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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 general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, with the onset occurring before the age of 18.

(2) Significantly subaverage general intellectual functioning. – An intelligence quotient of 70 or below on an individually administered, scientifically recognized 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, supported by appropriate affidavits, the court may order a pretrial hearing to determine if the defendant is mentally retarded. The court shall order such a hearing with the consent of the State or upon a finding that such a pretrial hearing is in the best interest of justice and will promote judicial economy and administrative efficiency. The defendant has the burden of production and persuasion to demonstrate mental retardation by clear and convincing evidence. If the court determines the defendant to be 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) If the court does not find the defendant to be mentally retarded in the pretrial
2 proceeding, upon the introduction of evidence of the defendant's mental retardation
3 during the sentencing hearing, the court shall submit a special issue to the jury as to
4 whether the defendant is mentally retarded as defined in this section. This special issue
5 shall be considered and answered by the jury prior to the consideration of aggravating or
6 mitigating factors and the determination of sentence. If the jury determines the
7 defendant to be mentally retarded, the court shall declare the case noncapital and the
8 defendant shall be sentenced to life imprisonment.

9 (f) The defendant has the burden of production and persuasion to demonstrate
10 mental retardation to the jury by a preponderance of the evidence.

11 (g) If the jury determines that the defendant is not mentally retarded as defined
12 by this section, the jury may consider any evidence of mental retardation presented
13 during the sentencing hearing when determining aggravating or mitigating factors and
14 the defendant's sentence.

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

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

19 "(b) Sentence Recommendation by the Jury. – Instructions determined by the trial
20 judge to be warranted by the evidence shall be given by the court in its charge to the
21 jury prior to its deliberation in determining sentence. The court shall give appropriate
22 instructions in those cases in which evidence of the defendant's mental retardation
23 requires the consideration by the jury of the provisions of G.S. 15A-2004. If the jury
24 cannot, within a reasonable time, unanimously agree as to whether the defendant is
25 mentally retarded, as defined in G.S. 15A-2004, the judge shall impose a sentence of
26 life imprisonment. In all cases in which the death penalty may be authorized, the judge
27 shall include in his instructions to the jury that it must consider any aggravating
28 circumstance or circumstances or mitigating circumstance or circumstances from the
29 lists provided in subsections (e) and (f) which may be supported by the evidence, and
30 shall furnish to the jury a written list of issues relating to such aggravating or mitigating
31 circumstance or circumstances.

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

- 35 (1) Whether any sufficient aggravating circumstance or circumstances as
36 enumerated in subsection (e) exist;
- 37 (2) Whether any sufficient mitigating circumstance or circumstances as
38 enumerated in subsection (f), which outweigh the aggravating
39 circumstance or circumstances found, exist; and
- 40 (3) Based on these considerations, whether the defendant should be
41 sentenced to death or to imprisonment in the State's prison for life.

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

1 jury shall be individually polled to establish whether each juror concurs and agrees to
2 the sentence 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,
5 however, that the judge shall in no instance impose the death penalty when the jury
6 cannot agree unanimously to its sentence recommendation."

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

9 "**§ 15A-2005. Request for postconviction determination of mental retardation.**

10 (a) A defendant sentenced to death may make a motion before the trial court that
11 entered the judgment of conviction against the defendant for a determination of the
12 defendant's mental retardation.

13 (b) Upon such motion, the court shall conduct a hearing to determine if the
14 defendant is mentally retarded as defined by G.S. 15A-2004(a).

15 (c) The defendant has the burden of production and persuasion to demonstrate
16 mental retardation by a preponderance of the evidence.

17 (d) The court shall appoint counsel for the defendant who brings a motion under
18 this section if that defendant is indigent.

19 (e) If the court determines the defendant to be mentally retarded, the court shall
20 declare the defendant ineligible for the death penalty and must convert the defendant's
21 sentence to life imprisonment."

22 **SECTION 4.** Sections 1 and 2 of this act become effective October 1, 2001,
23 and apply to trials docketed to begin on or after that date. Section 3 of this act becomes
24 effective October 1, 2001, and applies to trials in progress on that date, including trials
25 in which jury selection has begun, and applies to defendants convicted and sentenced to
26 death on or before that date. Section 3 of this act expires on October 1, 2002. Section 4
27 of this act is effective when it becomes law.