

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 2710

By: Toure of the House

and

Wilkerson of the Senate

(criminal procedure - execution - developmental
disability - codification -
effective date)

AMENDMENT NO. 1. Page 1, strike the stricken title, enacting
clause and entire bill and insert

"[criminal procedure - prohibiting execution of
persons with severe developmental disability -
procedure - appeals - codification - effective date -
emergency]

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 section:

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. A defendant charged with capital murder who intends to raise severe developmental disability as a bar to the death sentence must provide to the state notice of such intention at least ninety (90) days prior to trial. The notice shall include a brief but detailed statement specifying the witnesses, nature and type of evidence sought to be introduced.

E. 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 during the sentencing stage and prior to the determination of sentence. If the jury unanimously 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 preponderance of the evidence.

F. If the jury determines that the defendant does not have a severe developmental disability as defined by this section, the jury shall proceed to determine the existence of aggravating and mitigating factors in determining whether the sentence of death shall be imposed. In those deliberations, 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.

G. If the jury determines that the defendant does not have a severe developmental disability and imposes a death sentence, the trial court shall make findings of fact and conclusions of law relating to the issue of whether the determination relating to the issue of mental retardation was made under the influence of passion, prejudice, or any other arbitrary factor. The findings shall be attached as an exhibit to the report of the trial judge required under Section 701.13 of Title 21 of the Oklahoma Statutes. If the trial court finds that the determination of the jury concerning the claim of the defendant of severe developmental disability was not supported by the evidence, that issue may be raised on appeal to the Oklahoma Court of Criminal Appeals for consideration as part of its mandatory sentence review.

H. 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, 2004.

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."

Passed the Senate the 13th day of April, 2004.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2004.

Presiding Officer of the House
of Representatives