

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 1005

Short Title: No Death Penalty/Mentally Retarded.

(Public)

Sponsors: Representatives Fitch; and Colton.

Referred to: Judiciary I.

April 19, 1991

A BILL TO BE ENTITLED

AN ACT TO PROHIBIT THE DEATH PENALTY FOR MENTALLY RETARDED PERSONS.

The General Assembly of North Carolina enacts:

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

"(g) Notwithstanding any other provision of law, a sentence of death shall not be imposed or carried out upon any person who is mentally retarded. For purposes of this section, a person is mentally retarded (as defined by the DSMIIIIR and any successor) if that person has significantly subaverage general intellectual functioning that exists concurrently with deficits in adaptive behavior and this condition manifested before age 18.

(h) Determination of Eligibility for the Death Penalty.

(1) Upon motion of the defendant, the court shall conduct a hearing to determine whether the defendant is mentally retarded. If the court determines that the defendant is mentally retarded, the court shall declare the case noncapital and the State may not thereafter seek the death penalty against the defendant. The court's denial of relief under this subsection is without prejudice to the defendant's right to rely on this defense at trial. If the motion is denied, no reference to the hearing may be made at the trial, and recorded testimony or evidence taken at the hearing is not admissible as evidence at the trial.

(2) A defendant is not eligible for the death penalty under G.S. 15A-2000(g), if, after the defendant produces evidence that he is mentally

1 retarded the State fails to prove beyond a reasonable doubt that the
2 defendant does not suffer such condition."
3 Sec. 2. This act is effective upon ratification.