

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 553\*

Short Title: Prohibit Execution/Severe Mental Disability. (Public)

Sponsors: Representatives Insko, Harrison (Primary Sponsors); Alexander, Fisher, Luebke, Parmon, Wainwright, Weiss, and Womble.

Referred to: Judiciary I.

March 12, 2007

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A DEFENDANT CONVICTED OF FIRST DEGREE  
2 MURDER WHO HAD A SEVERE MENTAL DISABILITY AT THE TIME OF  
3 THE COMMISSION OF THE CAPITAL CRIME SHALL NOT BE SENTENCED  
4 TO DEATH.

5  
6 Whereas, leading State and national mental health organizations have called  
7 for a prohibition on imposition of the death penalty for those with serious mental illness  
8 at the time of the commission of the crime; and

9 Whereas, specifically, the American Psychological Association, the American  
10 Psychiatric Association, and the National Alliance for the Mentally Ill have all called  
11 for the exclusion of the seriously mentally ill from the imposition of the death penalty;  
12 and

13 Whereas, the American Bar Association recently endorsed the call for the end  
14 of the death penalty for those with serious mental illness; Now, therefore,  
15 The General Assembly of North Carolina enacts:

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

18 **"§ 15A-2007. Defendant with severe mental disability; death sentence prohibited.**

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

27 (b) Death Penalty Prohibited for Defendant with Severe Mental Disability at  
28 Time of Commission of Criminal Offense. – Notwithstanding any provision of law to

1 the contrary, no defendant who had a severe mental disability at the time of the  
2 commission of the criminal offense shall be sentenced to death.

3 (c) Pretrial Hearing to Determine Severe Mental Disability. – Upon motion of the  
4 defendant, supported by appropriate affidavits, the court may order a pretrial hearing to  
5 determine if the defendant had a severe mental disability at the time of the commission  
6 of the offense. The court shall order such a hearing with the consent of the State. The  
7 defendant has the burden of production and persuasion to demonstrate by clear and  
8 convincing evidence that the defendant had a severe mental disability at the time of the  
9 criminal offense. If the court determines that the defendant had a severe mental  
10 disability at the time of the criminal offense, the court shall declare the case noncapital,  
11 and the State shall not seek the death penalty against the defendant.

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

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

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

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

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

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

41 "(b) Sentence Recommendation by the Jury. – Instructions determined by the trial  
42 judge to be warranted by the evidence shall be given by the court in its charge to the  
43 jury prior to its deliberation in determining sentence. The court shall give appropriate  
44 instructions in those cases in which evidence of the defendant's mental retardation

1 requires the consideration by the jury of the provisions of G.S. 15A-2005. The court  
2 shall also give appropriate instructions in those cases in which evidence of the  
3 defendant's severe mental disability requires the consideration by the jury of the  
4 provisions of G.S. 15A-2007. In all cases in which the death penalty may be authorized,  
5 the judge shall include in his instructions to the jury that it must consider any  
6 aggravating circumstance or circumstances or mitigating circumstance or circumstances  
7 from the lists provided in subsections (e) and (f) which may be supported by the  
8 evidence, and shall furnish to the jury a written list of issues relating to such aggravating  
9 or mitigating circumstance or circumstances.

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

- 13 (1) Whether any sufficient aggravating circumstance or circumstances as  
14 enumerated in subsection (e) exist;
- 15 (2) Whether any sufficient mitigating circumstance or circumstances as  
16 enumerated in subsection (f), which outweigh the aggravating  
17 circumstance or circumstances found, exist; and
- 18 (3) Based on these considerations, whether the defendant should be  
19 sentenced to death or to imprisonment in the State's prison for life.

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

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

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

30 "**§ 15A-2008. Request for postconviction determination of severe mental disability.**

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

- 34 (1) Notwithstanding any other provision or time limitation contained in  
35 Article 89 of Chapter 15A of the General Statutes, a defendant may  
36 seek appropriate relief from the defendant's death sentence upon the  
37 ground that the defendant had a severe mental disability, as defined in  
38 G.S. 15A-2007(a), at the time of the commission of the capital crime.
- 39 (2) A motion seeking appropriate relief from a death sentence on the  
40 ground that the defendant had a severe mental disability at the time of  
41 the commission of the capital crime, shall be filed:
  - 42 a. On or before January 31, 2008, if the defendant's conviction and  
43 sentence of death were entered prior to October 1, 2007.

1                   b.     Within 120 days of the imposition of a sentence of death, if the  
2                         defendant's trial was in progress on October 1, 2007. For  
3                         purposes of this section, a trial is considered to be in progress if  
4                         the process of jury selection has begun.

5                   (3)   The motion, seeking relief from a death sentence upon the ground that  
6                         the defendant had a mental disability, shall comply with the provisions  
7                         of G.S. 15A-1420. The procedures and hearing on the motion shall  
8                         follow and comply with G.S. 15A-1420."

9                   **SECTION 4.** Sections 1 and 2 of this act become effective October 1, 2007,  
10                   and apply to trials docketed to begin on or after that date. Section 3 of this act becomes  
11                   effective October 1, 2007, and expires October 1, 2008. Section 4 of this act is effective  
12                   when it becomes law.