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Should Texas Ban Execution of Mentally Retarded Offenders?

The 77th Legislature is considering legislation that would prohibit the execution of mentally retarded persons found guilty of capital murder. Fueling the debate is the U.S. Supreme Court's decision to hear the appeal in a Texas case of a man who claims to be mentally retarded. Johnny Paul Penry argues that his death sentence is unconstitutional, in part because the jury that sentenced him was not sufficiently able to hear evidence of his mental retardation that could have mitigated his guilt and led to a life sentence.

When the Supreme Court first considered Penry's case in 1989, the court ruled that executing mentally retarded offenders did not violate the U.S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment because under "evolving societal standards of decency," there was "insufficient evidence of a national consensus" against such executions. At the time, only Georgia and Maryland statutorily prohibited executing the mentally retarded. Today, the federal government and 13 of the 38 death-penalty states have this prohibition, and state legislatures in Florida, Missouri, and North Carolina are considering enacting it.

Advocates for the mentally retarded say that as many as six mentally retarded offenders have been executed in Texas since 1984, and at least two are now on death row. Others dispute the contention that a mentally retarded offender ever has been executed in Texas or that any such offenders are awaiting execution.

Texas lawmakers are debating whether to follow the lead of 13 other states in prohibiting capital punishment for mentally retarded persons.

The 76th Legislature generated three bills related to prohibiting execution of the mentally retarded, but none passed both houses. SB 326 by Ellis passed the Senate and was reported favorably by the House Criminal Jurisprudence Committee but died in the House Calendars Committee. This session, the debate centers on whether the mentally retarded should be considered morally less culpable than other offenders, the fairness of the criminal justice

system, whether changes would create a new layer of appeals or equal-protection issues, and whether Texas law reflects current public opinion.

Defining mental retardation

Health and Safety Code, sec. 591.003 establishes a three-pronged definition of mental retardation: "significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period." A person must meet all three criteria to be considered mentally retarded. The code defines significantly subaverage intellectual functioning as a score on a standard IQ test that is two or more standard deviations below the mean, or average, score. For most tests, a score of 70 or below qualifies for mental retardation. Adaptive behavior means the effectiveness with or degree to which a person meets the standards of personal independence and social responsibility expected of the person's age and cultural group. Although state law does not define the developmental period, mental health professionals generally consider that it ends at age 18.

Mental retardation is caused when brain development is impaired before birth, during birth, or in childhood. A person who suffers a traumatic brain injury after the developmental period is not considered mentally retarded, even if his or her limitations in IQ and adaptive skills mirror those of a mentally retarded person.

Psychologists use standardized tests to determine mental retardation. The ARC (formerly Association for Retarded Citizens of the United States) estimates that between 6.2 million and 7.5 million Americans had mental retardation in 1990. About 87 percent were considered mildly retarded, with an IQ range of 50-75.

Mental retardation is distinct from mental illness. Mental retardation is a permanent condition, but mental illness can be episodic and treatable. Onset of mental illness can happen at any point in life and may not affect intellectual functioning. A mentally retarded person can have an accompanying mental illness.

Current Texas law

Texas law allows capital defendants to present mental retardation as an issue at trial, during appeals, in the clemency process, and before an execution.

Trial procedure. Code of Criminal Procedure (CCP), art. 46.02 requires that defendants be competent to stand trial, meaning they must understand the proceedings against them and be able to participate in their own defense. The trial court must grant a competency hearing before the criminal trial begins if the defendant requests a hearing or if the court decides on its own that evidence exists to support a finding of incompetence. Also, if anyone during the trial brings to the court evidence of the defendant's incompetence, the court must grant a hearing.

A 12-member jury — different from the jury deciding guilt or punishment — determines whether a preponderance of the evidence shows that the defendant either does not have the sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding or does not have a rational, as well as factual, understanding of the proceedings against him or her. The defense can produce evidence that the accused is mentally retarded, mentally ill, or has other problems that affect the defendant's ability to understand what is happening. If one or both factors are proved in the hearing, the jury must find the defendant incompetent to stand trial. The defendant then could be subject to proceedings for commitment, either in the maximum-security unit of a state or federal mental health facility (criminal commitment) or in a residential care facility within the Texas Department of Mental Health and Mental Retardation (civil commitment).

Defendants found competent to stand trial can assert an insanity defense during the trial under Penal Code, art. 8.01 to show that, as a result of severe mental disease or defects that can include mental retardation, they did not understand that their conduct was wrong. A jury could find a defendant not guilty by reason of insanity, and the defendant would be acquitted of the crime. The defendant then could be subject to criminal or civil commitment proceedings.

