

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 173*
Corrected Copy 2/20/01

Short Title: No Death Penalty/Mentally Retarded. (Public)

Sponsors: Senators Ballance, Dannelly, Horton, Shaw of Cumberland; Harris,
Jordan, Kinnaird, Lucas, and Martin of Guilford.

Referred to: Judiciary II.

February 19, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED
3 OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH, AS
4 RECOMMENDED BY THE LEGISLATIVE RESEARCH COMMISSION.

5 The General Assembly of North Carolina enacts:

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

8 **"§ 15A-2004. Mentally retarded defendants; death sentence prohibited.**

9 (a) The following definitions apply in this section:

10 (1) Mentally retarded. – Significantly subaverage intellectual functioning,
11 existing concurrently with impairment in adaptive functioning, and
12 manifested before the age of 18.

13 (2) Significantly subaverage intellectual functioning. – An intelligence
14 quotient of 70 or below on an individually administered standardized
15 intelligence quotient test.

16 (b) Notwithstanding any provision of law to the contrary, no defendant who is
17 mentally retarded shall be sentenced to death.

18 (c) Upon motion of the defendant prior to trial, the court shall conduct a hearing
19 to determine whether the defendant is mentally retarded. The defendant has the burden
20 of production and persuasion to demonstrate mental retardation by a preponderance of
21 the evidence. If the court determines the defendant is mentally retarded, the court shall
22 declare the case noncapital, and the State may not seek the death penalty against the
23 defendant.

24 (d) The pretrial determination of the court shall not preclude the defendant from
25 raising any legal defense during the trial.

1 (e) The provisions of this section do not preclude the sentencing of a mentally
2 retarded offender to any other sentence authorized by G.S. 14-17 for the crime of
3 murder in the first degree."

4 **SECTION 2.** This act becomes effective December 1, 2001, and applies to
5 trials begun on or after that date.