

February 11, 2009

H 137. CAPITAL PROCEDURE/SEVERE MENTAL DISABILITY. Filed 2/11/09. *TO AMEND THE CAPITAL TRIAL, SENTENCING, AND POST-CONVICTION PROCEDURES FOR A PERSON WITH A SEVERE MENTAL DISABILITY.*

Enacts new GS 15A-2007 to prohibit imposing the death penalty on a person determined to have a *severe mental disability* at the time the criminal offense is committed. Defines the term *severe mental disability*; and provides criteria for determining if the defendant meets the definition.

Definition. Defines *severe mental disability* to mean any mental disability or defect that significantly impairs a person's capacity to do any of the following: (1) appreciate the nature, consequences, or wrongfulness of the person's conduct; (2) exercise rational judgment in relation to conduct; or (3) conform the person's conduct to the requirements of law. Specifies that a mental disability manifested primarily by repeated criminal conduct or attributable solely to the effects of alcohol or other, standing alone does not constitute a *severe mental disability*.

Determination by the court at the pretrial hearing. Requires the court, upon a motion by the defendant that is supported by affidavits, to order a pretrial hearing to ascertain if the defendant had a severe mental disability at the time of the commission of the criminal offense. Provides that the defendant has the burden of production and persuasion in the pretrial hearing to demonstrate by clear and convincing evidence that the defendant had a severe mental disability at the time of the criminal offense. Requires the court to make a determination whether the defendant meets the definition for a severe mental disability. If the court finds the defendant to have met the definition of a severe mental disability at the time of the commission of the crime, then the court must declare the case to be non-capital and the State may not pursue the death penalty against the defendant. The court's determination at the pretrial hearing does not prevent the defendant from raising any legal defense at trial.

Determination by the jury at the sentencing hearing. If in the pretrial hearing, the court does not find that the defendant had a severe mental disability at the time of the commission of the crime, the defendant may introduce evidence of the mental disability during the sentencing hearing before the jury. If the defendant introduces this evidence during the sentencing hearing, the court must submit the question of the defendant's mental disability to the jury as a special issue. Provides that the defendant has the burden of production and persuasion in the pretrial hearing to demonstrate to the jury by a preponderance of the evidence that the defendant had a severe mental disability at the time of the criminal offense. Directs the court to declare the case non-capital if the jury finds that the defendant had a severe mental disability at the time the crime was committed and to sentence the defendant to life imprisonment.

Further consideration of severe mental disability by the jury. Provides that even if the jury determines that the defendant did not have a severe mental disability at the commission of the crime, as defined under new GS 15A-2007, the jury may consider any evidence of the disability presented during the sentencing hearing in determining mitigating factors and the defendant's sentence.

Penalties. Provides that nothing in proposed GS 15A-2007 prohibits the sentencing of a defendant determined to have a severe mental disability to any other sentence authorized under GS 14-17 for murder in the first degree.

Amends GS 15A-2000(b), directing the court to provide appropriate jury instructions regarding the provisions of proposed GS 15A-2007.

Proposed GS 15A-2007 and amended GS 15A-2000(b) become effective October 1, 2009 and apply to trials docketed to begin on or after that date.

Post conviction determination of severe mental disability. Enacts new GS 15A-2008 to provide procedural directives for defendants to request a post conviction determination of severe mental disability. Provisions apply to defendants who have been convicted of first-degree murder, sentenced to death, and are in custody awaiting the imposition of the death penalty.

Requires defendants seeking post conviction relief from the death sentence on the grounds that the defendant had a severe mental disability at the time the

capital crime was committed to file a motion: (1) on or before January 31, 2010 if the defendant's conviction and death sentence was entered before October 1, 2009 (the effective date of proposed new GS 15A-2007), or (2) within 150 days of receiving the death penalty if the defendant's trial was in progress on October 1, 2009. Directs that the defendant's motion must comply with the provisions of GS 15A-1420 and that the procedures and hearing on the motion shall also comply with GS 15A-1420.

Proposed GS 15A-2008 becomes effective October 1, 2009 and expires October 1, 2010.

Intro. by Insko.

GS 15A

July 14, 2009

H 137. CAPITAL PROCEDURE/SEVERE MENTAL DISABILITY. Filed 2/11/09. House committee substitute makes the following changes to 1st edition. Specifies in proposed GS 15A-2007(e) that if a jury determines that the defendant had a severe mental disability at the time of the commission of the criminal offense, the court must declare the case noncapital and sentence the defendant to life imprisonment *without parole*.

Provides in proposed GS 15A-2008 that in cases in which a defendant has been convicted of first degree murder, sentenced to death, and is in custody awaiting imposition of the death penalty, a motion seeking appropriate relief from a death sentence on the grounds that the defendant had a severe mental disability at the time of the commission of the crime must be filed (1) by April 1, 2010 (was, January 31, 2010) if the defendant's conviction and death sentence were entered prior to December 1, 2009 (was, October 1, 2009) and (2) within 150 days of the imposition of a death sentence, if the defendant's trial was in progress on December 1, 2009 (was, October 1, 2009). Also adds that, if the court determines that the defendant had a severe mental disability at the time of the commission of the criminal offense, the death sentence must be vacated and the defendant sentenced to life imprisonment without parole.

Effective July 1, 2009, appropriates \$25,000 for 2009-10 from the General Fund to the Judicial Department for the purpose of providing superior court judges with information and training on the requirements of the act.

Changes the effective date for proposed GS 15A-2007 and GS 15A-2008, and amendments to GS 15A-2000(b) to December 1, 2009 (was, October 1, 2009). Changes the expiration date for proposed GS 15A-2008 to December 1, 2010 (was, October 1, 2010). Makes a conforming change.

July 27, 2009

H 137. CAPITAL PROCEDURE/SEVERE MENTAL DISABILITY. Filed 2/11/09. House committee substitute makes the following changes to 2nd edition. Amends the definition for *severe mental disability* to mean any mental disability or defect that significantly impairs a person's capacity to do any of the following: (1) appreciate the nature, consequences, or wrongfulness of the person's conduct *in the criminal offense*; (2) exercise rational judgment in relation to *the criminal offense* (was, conduct); and (3) conform the person's conduct to the requirements of the law *in connection with the criminal offense*. Prohibits the death penalty for a defendant who was under the influence of a severe mental disability (was, who had a severe mental disability) when the crime was committed.

Authorizes the School of Government at UNC-Chapel Hill to use up to \$10,000 of the funds appropriated to the UNC Board of Governors for the North Carolina Judicial College for the 2009-10 fiscal year to provide information and training on the requirements of this act to superior court judges (was, appropriated \$25,000 for the 2009-10 fiscal year from the General Fund to the Judicial Department to provide superior court judges with information and training on the requirements of this act). Makes a conforming change to the title.