

1 STATE OF OKLAHOMA

2 1st Session of the 51st Legislature (2007)

3 HOUSE BILL 1826

By: Kiesel

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5  
6 AS INTRODUCED

7 An Act relating to crimes and punishments; amending  
8 Section 1, Chapter 290, O.S.L. 2006 (21 O.S. Supp.  
9 2006, Section 701.10b), which relates to death  
10 sentence proceedings for the mentally retarded;  
11 modifying procedures for certain determination;  
12 providing notice requirements; requiring certain  
13 findings be made on the record; requiring scheduling  
14 of jury trial upon completion of discovery; providing  
15 waiver of jury determination; authorizing bench  
16 trial; providing procedures for bench trials;  
17 providing procedures for impaneling jurors; providing  
18 procedures for jury trials; providing procedures upon  
19 jury determination of mental retardation; authorizing  
20 appeals from jury verdicts or trial court decision;  
21 providing procedures for appeals; providing  
22 procedures for filing certain petition; providing  
23 procedures for oral arguments; requiring case to  
24 proceed as a capital or noncapital first degree  
murder case under certain circumstances; and  
providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 1, Chapter 290, O.S.L.  
2006 (21 O.S. Supp. 2006, Section 701.10b), is amended to read as  
follows:

Section 701.10b A. For purposes of this section:

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

4        2. "Significant limitations in adaptive functioning" means  
5 significant limitations in two or more of the following adaptive  
6 skill areas; communication, self-care, home living, social skills,  
7 community use, self-direction, health, safety, functional academics,  
8 leisure skills and work skills; and

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

11        B. Regardless of any provision of law to the contrary, no  
12 defendant who is mentally retarded shall be sentenced to death;  
13 provided, however, the onset of the mental retardation must have  
14 been manifested before the defendant attained the age of eighteen  
15 (18) years.

16        C. The defendant has the burden of production and persuasion to  
17 demonstrate mental retardation by showing significantly subaverage  
18 general intellectual functioning, significant limitations in  
19 adaptive functioning, and that the onset of the mental retardation  
20 was manifested before the age of eighteen (18) years. An  
21 intelligence quotient of seventy (70) or below on an individually  
22 administered, scientifically recognized standardized intelligence  
23 quotient test administered by a licensed psychiatrist or  
24 psychologist is evidence of significantly subaverage general

1 intellectual functioning; however, it is not sufficient without  
2 evidence of significant limitations in adaptive functioning and  
3 without evidence of manifestation before the age of eighteen (18)  
4 years. In determining the intelligence quotient, the standard  
5 measurement of error for the test administered shall be taken into  
6 account.

7 However, in no event shall a defendant who has received an  
8 intelligence quotient of seventy-six (76) or above on any  
9 individually administered, scientifically recognized, standardized  
10 intelligence quotient test administered by a licensed psychiatrist  
11 or psychologist, be considered mentally retarded and, thus, shall  
12 not be subject to any proceedings under this section.

13 D. A defendant charged with capital murder who intends to raise  
14 mental retardation as a bar to the death sentence shall ~~provide to~~  
15 ~~the state notice of such intention at least ninety (90) file a~~  
16 Notice of Intent to Raise Mental Retardation as a defense to the  
17 imposition of the death penalty and Motion to Quash Bill of  
18 Particulars due to Mental Retardation within sixty (60) days after  
19 formal arraignment or within ninety (90) days after the filing of a  
20 from the date the state files its bill of particulars, whichever is  
21 later. The notice shall include a brief but detailed statement  
22 specifying the witnesses, nature and type of evidence sought to be  
23 introduced. The notice must ~~demonstrate sufficient facts that~~  
24 ~~demonstrate a good faith belief as to the mental retardation of the~~

1 defendant be accompanied by an averment that the defendant has at  
2 least one intelligence quotient test showing a score of seventy (70)  
3 or below, within the margin of error, setting forth the score and  
4 date of testing, in order for the defendant to be eligible to raise  
5 the issue of mental retardation. If the defendant fails to set  
6 forth this information meeting the eligibility requirement, the  
7 trial court shall make a finding on the record that the defendant  
8 has not met the threshold for establishing mental retardation, and  
9 deny the Motion to Quash Bill of Particulars.

