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Short Title: Capital Procedure/Severe Mental Disability.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE CAPITAL TRIAL, SENTENCING, AND POSTCONVICTION PROCEDURES FOR A PERSON WITH A SEVERE MENTAL DISABILITY AND TO PROVIDE THAT INSANITY IS NOT AVAILABLE AS A DEFENSE TO A CRIMINAL ACTION IF PRIOR ALCOHOL OR DRUG USE OR BOTH ARE THE SOLE CAUSE OF THE PSYCHOSIS OR IF VOLUNTARY INTOXICATION, A VOLUNTARY DRUGGED CONDITION, OR BOTH COMBINED ARE THE SOLE SUPPORT FOR THE DEFENSE.

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

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

Whereas, the American Bar Association recently endorsed the call for the end of the death penalty for persons with a severe mental disability; Now, therefore, 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-2007. Defendant with severe mental disability; death sentence prohibited.**

(a) Definition. – For purposes of this section, the term "severe mental disability" means any mental disability or defect that significantly impairs a person's capacity to do any of the following: (i) appreciate the nature, consequences, or wrongfulness of the person's conduct in the criminal offense; (ii) exercise rational judgment in relation to the criminal offense; or (iii) conform the person's conduct to the requirements of the law in connection with the criminal offense.

(1) A mental disability manifested primarily by repeated criminal conduct or attributable solely to the acute effects of alcohol or other drugs does not, standing alone, constitute a severe mental disability for purposes of this section.

(2) The defendant has the burden of production and persuasion to demonstrate by clear and convincing evidence (i.e., active, residual, or prodromal symptoms) that the mental disability was manifested at some date prior to



1 the defendant's alleged conduct at the time of the offense in order to meet the  
2 test of severe mental disability under the provisions of this section.

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

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

15 (d) Pretrial Determinations; Effect on Legal Defenses. – Anyone found to be under the  
16 influence of a severe mental disability at the time of the commission of the criminal offense  
17 pursuant to this statute shall waive a defense of not guilty by reason of insanity. The pretrial  
18 determination of the court shall not preclude the defendant from raising any other legal defense  
19 during trial.

20 (e) Procedure at Sentencing Hearing Regarding Determination of Severe Mental  
21 Disability. – If the court does not find in the pretrial proceeding that the defendant had a severe  
22 mental disability at the time of the commission of the criminal offense, the defendant may  
23 introduce evidence during the sentencing hearing regarding the disability. If, during the  
24 sentencing hearing, the defendant introduces evidence regarding the disability, the court shall  
25 submit a special issue to the jury as to whether the defendant had a severe mental disability at  
26 the time of the commission of the criminal offense. These special issues shall be considered and  
27 answered by the jury prior to the consideration of aggravating or mitigating factors and the  
28 determination of sentence. If the jury determines that the defendant had a severe mental  
29 disability at the time of the commission of the criminal offense, the court shall declare the case  
30 noncapital, and the defendant shall be sentenced to life imprisonment without parole.

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

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

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

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

44 "(b) Sentence Recommendation by the Jury. – Instructions determined by the trial judge  
45 to be warranted by the evidence shall be given by the court in its charge to the jury prior to its  
46 deliberation in determining sentence. The court shall give appropriate instructions in those  
47 cases in which evidence of the defendant's mental retardation requires the consideration by the  
48 jury of the provisions of G.S. 15A-2005. The court shall also give appropriate instructions in  
49 those cases in which evidence of the defendant's severe mental disability requires the  
50 consideration by the jury of the provisions of G.S. 15A-2007. In all cases in which the death  
51 penalty may be authorized, the judge shall include in his instructions to the jury that it must

1 consider any aggravating circumstance or circumstances or mitigating circumstance or  
2 circumstances from the lists provided in subsections (e) and (f) which may be supported by the  
3 evidence, and shall furnish to the jury a written list of issues relating to such aggravating or  
4 mitigating circumstance or circumstances.

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

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

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

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

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

25 "**§ 15A-2008. Request for postconviction determination of severe mental disability.**

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

- 29 (1) Notwithstanding any other provision or time limitation contained in Article  
30 89 of Chapter 15A of the General Statutes, a defendant may seek appropriate  
31 relief from the defendant's death sentence upon the ground that the defendant  
32 submits credible and verifiable evidence of a prior severe mental disability,  
33 as defined in G.S. 15A-2007(a), at the time of the commission of the capital  
34 crime.
- 35 (2) A motion seeking appropriate relief from a death sentence on the ground that  
36 the defendant had a severe mental disability at the time of the commission of  
37 the capital crime, shall be filed:
  - 38 a. On or before January 31, 2012, if the defendant's conviction and  
39 sentence of death were entered prior to October 1, 2011.
  - 40 b. Within 150 days of the imposition of a sentence of death if the  
41 defendant's trial was in progress on October 1, 2011. For purposes of  
42 this section, a trial is considered to be in progress if the process of  
43 jury selection has begun.
- 44 (3) The motion seeking relief from a death sentence upon the ground that the  
45 defendant had a severe mental disability shall comply with the provisions of  
46 G.S. 15A-1420. The procedures and hearing on the motion shall follow and  
47 comply with G.S. 15A-1420. Upon motion of the defendant, supported by  
48 appropriate affidavits, the court shall order a hearing to determine if the  
49 defendant had a severe mental disability, as defined in G.S. 15A-2007(a), at  
50 the time of the commission of the offense. If the court determines that the  
51 defendant had a severe mental disability at the time of the commission of the

1 criminal offense, the defendant shall be sentenced to life imprisonment  
2 without parole."

3 **SECTION 4.** Article 52 of Chapter 15A of the General Statutes is amended by  
4 adding a new section to read:

5 **"§ 15A-960. Insanity defense is not available when drug or alcohol use is the sole cause of**  
6 **psychosis.**

7 Notwithstanding any other provision of law, insanity is not available as a defense in either  
8 of the following circumstances: (i) prior alcohol use, prior drug use, or both are the sole cause  
9 of the psychosis or (ii) voluntary intoxication, a voluntary drugged condition, or both combined  
10 are the sole support for the defense."

11 **SECTION 5.** Sections 1, 2, and 4 of this act become effective October 1, 2011, and  
12 apply to trials docketed to begin on or after that date. Section 3 of this act becomes effective  
13 October 1, 2011, and expires October 1, 2012. Section 5 of this act is effective when this act  
14 becomes law.