

2026 Regular Session

HOUSE BILL NO. 1107

BY REPRESENTATIVE MELERINE

CRIMINAL/PROCEDURE: Provides relative to determination of intellectual disability in capital cases

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 905.5.1(C) and 924(introductory  
3 paragraph) and to enact Code of Criminal Procedure Articles 905.5.1(I), 924(7)  
4 through (9), and 926.5, relative to intellectual disabilities in capital cases; to provide  
5 for definitions; to provide for a prohibition; to provide relative to the effectiveness  
6 of certain provisions of law; to provide for legislative overrule of certain  
7 jurisprudence; to provide for a burden of proof; to provide for criteria; to provide for  
8 duties of the court; to provide for duties of the defendant or petitioner; to provide  
9 relative to evidentiary hearings; to provide for retroactivity; to provide for  
10 applicability; to provide for limitations; and to provide for related matters.

11 Be it enacted by the Legislature of Louisiana:

12 Section 1. Code of Criminal Procedure Article 905.5.1(C) and 924(introductory  
13 paragraph) are hereby amended and reenacted and Code of Criminal Procedure Articles  
14 905.5.1(I), 924(7) through (9), and 926.5 are hereby enacted to read as follows:

15 Art. 905.5.1. Intellectual disability

16 \* \* \*

17 C.(1)(a) Any defendant in a capital case ~~making a claim of~~ who claims the  
18 existence of an intellectual disability shall prove ~~the allegation~~ all of the following  
19 by a preponderance of the clear and convincing evidence.;



1 Art. 924. Definitions

2 As used in this Title, the following terms have the following meanings:

3 \* \* \*

4 (7) "Adaptive behavior" means the effectiveness or degree to which the  
5 petitioner meets developmental and sociocultural standards for personal  
6 independence and social responsibility that, without ongoing support, limit the  
7 functioning of the petitioner in one or more activities of daily living that include but  
8 are not limited to communication, social participation, and independent living across  
9 multiple environments such as home, school, work, and the community.

10 (8) "Intellectually disabled" means a condition that occurred before the  
11 petitioner reached eighteen years of age, is based on a mental deficit that involves  
12 significantly subaverage intellectual functioning, and exists concurrently with  
13 significant impairment in adaptive behavior.

14 (9) "Significantly subaverage intellectual functioning" means an intelligence  
15 quotient of seventy or below.

16 \* \* \*

17 Art. 926.5. Determination of intellectual disability in capital cases; post-conviction  
18 relief

19 A. In *State v. Williams*, 2001-1650 (La. 11/1/02), 831 So. 2d 835, the  
20 Louisiana Supreme Court created a test for applying a determination of intellectual  
21 disability in *Atkins v. Virginia*, 536 U.S. 304 (2002) absent legislative guidance. In  
22 *State v. Dunn*, 2007-0878 (La. 1/25/08), 974 So. 2d 658, the Louisiana Supreme  
23 Court held that, notwithstanding Article 905.5.1, *Williams* still applied to all claims  
24 of intellectual disability raised post-trial pursuant to *Atkins*. As provided in this  
25 Article, the legislature unambiguously overrules both *Dunn* and *Williams* to the  
26 extent these cases conflict with this Article.

27 B. No person found to be intellectually disabled pursuant to this Article shall  
28 be subjected to a sentence of death.

1           C.(1) To obtain relief pursuant to this Article, a petitioner shall prove all of  
2           the following by clear and convincing evidence:

3           (a) The petitioner has significantly subaverage intellectual functioning.

4           (b) The petitioner has significant and substantial deficits in adaptive  
5           behavior.

6           (c) Both the significantly subaverage intellectual functioning and the  
7           substantial deficits in adaptive behavior manifested before the petitioner reached  
8           eighteen years of age.

9           (d) Both the significantly subaverage intellectual functioning and substantial  
10          deficits in adaptive behavior exist concurrently.

11          (2) A petitioner shall prove all of the criteria provided in Subparagraph (1)  
12          of this Paragraph to be considered intellectually disabled.

13          D.(1) To prove significantly subaverage intellectual functioning for post-  
14          conviction relief, the petitioner shall submit a written expert report at least thirty  
15          days before the state files procedural objections and, upon a finding of good cause  
16          by the court, at least sixty days before any hearing on the merits. The expert report  
17          shall contain a determination of the petitioner's intelligence quotient.

