

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1005  
Second Edition Engrossed 5/10/91

Short Title: No Death Penalty/Mentally Retarded.

(Public)

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Sponsors: Representatives Fitch; and Colton.

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Referred to: Judiciary I.

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April 19, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT THE DEATH PENALTY FOR MENTALLY RETARDED  
3 PERSONS.

4 The General Assembly of North Carolina enacts:

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

7 "(g) Notwithstanding any other provision of law, a sentence of death shall not be  
8 imposed or carried out upon any person who is mentally retarded. A person who is  
9 convicted of an offense for which the death penalty may be imposed, but who is found  
10 ineligible to receive the death penalty under subsection (h) of this section shall be  
11 sentenced to life imprisonment and shall not be eligible for parole, good time, or gain  
12 time. The sentencing judge shall not suspend the sentence of life imprisonment of a  
13 person found ineligible to receive the death penalty under subsection (h) of this section  
14 and shall not place that person on probation. For purposes of this section, a person is  
15 mentally retarded (as defined by the DSMIIIR and any successor) if that person has  
16 significantly subaverage general intellectual functioning that exists concurrently with  
17 deficits in adaptive behavior and this condition manifested before age 18.

18 (h) Determination of Eligibility for the Death Penalty.

19 (1) Upon motion of the defendant, the court shall conduct a hearing to  
20 determine whether the defendant is mentally retarded. If the court  
21 determines that the defendant is mentally retarded, the court shall  
22 declare the case noncapital and the State may not thereafter seek the  
23 death penalty against the defendant. The court's denial of relief under

1                   this subsection is without prejudice to the defendant's right to rely on  
2                   this defense at trial. If the motion is denied, no reference to the  
3                   hearing may be made at the trial, and recorded testimony or evidence  
4                   taken at the hearing is not admissible as evidence at the trial.

5           (2)   A defendant is not eligible for the death penalty under G.S. 15A-  
6                   2000(g), if, after the defendant produces evidence that he is mentally  
7                   retarded the State fails to prove beyond a reasonable doubt that the  
8                   defendant does not suffer such condition."

9           Sec. 2. This act is effective upon ratification.