

HOUSE BILL REPORT

HB 1234

*As Reported By House Committee on:
Judiciary*

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

Brief Description: Prohibiting the execution of the mentally retarded.

Sponsor(s): 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.

Brief History:

Reported by House Committee on:
Judiciary, February 8, 1991, DPS.

**HOUSE COMMITTEE ON
JUDICIARY**

Majority Report: *That Substitute House Bill No. 1234 be substituted therefor, and the substitute bill do pass.* Signed by 15 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Paris, Assistant Ranking Minority Member; Belcher; Broback; Forner; Hargrove; Inslee; Locke; R. Meyers; H. Myers; Riley; Scott; D. Sommers; and Wineberry.

Minority Report: *Do not pass.* Signed by 4 members: Representatives Padden, Ranking Minority Member; Mielke; Tate; and Vance.

Staff: Pat Shelledy (786-7149).

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 Georgia, Maryland, Kentucky and Tennessee prohibit execution of mentally retarded persons, and similar legislation is under consideration in the state of Florida.

Summary of Substitute Bill: 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.

Substitute Bill Compared to Original Bill: The requirement that the defense prove the existence of mental retardation by a preponderance of the evidence is added. The definition of "mentally retarded" is amended to delete reference to the American Association on Mental Retardation's definition and is amended to clarify that significantly subaverage general intellectual functioning and deficits in adaptive behavior must have both been manifested during the developmental period, and exist concurrently.

Fiscal Note: Not requested.

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

Testimony For: The death penalty should only be imposed, if at all, when the person subject to the death penalty has sufficient understanding of the gravity of the crime to be held morally culpable. Mentally retarded people lack that level of understanding.

Testimony Against: The bill is unnecessary, because current law provides for establishing a sufficient mitigating factor due to the capacity of the defendant to appreciate the wrongfulness of the crime. Defendants will obtain experts to label them as "mentally retarded" to avoid the death penalty.

Witnesses: Pro: Representative Cal Anderson, prime sponsor; Joan Fitzpatrick, Professor, University of Washington Law School; Larry Jones, Washington Association of Retarded Citizens; Tony Lee, Washington Association of Churches; and Ned Djlesie, Washington Catholic Conference. Con: Mike Redman, Washington Association of Prosecuting Attorneys.