

SENATE BILL REPORT

SHB 1234

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 25, 1992

Brief Description: Prohibiting the execution of the mentally retarded.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Anderson, Miller, Appelwick, Wineberry, Paris, Scott, Hargrove, Ludwig, D. Sommers, Broback, R. Meyers, Belcher, Prince, H. Myers, Riley, Locke, Forner, Ballard, Ferguson, Horn, Dellwo, Wang, Roland, R. Johnson, O'Brien, Jacobsen, R. Fisher, Phillips, Ogden, Rasmussen, Leonard and Cooper).

HOUSE COMMITTEE ON JUDICIARY

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Nelson, Chairman; Thorsness, Vice Chairman; M. Kreidler, Madsen, and A. Smith.

Staff: Jon Carlson (786-7459)

Hearing Dates: April 1, 1991; April 2, 1991; February 20, 1992; February 25, 1992

BACKGROUND:

The U.S. Supreme Court recently decided Penry v. Lynaugh, 109 S. Ct. 2934 (1989), which addressed imposing the death penalty on mentally retarded persons. In Penry, the court found that the Eighth Amendment prohibition against cruel and unusual punishment does not categorically forbid imposing a capital sentence upon a person diagnosed as being mentally retarded.

The capital punishment statutes in most states do not directly address imposing capital punishment on mentally retarded persons. The states of New Mexico, Georgia, Maryland, Kentucky and Tennessee prohibit execution of mentally retarded persons, and similar legislation is under consideration in the state of Florida.

SUMMARY:

A person convicted of aggravated first-degree murder who was mentally retarded at the time the crime was committed cannot be sentenced to death. A diagnosis of mental retardation must be documented by a licensed psychiatrist or licensed psychologist who is an expert in making such evaluations. The defense must establish the existence of mental retardation by a preponderance of the evidence.

Appropriation: none

Revenue: none

Fiscal Note: available

SUMMARY OF PROPOSED SENATE AMENDMENT:

Prior to deciding whether to file written notice of a special sentencing proceeding to determine whether or not the death penalty should be imposed, the prosecuting attorney shall ask the attorney for the accused if there are any mitigating circumstances. For crimes committed on or after July 1, 1992 the prosecuting attorney must request that the defense provide any evidence tending to show that the defendant is mentally retarded.

Prosecuting attorneys should decline to seek the death penalty if the evidence establishes, to the prosecutor's satisfaction, that the defendant is mentally retarded. If the prosecutor decides to seek the death penalty despite any evidence of mental retardation, the evidence may still be offered during the penalty phase for the jury's consideration as a mitigating factor. No claim for relief is created by these provisions in the event that evidence of the defendant's mental retardation is found to be insufficient by the jury.

TESTIMONY FOR:

Without this measure, there can be no guarantee that individuals with mental retardation will not be executed in this state. The death penalty should not be imposed upon those who do not have the mental capacity to understand the wrongful nature of their acts.

TESTIMONY AGAINST:

The intelligence quotient standard for measuring mental retardation is subjective, subject to varying interpretations, and an inaccurate index of an individual's mental abilities. The current death penalty scheme more than adequately takes into account an aggravated murderer's mental retardation.

TESTIFIED: PRO: Representative Cal Anderson, prime sponsor; Joan Fitzpatrick, professor, University of Washington; Dr. Wendy Marlowe, Washington State Psychological Association; Sharon Park, Washington State Catholic Conference; Jeff Larson, Washington Assembly for Citizens with Disabilities; Joy Isham, Washington Association for the Retarded; CON: Mike Redman, Washington Association of Prosecuting Attorneys; Mike Patrick, Washington State Council of Police Officers; Helen Harlow, Tennis Shoe Brigade; Jim Weed, Okanogan County Sheriff