10 E. The After complete discovery on the issue is afforded both  
11 parties and within sixty (60) days from the date the notice and  
12 motion to quash is filed, the ~~district~~ trial court shall ~~conduct an~~  
13 evidentiary hearing to determine schedule a jury trial on whether  
14 the defendant is mentally retarded. If ~~the court determines, by~~  
15 clear and convincing evidence, that the defendant is mentally  
16 retarded, the defendant, if convicted, shall be sentenced to life  
17 imprisonment or life without parole. If the district court  
18 determines that the defendant is not mentally retarded, the capital  
19 trial of the offense may additional time to prepare for the trial on  
20 mental retardation is required, the trial court may schedule the  
21 trial for a later date upon good cause shown.

22 F. 1. If the defendant personally and affirmatively waives his  
23 or her right to a jury determination of mental retardation on the  
24

1 record, the issue may be tried to the bench and the hearing shall be  
2 conducted after complete discovery is afforded both parties.

3 2. The defendant, who has the burden of proof, shall open the  
4 case first, present evidence first and have the opportunity to  
5 present the first and last closing arguments to the trial court.  
6 Each party may have the defendant examined by an expert, and may  
7 present that expert testimony in support of the claim that the  
8 defendant is or is not mentally retarded by a preponderance of the  
9 evidence.

10 3. At the conclusion of the hearing, the trial court shall  
11 determine whether the defendant has shown by a preponderance of the  
12 evidence that he or she is mentally retarded. If the trial court  
13 finds that the defendant has not met his or her burden of proving  
14 mental retardation, the intellectual functioning of the defendant  
15 may still be considered as a mitigating factor in the sentencing  
16 stage of the capital trial.

17 4. The decision of the trial court following the bench trial  
18 shall be made in open court and memorialized by a written Order  
19 Granting or Denying the Motion to Quash Bill of Particulars on  
20 grounds of mental retardation and shall be filed in the district  
21 court within ten (10) days setting forth Findings of Fact and  
22 Conclusions of Law.

23 G. Jury trial on the issue of mental retardation shall be  
24 conducted pursuant to the dictates of Section 19 of Article II of

1 the Oklahoma Constitution. The trial court shall impanel a jury  
2 composed of twelve jurors, summoned to determine the sole question  
3 of mental retardation. The court shall proceed to the selection of  
4 the jury in the manner provided by law and the parties shall be  
5 afforded nine peremptory challenges each, pursuant to Section 655 of  
6 Title 22 of the Oklahoma Statutes. A request for a hearing under  
7 this section shall not waive entitlement by the defendant to submit  
8 the issue of mental retardation to a jury during the sentencing  
9 phase in a capital trial if convicted of an offense punishable by  
10 death. The court's determination on the issue of mental retardation  
11 shall not be the subject of an interlocutory appeal. The potential  
12 jurors shall not be death qualified as the sole issue to be  
13 determined is whether the defendant is mentally retarded. The  
14 jurors shall receive fees for attendance and mileage as is allowed  
15 by law.

16 ~~F. The court shall submit a special issue to the jury as to~~  
17 ~~whether the defendant~~ H. 1. The defendant has the burden to prove,  
18 by a preponderance of the evidence, that he or she is mentally  
19 retarded, as defined in subsection A of this section. This special  
20 issue shall be considered and answered by the jury during the  
21 sentencing stage and prior to the determination of sentence. If the  
22 jury unanimously determines that Because the defendant has the  
23 burden to prove that he is she is mentally retarded, the defendant  
24 may only be sentenced to life imprisonment or life without parole.

1 ~~The defendant has the burden of production and persuasion to~~  
2 ~~demonstrate mental retardation to the jury by a preponderance of the~~  
3 ~~evidence shall open first, present evidence first, and have the~~  
4 ~~opportunity to present the first and last closing arguments to the~~  
5 ~~jury.~~

6 2. Each party may present witnesses relevant to the  
7 determination of the issue of mental retardation.

8 3. Evidence relating to the crime with which the defendant is  
9 charged is not admissible unless that evidence is specifically  
10 relevant to refute the evidence presented by the defendant of mental  
11 retardation. Evidence relating to other crimes is admissible only  
12 to the extent it is relevant to refute the evidence presented by the  
13 defendant of mental retardation.

