

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 137*

Short Title: Capital Procedure/Severe Mental Disability. (Public)

Sponsors: Representatives Insko, Harrison, Womble, Luebke (Primary Sponsors);
K. Alexander, M. Alexander, Bryant, Cotham, Faison, Fisher, E. Floyd, Glazier,
Hall, Hill, Lucas, Mackey, Mobley, Rapp, Tarleton, Wainwright, Weiss, and
Wray.

Referred to: Judiciary I.

February 12, 2009

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CAPITAL TRIAL, SENTENCING, AND POST-CONVICTION
PROCEDURES FOR A PERSON WITH A SEVERE MENTAL DISABILITY.

Whereas, leading State and national mental health organizations have called for a
prohibition on imposition of the death penalty for persons with a severe mental disability at the
time of the commission of the crime; and

Whereas, specifically, the American Psychological Association, the American
Psychiatric Association, and the National Alliance on Mental Illness have all called for the
exclusion of persons with a severe mental disability from the imposition of the death penalty;
and

Whereas, the American Bar Association recently endorsed the call for the end of the
death penalty for persons with a severe mental disability; Now, therefore,
The General Assembly of North Carolina enacts:

SECTION 1. Article 100 of Chapter 15A of the General Statutes is amended by
adding a new section to read:

"§ 15A-2007. Defendant with severe mental disability; death sentence prohibited.

(a) Definition. – For purposes of this section, the term "severe mental disability" means any mental disability or defect that significantly impairs a person's capacity to do any of the following: (i) appreciate the nature, consequences, or wrongfulness of the person's conduct; (ii) exercise rational judgment in relation to conduct; or (iii) conform the person's conduct to the requirements of the law. A mental disability manifested primarily by repeated criminal conduct or attributable solely to the acute effects of alcohol or other drugs does not, standing alone, constitute a severe mental disability for purposes of this section.

(b) Death Penalty Prohibited for Defendant with Severe Mental Disability at Time of Commission of Criminal Offense. – Notwithstanding any provision of law to the contrary, no defendant who had a severe mental disability at the time of the commission of the criminal offense shall be sentenced to death.

(c) Pretrial Hearing to Determine Severe Mental Disability. – Upon motion of the defendant, supported by appropriate affidavits, the court shall order a pretrial hearing to determine if the defendant had a severe mental disability at the time of the commission of the offense. The defendant has the burden of production and persuasion to demonstrate by clear and convincing evidence that the defendant had a severe mental disability at the time of the criminal offense. If the court determines that the defendant had a severe mental disability at the



1 time of the criminal offense, the court shall declare the case noncapital, and the State shall not
2 seek the death penalty against the defendant.

3 (d) Pretrial Determination Does Not Affect Legal Defenses. – The pretrial
4 determination of the court shall not preclude the defendant from raising any legal defense
5 during the trial.

6 (e) Procedure at Sentencing Hearing Regarding Determination of Severe Mental
7 Disability. – If the court does not find in the pretrial proceeding that the defendant had a severe
8 mental disability at the time of the commission of the criminal offense, the defendant may
9 introduce evidence during the sentencing hearing regarding the disability. If, during the
10 sentencing hearing, the defendant introduces evidence regarding the disability, the court shall
11 submit a special issue to the jury as to whether the defendant had a severe mental disability at
12 the time of the commission of the criminal offense. These special issues shall be considered and
13 answered by the jury prior to the consideration of aggravating or mitigating factors and the
14 determination of sentence. If the jury determines that the defendant had a severe mental
15 disability at the time of the commission of the criminal offense, the court shall declare the case
16 noncapital, and the defendant shall be sentenced to life imprisonment.

17 (f) Burden of Production and Persuasion. – The defendant has the burden of production
18 and persuasion to demonstrate to the jury by a preponderance of the evidence that the defendant
19 had a severe mental disability at the time of the commission of the criminal offense.

20 (g) Jury Consideration of Severe Mental Disability. – If the jury determines that the
21 defendant did not have a severe mental disability as defined by this section at the time of the
22 commission of the criminal offense, the jury may consider any evidence of the disability
23 presented during the sentencing hearing when determining mitigating factors and the
24 defendant's sentence.

