

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 309

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

Sponsors: Senators Kinnaird; Atwater, Dannelly, Dorsett, Garrou, Graham, Jones, Malone, McKissick, Nesbitt, Purcell, Shaw, and Vaughan.

Referred to: Judiciary I.

February 26, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE CAPITAL TRIAL, SENTENCING, AND POST-CONVICTION  
3 PROCEDURES FOR A PERSON WITH A SEVERE MENTAL DISABILITY.

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

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

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

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

16 **"§ 15A-2007. Defendant with severe mental disability; death sentence prohibited.**

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

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

28 (c) Pretrial Hearing to Determine Severe Mental Disability. – Upon motion of the  
29 defendant, supported by appropriate affidavits, the court shall order a pretrial hearing to  
30 determine if the defendant had a severe mental disability at the time of the commission of the  
31 offense. The defendant has the burden of production and persuasion to demonstrate by clear  
32 and convincing evidence that the defendant had a severe mental disability at the time of the  
33 criminal offense. If the court determines that the defendant had a severe mental disability at the  
34 time of the criminal offense, the court shall declare the case noncapital, and the State shall not  
35 seek the death penalty against the defendant.



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

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

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

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

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

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

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

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

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

50        The sentence recommendation must be agreed upon by a unanimous vote of the 12 jurors.  
51 Upon delivery of the sentence recommendation by the foreman of the jury, the jury shall be

1 individually polled to establish whether each juror concurs and agrees to the sentence  
2 recommendation returned.

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

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

9 **"§ 15A-2008. Request for postconviction determination of severe mental disability.**

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

- 13 (1) Notwithstanding any other provision or time limitation contained in Article  
14 89 of Chapter 15A of the General Statutes, a defendant may seek appropriate  
15 relief from the defendant's death sentence upon the ground that the defendant  
16 had a severe mental disability, as defined in G.S. 15A-2007(a), at the time of  
17 the commission of the capital crime.
- 18 (2) A motion seeking appropriate relief from a death sentence on the ground that  
19 the defendant had a severe mental disability at the time of the commission of  
20 the capital crime, shall be filed:
- 21 a. On or before January 31, 2010, if the defendant's conviction and  
22 sentence of death were entered prior to October 1, 2009.
- 23 b. Within 150 days of the imposition of a sentence of death, if the  
24 defendant's trial was in progress on October 1, 2009. For purposes of  
25 this section, a trial is considered to be in progress if the process of  
26 jury selection has begun.
- 27 (3) The motion, seeking relief from a death sentence upon the ground that the  
28 defendant had a severe mental disability, shall comply with the provisions of  
29 G.S. 15A-1420. The procedures and hearing on the motion shall follow and  
30 comply with G.S. 15A-1420. Upon motion of the defendant, supported by  
31 appropriate affidavits, the court shall order a hearing to determine if the  
32 defendant had a severe mental disability at the time of the commission of the  
33 offense."

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