18          (2) The court shall consider the margin of error when evaluating a  
19          petitioner's intelligence quotient test score; however, the court shall not presume that  
20          an intelligence quotient score falls in the bottom of the error range.

21          (3) The court shall consider the cumulative effects of multiple scores and  
22          also scores of adaptive behavior when the petitioner has an intelligence quotient  
23          ranging from seventy-five through eighty. The court shall presume that higher  
24          intelligence quotient scores more accurately reflect a person's capacity. A score  
25          above eighty on any scientifically recognized, standardized intelligence quotient test  
26          that is individually administered by a licensed psychiatrist or psychologist creates an  
27          irrebuttable presumption that the petitioner does not have significantly subaverage  
28          intellectual functioning.

1           (4) The expert report provided in Subparagraph (1) of this Paragraph is  
2           subject to the criteria for use of expert evidence as set forth by the Supreme Court  
3           of the United States in *Daubert vs. Merrell Dow Pharmaceuticals*, 509 U.S. 579  
4           (1993) and the Louisiana Supreme Court in *State v. Foret*, 628 So. 2d 1116 (La.  
5           1993).

6           (5) A petitioner who, on the sole basis of a written expert report, is unable  
7           to prove subaverage intellectual functioning by clear and convincing evidence shall  
8           not be granted an evidentiary hearing on his claim of intellectual disability.

9           E. Any evidentiary hearing, if applicable, shall be conducted in accordance  
10          with Article 930.

11          F. Notwithstanding any other provision of law to the contrary, Article  
12          905.5.1 shall become inoperative immediately upon, and to the extent permitted by,  
13          a decision of the Supreme Court of the United States overruling *Atkins v. Virginia*,  
14          536 U.S. 304 (2002), thereby restoring this state with the authority to impose or carry  
15          out a sentence of death notwithstanding a claim of intellectual disability.

16          G. Any civil action seeking declaratory, injunctive, or other relief  
17          challenging the constitutionality of this Article, in whole or in part, shall be brought  
18          exclusively by ordinary proceeding in the Twenty-First Judicial District Court.

19          H. This Article applies both retroactively and prospectively to all post-  
20          conviction relief that is sought on the basis of the petitioner's intellectual disability.

21          I. This Article applies only to claims of intellectual disability that are raised  
22          in post-conviction proceedings for capital cases. Nothing in this Article shall be  
23          construed to control, limit, expand, or otherwise affect any of the following:

24                 (1) The meaning of disability, intellectual disability, or any related term.

25                 (2) Any right, protection, benefit, or eligibility determination under any other  
26                 provision of state or federal law.

27          Section 2. The Louisiana State Law Institute is hereby authorized and directed to  
28 renumber the Subparagraphs of Code of Criminal Procedure Article 924 so as to properly  
29 place Code of Criminal Procedure Article 924(7) through (9) as enacted by this Act.

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**DIGEST**

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 1107 Reengrossed

2026 Regular Session

Melerine

**Abstract:** Provides relative to the legislative overruling of certain jurisprudence with respect to the determination of intellectual disability in capital cases.

Present law (C.Cr.P. Art. 905.5.1) provides relative to capital defendants who have intellectual disabilities.

Proposed law generally retains present law.

Present law requires any defendant in a capital case who makes a claim of intellectual disability to prove the allegation by a preponderance of the evidence.

Proposed law amends present law to require the defendant to prove by clear and convincing evidence all of the following:

- (1) The defendant has significantly subaverage intellectual functioning with consideration of the margin of error when evaluating a defendant's intelligence quotient test score.
- (2) The defendant has significant and substantial deficits in adaptive behavior.
- (3) Both the significantly subaverage intellectual functioning and the substantial deficits in adaptive behavior manifested before the defendant reached the age of 18 years.
- (4) Both the significantly subaverage intellectual functioning and substantial deficits in adaptive behavior exist concurrently.

Present law (C.Cr.P. Art. 924) provides for definitions relative to post-conviction relief.

Proposed law retains present law and defines the terms "adaptive behavior", "intellectually disabled", and "significantly subaverage intellectual functioning".

Proposed law provides for the legislative overruling of *State v. Williams* and *State v. Dunn*, relative to capital defendants who allege a claim of intellectual disability.

Proposed law prohibits a person found to be intellectually disabled pursuant to proposed law from being subjected to a sentence of death.

