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SENATE BILL DRS35276-MM-69E* (03/16)

Short Title: Capital Procedure/Severe Disability. (Public)

Sponsors: Senators Britt, Lee, and McKissick (Primary Sponsors).

Referred to:

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



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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 without parole.**

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 52 of Chapter 15A of the General Statutes is amended by
22 adding a new section to read:

23 **"§ 15A-960. Insanity defense is not available when drug or alcohol use is the sole cause of**
24 **psychosis.**

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

29 **SECTION 4.** This act becomes effective October 1, 2017, and applies to trials
30 docketed to begin on or after that date.