

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE  
SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2635

By: Toure, Blackburn and Calvey  
of the House

and

Monson of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to criminal procedure; defining terms; limiting execution of mentally retarded persons under certain circumstances; placing burden of production and persuasion; establishing procedures to be followed; requiring appropriate jury instructions under certain circumstances; providing for codification; providing an effective date; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 701.10b of Title 21, unless there is created a duplication in numbering, reads as follows:

A. For purposes of this act:

1. "Severe developmental disability" means significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, both of which were manifested before the age of eighteen (18) years;

2. "Significant limitations in adaptive functioning" means significant limitations in two or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health, safety, functional academics, leisure skills and work skills; and

3. "Significantly subaverage general intellectual functioning" means an intelligence quotient of seventy (70) or below.

B. Regardless of any provision of law to the contrary, no defendant who has a severe developmental disability shall be sentenced to death.

C. The defendant has the burden of production and persuasion to demonstrate the severe developmental disability by showing significantly subaverage general intellectual functioning, significant limitations in adaptive functioning, and that the severe developmental disability was manifested before the age of eighteen (18) years. An intelligence quotient of seventy (70) or below on an individually administered, scientifically recognized standardized intelligence quotient test administered by a licensed psychiatrist or psychologist is evidence of significantly subaverage general intellectual functioning; however, it is not sufficient without evidence of significant limitations in adaptive functioning and without evidence of manifestation before the age of eighteen (18) years.

D. The court shall submit a special issue to the jury as to whether the defendant has a severe developmental disability as defined in this section. This special issue shall be considered and answered by the jury prior to the determination of sentence. If the jury determines that the defendant has a severe developmental disability, the defendant may only be sentenced to life imprisonment or life without parole. The defendant has the burden of production and persuasion to demonstrate the severe developmental disability to the jury by a clear and convincing evidence.

E. If the jury determines that the defendant does not have a severe developmental disability as defined by this section, the jury may consider any evidence of developmental disability presented during the sentencing hearing when determining aggravating or mitigating factors and the sentence of the defendant.

F. The provisions of this section do not preclude the sentencing of a person with a severe developmental disability to any other sentence authorized by Section 701.9 of Title 21 of the Oklahoma Statutes for the crime of murder in the first degree.

G. The court shall give appropriate instructions in those cases in which evidence of the severe developmental disability of the defendant requires the consideration by the jury of the provisions of this section.

SECTION 2. This act shall become effective July 1, 2002.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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