Penal Code, art. 19.03 requires the state to prove that a defendant intentionally and knowingly committed a capital crime before he or she can be eligible for the death penalty. The jury's decision must be unanimous; if any juror votes that the defendant did not act voluntarily or was not able to form the necessary culpable mental state with regard to the crime, the defendant cannot be sentenced to death.

If a defendant is convicted of capital murder, the defense can present evidence during the punishment phase of the trial for the jury to consider as mitigating against

The Case of Johnny Paul Penry

No one disputes that Johnny Paul Penry is guilty of murder. In 1979, he was convicted of raping and murdering Pamela Mosely Carpenter and was sentenced to death. The argument over whether the 44-year-old Texan should be executed revolves around the contention that he is mentally retarded.

Penry's supporters say he clearly is mentally retarded. They say his IQ ranges between 50 and 63, he reads and writes at an elementary level or not at all, he is unaware of the consequences of his actions or his pending execution, he was abused horribly as a child, he believes in Santa Claus, and his favorite activities are drawing pictures in crayon and coloring in a book.

Prosecutors and others who support carrying out Penry's death sentence say he is a sociopath who is pretending to have mental retardation to escape justice and that he was aware of the consequences of his crimes. A psychologist in the Texas Department of Criminal Justice's Institutional Division noted in 1999 that Penry was not diagnosed as mentally retarded because, among other reasons, he demonstrated adequate adaptive behavior, he read and wrote in the presence of social workers, and he had no more difficulties than other death-row offenders. A prison guard testified in Penry's 1990 trial that he noticed a change in Penry's behavior and apparent abilities during the time that Penry's alleged retardation was becoming a legal issue. As proof that Penry is not mentally retarded, prosecutors point to his ability to "think on his feet" and to carry out complicated plans during his crimes.

Penry's death sentence was appealed to the U.S. Supreme Court. In 1989, the court ruled in *Penry v. Lynaugh* (492 U.S. 302) that, while permitting capital punishment for mentally retarded offenders did not violate the U.S. Constitution's Eighth Amendment prohibition against cruel and unusual punishment, states must allow juries to sentence such offenders to life in prison if they believe the offender's mental retardation mitigates his or her culpability. The court remanded Penry's case to the U.S. District Court for the Eastern District of Texas, ruling that Penry's jury was not sufficiently able to consider mitigating evidence in its decision to sentence him to death. The district court gave Texas 90 days to retry Penry or to commute his sentence to life in prison.

Penry was tried a second time in 1990 and again found guilty of capital murder. The jury again considered the three special issues required at the time: (1) whether the conduct of the defendant that caused the death of the victim was committed deliberately and with the reasonable expectation that the death of the victim or another would result; (2) whether there was a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and (3) if raised by the evidence, whether the conduct of the defendant in killing the victim was unreasonable in response to the provocation, if any, by the victim. The judge instructed the jury in detail to consider mitigating circumstances, if any, supported by the evidence presented in either phase of the trial that could make a death sentence inappropriate.

In 1991, the 72nd Legislature enacted SB 880 by Montford, requiring the jury in the punishment phase of a capital trial to consider evidence presented as mitigating against imposition of the death penalty. However, because at the time of Penry's second trial in 1990 the Legislature had not yet changed the law, Penry argues that the instruction his jury received was not adequate to allow them to consider mitigating evidence of his alleged mental retardation and severe childhood abuse. Penry argues that to follow the judge's mitigation instructions, jurors might have had to answer falsely the special issues that then were in effect, thereby breaking the oath they took to answer the questions truthfully. The Supreme Court is scheduled to hear oral arguments in this case on March 27, 2001.

If the Legislature were to enact a law barring the execution of mentally retarded capital offenders, prosecutors say that Penry's sentence likely would come under further review. Their concern is that if Penry's sentence were reduced to life in prison, he could be released on parole because he has served the necessary two-thirds of his sentence to be eligible under the law that existed in 1979, when he was convicted. Penry's attorneys say he would sign a waiver relinquishing his parole rights.

imposition of the death penalty (CCP, art. 37.071). The 72nd Legislature added this provision in 1991 in response to the U.S. Supreme Court's 1989 decision in the Texas case *Penry v. Lynaugh*. (See box on page 3.)

The defense can present evidence of mental retardation, mental illness, childhood abuse, background, or anything else it thinks mitigates the defendant's culpability. The jury then votes on whether it agrees there is a sufficient mitigating circumstance to warrant a sentence of life imprisonment instead of death. For the defendant to be sentenced to death, the jury must vote unanimously that no mitigating circumstance exists. If any juror votes that a mitigating circumstance exists, the defendant will be sentenced to life imprisonment.

Appellate procedure. Capital offenders sentenced to death are guaranteed a direct appeal to the Court of Criminal Appeals, the state's highest criminal court, to address possible trial errors (CCP, art. 37.071). The direct appeal could raise the issue of mental retardation by arguing that the defendant's trial attorney did not investigate the defendant's mental retardation and was therefore ineffective.

