

CS for EHB 2710

1 THE STATE SENATE
2 Tuesday, April 6, 2004

3 Committee Substitute for
4 ENGROSSED
5 House Bill No. 2710

6 COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 2710 - By: TOURE
7 of the House and WILKERSON of the Senate.

8 [criminal procedure - prohibiting execution of persons with
9 severe developmental disability - procedure - appeals -
10 codification - effective date -
11 emergency]

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

15 A. For purposes of this section:

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

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

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

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

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

19 D. A defendant charged with capital murder who intends to raise
20 severe developmental disability as a bar to the death sentence must
21 provide to the state notice of such intention at least ninety (90)
22 days prior to trial. The notice shall include a brief but detailed

1 statement specifying the witnesses, nature and type of evidence
2 sought to be introduced.

3 E. The court shall submit a special issue to the jury as to
4 whether the defendant has a severe developmental disability as
5 defined in this section. This special issue shall be considered and
6 answered by the jury during the sentencing stage and prior to the
7 determination of sentence. If the jury unanimously determines that
8 the defendant has a severe developmental disability, the defendant
9 may only be sentenced to life imprisonment or life without parole.
10 The defendant has the burden of production and persuasion to
11 demonstrate the severe developmental disability to the jury by a
12 preponderance of the evidence.

13 F. If the jury determines that the defendant does not have a
14 severe developmental disability as defined by this section, the jury
15 shall proceed to determine the existence of aggravating and
16 mitigating factors in determining whether the sentence of death
17 shall be imposed. In those deliberations, the jury may consider any
18 evidence of developmental disability presented during the sentencing
19 hearing when determining aggravating or mitigating factors and the
20 sentence of the defendant.

21 G. If the jury determines that the defendant does not have a
22 severe developmental disability and imposes a death sentence, the
23 trial court shall make findings of fact and conclusions of law

1 relating to the issue of whether the determination relating to the
2 issue of mental retardation was made under the influence of passion,
3 prejudice, or any other arbitrary factor. The findings shall be
4 attached as an exhibit to the report of the trial judge required
5 under Section 701.13 of Title 21 of the Oklahoma Statutes. If the
6 trial court finds that the determination of the jury concerning the
7 claim of the defendant of severe developmental disability was not
8 supported by the evidence, that issue may be raised on appeal to the
9 Oklahoma Court of Criminal Appeals for consideration as part of its
10 mandatory sentence review.

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

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

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

20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-31-04 - DO
21 PASS, As Amended.