

**§ 15A-2005. Intellectual disability; death sentence prohibited.**

- (a) (1) The following definitions apply in this section:
- a. Intellectual disability. – A condition marked by significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, both of which were manifested before the age of 18.
  - b. Significant limitations in adaptive functioning. – 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.
  - c. Significantly subaverage general intellectual functioning. – An intelligence quotient of 70 or below.
- (2) The defendant has the burden of proving significantly subaverage general intellectual functioning, significant limitations in adaptive functioning, and that intellectual disability was manifested before the age of 18. An intelligence quotient of 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 18, to establish that the defendant has an intellectual disability. An intelligence quotient of 70, as described in this subdivision, is approximate and a higher score resulting from the application of the standard error of measurement to an intelligence quotient of 70 shall not preclude the defendant from being able to present additional evidence of intellectual disability, including testimony regarding adaptive deficits. Accepted clinical standards for diagnosing significant limitations in intellectual functioning and adaptive behavior shall be applied in the determination of intellectual disability.
- (b) Notwithstanding any provision of law to the contrary, no defendant with an intellectual disability shall be sentenced to death.
- (c) Upon motion of the defendant, supported by appropriate affidavits, the court may order a pretrial hearing to determine if the defendant has an intellectual disability. The court shall order such a hearing with the consent of the State. The defendant has the burden of production and persuasion to demonstrate intellectual disability by clear and convincing evidence. If the court determines that the defendant has an intellectual disability, the court shall declare the case noncapital, and the State may not seek the death penalty against the defendant.
- (d) The pretrial determination of the court shall not preclude the defendant from raising any legal defense during the trial.
- (e) If the court does not find that the defendant has an intellectual disability in the pretrial proceeding, upon the introduction of evidence raising the issue of intellectual disability during the sentencing hearing, the court shall submit a special issue to the jury as to whether the defendant has an intellectual disability as defined in this section. This special issue shall 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 has an intellectual disability, the court shall declare the case noncapital and the defendant shall be sentenced to life imprisonment.
- (f) The defendant has the burden of production and persuasion to demonstrate intellectual disability to the jury by a preponderance of the evidence.

(g) If the jury determines that the defendant does not have an intellectual disability as defined by this section, the jury may consider any evidence of intellectual disability presented during the sentencing hearing when determining aggravating or mitigating factors and the defendant's sentence.

(h) The provisions of this section do not preclude the sentencing of an offender with an intellectual disability to any other sentence authorized by G.S. 14-17 for the crime of murder in the first degree. (2001-346, s. 1; 2015-247, s. 5.)