Proposed law provides for criteria that a petitioner is required to prove by clear and convincing evidence in order to obtain post-conviction relief under proposed law.

Proposed law requires a petitioner to prove all of the criteria provided in proposed law to be considered intellectually disabled.

Proposed law requires the petitioner to provide a written expert report within certain time periods to prove significantly subaverage intellectual functioning for the purposes of post-conviction relief and requires the expert report to contain a determination of the petitioner's intelligence quotient (IQ).

Proposed law provides for duties of the court relative to consideration of the margin of error when evaluating a petitioner's IQ test score, the cumulative effects of multiple scores, and also scores of adaptive behavior when the petitioner has an IQ ranging from 75 through 80.

Proposed law provides an irrebuttable presumption that the petitioner does not have significantly subaverage intellectual functioning if he has obtained a score above 80 on any scientifically recognized, standardized IQ test that is individually administered by a licensed psychiatrist or psychologist.

Proposed law provides that the expert report is subject to the criteria for use of expert evidence as set forth by jurisprudence of the U.S. Supreme Court and the La. Supreme Court.

Proposed law prohibits an evidentiary hearing on a petitioner's claim of intellectual disability when the petitioner, on the sole basis of a written expert report, is unable to prove subaverage intellectual functioning by clear and convincing evidence.

Proposed law requires any evidentiary hearing, if applicable, to be conducted in accordance with present law (C.Cr.P. Art. 930).

Proposed law provides that present law (C.Cr.P. Art. 905.5.1) becomes inoperative immediately upon, and to the extent permitted by, a decision of the U.S. Supreme Court overruling *Atkins v. Virginia*, relative to the imposition of a sentence of death notwithstanding a claim of intellectual disability.

Proposed law provides for venue in the 21st JDC for any civil action seeking declaratory, injunctive, or other relief challenging the constitutionality of proposed law, in whole or in part.

Proposed law applies both retroactively and prospectively to all post-conviction relief that is sought on the basis of the petitioner's intellectual disability.

Proposed law applies only to claims of intellectual disability that are in post-conviction proceedings for capital cases. Further provides that nothing in proposed law controls, limits, expands, or otherwise affects any of the following:

- (1) The meaning of disability, intellectual disability, or any related term.
- (2) Any right, protection, benefit, or eligibility determination under any other provision of state or federal law.

Proposed law provides for duties of the La. State Law Institute relative to placement of proposed law.

(Amends C.Cr.P. Art. 905.5.1(C) and 924(intro. para.); Adds C.Cr.P. Arts. 905.5.1(I), 924(7)-(9), and 926.5)

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Change the evidentiary standard from a preponderance of the evidence to clear and convincing evidence for any defendant in a capital case who makes a claim of intellectual disability.
2. Relative to submission of the petitioner's written expert report:

- (a) Remove proposed law regarding a determination of the petitioner's IQ using current community, nationally, and culturally accepted intelligence testing procedures and submission of this report within 10 days of the testing of the petitioner.
  - (b) Provide that the petitioner has at least 30 days for submission before the state files procedural objections and, upon a finding of good cause by the court, at least 60 days for submission before any hearing on the merits.
  - (c) Require the expert report to contain a determination of the petitioner's IQ.
3. Provide that the expert report is subject to the criteria for use of expert evidence as set forth by jurisprudence of the U.S. Supreme Court and the La. Supreme Court.
4. Prohibit an evidentiary hearing on an intellectual disability claim for a petitioner who, on the sole basis of a written expert report, is unable to prove subaverage intellectual functioning by clear and convincing evidence.
5. Clarify that proposed law applies only to claims of intellectual disability that are raised in post-conviction proceedings for capital cases.
6. Provide that nothing in proposed law controls, limits, expands, or otherwise affects any of the following:
  - (a) The meaning of disability, intellectual disability, or any related term.
  - (b) Any right, protection, benefit, or eligibility determination under any other provision of state or federal law.
7. Make technical changes.

The House Floor Amendments to the engrossed bill:

1. Require the court, when evaluating a person's IQ test score, to also consider scores of adaptive behavior when the petitioner has an IQ ranging from 75 to 80.
2. Change the score needed on a scientifically recognized, standard IQ test to create an irrebuttable presumption that the petitioner does not have significantly subaverage intellectual functioning from above 75 to above 80.
3. Make technical changes.