factual basis that the intellectual functioning testing present by the defendant or petitioner is unreliable.

The bill restates existing law providing that the prosecutor to submit a list of proposed tests its expert will administer and the defendant or petitioner will have an opportunity to objections before testing is ordered.

5. Intellectual Disability is a Question of Fact

This bill states, as supported by caselaw, that intellectual disability is a "question of fact." (*In re Lewis* (2018) 4 Cal.5th 1185, 1192, 1201; *People v. Superior Court (Vidal)* (2007) 40 Cal.4th 999, 1012; *In re Hawthorne* (2005) 35 Cal.4th 40, 49.). The bill makes it clear that the parties to a trial or habeas proceeding may stipulate that a defendant or petitioner is a person with intellectual disability as defined. And provides that if the parties do stipulate,

or counsel representing the State concedes that the defendant or petitioner has an intellectual disability, the court shall, within 30 days accept the stipulation and declare the defendant ineligible for the death penalty.

This will save wasted court time when all parties agree. For example, according to the author:

> In at least one case, even after the parties stipulated to this question of fact, a court retained its own expert to assess whether the petitioner had an intellectual disability. Ultimately, the court's expert agreed with the conclusions of both parties' experts – that the petitioner was a person with intellectual disability, and the court found that the petitioner had an intellectual disability and vacated the petitioner's death sentence. This cost the taxpayers thousands of dollars and took two years to resolve. There is no need for courts to waste taxpayer funds, court staff time, and attorney time extending litigation once both parties agree the person has an intellectual disability.

6. Argument in Support

The California Alliance for Youth and Community Justice supports this bill:

> In 2002, the United States Supreme Court held it is unconstitutional to execute a person with intellectual disability. The following year, the California Legislature added Penal Code section 1376 to implement this decision. Since it was enacted, this code section has been amended twice: first, in 2012, to change the term "mental retardation" to "intellectual disability," and again in 2020 to modernize the statute and bring it in line with current clinical standards. SB 1001 makes further technical amendments to the statute that provide necessary and important safeguards to ensure that California is not engaging in cruel and unusual punishment by executing or sentencing to death people who are intellectually disabled.

7. Argument in Opposition

The California District Attorneys Association opposes this bill stating"

> This bill would create a de facto presumption in favor of a test by the defendant related to an intellectual disability specifically within death penalty cases. This presumption would exclude the people from even testing the defendant to confirm the intellectual disability unless the testing produced by the defendant could be shown to be unreliable. Forcing a party to show that a defendant's mental test is unreliable before having the right to access that defendant to conduct an independent examination is a novel standard that has not been applied in other criminal settings. Once a defendant has put their mental state into dispute, the state has the legal right to independently assess and test a defendant.
>
> Furthermore, even if the People could show the testing of a defendant for an intellectual disability was unreliable, this bill seeks to severely limit the ability to test a defendant. SB 1001 limits the testing of a defendant who has already presented unreliable tests. The People would be limited to tests directly related to the determination of the defendant's intellectual functioning and would be

prohibited from a discussion of the facts of the case even if that discussion was necessary to testing intellectual disability. The prosecution expert will be required to submit a proposed list of the tests prior to the evaluation so that they can be challenged by the defense in a manner that is inconsistent with current law.

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