14 G. I. If the jury determines that the defendant is mentally  
15 retarded, the trial court shall enter an order in open court  
16 granting the Motion to Quash Bill of Particulars and the case shall  
17 proceed as a noncapital first degree murder case. If the jury  
18 determines that the defendant is not mentally retarded or, the trial  
19 court shall enter an order in open court denying the Motion to Quash  
20 Bill of Particulars and the case shall proceed as a capital first  
21 degree murder case. If the jury is unable to reach a unanimous  
22 decision verdict, the jury shall proceed to determine the existence  
23 of aggravating and mitigating factors in determining whether the  
24 sentence of death shall be imposed. In those deliberations, the

1 ~~jury may consider any evidence of mental retardation as a mitigating~~  
2 ~~factor in sentencing the defendant trial court shall enter an order~~  
3 ~~granting the Motion to Quash Bill of Particulars, finding the~~  
4 ~~defendant to be mentally retarded. The order granting or denying~~  
5 ~~the Motion to Quash Bill of Particulars shall be filed in the~~  
6 ~~District court record within ten (10) days from the date of the~~  
7 ~~verdict of the jury.~~

8 H. ~~If the jury determines that the defendant is not mentally~~  
9 ~~retarded and imposes a death sentence, the trial court shall make~~  
10 ~~findings of fact and conclusions of law relating to the issue of~~  
11 ~~whether the determination on the issue of mental retardation was~~  
12 ~~made under the influence of passion, prejudice, or any other~~  
13 ~~arbitrary factor. The findings shall be attached as an exhibit to~~  
14 ~~the report of the trial judge required under Section 701.13 of Title~~  
15 ~~21 of the Oklahoma Statutes. If the trial court finds that the~~  
16 ~~determination of mental retardation was not supported by the~~  
17 ~~evidence, the issue may be raised on J. Either party may file an~~  
18 ~~appeal to the Oklahoma Court of Criminal Appeals for consideration~~  
19 ~~as part of its mandatory sentence review from a jury verdict on~~  
20 ~~mental retardation or from the decision of the trial court on mental~~  
21 ~~retardation. If the sufficiency of the evidence is challenged on~~  
22 ~~appeal, the Oklahoma Court of Criminal Appeals shall review the~~  
23 ~~evidence in the light most favorable to the prevailing party to~~  
24 ~~determine whether a rational trier of fact could have found that the~~

1 defendant met or failed to meet his or her burden of proving mental  
2 retardation by a preponderance of the evidence.

3 ~~I. K. 1. The standard of review for a trier of fact mental~~  
4 ~~retardation determination shall be whether, after reviewing the~~  
5 ~~evidence in the light most favorable to the state, any rational~~  
6 ~~trier of fact could have found the defendant not mentally retarded~~  
7 ~~as defined by this section, giving full deference to the findings of~~  
8 ~~the trier of fact.~~

9 ~~J. The court shall give appropriate instructions in those cases~~  
10 ~~in which evidence of the mental retardation of the defendant~~  
11 ~~requires the consideration by the jury of the provisions of this~~  
12 ~~section party seeking to appeal shall file a notice of intent to~~  
13 ~~appeal and designation of record with the district court clerk~~  
14 ~~within five (5) days from the date the order granting or denying the~~  
15 ~~Motion to Quash Bill of Particulars is filed in the district court.~~  
16 ~~The filing of the notice of intent to appeal in the district court~~  
17 ~~is jurisdictional and failure to timely file constitutes waiver of~~  
18 ~~the right to appeal. The party seeking to appeal shall file the~~  
19 ~~notice of intent to appeal, together with a copy of the written~~  
20 ~~order of the trial court being appealed, with the clerk of the~~  
21 ~~Oklahoma Court of Criminal Appeals within ten (10) days from the~~  
22 ~~date the notice is filed in the district court.~~

23 2. To perfect the appeal, the Petition in Error, certified copy  
24 of the original record, transcript of proceedings and brief shall be

1 filed with the clerk of the Oklahoma Court of Criminal Appeals  
2 within sixty (60) days from the date the trial court enters an order  
3 granting or denying the Motion to Quash Bill of Particulars.

