**A** **BILL**

TO AMEND SECTION 16‑3‑20, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO MURDER AND THE PUNISHMENT FOR MURDER, SO AS TO ADD AS A MITIGATING CIRCUMSTANCE, FOR PURPOSES OF THE DEATH PENALTY, THAT THE DEFENDANT HAD A SEVERE MENTAL DISABILITY AT THE TIME OF THE COMMISSION OF THE CRIME, AND TO DEFINE THE PARAMETERS OF THIS MITIGATING CIRCUMSTANCE, PROHIBIT THE DEATH PENALTY FOR A PERSON WHO HAD A SEVERE MENTAL DISABILITY AT THE TIME OF THE COMMISSION OF THE CRIME, AND TO PROVIDE A PROCEDURE FOR A PRETRIAL HEARING AND JURY CONSIDERATION RELATING TO A DEFENDANT WITH A SEVERE MENTAL DISABILITY.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑3‑20(C)(b) of the 1976 Code is amended to read:

“(b) Mitigating circumstances:

(1) The defendant has no significant history of prior criminal conviction involving the use of violence against another person.

(2) The murder was committed while the defendant was under the influence of mental or emotional disturbance.

(3) The victim was a participant in the defendant’s conduct or consented to the act.

(4) The defendant was an accomplice in the murder committed by another person and his participation was relatively minor.

(5) The defendant acted under duress or under the domination of another person.

(6) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(7) The age or mentality of the defendant at the time of the crime.

(8) The defendant was provoked by the victim into committing the murder.

(9) The defendant was below the age of eighteen at the time of the crime.

(10) The defendant had mental retardation at the time of the crime. ‘Mental retardation’ means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(11) The defendant had a severe mental disability, as defined in subsection (F), at the time of the commission of the crime.

The statutory instructions as to statutory aggravating and mitigating circumstances must be given in charge and in writing to the jury for its deliberation. The jury, if its verdict is a recommendation of death, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances which it found beyond a reasonable doubt. The jury, if it does not recommend death, after finding a statutory aggravating circumstance or circumstances beyond a reasonable doubt, shall designate in writing, and signed by all members of the jury, the statutory aggravating circumstance or circumstances it found beyond a reasonable doubt. In nonjury cases the judge shall make the designation of the statutory aggravating circumstance or circumstances. Unless at least one of the statutory aggravating circumstances enumerated in this section is found, the death penalty must not be imposed.

Where a statutory aggravating circumstance is found and a recommendation of death is made, the trial judge shall sentence the defendant to death. The trial judge, before imposing the death penalty, shall find as an affirmative fact that the death penalty was warranted under the evidence of the case and was not a result of prejudice, passion, or any other arbitrary factor. Where a statutory aggravating circumstance is found and a sentence of death is not recommended by the jury, the trial judge shall sentence the defendant to life imprisonment as provided in subsection (A). Before dismissing the jury, the trial judge shall question the jury as to whether or not it found a statutory aggravating circumstance or circumstances beyond a reasonable doubt. If the jury does not unanimously find any statutory aggravating circumstances or circumstances beyond a reasonable doubt, it shall not make a sentencing recommendation. Where a statutory aggravating circumstance is not found, the trial judge shall sentence the defendant to either life imprisonment or a mandatory minimum term of imprisonment for thirty years. No person sentenced to life imprisonment or a mandatory minimum term of imprisonment for thirty years under this section is eligible for parole or to receive any work credits, good conduct credits, education credits, or any other credits that would reduce the sentence required by this section. If the jury has found a statutory aggravating circumstance or circumstances beyond a reasonable doubt, the jury shall designate this finding, in writing, signed by all the members of the jury. The jury shall not recommend the death penalty if the vote for such penalty is not unanimous as provided. If members of the jury after a reasonable deliberation cannot agree on a recommendation as to whether or not the death sentence should be imposed on a defendant found guilty of murder, the trial judge shall dismiss such jury and shall sentence the defendant to life imprisonment as provided in subsection (A).”

SECTION 2. Section 16‑3‑20 of the 1976 Code, as last amended by Act 289 of 2010, is further amended by adding subsections at the end to read:

“(F) For purposes of this section, the term:

(1) ‘Severe mental disability’ means:

(a) a severe mental illness that significantly impairs a person’s capacity to do any of the following:

(i) appreciate the nature, consequences, or wrongfulness of the person’s conduct;

(ii) exercise rational judgment in relation to conduct; or

(iii) conform the person’s conduct to the requirements of the law. A mental illness manifested primarily by repeated criminal conduct or attributable solely to the acute effects of alcohol or other drugs does not, standing alone, constitute a severe mental disability for purposes of this section; or

(b) dementia or traumatic brain injury that results in significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning. An intelligence quotient of seventy-five or below on an individually administered, scientifically recognized standardized intelligent quotient test administered by a licensed psychiatrist or psychologist is evidence of significantly subaverage general intellectual 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 and safety, functional academics, leisure skills, and work skills.

(3) ‘Significant subaverage general intellectual functioning’ means an intelligence quotient of approximately seventy‑five or below.

(G)(1) Notwithstanding another provision of law, a defendant found to have a severe mental disability at the time of the commission of the crime may not be sentenced to death.

(2) Upon motion of the defendant supported by appropriate affidavits, the court may order a pretrial hearing to determine if the defendant had a severe mental disability at the time of the commission of the crime. The court shall order pretrial hearing with the consent of the State. The defendant has the burden of production and persuasion to demonstrate by clear and convincing evidence that the defendant had a severe mental disability at the time of the commission of the crime. If the court determines that the defendant had a severe mental disability at the time of the commission of the crime, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant. The pretrial determination of the court does not preclude the defendant from raising any legal defense available during the trial.

(3) If the court does not find in the pretrial proceeding that the defendant had a severe mental disability at the time of the commission of the crime, the defendant may introduce evidence during the sentencing hearing regarding the disability. If, during the sentencing hearing, the defendant introduces evidence regarding the disability, the court shall submit a special issue to the jury as to whether the defendant had a severe mental disability at the time of the commission of the crime. The defendant has the burden of production and persuasion to demonstrate by clear and convincing evidence that the defendant had a severe mental disability at the time of the commission of the crime. The special issue must be considered and answered by the jury prior to the consideration of aggravating or mitigating factors and the determination of sentence. If the jury determines that the defendant had a severe mental disability at the time of the commission of the crime, the court shall declare the case noncapital and the defendant must be sentenced to life imprisonment.

(4) If the jury determines that the defendant did not have a severe mental disability as defined by this section at the time of the commission of the crime, the jury may consider any evidence of the disability presented during the sentencing hearing when determining mitigating factors and the defendant’s sentence.

(5) The provisions of this section do not preclude the sentencing of an offender who has a severe mental disability as defined in this section to any other sentence authorized in subsection(A).”

SECTION 3. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 4. This act takes effect upon approval by the Governor.

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