

ENGROSSED HOUSE
BILL NO. 2710

By: Toure of the House

and

Wilkerson of the Senate

(criminal procedure - execution - developmental
disability - 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. No person who has a severe developmental disability shall be sentenced to death.

B. A defendant in a capital case who is claiming a severe developmental disability has the burden of production and persuasion and must demonstrate the severe developmental disability by a preponderance of the evidence. Evidence of significantly subaverage general intellectual functioning is not alone sufficient to establish a severe developmental disability without evidence of significant limitations in adaptive functioning and evidence that the severe developmental disability manifested before the defendant reached eighteen (18) years of age.

C. 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 sixty (60) 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.

D. Before the capital trial, the district court shall empanel a special jury of twelve persons to determine the sole question of whether or not the defendant has a severe developmental disability. Each party shall be granted nine peremptory challenges to the jury. The special jury shall not be death-qualified or informed of the charges against the defendant. The defendant shall open the presentation of evidence, and counsel for the defendant shall be permitted the first and last closing arguments to the jury.

E. The evidence shall be strictly limited to facts relevant to the question of severe developmental disability. Evidence of the alleged capital crime shall only be admissible to the extent relevant to the issue of severe developmental disability. The district court shall ensure that evidence of any alleged criminal conduct by the defendant is narrowly confined to the issue of severe developmental disability.

F. The court shall give appropriate instructions based on the provisions of this section in any case in which a claim of severe developmental disability is determined by a special jury.

G. The verdict of any nine jurors is sufficient to determine whether or not the defendant has a severe developmental disability. If the special jury determines the defendant has a severe developmental disability, the defendant, upon a subsequent conviction punishable by death, shall be sentenced to life imprisonment or life without parole. If a sufficient number of jurors cannot agree to a verdict regarding whether or not the defendant has a severe developmental disability, the trial court shall determine the issue of severe developmental disability, and upon a subsequent conviction punishable by death, the defendant shall be sentenced to life imprisonment or life without parole if it is found that the defendant is severely developmentally disabled.

H. If the special jury determines that the defendant does not have a severe developmental disability as defined by this section,

the trial of the offense may proceed as a capital case and the defendant may be subject to the sentence of death. Upon conviction of an offense punishable by death, the parties may introduce in the sentencing proceeding and the jury may consider any evidence bearing on developmental disability as a mitigating factor in determining the appropriate sentence.

I. If the jury determines that the defendant does not have a severe developmental disability and a death sentence is subsequently imposed, 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 severe developmental disability 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. The Oklahoma Court of Criminal Appeals shall review the determination of the jury de novo as part of its mandatory sentence review and shall modify the death sentence if, in the judgment of the Court, modification is necessary to enforce the provisions of this section.

J. 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 as shown by a scientifically recognized standardized test of general

intelligence, individually administered by a licensed psychiatrist, psychologist, psychometrist or other qualified professional, considering the standard error of measurement for the specific assessment instruments used and instruments' strengths and limitations; provided however, that significantly subaverage general intellectual functioning may be established by other relevant evidence.

SECTION 2. This act shall become effective July 1, 2004.

Passed the House of Representatives the 3rd day of March, 2004.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2004.

Presiding Officer of the Senate