

ENGROSSED HOUSE  
BILL NO. 2635

By: Toure, Blackburn and Calvey  
of the House

and

Monson of the Senate

( criminal procedure - execution of persons with  
severe developmental disability - jury  
instructions - codification -  
effective date )

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);

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. Upon motion of the defendant, supported by appropriate affidavits, the court may order a pretrial hearing to determine if the defendant has a severe developmental disability. The defendant has the burden of production and persuasion to demonstrate the severe developmental disability by clear and convincing evidence 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). 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). If the court determines the defendant to have a severe developmental disability, the court shall declare the case noncapital, and the state may not seek the death penalty against the defendant. The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.

D. If the court does not find the defendant to have a severe developmental disability in the pretrial proceeding and upon the introduction of evidence of the severe developmental disability of the defendant during the sentencing hearing, 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 consideration of aggravating or mitigating factors and the determination of sentence. If the jury determines that the defendant has a severe developmental disability, the court shall declare the case noncapital and the defendant shall 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 severe 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.

Passed the House of Representatives the 28th day of February, 2002.

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Presiding Officer of the House of  
Representatives

Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2002.

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Presiding Officer of the Senate