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SENATE BILL 173\*  
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Short Title: No Death Penalty/Mentally Retarded.

(Public)

Sponsors:

Referred to:

February 19, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED  
OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH.

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-2004. Mentally retarded defendants; death sentence prohibited.**

(a) The following definitions apply in this section:

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

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

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

(c) Upon motion of the defendant prior to trial, the court shall conduct a hearing  
to determine whether the defendant is mentally retarded. The intelligence quotient test  
referred to in subdivision (a)(2) of this section must have been administered prior to the  
commission of the alleged crime. The defendant has the burden of production and  
persuasion to demonstrate mental retardation by a preponderance of the evidence. If the  
court determines the defendant is mentally retarded, the court shall declare the case  
noncapital, and the State may not seek the death penalty against the defendant.

(d) The pretrial determination of the court shall not preclude the defendant from  
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 (f) In the event the court enters an order pursuant to this section finding that the  
5 defendant is mentally retarded, or is found not mentally retarded, the State or the  
6 defendant may appeal to the Court of Appeals as of right from the order. The State or  
7 the defendant shall have ten days to determine whether to take an appeal from the order  
8 finding that the defendant is mentally retarded. The taking of an appeal by the State or  
9 the defendant stays the effectiveness of the court's order and any order fixing a date for  
10 trial. Within six months of the enactment date of this subsection, the Supreme Court  
11 shall adopt rules to ensure that appeals pursuant to this subsection are expeditiously  
12 perfected, reviewed, and determined so that pretrial delays are minimized."

13 **SECTION 2.** Article 100 of Chapter 15A of the General Statutes is amended  
14 by adding a new section to read:

15 **"§ 15A-2005. Capital offenses; State has discretion as to whether to seek the death**  
16 **penalty.**

17 (a) The State may try a defendant capitally or noncapitally for first degree  
18 murder, even if evidence of an aggravating circumstance exists. If a defendant indicted  
19 for first degree murder pleads guilty to the offense, the State may choose not to seek the  
20 death penalty, even if evidence of an aggravating circumstance exists. The State may  
21 accept a guilty plea from a defendant for first degree murder and agree as part of a plea  
22 bargain that the State shall not seek the death penalty for the capital offense, even if  
23 evidence of an aggravating circumstance exists.

24 The State may exercise its discretion to try a defendant noncapitally for first degree  
25 murder or to accept a guilty plea and not seek the death penalty at any time during the  
26 pretrial proceedings, the trial, or the sentencing hearing.

27 (b) If a defendant is convicted of or pleads guilty to first degree murder when the  
28 State elects not to seek the death penalty, then the court shall impose a sentence of life  
29 imprisonment without parole."

30 **SECTION 3.** G.S. 15A-2000(a) reads as rewritten:

31 "(a) Separate Proceedings on Issue of Penalty. –

32 (1) ~~Upon~~ Except as provided in G.S. 15A-2005, upon conviction or  
33 adjudication of guilt of a defendant of a capital felony, the court shall  
34 conduct a separate sentencing proceeding to determine whether the  
35 defendant should be sentenced to death or life imprisonment. A capital  
36 felony is one which may be punishable by death.

37 (2) The proceeding shall be conducted by the trial judge before the trial  
38 jury as soon as practicable after the guilty verdict is returned. If prior  
39 to the time that the trial jury begins its deliberations on the issue of  
40 penalty, any juror dies, becomes incapacitated or disqualified, or is  
41 discharged for any reason, an alternate juror shall become a part of the  
42 jury and serve in all respects as those selected on the regular trial  
43 panel. An alternate juror shall become a part of the jury in the order in

1 which he was selected. If the trial jury is unable to reconvene for a  
2 hearing on the issue of penalty after having determined the guilt of the  
3 accused, the trial judge shall impanel a new jury to determine the issue  
4 of the punishment. If the defendant pleads guilty, the sentencing  
5 proceeding shall be conducted before a jury impaneled for that  
6 purpose. A jury selected for the purpose of determining punishment in  
7 a capital case shall be selected in the same manner as juries are  
8 selected for the trial of capital cases.

9 (3) In the proceeding there shall not be any requirement to resubmit  
10 evidence presented during the guilt determination phase of the case,  
11 unless a new jury is impaneled, but all such evidence is competent for  
12 the jury's consideration in passing on punishment. Evidence may be  
13 presented as to any matter that the court deems relevant to sentence,  
14 and may include matters relating to any of the aggravating or  
15 mitigating circumstances enumerated in subsections (e) and (f). Any  
16 evidence which the court deems to have probative value may be  
17 received.

18 (4) The State and the defendant or his counsel shall be permitted to  
19 present argument for or against sentence of death. The defendant or  
20 defendant's counsel shall have the right to the last argument."

21 **SECTION 4.** G.S. 15A-2001 reads as rewritten:

22 **"§ 15A-2001. Capital offenses; plea of guilty.**

23 (a) Any person who has been indicted for an offense punishable by death may  
24 enter a plea of guilty at any time after his ~~indictment, and the indictment.~~

25 (b) If the defendant enters a guilty plea to first degree murder and the State  
26 chooses not to seek the death penalty as provided in G.S. 15A-2005, then the judge of  
27 the superior court having jurisdiction shall sentence the person to life imprisonment  
28 without parole.

29 (c) If the defendant enters a guilty plea to first degree murder and the State  
30 chooses to seek the death penalty, then the judge of the superior court having  
31 jurisdiction may sentence such person to life imprisonment or to death pursuant to the  
32 procedures of G.S. 15A-2000. Before sentencing the ~~defendant,~~ defendant in a case in  
33 which the State is seeking the death penalty, the presiding judge shall impanel a jury for  
34 the limited purpose of hearing evidence and determining a sentence recommendation as  
35 to the appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence  
36 recommendation in cases where the defendant pleads guilty and the State seeks the  
37 death penalty shall be determined under the same procedure of G.S. 15A-2000  
38 applicable to defendants who have been tried and found guilty by a jury."

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