



April 17, 2009

The Honorable Martin Nesbitt
Chair, J1 Committee
300 North Salisbury Street
3008 Legislative Office Building
Raleigh, NC 27603

Dear Senator Nesbitt:

I am the Director of Policy and Legal Affairs for the National Alliance on Mental Illness (NAMI) and am writing concerning the draft bill to amend capital trial, sentencing, and post-conviction procedures for a person with a severe mental disability. This important legislation would ensure that the impact of severe and persistent mental illnesses such as schizophrenia and bipolar disorder will be accurately considered in decisions to impose or carry out death sentences. I was a member of the American Bar Association's (ABA) taskforce which studied the application of the death penalty to people with severe mental disabilities and made recommendations for ensuring fairer consideration of the impact of these disabilities on individuals facing capital charges or already sentenced to death. Pending introduction of the draft legislation, I would like to make the following observations.

First, the bill will impact on a very small number of cases. The definition of severe mental disability in the bill is identical to that in the ABA's definition, which was narrowly crafted to ensure that it would apply only to the most severe and persistent "Axis I" disorders such as schizophrenia and other disorders characterized by delusions, hallucinations and other symptoms of psychosis. According to the North Carolina Sentencing and Policy Advisory Commission, there have been fewer than 10 death sentences imposed per year during the last five fiscal years. Although it is not known how many of these cases involved people with severe mental disabilities as defined in the draft bill, it is important to note that about 1 percent of the American adult population live with schizophrenia and about 3-5 percent of the population live with mental illnesses characterized as "severe and persistent". Even assuming a somewhat higher prevalence rate of these disorders among the death row population, it is clear that this bill will affect very few people.

Second, the draft legislation is likely to have positive cost implications for the state of North Carolina. It is well known that capital cases cost far more than non-capital cases due to multiple levels of appeals, attorneys fees, the costs of experts, and other expenses. In fact, a 1993 study, characterized by the Death Penalty Information Center as "the most comprehensive death penalty study in the country" found that the death penalty cost North Carolina \$2.16 million more per execution than a non-death penalty murder case.¹

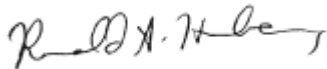
¹ P.J. Cook and D.B. Slawson, "The Costs of Processing Murder Cases in North Carolina", Terry Sanford Institute of Public Policy, Duke University, May 1993, <http://www.deathpenaltyinfo.org/northcarolina.pdf>

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Finally, the draft bill, if enacted, will ensure that North Carolina comports with Constitutional standards set forth in several recent Supreme Court decisions. Although these decisions did not directly address the execution of people with severe and persistent mental illnesses but rather people with mental retardation (*Atkins v. Virginia*, 536 U.S. 304 (2002)) and juveniles (*Roper v. Simmons*, 125 S. Ct. 1183 (2005)), these cases stand for the proposition that the execution of people with diminished capacities is prohibited by the Eighth Amendment of the U.S. Constitution. The factors cited by the *Atkins* and *Roper* Courts as constituting diminished capacity (orientation to reality, logical reasoning, processing and comprehension of information, poor memory and concentration, impaired executive functioning, poor impulse control) are significant factors as well in cases involving severe and persistent mental illness.

Thank you for affording me the opportunity to comment on the draft bill. NAMI appreciates your commitment to ensuring that the impact of severe and persistent mental illness is considered fairly in capital cases. Please contact me, RonH@nami.org, if I can be of further assistance.

Sincerely,



Ronald S. Honberg, J.D., M.Ed
Director of Policy and Legal Affairs
