

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

SENATE BILL 878

By: Eason McIntyre

AS INTRODUCED

An Act relating to crimes and punishments; defining terms; prohibiting death penalty for certain defendant; placing burden of proof on defendant to show certain disability; requiring certain notice within specified time period; stating contents of certain notice; requiring certain jury instructions; stating result of certain jury determinations; requiring findings of fact and conclusions of law under certain circumstances; authorizing certain appeal; providing for codification; and providing an 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. 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 proof 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 proof 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 November 1, 2005.

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