

**21-6622. Sentencing for capital murder and mandatory terms of imprisonment; determination if defendant is a person with intellectual disability.** (a) If, under K.S.A. 2014 Supp. 21-6617, and amendments thereto, the county or district attorney has filed a notice of intent to request a separate sentencing proceeding to determine whether the defendant should be sentenced to death and the defendant is convicted of the crime of capital murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is a person with intellectual disability. If the court determines that there is not sufficient reason to believe that the defendant is a person with intellectual disability, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 2014 Supp. 21-6617, 21-6619, 21-6624, 21-6625, 21-6628 and 21-6629, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is a person with intellectual disability, the court shall conduct a hearing to determine whether the defendant is a person with intellectual disability.

(b) If a defendant is convicted of the crime of capital murder and a sentence of death is not imposed, or if a defendant is convicted of the crime of murder in the first degree based upon the finding of premeditated murder, the defendant's counsel or the warden of the correctional institution or sheriff having custody of the defendant may request a determination by the court of whether the defendant is a person with intellectual disability. If the court determines that there is not sufficient reason to believe that the defendant is a person with intellectual disability, the court shall so find and the defendant shall be sentenced in accordance with K.S.A. 2014 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto. If the court determines that there is sufficient reason to believe that the defendant is a person with intellectual disability, the court shall conduct a hearing to determine whether the defendant is a person with intellectual disability.

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

(d) If, at the conclusion of a hearing pursuant to subsection (a), the court determines that the defendant is not a person with intellectual disability, the defendant shall be sentenced in accordance with K.S.A. 2014 Supp. 21-6617, 21-6619, 21-6624, 21-6625, 21-6628 and 21-6629, and amendments thereto.

(e) If, at the conclusion of a hearing pursuant to subsection (b), the court determines that the defendant is not a person with intellectual disability, the defendant shall be sentenced in accordance with K.S.A. 2014 Supp. 21-6620, 21-6623, 21-6624 and 21-6625, and amendments thereto.

(f) If, at the conclusion of a hearing pursuant to this section, the court determines that the defendant is a person with intellectual disability, the court shall sentence the defendant as otherwise provided by law, and no sentence of death, life without the possibility of parole, or mandatory term of imprisonment shall be imposed hereunder.

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

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

**History:** L. 2010, ch. 136, § 262; L. 2011, ch. 30, § 71; L. 2012, ch. 91, § 16; July 1.