The legislature of State X is debating reforms in the law governing insanity. Two reforms have been proposed. Proposal A would eliminate the insanity defense altogether. Proposal B would retain the defense but place on the defendant the burden of proving insanity by a preponderance of the evidence. Opponents of the reforms argue that the proposals would be unconstitutional under the due process clause of the United States Constitution.

Which of the proposed reforms would be unconstitutional?

A. Neither proposal.

B. Proposal A only.

C. Proposal B only.

D. Both proposals.

Explanation:

Affirmative defenses

Duress
Insanity
Necessity
Entrapment
Defense of persons/property
Mnemonic: **DINED**

The Fourteenth Amendment **due process clause** (applicable to the states) requires the prosecution to prove every element of a **criminal offense beyond a reasonable doubt**. Since an affirmative defense does not challenge any elements of a crime—it instead provides a justification or excuse for criminal conduct—the due process clause does not apply. Therefore, state law can place any burden of proof on either party (prosecution or defense) to establish or negate an affirmative defense. Additionally, states can freely modify or eliminate such defenses.

Insanity is an affirmative defense because it does not challenge any element of a crime and instead provides an excuse for the defendant's criminal behavior. Since due process does not regulate affirmative defenses, Proposal B can require a defendant to prove this defense by a preponderance of the evidence **(Choices C & D)**. And Proposal A can completely eliminate insanity as an affirmative defense without violating due process **(Choices B & D)**. Therefore, both proposals are constitutional.

Educational objective:

Due process does not apply to affirmative defenses (eg, insanity), so state law can require the defendant to prove an affirmative defense by any standard. Additionally, a legislature can freely modify or eliminate these defenses.

References

U.S. Const. amend. XIV § 1 (due process clause).

Leland v. Oregon, 343 U.S. 790, 799 (1952) (recognizing that states can place any burden of proof on the defendant to establish an insanity defense).

Clark v. Arizona, 548 U.S. 735, 752–53 (2006) (holding that a state can narrow its insanity defense).