

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

HOUSE BILL HB2635

By: Toure

AS INTRODUCED

An Act relating to criminal procedure; defining terms; prohibiting execution of mentally retarded persons; establishing certain burdens of proof; establishing procedures to be followed; requiring appropriate jury instructions under certain circumstances; establishing post-conviction relief procedure regarding mentally retarded persons sentenced to death; establishing time limits for procedure; 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. "Mentally retarded" 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 is mentally retarded 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 is mentally retarded. The defendant has the burden of production and persuasion to demonstrate mental retardation by clear and convincing evidence by showing significantly subaverage general intellectual functioning, significant limitations in adaptive functioning, and that mental retardation 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 be mentally retarded, 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 be mentally retarded in the pretrial proceeding, upon the introduction of evidence of the mental retardation of the defendant during the sentencing hearing, the court shall submit a special issue to the jury as to whether the defendant is mentally retarded 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 the defendant to be mentally retarded, 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 mental retardation to the jury by a preponderance of the evidence.

E. If the jury determines that the defendant is not mentally retarded as defined by this section, the jury may consider any evidence of mental retardation 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 mentally retarded offender 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 mental retardation of the defendant requires the consideration by the jury of the provisions of this section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1089A of Title 22, unless there is created a duplication in numbering, reads as follows:

A. 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 defendant may seek appropriate relief from the death sentence of the defendant upon the ground that the defendant was mentally retarded, as defined in Section 1 of this act, at the time of the commission of the capital crime.

B. A motion seeking appropriate relief from a death sentence on the ground that the defendant is mentally retarded, shall be filed:

1. On or before January 31, 2003, if the conviction of the defendant and sentence of death were entered prior to July 1, 2002; and

2. Within one hundred twenty (120) days of the imposition of a sentence of death if the trial of the defendant was in progress on July 1, 2002. For purposes of this section, a trial is considered to be in progress if the process of jury selection has begun.

C. All matters regarding the motion, seeking relief from a death sentence upon the ground that the defendant was mentally retarded, not specifically governed by the provisions of this section shall be subject to provisions of Section 1089 of Title 22 of the Oklahoma Statutes. If the provisions of this section conflict with the provisions of Section 1089 of Title 22 of the Oklahoma Statutes, the provisions of this section shall govern.

SECTION 3. This act shall become effective July 1, 2002.

SECTION 4. 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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