In addition, CCP, art. 11.071 permits defendants to seek another form of review by the Court of Criminal Appeals, called a writ of *habeas corpus*. This type of review allows defendants to raise issues outside the trial record and typically challenges a conviction's constitutionality. Through a *habeas* writ, defendants can bring claims that they were incompetent to be sentenced to death or that the attorney in the direct appeal was ineffective in not raising the issue of ineffective trial counsel. If the court agrees that the defendant was not competent, it must change the death sentence to life in prison or require a new trial (CCP, art. 44.251). If the court affirms the conviction and sentence, the defendant can appeal to the U.S. Supreme Court and again raise competence issues related to mental retardation.

Clemency process. CCP, art. 48.01 allows capital defendants to appeal to the governor to be pardoned or to have their death sentences commuted to life in prison. A defendant can appeal for executive clemency on any grounds, including mental retardation. The governor independently can grant a one-time, 30-day reprieve from execution, but can commute a sentence or issue a pardon only on the recommendation of a majority of the Board of Pardons and Paroles.

Competency to be executed. CCP, art. 46.04 requires offenders sentenced to death to be competent to be executed before their sentences can be carried out. Defendants are considered incompetent if they do not understand that they will be executed, that the execution is imminent, and the reason they will be executed. The 76th Legislature enacted HB 245 by Gallego, which codified requirements in a 1984 Supreme Court decision, *Ford v. Wainwright* (477 U.S. 399), to prohibit the execution of a prisoner who is not competent. If the defense, prosecution, or court raises the issue of competency, the trial court must order at least two mental health experts to make a determination of competence. If the court finds, based on the experts' reports, that the defendant is not competent, he or she cannot be executed. If the defendant regains competency, a new execution date can be set.

Proposed legislation in Texas

Proposals in the 77th Legislature include specifically prohibiting the execution of a mentally retarded person (HB 242 by Gallego); establishing a special pre-trial procedure for a jury to determine if a defendant was mentally retarded; requiring mentally retarded persons found guilty of capital murder to receive a sentence of life imprisonment; changing the definition of mental retardation to a specific IQ score; and allowing offenders sentenced to death before September 1, 2001, to have a hearing to determine if they were mentally retarded at the time of the crime.

Under CSHB 236 by Hinojosa/Gallego, a defendant in a capital trial who wanted to have the jury consider mental retardation as a special issue during the punishment phase would have to file a notice with the court at least 30 days before the trial began. Upon receiving notice, the court would have to hold a hearing to determine whether to appoint disinterested experts to determine if the defendant were mentally retarded. If there were sufficient evidence of mental retardation, the court would have the defendant examined by experienced, qualified experts. The defendant then would face trial. If a defendant were convicted and had been found by the court in a pre-trial hearing to be mentally retarded, then the court, on the written request of the defense attorney, would instruct the jury to decide if the defendant was mentally retarded. If the jury found the defendant mentally retarded, the court would sentence the defendant to life imprisonment. The bill also would specify that mental retardation is a mitigating factor for the jury to consider in the punishment phase of a capital trial. If the jury decided that the defendant's

Laws in Other States

Of the 14 jurisdictions that prohibit the execution of mentally retarded offenders (see table at right), 12 enacted their laws after the U.S. Supreme Court's 1989 decision in *Penry v. Lynaugh*. Ten states' statutes specify that a person who is mentally retarded cannot be sentenced to death. Statutes for the other two states and the federal government state that a mentally retarded person cannot be executed.

Legislation proposed in Texas would track the Health and Safety Code definition of mental retardation as "significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period." Nine of the states that prohibit capital punishment for the mentally retarded use a similar three-pronged definition. Some specify an IQ cutoff of 65 or 70, some define the developmental period as ending at age 18 or 22, and some are specific about neither. Three other states use a two-pronged definition that does not require mental retardation to be manifested during the developmental period.

Federal law (U.S.C., sec. 3596) defines a mentally retarded person as someone who "as a result of mental disability, lacks the mental capacity to understand the death pentalty and why it was imposed on that person."

Jurisdiction	Year enacted
Arkansas	1993
Colorado	1993
Georgia	1988
Indiana	1994
Kansas	1990
Kentucky	1990
Maryland	1989
Nebraska	1998
New Mexico	1996
New York	1995
South Dakota	2000
Tennessee	1990
Washington	1993
Federal government	1994

Information compiled from the American Bar Association, Florida Senate, U.S. Code Ann., Kan. Stat. Ann., Neb. Rev. St., S. Dak. Stat., South Dakota Legislative Research Council, Tenn. Code Ann., and Wash. Rev. Code Ann.

mitigating circumstances warranted a life sentence, the court would sentence the defendant to life imprisonment. The bill would use the Health and Safety Code definition of mental retardation. The House Criminal Jurisprudence Committee reported CSHB 236 favorably on March 6.