4 3. The court reporter shall be required to expedite preparation  
5 of the record. Requests for extensions of time shall be considered  
6 in accordance with Section III of the Rules of the Oklahoma Court of  
7 Criminal Appeals, Chapter 18, Appendix of Title 22 of the Oklahoma  
8 Statutes. To ensure the appeal is perfected within sixty (60) days,  
9 the record and transcripts shall be completed and filed with the  
10 district court clerk, and immediately transmitted to the Clerk of  
11 the Court of Criminal Appeals and appellate counsel within forty  
12 (40) days of the entry of the order of the trial court. If the  
13 record is not complete within forty (40) days of the order of the  
14 trial court, a Notice of Noncompletion of Record shall be sent to  
15 the clerk of the Court of Criminal Appeals, explaining the cause for  
16 delay. A show cause hearing may be scheduled by the court.

17 4. The district court clerk shall prepare and file three  
18 certified copies of all pleadings, instruments, and transcripts  
19 designated for inclusion in the appeal record within forty (40) days  
20 from the date of the order appealed from in the same manner provided  
21 for the preparation of a regular appeal; provided, however, the due  
22 dates set forth in this section shall control. The original  
23 transcript and one certified copy of the record designated shall be  
24 filed with the clerk of the Oklahoma Court of Criminal Appeals; one

1 certified copy of the record and transcript shall be provided to the  
2 district attorney; and, one certified copy of the record and  
3 transcript to either the Oklahoma Indigent Defense System, pursuant  
4 to Section 1362 of Title 22 of the Oklahoma Statutes, or to the  
5 retained or other appointed counsel of record on appeal.

6 5. The Petition in Error shall be filed within sixty (60) days  
7 from the date the ruling of the trial court is pronounced in open  
8 court to invoke the jurisdiction of the Oklahoma Court of Criminal  
9 Appeals. The Petition in Error must contain the following  
10 information:

- 11 a. the type of appeal and the date the state filed its  
12 Bill of Particulars,
- 13 b. the date the defendant gave Notice of Intent to raise  
14 Mental Retardation as a defense to the imposition of  
15 the death penalty,
- 16 c. the date the Motion to Quash Bill of Particulars due  
17 to Mental Retardation was filed in the district court,
- 18 d. the case number and the court from which the appeal is  
19 lodged,
- 20 e. the date on which the jury trial on mental  
21 retardation or the evidentiary hearing on mental  
22 retardation was held,
- 23 f. the date the order granting or denying the motion to  
24 quash was filed in the district court and the name of

1           the judge, and

2           g. the nature of relief being sought.

3           L. An Application for Accelerated Docket shall be filed with  
4 the Petition in Error. The application shall be served on the  
5 adverse party within five (5) days from the date on which the  
6 application is filed and must contain a certificate of service.  
7 Upon the filing of the Petition in Error, the Oklahoma Court of  
8 Criminal Appeals shall schedule the matter for oral argument.

9           M. 1. The response brief shall be filed within twenty (20)  
10 days from the date the brief is filed by the appellant.

11           2. The application and response shall contain specific  
12 propositions of error, a brief explanation of the argument, specific  
13 references to the transcripts or record, and appropriate citations  
14 of authority pertaining to the issues raised.

15           3. Oral argument shall be limited to fifteen (15) minutes to  
16 each side. The moving party shall be entitled to open and conclude  
17 the oral argument. At the conclusion of oral argument, the  
18 Oklahoma Court of Criminal Appeals may issue its decision in open  
19 court or take the matter under advisement. If the decision is taken  
20 under advisement, the Court will issue a written order within ten  
21 (10) days from the date of argument.

22           N. If the jury renders a verdict finding the defendant is not  
23 mentally retarded and the defendant does not appeal, or the verdict  
24 is affirmed on appeal, the case shall proceed as a capital first

1 degree murder case. The issue of mental retardation shall not be  
2 relitigated at the capital first degree murder trial. However,  
3 evidence of the intellectual functioning and deficits of the  
4 defendant may be presented as mitigating evidence during second  
5 stage proceedings if the jury finds the defendant guilty.

6 O. If the jury renders a verdict finding the defendant is  
7 mentally retarded, or the jury is unable to reach a verdict and the  
8 trial court grants the Motion to Quash Bill of Particulars, and the  
9 state does not appeal, or the verdict is affirmed on appeal, the  
10 case shall proceed as a noncapital first degree murder case.

11 SECTION 2. This act shall become effective November 1, 2007.

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13 51-1-5115 GRS 01/11/07  
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