

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 137*
Committee Substitute Favorable 7/14/09
PROPOSED COMMITTEE SUBSTITUTE H137-PCS11019-LH-23

Short Title: Capital Procedure/Severe Mental Disability.

(Public)

Sponsors:

Referred to:

February 12, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE CAPITAL TRIAL, SENTENCING, AND POST-CONVICTION
3 PROCEDURES FOR A PERSON WITH A SEVERE MENTAL DISABILITY AND TO
4 AUTHORIZE THE USE OF CERTAIN FUNDS TO PROVIDE JUDICIAL TRAINING
5 WITH REGARD TO THE LEGAL REQUIREMENTS OF THESE PROCEDURES.

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

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

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

16 **SECTION 1.** Article 100 of Chapter 15A of the General Statutes is amended by
17 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" means
20 any mental disability or defect that significantly impairs a person's capacity to do any of the
21 following: (i) appreciate the nature, consequences, or wrongfulness of the person's conduct in
22 the criminal offense; (ii) exercise rational judgment in relation to the criminal offense; or (iii)
23 conform the person's conduct to the requirements of the law in connection with the criminal
24 offense. A mental disability manifested primarily by repeated criminal conduct or attributable
25 solely to the acute effects of alcohol or other drugs does not, standing alone, constitute a severe
26 mental disability for purposes of this section.

27 (b) Death Penalty Prohibited for Defendant With Severe Mental Disability at Time of
28 Commission of Criminal Offense. – Notwithstanding any provision of law to the contrary, no
29 defendant who was under the influence of a severe mental disability at the time of the
30 commission of the criminal offense shall be sentenced to death.

31 (c) Pretrial Hearing to Determine Severe Mental Disability. – Upon motion of the
32 defendant, supported by appropriate affidavits, the court shall order a pretrial hearing to
33 determine if the defendant had a severe mental disability at the time of the commission of the



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1 offense. The defendant has the burden of production and persuasion to demonstrate by clear
2 and convincing evidence that the defendant had a severe mental disability at the time of the
3 criminal offense. If the court determines that the defendant had a severe mental disability at the
4 time of the criminal offense, the court shall declare the case noncapital, and the State shall not
5 seek the death penalty against the defendant.

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

9 (e) Procedure at Sentencing Hearing Regarding Determination of Severe Mental
10 Disability. – If the court does not find in the pretrial proceeding that the defendant had a severe
11 mental disability at the time of the commission of the criminal offense, the defendant may
12 introduce evidence during the sentencing hearing regarding the disability. If, during the
13 sentencing hearing, the defendant introduces evidence regarding the disability, the court shall
14 submit a special issue to the jury as to whether the defendant had a severe mental disability at
15 the time of the commission of the criminal offense. These special issues shall be considered and
16 answered by the jury prior to the consideration of aggravating or mitigating factors and the
17 determination of sentence. If the jury determines that the defendant had a severe mental
18 disability at the time of the commission of the criminal offense, the court shall declare the case
19 noncapital, and the defendant shall be sentenced to life imprisonment without parole.

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

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

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

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

33 "(b) Sentence Recommendation by the Jury. – Instructions determined by the trial judge
34 to be warranted by the evidence shall be given by the court in its charge to the jury prior to its
35 deliberation in determining sentence. The court shall give appropriate instructions in those
36 cases in which evidence of the defendant's mental retardation requires the consideration by the
37 jury of the provisions of G.S. 15A-2005. The court shall also give appropriate instructions in
38 those cases in which evidence of the defendant's severe mental disability requires the
39 consideration by the jury of the provisions of G.S. 15A-2007. In all cases in which the death
40 penalty may be authorized, the judge shall include in his instructions to the jury that it must
41 consider any aggravating circumstance or circumstances or mitigating circumstance or
42 circumstances from the lists provided in subsections (e) and (f) which may be supported by the
43 evidence, and shall furnish to the jury a written list of issues relating to such aggravating or
44 mitigating circumstance or circumstances.

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

- 48 (1) Whether any sufficient aggravating circumstance or circumstances as
49 enumerated in subsection (e) exist;

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

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

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

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

16 "**§ 15A-2008. Request for post-conviction determination of severe mental disability.**

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

- 20 (1) Notwithstanding any other provision or time limitation contained in Article
21 89 of Chapter 15A of the General Statutes, a defendant may seek appropriate
22 relief from the defendant's death sentence upon the ground that the defendant
23 had a severe mental disability, as defined in G.S. 15A-2007(a), at the time of
24 the commission of the capital crime.
25 (2) A motion seeking appropriate relief from a death sentence on the ground that
26 the defendant had a severe mental disability at the time of the commission of
27 the capital crime, shall be filed:
28 a. On or before April 1, 2010, if the defendant's conviction and
29 sentence of death were entered prior to December 1, 2009.
30 b. Within 150 days of the imposition of a sentence of death, if the
31 defendant's trial was in progress on December 1, 2009. For purposes
32 of this section, a trial is considered to be in progress if the process of
33 jury selection has begun.
34 (3) The motion, seeking relief from a death sentence upon the ground that the
35 defendant had a severe mental disability, shall comply with the provisions of
36 G.S. 15A-1420. The procedures and hearing on the motion shall follow and
37 comply with G.S. 15A-1420. Upon motion of the defendant, supported by
38 appropriate affidavits, the court shall order a hearing to determine if the
39 defendant had a severe mental disability at the time of the commission of the
40 offense.
41 (4) If the court determines that the defendant had a severe mental disability at
42 the time of the commission of the criminal offense, the death sentence shall
43 be vacated, and the defendant shall be sentenced to life imprisonment
44 without parole."

45 **SECTION 4.** Of the funds appropriated to the Board of Governors of The
46 University of North Carolina for the North Carolina Judicial College for the 2009-2010 fiscal
47 year, the School of Government at the University of North Carolina at Chapel Hill may use up
48 to the sum of ten thousand dollars (\$10,000) for the 2009-2010 fiscal year for the purpose of
49 providing superior court judges with information and training on the requirements of this act.

50 **SECTION 5.** Sections 1 and 2 of this act become effective December 1, 2009, and
51 apply to trials docketed to begin on or after that date. Section 3 of this act becomes effective

1 December 1, 2009, and expires December 1, 2010. Section 4 of this act becomes effective July
2 1, 2009. Section 5 of this act is effective when it becomes law.