

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**SENATE BILL 173*
Corrected Copy 2/20/01
Judiciary II Committee Substitute Adopted 4/19/01
Fourth Edition Engrossed 4/23/01
House Committee Substitute Favorable 7/4/01
Sixth Edition Engrossed 7/16/01**

Short Title: No Death Penalty/Mentally Retarded. (Public)

Sponsors:

Referred to:

February 19, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A MENTALLY RETARDED PERSON CONVICTED
3 OF FIRST DEGREE MURDER SHALL NOT BE SENTENCED TO DEATH.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Article 100 of Chapter 15A of the General Statutes is amended
6 by adding a new section to read:

7 "**§ 15A-2005. Mentally retarded defendants; death sentence prohibited.**

8 (a) (1) The following definitions apply in this section:
9 a. Mentally retarded. – Significantly subaverage general
10 intellectual functioning, existing concurrently with significant
11 limitations in adaptive functioning, both of which were
12 manifested before the age of 18.

13 b. Significant limitations in adaptive functioning. – Significant
14 limitations in two or more of the following adaptive skill areas:
15 communication, self-care, home living, social skills, community
16 use, self-direction, health and safety, functional academics,
17 leisure skills and work skills.

18 c. Significantly subaverage general intellectual functioning. – An
19 intelligence quotient of 70 or below.

20 (2) The defendant has the burden of proving significantly subaverage
21 general intellectual functioning, significant limitations in adaptive
22 functioning, and that mental retardation was manifested before the age
23 of 18. An intelligence quotient of 70 or below on an individually
24 administered, scientifically recognized standardized intelligence
25 quotient test administered by a licensed psychiatrist or psychologist is

1 evidence of significantly subaverage general intellectual functioning;
2 however, it is not sufficient, without evidence of significant limitations
3 in adaptive functioning and without evidence of manifestation before
4 the age of 18, to establish that the defendant is mentally retarded."

5 (b) Notwithstanding any provision of law to the contrary, no defendant who is
6 mentally retarded shall be sentenced to death.

7 (c) Upon motion of the defendant, supported by appropriate affidavits, the court
8 may order a pretrial hearing to determine if the defendant is mentally retarded. The
9 court shall order such a hearing with the consent of the State. The defendant has the
10 burden of production and persuasion to demonstrate mental retardation by clear and
11 convincing evidence. If the court determines the defendant to be mentally retarded, the
12 court shall declare the case noncapital, and the State may not seek the death penalty
13 against the defendant.

14 (d) The pretrial determination of the court shall not preclude the defendant from
15 raising any legal defense during the trial.

16 (e) If the court does not find the defendant to be mentally retarded in the pretrial
17 proceeding, upon the introduction of evidence of the defendant's mental retardation
18 during the sentencing hearing, the court shall submit a special issue to the jury as to
19 whether the defendant is mentally retarded as defined in this section. This special issue
20 shall be considered and answered by the jury prior to the consideration of aggravating or
21 mitigating factors and the determination of sentence. If the jury determines the
22 defendant to be mentally retarded, the court shall declare the case noncapital and the
23 defendant shall be sentenced to life imprisonment.

24 (f) The defendant has the burden of production and persuasion to demonstrate
25 mental retardation to the jury by a preponderance of the evidence.

26 (g) If the jury determines that the defendant is not mentally retarded as defined
27 by this section, the jury may consider any evidence of mental retardation presented
28 during the sentencing hearing when determining aggravating or mitigating factors and
29 the defendant's sentence.

30 (h) The provisions of this section do not preclude the sentencing of a mentally
31 retarded offender to any other sentence authorized by G.S. 14-17 for the crime of
32 murder in the first degree."

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

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

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

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

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

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

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

21 **"§ 15A-2006. Request for postconviction determination of mental retardation.**

22 "In cases in which the defendant has been convicted of first-degree murder,
23 sentenced to death, and is in custody awaiting imposition of the death penalty, the
24 following procedures apply:

- 25 (1) Notwithstanding any other provision or time limitation contained in
26 Article 89 of Chapter 15A, a defendant may seek appropriate relief
27 from the defendant's death sentence upon the ground that the defendant
28 was mentally retarded, as defined in G.S. 15A-2005(a), at the time of
29 the commission of the capital crime.
- 30 (2) A motion seeking appropriate relief from a death sentence on the
31 ground that the defendant is mentally retarded, shall be filed:
 - 32 a. On or before January 31, 2002, if the defendant's conviction and
33 sentence of death were entered prior to October 1, 2001.
 - 34 b. Within 120 days of the imposition of a sentence of death, if the
35 defendant's trial was in progress on October 1, 2001. For
36 purposes of this section, a trial is considered to be in progress if
37 the process of jury selection has begun.
- 38 (3) The motion, seeking relief from a death sentence upon the ground that
39 the defendant was mentally retarded, shall comply with the provisions
40 of G.S. 15A-1420. The procedures and hearing on the motion shall
41 follow and comply with G.S. 15A-1420.

42 **SECTION 4.** Sections 1 and 2 of this act become effective October 1, 2001,
43 and apply to trials docketed to begin on or after that date. Section 3 of this act becomes

1 effective October 1, 2001, and expires October 1, 2002. Section 4 of this act is effective
2 when it becomes law.