

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 659  
Committee Substitute Favorable 4/20/11

Short Title: Capital Procedure/Severe Mental Disability.

(Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE CAPITAL TRIAL, SENTENCING, AND POSTCONVICTION  
3 PROCEDURES FOR A PERSON WITH A SEVERE MENTAL DISABILITY AND TO  
4 PROVIDE THAT INSANITY IS NOT AVAILABLE AS A DEFENSE TO A CRIMINAL  
5 ACTION IF PRIOR ALCOHOL OR DRUG USE OR BOTH ARE THE SOLE CAUSE OF  
6 THE PSYCHOSIS OR IF VOLUNTARY INTOXICATION, A VOLUNTARY  
7 DRUGGED CONDITION, OR BOTH COMBINED ARE THE SOLE SUPPORT FOR  
8 THE DEFENSE.

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

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

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

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

21 **"§ 15A-2007. Defendant with severe mental disability; death sentence prohibited.**

22 (a) Definition. – For purposes of this section, the term "severe mental disability" means  
23 any mental disability or defect that significantly impairs a person's capacity to do any of the  
24 following: (i) appreciate the nature, consequences, or wrongfulness of the person's conduct in  
25 the criminal offense; (ii) exercise rational judgment in relation to the criminal offense; or (iii)  
26 conform the person's conduct to the requirements of the law in connection with the criminal  
27 offense.

28 (1) A mental disability manifested primarily by repeated criminal conduct or  
29 attributable solely to the acute effects of alcohol or other drugs does not,  
30 standing alone, constitute a severe mental disability for purposes of this  
31 section.

32 (2) The defendant has the burden of production and persuasion to demonstrate  
33 by clear and convincing evidence (i.e., active, residual, or prodromal  
34 symptoms) that the mental disability was manifested at some time prior to  
35 the defendant's alleged conduct at the time of the offense in order to meet the  
36 test of severe mental disability under the provisions of this section.



1       **(b) Death Penalty Prohibited for Defendant With Severe Mental Disability at Time of**  
2 **Commission of Criminal Offense.** – Notwithstanding any provision of law to the contrary, no  
3 defendant who had a severe mental disability at the time of the commission of the criminal  
4 offense shall be sentenced to death.

5       **(c) Pretrial Hearing to Determine Severe Mental Disability.** – Upon motion of the  
6 defendant, supported by appropriate affidavits, the court shall order a pretrial hearing to  
7 determine if the defendant had a severe mental disability at the time of the commission of the  
8 offense. The defendant has the burden of production and persuasion to demonstrate by clear  
9 and convincing evidence that the defendant had a severe mental disability at the time of the  
10 criminal offense. If the court determines that the defendant had a severe mental disability at the  
11 time of the criminal offense, the court shall declare the case noncapital, and the State shall not  
12 seek the death penalty against the defendant.

13       **(d) Pretrial Determinations; Effect on Legal Defenses.** – Anyone found to be under the  
14 influence of a severe mental disability at the time of the commission of the criminal offense  
15 pursuant to this statute shall waive a defense of not guilty by reason of insanity. The pretrial  
16 determination of the court shall not preclude the defendant from raising any other legal defense  
17 during trial.

18       **(e) Procedure at Sentencing Hearing Regarding Determination of Severe Mental**  
19 **Disability.** – If the court does not find in the pretrial proceeding that the defendant had a severe  
20 mental disability at the time of the commission of the criminal offense, the defendant may  
21 introduce evidence during the sentencing hearing regarding the disability. If, during the  
22 sentencing hearing, the defendant introduces evidence regarding the disability, the court shall  
23 submit a special issue to the jury as to whether the defendant had a severe mental disability at  
24 the time of the commission of the criminal offense. These special issues shall be considered and  
25 answered by the jury prior to the consideration of aggravating or mitigating factors and the  
26 determination of sentence. If the jury determines that the defendant had a severe mental  
27 disability at the time of the commission of the criminal offense, the court shall declare the case  
28 noncapital, and the defendant shall be sentenced to life imprisonment.

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

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

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

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

42       **"(b) Sentence Recommendation by the Jury.** – Instructions determined by the trial judge  
43 to be warranted by the evidence shall be given by the court in its charge to the jury prior to its  
44 deliberation in determining sentence. The court shall give appropriate instructions in those  
45 cases in which evidence of the defendant's mental retardation requires the consideration by the  
46 jury of the provisions of G.S. 15A-2005. The court shall also give appropriate instructions in  
47 those cases in which evidence of the defendant's severe mental disability requires the  
48 consideration by the jury of the provisions of G.S. 15A-2007. In all cases in which the death  
49 penalty may be authorized, the judge shall include in his instructions to the jury that it must  
50 consider any aggravating circumstance or circumstances or mitigating circumstance or  
51 circumstances from the lists provided in subsections (e) and (f) which may be supported by the

1 evidence, and shall furnish to the jury a written list of issues relating to such aggravating or  
2 mitigating circumstance or circumstances.

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

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

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

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

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

23 **"§ 15A-2008. Request for postconviction determination of severe mental disability.**

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

- 27 (1) Notwithstanding any other provision or time limitation contained in Article  
28 89 of Chapter 15A of the General Statutes, a defendant may seek appropriate  
29 relief from the defendant's death sentence upon the ground that the defendant  
30 had a severe mental disability, as defined in G.S. 15A-2007(a), at the time of  
31 the commission of the capital crime.
- 32 (2) A motion seeking appropriate relief from a death sentence on the ground that  
33 the defendant had a severe mental disability at the time of the commission of  
34 the capital crime, shall be filed:
  - 35 a. On or before January 31, 2012, if the defendant's conviction and  
36 sentence of death were entered prior to October 1, 2011.
  - 37 b. Within 150 days of the imposition of a sentence of death if the  
38 defendant's trial was in progress on October 1, 2011. For purposes of  
39 this section, a trial is considered to be in progress if the process of  
40 jury selection has begun.
- 41 (3) The motion seeking relief from a death sentence upon the ground that the  
42 defendant had a severe mental disability shall comply with the provisions of  
43 G.S. 15A-1420. The procedures and hearing on the motion shall follow and  
44 comply with G.S. 15A-1420. Upon motion of the defendant, supported by  
45 appropriate affidavits, the court shall order a hearing to determine if the  
46 defendant had a severe mental disability at the time of the commission of the  
47 offense."

48 **SECTION 4.** Article 52 of Chapter 15A of the General Statutes is amended by  
49 adding a new section to read:

50 **"§ 15A-960. Insanity defense is not available when drug or alcohol use is the sole cause of**  
51 **psychosis.**

1        Notwithstanding any other provision of law, insanity is not available as a defense in either  
2 of the following circumstances: (i) prior alcohol use, prior drug use, or both are the sole cause  
3 of the psychosis or (ii) voluntary intoxication, a voluntary drugged condition, or both combined  
4 are the sole support for the defense."

5                **SECTION 5.** Sections 1, 2, and 4 of this act become effective October 1, 2011, and  
6 apply to trials docketed to begin on or after that date. Section 3 of this act becomes effective  
7 October 1, 2011, and expires October 1, 2012. Section 5 of this act is effective when this act  
8 becomes law.