25 (h) Penalties that May Be Imposed on Convicted Defendant with a Severe Mental
26 Disability. – The provisions of this section do not preclude the sentencing of an offender who
27 has a severe mental disability as defined by this section to any other sentence authorized by
28 G.S. 14-17 for the crime of murder in the first degree."

29 **SECTION 2.** G.S. 15A-2000(b) reads as rewritten:

30 "(b) Sentence Recommendation by the Jury. – Instructions determined by the trial judge
31 to be warranted by the evidence shall be given by the court in its charge to the jury prior to its
32 deliberation in determining sentence. The court shall give appropriate instructions in those
33 cases in which evidence of the defendant's mental retardation requires the consideration by the
34 jury of the provisions of G.S. 15A-2005. The court shall also give appropriate instructions in
35 those cases in which evidence of the defendant's severe mental disability requires the
36 consideration by the jury of the provisions of G.S. 15A-2007. In all cases in which the death
37 penalty may be authorized, the judge shall include in his instructions to the jury that it must
38 consider any aggravating circumstance or circumstances or mitigating circumstance or
39 circumstances from the lists provided in subsections (e) and (f) which may be supported by the
40 evidence, and shall furnish to the jury a written list of issues relating to such aggravating or
41 mitigating circumstance or circumstances.

42 After hearing the evidence, argument of counsel, and instructions of the court, the jury shall
43 deliberate and render a sentence recommendation to the court, based upon the following
44 matters:

- 45 (1) Whether any sufficient aggravating circumstance or circumstances as
46 enumerated in subsection (e) exist;
- 47 (2) Whether any sufficient mitigating circumstance or circumstances as
48 enumerated in subsection (f), which outweigh the aggravating circumstance
49 or circumstances found, exist; and
- 50 (3) Based on these considerations, whether the defendant should be sentenced to
51 death or to imprisonment in the State's prison for life.

1 The sentence recommendation must be agreed upon by a unanimous vote of the 12 jurors.
2 Upon delivery of the sentence recommendation by the foreman of the jury, the jury shall be
3 individually polled to establish whether each juror concurs and agrees to the sentence
4 recommendation returned.

5 If the jury cannot, within a reasonable time, unanimously agree to its sentence
6 recommendation, the judge shall impose a sentence of life imprisonment; provided, however,
7 that the judge shall in no instance impose the death penalty when the jury cannot agree
8 unanimously to its sentence recommendation."

9 **SECTION 3.** Article 100 of Chapter 15A of the General Statutes is amended by
10 adding a new section to read:

11 **"§ 15A-2008. Request for postconviction determination of severe mental disability.**

12 In cases in which the defendant has been convicted of first degree murder, sentenced to
13 death, and is in custody awaiting imposition of the death penalty, the following procedures
14 apply:

15 (1) Notwithstanding any other provision or time limitation contained in Article
16 89 of Chapter 15A of the General Statutes, a defendant may seek appropriate
17 relief from the defendant's death sentence upon the ground that the defendant
18 had a severe mental disability, as defined in G.S. 15A-2007(a), at the time of
19 the commission of the capital crime.

20 (2) A motion seeking appropriate relief from a death sentence on the ground that
21 the defendant had a severe mental disability at the time of the commission of
22 the capital crime, shall be filed:

23 a. On or before January 31, 2010, if the defendant's conviction and
24 sentence of death were entered prior to October 1, 2009.

25 b. Within 150 days of the imposition of a sentence of death, if the
26 defendant's trial was in progress on October 1, 2009. For purposes of
27 this section, a trial is considered to be in progress if the process of
28 jury selection has begun.

29 (3) The motion, seeking relief from a death sentence upon the ground that the
30 defendant had a severe mental disability, shall comply with the provisions of
31 G.S. 15A-1420. The procedures and hearing on the motion shall follow and
32 comply with G.S. 15A-1420. Upon motion of the defendant, supported by
33 appropriate affidavits, the court shall order a hearing to determine if the
34 defendant had a severe mental disability at the time of the commission of the
35 offense."

36 **SECTION 4.** Sections 1 and 2 of this act become effective October 1, 2009, and
37 apply to trials docketed to begin on or after that date. Section 3 of this act becomes effective
38 October 1, 2009, and expires October 1, 2010. Section 4 of this act is effective when it
39 becomes law.