

FACT: During testimony on SB26 in March, 2003, a representative of the Pennsylvania District Attorneys Association claimed that there were 26 PA death row prisoners who were mentally retarded, according to a Department of Corrections competency test. Supporters of the legislation felt that was a low estimate. Very few of those 26 have received relief since the Atkins decision.

The legislation provides a mechanism for defendants convicted and sentenced to death prior to the *Atkins* ruling to seek relief.

Such relief must be sought within a year of the effective date of the act. Convicts seeking and granted relief shall have their death sentences vacated and shall be sentenced to life imprisonment.

The legislation is supported by professionals in the mental retardation field, civil libertarians, and learned counsel.

Counsel who successfully argued the *Atkins* case before the Supreme Court, and who are consulting with state legislatures to enact consti-

tutional statutes to meet *Atkins*, have assisted in the drafting of the bill. It is extremely important that we enact a statute that will withstand any potential court challenges that claim we have excluded mentally retarded persons.

(SB631 only) The definition of mentally retarded reflects a national consensus.

The American Association on Mental Retardation is the principle organization in the field and has adopted the following definition: mental retardation is a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. The disability originates before age 18. While the AAMR definition does not contain an IQ threshold, the legislation does refer to an IQ of 70 or below because mental retardation generally encompasses everyone at this threshold.

For more information, visit the Death Penalty Information Center's page on the death penalty and mental retardation at:

www.deathpenaltyinfo.org

What you need to know about.....

The death penalty and the mentally retarded

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The Basics:

In June, 2002, the United States Supreme Court outlawed the execution of the mentally retarded in its *Atkins v. Virginia* decision. The court left the states to decide how this ruling would be implemented.

In June, 2003, the Pennsylvania Senate voted 48-1 in favor of Senate Bill 26, which would end the practice of executing the mentally retarded in Pennsylvania and was favored by advocates for the mentally retarded and church groups, among others.

SB26 never got a vote in the state House of Representatives.

In the 2005-06 session, Senator Mary Jo White has introduced SB631, which is identical to the previously passed legislation and has a total of 11 co-sponsors (as of July, 2005). Meanwhile, in the state House, Rep. Kathy Manderino has introduced HB1410 with 30 co-sponsors. SB631 and HB1410 differ slightly but concur on one key point: A defendant's mental capacity would be determined before trial by the judge.

There are also additional bills pending in both chambers that claim to end the execution of the mentally retarded. SB334 and HB698 would allow the jury to determine a defendant's mental capacity after a guilty verdict has been rendered.

Of the eight states that have implemented standards since the *Atkins* decision, seven have opted for pre-trial determination.

Who supports SB631, HB1410:
Advocates for the mentally retarded
Church groups
Civil libertarians
Who supports SB334, HB698:
Prosecutors

Why SB631 and HB1410?

The legislation ensures compliance with the Supreme Court ruling in *Atkins v. Virginia*.

The Court was clear that its holding in the case extends to all defendants who "fall within the range of mentally retarded offenders about whom there is a national consensus." While states are free to adopt variations in definitions, the Court was clear that states could

not adopt a definition that encompasses a smaller group of defendants, nor may they fail to protect any individuals who are mentally retarded under a definition within the national consensus.

The legislation provides a mechanism for pre-trial determination of mental retardation by the court.

There is already a process in place for resolution of many pre-trial issues. Judges routinely determine the competency of defendants to stand trial or the admissibility of evidence.

If a defendant is mentally retarded and is ineligible for the death penalty, pre-trial determination saves the Commonwealth the costs of an unnecessary capital trial. The burden of proof of mental retardation falls on the defendant in the pre-trial stage.

If a judge determines a capital case may proceed, the defendant may still raise the issue as a mitigating factor at the post-conviction phase of capital trials.



Earl Washington, IQ of 69, confessed to a murder he did not commit. 16 years after being sentenced to death, DNA testing proved his innocence.