

HOUSE BILL No. 2271

By Committee on Corrections and Juvenile Justice

2-3

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to sentencing; capital murder; person with intellectual disability;
3 amending K.S.A. 2016 Supp. 21-6622 and repealing the existing
4 section.
5

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

7 Section 1. K.S.A. 2016 Supp. 21-6622 is hereby amended to read as
8 follows: 21-6622. (a) If, under K.S.A. 2016 Supp. 21-6617, and
9 amendments thereto, the county or district attorney has filed a notice of
10 intent to request a separate sentencing proceeding to determine whether
11 the defendant should be sentenced to death and the defendant is convicted
12 of the crime of capital murder, the defendant's counsel or the warden of the
13 correctional institution or sheriff having custody of the defendant may
14 request a determination by the court of whether the defendant is a person
15 with intellectual disability. If the court determines that there is not
16 sufficient reason to believe that the defendant is a person with intellectual
17 disability, the court shall so find and the defendant shall be sentenced in
18 accordance with K.S.A. 2016 Supp. 21-6617, 21-6619, 21-6624, 21-6625,
19 21-6628 and 21-6629, and amendments thereto. If the court determines
20 that there is sufficient reason to believe that the defendant is a person with
21 intellectual disability, the court shall conduct a hearing to determine
22 whether the defendant is a person with intellectual disability.

23 (b) If a defendant is convicted of the crime of capital murder and a
24 sentence of death is not imposed, or if a defendant is convicted of the
25 crime of murder in the first degree based upon the finding of premeditated
26 murder, the defendant's counsel or the warden of the correctional
27 institution or sheriff having custody of the defendant may request a
28 determination by the court of whether the defendant is a person with
29 intellectual disability. If the court determines that there is not sufficient
30 reason to believe that the defendant is a person with intellectual disability,
31 the court shall so find and the defendant shall be sentenced in accordance
32 with K.S.A. 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and
33 amendments thereto. If the court determines that there is sufficient reason
34 to believe that the defendant is a person with intellectual disability, the
35 court shall conduct a hearing to determine whether the defendant is a
36 person with intellectual disability.

1 (c) At the hearing, the court shall determine whether the defendant is
2 a person with intellectual disability. The court shall order a psychiatric or
3 psychological examination of the defendant. For that purpose, the court
4 shall appoint two licensed physicians or licensed psychologists, or one of
5 each, qualified by training and practice to make such examination, to
6 examine the defendant and report their findings in writing to the judge
7 within 14 days after the order of examination is issued. The defendant
8 shall have the right to present evidence and cross-examine any witnesses at
9 the hearing. No statement made by the defendant in the course of any
10 examination provided for by this section, whether or not the defendant
11 consents to the examination, shall be admitted in evidence against the
12 defendant in any criminal proceeding.

13 (d) If, at the conclusion of a hearing pursuant to subsection (a), the
14 court determines that the defendant is not a person with intellectual
15 disability, the defendant shall be sentenced in accordance with K.S.A.
16 2016 Supp. 21-6617, 21-6619, 21-6624, 21-6625, 21-6628 and 21-6629,
17 and amendments thereto.

18 (e) If, at the conclusion of a hearing pursuant to subsection (b), the
19 court determines that the defendant is not a person with intellectual
20 disability, the defendant shall be sentenced in accordance with K.S.A.
21 2016 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments
22 thereto.

23 (f) If, at the conclusion of a hearing pursuant to this section, the court
24 determines that the defendant is a person with intellectual disability, the
25 court shall sentence the defendant as otherwise provided by law, and no
26 sentence of death, life without the possibility of parole, or mandatory term
27 of imprisonment *pursuant to K.S.A. 2016 Supp. 21-6623, 21-6624 and 21-*
28 *6625, and amendments thereto*, shall be imposed hereunder.

29 (g) Unless otherwise ordered by the court for good cause shown, the
30 provisions of subsection (b) shall not apply if it has been determined,
31 pursuant to a hearing granted under the provisions of subsection (a), that
32 the defendant is not a person with intellectual disability.

33 (h) As used in this section, "intellectual disability" means having
34 significantly subaverage general intellectual functioning, as defined by
35 K.S.A. 76-12b01, and amendments thereto, to an extent which
36 substantially impairs one's capacity to appreciate the criminality of one's
37 conduct or to conform one's conduct to the requirements of law.

38 Sec. 2. K.S.A. 2016 Supp. 21-6622 is hereby repealed.

39 Sec. 3. This act shall take effect and be in force from and after its
40 publication in the statute book.