

SENATE BILL REPORT

SB 5625

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, FEBRUARY 25, 1993

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

**SPONSORS:** Senators Prentice, Hargrove, Rinehart, A. Smith, Williams, Moyer, Drew, Prince, Erwin, Skratek and McAuliffe

**SENATE COMMITTEE ON LAW & JUSTICE**

**Majority Report:** That Substitute Senate Bill No. 5625 be substituted therefor, and the substitute bill do pass.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, Niemi, Rinehart, and Spanel.

**Staff:** Lidia Mori (786-7755)

**Hearing Dates:** February 17, 1993; February 25, 1993

**BACKGROUND:**

In the United States Supreme Court case, Penry v. Lynaugh, 109 S. Ct. 2934 (1989) 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 the imposition of capital punishment on mentally retarded persons. The states of Georgia, Maryland, Kentucky, Tennessee and New Mexico 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 assessments. The defense must establish the existence of mental retardation by a preponderance of the evidence. An individual is mentally retarded when that person has significantly subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior and both were manifested during the developmental period between conception and the 18th birthday.

**EFFECT OF PROPOSED SUBSTITUTE:**

The court shall select the psychologist or psychiatrist that will perform the diagnosis and evaluation regarding mental retardation. The court will decide the issue as to the existence of mental retardation.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested

**TESTIMONY FOR:**

The diagnosis of mental retardation is one of the least controversial of all diagnoses. A person who tries to feign mental retardation is readily identifiable. Mental retardation is a lifelong affliction, it does not come and go. This bill is directed at only the bottom 3 percent of the population.

**TESTIMONY AGAINST:**

The bill is unnecessary because there are safeguards in the system now that protect this group of people. This bill would muddy the water for capital punishment.

**TESTIFIED:** PRO: Senator Prentice; Ned Dolejsi, Washington State Catholic Conference; Joan Fitzpatrick; Larry Jones, past president, American Assn. on Mental Retardation; Dr. Wendy Marlowe, Washington State Psychological Assn.; Steve Lansing, Lutheran Public Policy Office; Kevin Klumpp; CON: Mike Redman, WAPA; Fred Johnson, WAPA