

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 968

Short Title: No Death Penalty/Mentally Retarded.

(Public)

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Sponsors: Representatives Locks, Wiser, Hackney, Holt, Nesbitt, Gardner; Barnhill, Burke, Chapin, Colton, N. Crawford, Edwards, Fitch, Gist, Hardaway, H. Hunter, Jeralds, Kennedy, Lutz, Michaux, Payne, and Privette.

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Referred to: Judiciary.

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March 31, 1989

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DEATH PENALTY FOR MENTALLY RETARDED PERSONS AND CERTAIN MENTALLY ILL PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-2000 is amended by adding the following subsections to read:

"(g) Notwithstanding any other provision of law, a sentence of death shall not be imposed or carried out upon:

(1) Any person who is mentally retarded as defined in G.S. 122C-3(22).

(2) Any person suffering from severe and persistent mental illness. For purposes of this subdivision, persons with severe and persistent mental illness are individuals who as the result of a mental disorder, exhibit emotional or behavioral functioning which is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long-term or indefinite duration. In these persons, mental disability is severe and persistent, resulting in a long-term limitation of their functional capacities for primary activities of daily living such as interpersonal relations, homemaking, self care, employment, and recreation.

(3) Any person who, as a result of organic brain injury or impairment and regardless of the age of onset, is of significantly subaverage general

- 1                    intellectual functioning which exists concurrently with deficits in  
2                    adaptive behavior.
- 3        (h)    Determination of Eligibility for the Death Penalty.
- 4            (1)    Upon motion of the defendant, the Court shall conduct a hearing to  
5            determine whether the defendant suffers from any of the conditions  
6            enumerated in G.S. 15A-2000(g)(1) through (g)(3). If the Court  
7            determines that the defendant suffers from such a condition he shall  
8            declare the case noncapital and the State may not thereafter seek the  
9            death penalty against the defendant. The Court's denial of relief under  
10           this subsection is without prejudice to the defendant's right to rely on  
11           this defense at trial. If the motion is denied, no reference to the  
12           hearing may be made at the trial, and recorded testimony or evidence  
13           taken at the hearing is not admissible as evidence at the trial.
- 14           (2)    A defendant is not eligible for the death penalty under G.S. 15A-  
15           2000(g) if, after the defendant produces evidence that he suffers from  
16           one or more of the conditions set out in G.S. 15A-2000(g)(1) through  
17           (g)(3), the State fails to prove beyond a reasonable doubt that the  
18           defendant does not suffer from such condition."
- 19        Sec. 2. This act is effective upon ratification.