

HOUSE BILL REPORT

HB 1659

As Reported By House Committee On:
Judiciary

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

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

Sponsors: Representatives Anderson, Appelwick, R. Meyers, Riley, Peery, R. Fisher, Leonard, Ogden, Heavey, G. Cole, Kremen, Miller, R. Johnson, Wang, King, Orr, Jones, Ludwig, Scott, Locke, Forner, J. Kohl, Thibaudeau, Long, Wineberry, H. Myers, Basich, Chappell, Campbell, Brown, Wood, Pruitt, Cothorn, Jacobsen, Wolfe and Johanson.

Brief History:

Reported by House Committee on:
Judiciary, March 3, 1993, DP.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 12 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Campbell; Chappell; Johanson; Locke; Mastin; H. Myers; Riley; Scott; and Wineberry.

Minority Report: Do not pass. Signed by 5 members: Representatives Ballasiotes, Assistant Ranking Minority Member; Forner; 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 Eighth 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.

In Washington, a person who is convicted of aggravated murder in the first degree may be sentenced to death if the

prosecutor files a timely notice of the prosecutor's intent to seek the death penalty and the jury finds, after a special sentencing proceeding, that no sufficient mitigating circumstances exist to merit leniency. Offenders not sentenced to death are sentenced to life imprisonment without the possibility of parole.

The special sentencing procedure is conducted after the jury finds the defendant guilty of the crime of aggravated murder in the first degree. Relevant evidence generally inadmissible at trial is admissible at the sentencing proceeding. Upon conclusion of the evidence and argument, the jurors deliberate upon the following question: "Having in mind the crime of which the defendant has been found guilty, are you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?" A unanimous affirmative response is necessary to impose the death penalty.

The jury may consider a number of relevant factors when deciding whether to impose the death penalty:

- Whether the defendant has or does not have a significant history of prior criminal activity;
- Whether the murder was committed while the defendant was under the influence of extreme mental disturbance;
- Whether the victim consented to the murder;
- Whether the defendant was an accomplice to a murder committed by another person where the defendant's participation was relatively minor;
- Whether the defendant acted under duress or domination of another person;
- Whether, at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental disease or defect;
- Whether the age of the defendant at the time of the crime calls for leniency; and
- Whether there is a likelihood that the defendant will pose a danger to others in the future.

The Washington State Supreme Court must review any imposition of the death penalty. The trial court must submit a report to the Supreme Court which includes a comprehensive statement of the case, and the defendant's background, including the defendant's educational background, intelligence level, and intelligence quotient. The Supreme Court must determine whether: (1) there was sufficient evidence to justify the jury's finding that no sufficient mitigating circumstances existed to warrant imposition of life imprisonment without the possibility of parole; (2) the death penalty is excessive or disproportionate to the penalty imposed in other similar cases considering the crime and the defendant; and (3) the sentence of death was brought about through passion or prejudice.

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 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.

"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 for age and cultural group.

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: Not requested.

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

Testimony For: The purpose of the bill is to avoid executing mentally retarded persons as has occurred in two southern states. The decision whether to pursue the death penalty for a mentally retarded defendant should not be up to prosecutors. The definition of mentally retarded essentially requires that the person be diagnosed as mentally retarded as a child so defendants will not be able to manipulate the system by falsely claiming they are mentally retarded. The federal law which imposes the death penalty for drug dealing specifically exempts mentally retarded defendants.

Testimony Against: The bill will gut the death penalty provisions. Death penalty cases will become a battle of the experts. Death penalty decisions should not be subject to the vagaries of psychology. Existing law provides sufficient protection. An equal protection issue exists because of the bright line intelligence test in the definition. Tests can be wrong.

Witnesses: Representative Cal Anderson, prime sponsor (pro); Lynne Darnell and Larry Jones, American Association for the Mentally Retarded (pro); Mike Redman and Jim Nagle, Washington Association of Prosecuting Attorneys (con); and Ned Dolejsi, Washington State Catholic Conference (pro).