

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

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HOUSE BILL 912

Short Title: Improve Capital Procedures for Certain Cases. (Public)

Sponsors: Representatives Hardister, Rogers, Moffitt, and Harrison (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 3, if favorable, Appropriations, if favorable, Rules, Calendar, and
Operations of the House

May 11, 2021

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

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

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

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

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

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

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

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

(2) The defendant has the burden of production and persuasion to demonstrate by
clear and convincing evidence (i.e., active, residual, or prodromal symptoms)
that the mental disability was manifested at some date prior to the defendant's



1 alleged conduct at the time of the offense in order to meet the test of severe
2 mental disability under the provisions of this section.

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

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

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

20 (e) Procedure at Sentencing Hearing Regarding Determination of Severe Mental
21 Disability. – If the court does not find in the pretrial proceeding that the defendant had a severe
22 mental disability at the time of the commission of the criminal offense, the defendant may
23 introduce evidence during the sentencing hearing regarding the disability. If, during the
24 sentencing hearing, the defendant introduces evidence regarding the disability, the court shall
25 submit a special issue to the jury as to whether the defendant had a severe mental disability at the
26 time of the commission of the criminal offense. These special issues shall be considered and
27 answered by the jury prior to the consideration of aggravating or mitigating factors and the
28 determination of sentence. If the jury determines that the defendant had a severe mental disability
29 at the time of the commission of the criminal offense, the court shall declare the case noncapital,
30 and the defendant shall be sentenced to life imprisonment without parole.

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

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

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

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

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

aggravating circumstance or circumstances or mitigating circumstance or circumstances from the lists provided in subsections (e) and (f) of this section which may be supported by the evidence, and shall furnish to the jury a written list of issues relating to such aggravating or mitigating circumstance or circumstances.

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

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

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

If the jury cannot, within a reasonable time, unanimously agree to its sentence recommendation, the judge shall impose a sentence of life imprisonment. The judge shall in no instance impose the death penalty when the jury cannot agree unanimously to its sentence recommendation."

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

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

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

- (1) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek appropriate relief from the defendant's death sentence upon the ground that the defendant submits credible and verifiable evidence of a prior severe mental disability, as defined in G.S. 15A-2007(a), at the time of the commission of the capital crime.
- (2) A motion seeking appropriate relief from a death sentence on the ground that the defendant had a severe mental disability at the time of the commission of the capital crime shall be filed:
 - a. On or before January 31, 2022, if the defendant's conviction and sentence of death were entered prior to October 1, 2021.
 - b. Within 150 days of the imposition of a sentence of death if the defendant's trial was in progress on October 1, 2021. For purposes of this section, a trial is considered to be in progress if the process of jury selection has begun.
- (3) The motion seeking relief from a death sentence upon the ground that the defendant had a severe mental disability shall comply with the provisions of G.S. 15A-1420. The procedures and hearing on the motion shall follow and comply with G.S. 15A-1420. Upon motion of the defendant, supported by appropriate affidavits, the court shall order a hearing to determine if the defendant had a severe mental disability, as defined in G.S. 15A-2007(a), at the time of the commission of the offense. If the court determines that the defendant had a severe mental disability at the time of the commission of the

1 criminal offense, the defendant shall be sentenced to life imprisonment
2 without parole."

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

5 **"§ 15A-960. Insanity defense is not available when drug or alcohol use is the sole cause of**
6 **psychosis.**

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

11 **SECTION 5.** There is appropriated from the General Fund to the Administrative
12 Office of the Courts the sum of one hundred thousand dollars (\$100,000) in recurring funds for
13 the 2021-2022 fiscal year to allocate to the Conference of District Attorneys to hire an attorney
14 to assist statewide with the implementation of the provisions of this act.

15 **SECTION 6.** Sections 1, 2, and 4 of this act become effective October 1, 2021, and
16 apply to trials docketed to begin on or after that date. Section 3 of this act becomes effective
17 October 1, 2021, and expires October 1, 2022. The remainder of this act becomes effective July
18 1, 2021.