

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

HOUSE BILL 1904

By: Toure

AS INTRODUCED

An Act relating to criminal procedure; defining terms; prohibiting execution of mentally retarded persons if onset of mental retardation was manifested before a certain age; placing burden of production and persuasion; establishing procedures to be followed; providing for an evidentiary hearing; providing for submission of special issue to the jury; providing procedure to be followed by the jury; providing for appeals; requiring appropriate jury instructions; 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 section:

1. "Mental retardation" or "mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with significant limitations in adaptive functioning;

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; provided, however, the onset of the mental retardation must have

been manifested before the defendant attained the age of eighteen (18) years.

C. The defendant has the burden of production and persuasion to demonstrate mental retardation by showing significantly subaverage general intellectual functioning, significant limitations in adaptive functioning, and that the onset of the mental retardation 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 mental retardation as a bar to the death sentence must provide to the state notice of such intention within ninety (90) days after formal arraignment or within ninety (90) days after the filing of a bill of particulars, whichever is later. The notice shall include a brief but detailed statement specifying the witnesses, nature and type of evidence sought to be introduced. The notice must demonstrate sufficient facts that demonstrate a good-faith belief as to the mental retardation of the defendant.

E. The district court shall conduct an evidentiary hearing to determine whether the defendant is mentally retarded. If the court determines, by clear and convincing evidence, that the defendant is mentally retarded, the defendant, if convicted, shall be sentenced to life imprisonment or life without parole. If the district court determines that the defendant is not mentally retarded, the capital trial of the offense may proceed. A request for a hearing under this section shall not waive entitlement by the defendant to submit

the issue of mental retardation to a jury during the sentencing phase in a capital trial if convicted of an offense punishable by death. The court's determination on the issue of mental retardation shall not be the subject of an interlocutory appeal.

F. The court shall submit a special issue to the jury as to whether the defendant is mentally retarded. This special issue shall be considered and answered by the jury during the sentencing stage and prior to the determination of sentence. If nine or more members of the jury determine that the defendant is mentally retarded, the defendant may only 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.

G. If the jury determines that the defendant is not mentally retarded, 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 mental retardation as a mitigating factor in sentencing the defendant.

H. If the jury determines that the defendant is not mentally retarded 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 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 mental retardation 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.

I. 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. This act shall become effective July 1, 2005.

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.

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