

HOUSE BILL REPORT

SSB 5625

As Passed House
April 9, 1993

Title: An act relating to imposing the death penalty upon the mentally retarded.

Brief Description: Prohibiting the death penalty for the mentally retarded.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Prentice, Hargrove, Rinehart, A. Smith, Williams, Moyer, Drew, Prince, Erwin, Skratek and McAuliffe).

Brief History:

Reported by House Committee on:
Judiciary, April 2, 1993, DP;
Passed House - Amended, April 9, 1993, 70-28.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 9 members:
Representatives Appelwick, Chair; Ludwig, Vice Chair;
Campbell; Chappell; Locke; Mastin; H. Myers; Riley; and
Scott.

Minority Report: Do not pass. Signed by 6 members:
Representatives Padden, Ranking Minority Member;
Ballasiotes, Assistant Ranking Minority Member; Johanson;
Long; Schmidt; and Tate.

Staff: Patricia Shelledy (786-7149).

Background: In Penry v. Lynaugh, 109 S. Ct. 2934 (1989), the United States Supreme Court found that the 8th Amendment prohibition against cruel and unusual punishment does not categorically forbid imposing the death penalty upon a person diagnosed as being mentally retarded. Like most states, Washington State's provisions governing the death penalty do not expressly prohibit imposing the death penalty upon mentally retarded defendants convicted of aggravated murder in the first degree.

Summary of Bill: The death penalty may not be imposed upon a mentally retarded person convicted of aggravated first-degree murder if the person was mentally retarded when he or

she committed the murder. A licensed psychiatrist or psychologist expert designated by the court in the diagnosis of mental retardation must document the diagnosis of mental retardation.

The defense must establish mental retardation by a preponderance of the evidence. The court must make a finding as to the existence of mental retardation.

"Mentally retarded" means the person has: (1) significantly subaverage general intellectual functioning; (2) which exists concurrently with deficits in adaptive behavior; and (3) **both** significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period, which is the time period between conception and the person's 18th birthday.

"General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

"Significantly subaverage general intellectual functioning" means intelligence quotient 70 or below.

"Adaptive behavior" means the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected of persons the defendant's age.

Mental retardation is added to the list of mitigating factors the jury may consider when deciding whether to impose the death penalty.

The Supreme Court must also consider whether the defendant was mentally retarded when reviewing the jury's decision to impose the death penalty and must invalidate the jury's decision if the court finds that the defendant was mentally retarded.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: The Legislature should make a statement as a matter of policy that mentally retarded people should not be executed, and not leave the decision to the discretion of individual prosecutors and juries.

Testimony Against: The current law provides sufficient protection to mentally retarded defendants. Prosecutors, jurors, and judges can be trusted not to seek the execution of the mentally retarded. The bill will simply be a vehicle for defendants who are not mentally retarded to appeal their sentences on yet another ground and will further delay their executions.

Witnesses: Larry Jones, American Association on Mental Retardation (pro); Lynne Darnell, Association of Retarded Citizens of Snohomish County (pro); Ned Dolejsi, Washington Catholic Conference (pro); and Mike Redman, Washington Association of Prosecuting Attorneys (con).