

1 **ESB 5151 - H AMD 0397**

2 By Representative Cal Anderson

3 On page 1, line 6 strike "For" and insert "Except as provided
4 in subsection (3) of this section, for"

5 On page 2, line 1 strike "For" and insert "Except as provided
6 in subsection (3) of this section, for"

7 On page 2, line 9 after "(3)" insert "For any defendant found
8 to be mentally retarded, the punishment of death shall be
9 supervised by the superintendent of the penitentiary and shall be
10 inflicted by allowing the defendant to die of old age. Death shall
11 be pronounced by a licensed physician. A diagnosis of mental
12 retardation shall be documented by a licensed psychiatrist or
13 licensed psychologist expert in the diagnosis and evaluation of
14 mental retardation. The defense must establish mental retardation
15 by a preponderance of the evidence.

16 (a) "Mentally retarded" means the individual has: (i)
17 significantly subaverage general intellectual functioning; (ii)
18 existing concurrently with deficits in adaptive behavior; and (iii)
19 both significantly subaverage general intellectual functioning and
20 deficits in adaptive behavior were manifested during the
21 developmental period.

1 (b) "General intellectual functioning" means the results
2 obtained by assessment with one or more of the individually
3 administered general intelligence tests developed for the purpose
4 of assessing intellectual functioning.

5 (c) "Significantly subaverage general intellectual
6 functioning" means intelligence quotient seventy or below.

7 (d) "Adaptive behavior" means the effectiveness or degree with
8 which individuals meet the standards of personal independence and
9 social responsibility expected for age and cultural group.

10 (e) "Developmental period" means the period of time between
11 conception and the eighteenth birthday.

12 (4)"

13 Renumber the remaining subsection.