

SENATE BILL REPORT

SB 5787

As of February 14, 2007

Title: An act relating to death penalty eligibility for persons who are mentally retarded or have a severe mental disorder.

Brief Description: Concerning death penalty eligibility for persons who are mentally retarded or have a severe mental disorder.

Sponsors: Senators Kline, Murray, Regala, Weinstein, Fairley, Brown, Pridemore, Jacobsen, Franklin, Rockefeller, Kohl-Welles and Spanel.

Brief History:

Committee Activity: Judiciary: 2/14/07.

SENATE COMMITTEE ON JUDICIARY

Staff: Dawn Noel (786-7472)

Background: Under current law, a person who commits first-degree murder under one or more aggravating circumstances may either be sentenced to death or life imprisonment without the possibility of parole. If the trier of fact determines that no sufficient mitigating circumstances exist to merit leniency, the person will be sentenced to death.

In determining whether no sufficient mitigating circumstances exist to merit leniency, the trier of fact may consider several factors, one of which is 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.

It is impermissible for a person to be sentenced to death if the person was "mentally retarded" at the time the crime was committed. An individual is "mentally retarded" if he or she has: (1) significantly sub-average general intellectual functioning; which (2) exists concurrently with deficits in adaptive behavior; and (3) both factors manifested before the individual reached the age of 18.

A diagnosis of mental retardation is to be documented by a licensed psychiatrist or psychologist designated by the court, who is an expert in the diagnosis and evaluation of mental retardation. The defense must establish mental retardation by a preponderance of the evidence, and the court must make a finding as to the existence of mental retardation.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: It is impermissible for a person to be sentenced to death if the person was "mentally retarded" at the time the crime was committed, or had a "severe mental disorder." A "severe mental disorder" means a severe mental illness or defect that significantly impairs a person's capacity to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. However, a mental illness or defect manifested primarily by repeated criminal conduct or attributable solely to the effects of voluntary use of alcohol or other drugs does not, standing alone, constitute a severe mental disorder. A diagnosis of mental retardation or severe mental disorder is to be documented by a licensed mental health professional designated by the court, who is an expert in the diagnosis and evaluation of mental retardation or severe mental disorders.

A defendant may bring a pre-trial motion for disqualification from death penalty eligibility as a result of mental retardation or severe mental disorder. The defense must establish mental retardation or severe mental disorder by a preponderance of the evidence and the court must make a finding as to the existence of each. If the court denies the motion, the question of whether the defendant was mentally retarded or had a severe mental disorder at the time the crime was committed may be presented to the jury during sentencing. A jury verdict that either factor has been proved by a preponderance of the evidence will disqualify the defendant from the death penalty. Instead, the defendant will receive a sentence of life imprisonment without the possibility of parole.

In addition to considering the question of whether the defendant was mentally retarded or had a severe mental disorder when the crime was committed, the jury will still determine whether no sufficient mitigating circumstances exist to merit leniency, and may consider several factors. One such factor is 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 impaired as a result of mental disease or defect. Another factor is whether, at the time of the murder, the defendant had significant intellectual impairments, but which do not constitute mental retardation.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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