HB 1247 by S. Turner would prohibit the death penalty for persons who at the time of the commission of a capital offense were mentally retarded. Mental retardation would be defined as an IQ of 65 or less or would track the Health and Safety Code definition. Before the criminal trial began, the defendant's counsel could request that the trial judge hold a hearing to determine if the defendant were mentally retarded at the time of the offense. The court would have to schedule a hearing, and the burden of proving mental retardation would be on the defendant. The court would have to make a finding 10 days before the trial of whether or not the defendant were mentally retarded or state that it would not make a finding. The decision could be appealed directly to the Court of Criminal Appeals. Also, on the request of the prosecution, the defense, or on the court's own motion, the court would have to appoint disinterested experts in diagnosing mental retardation to examine the defendant and determine if he or she were mentally retarded.

If the trial court found that the defendant was mentally retarded, the jury could consider the court's ruling in determining whether to convict the defendant. If the jury voted to convict, the defendant would be sentenced to life imprisonment. If the court found that the defendant was not mentally retarded at the time of the offense, the jury could not be informed of the hearing results. However, at the defendant's request, the judge would have to permit the defendant to present to the jury evidence of his or her assertion of mental retardation. At the punishment phase of the trial, the defendant could request to have the jury determine whether he or she were mentally retarded at the time of the offense. If the jury found that the defendant was mentally retarded, the judge would have to sentence

the defendant to life imprisonment. HB 1247 is pending in the House Criminal Jurisprudence Committee.

SB 686 by Ellis/Moncrief, similar to HB 1247, would prohibit the death penalty for persons who at the time of the commission of a capital offense were mentally retarded. Mental retardation would be defined as an IQ of 70 or less or would track the Health and Safety Code definition. The pre-trial hearing process would be identical to that in HB 1247. The court would have to announce its finding before the trial. SB 686 would apply to offenses committed after September 1, 2001, and would authorize defendants convicted of a capital offense before that date to ask the convicting court for a hearing to determine if they were mentally retarded at the time of the crime. If the court found that documentary evidence supported the defendant's claim of mental retardation, it could order a hearing, and if the court found the defendant to be mentally retarded at the time of the crime, it would have to forward a copy of that finding immediately to the Court of Criminal Appeals. SB 686 has been referred to the Senate Criminal Justice Committee.

For and against changing the law

Debate over whether to change the law centers on issues that include the moral culpability of a mentally retarded person, the fairness of the criminal justice system to the mentally retarded, the likely effect on appeals, whether the law would reflect public opinion, and concern over whether mentally disabled people who are not retarded would be entitled to equal protection under the law.

Moral culpability. *Supporters of changing the law say:* Justice is not served when the state executes a mentally retarded person. The death penalty should be limited only to the most culpable offenders. People with mental retardation cannot appreciate sufficiently the consequences of their actions and should not be held to the same standards and subjected to the same punishment as other offenders. Texas already recognizes that some groups of people are less culpable than others — the law protects from the death penalty those who commit murder while age 16 or younger. The state does not execute children, so it should not execute someone with the mind of a child. Life in prison would be an appropriate punishment for a mentally retarded person found guilty of committing capital murder.

Opponents of changing the law say: While the state does not execute children, it also does not allow children to marry, drive vehicles, sign contracts, raise families, or do any of the other things that adults with mental retardation have the right to do. Whether people understand the wrongfulness of their actions is more important than whether or not they fit the definition of mental retardation. When criminals formulate plans to commit murder, actually commit it, and in some cases, try to hide it, juries should have the option to sentence them to death. By definition, "mental age" means that a person received the same number of correct responses on a standardized IQ test as the average person of that age in the sample population. Saying that a 35-year-old person with mental retardation has the "mind" of a 10-year-old is inaccurate. Mental age refers only to the IQ test score, not to the level and nature of the person's experience and functioning.

Fairness of the criminal justice system. *Supporters of changing the law say:* For a variety of reasons, the criminal justice system often is unfair to mentally retarded people accused of crimes. Safeguards in current law to protect the mentally retarded from being sentenced to death are insufficient. People with mental retardation have been sentenced to death in Texas, and as many as six have been executed.

Mentally retarded people often cannot understand the charges against them and the consequences of what they tell law enforcement officials. They may give up their constitutional rights voluntarily without understanding that they have done so. Many mentally retarded people have learned to be agreeable when authority figures ask them questions, and they will agree with leading questions from police, even if they had no involvement in a crime. For example, the *New York Times* reported in February 2001 that detectives who interrogated a mentally retarded Virginia man asked leading questions to which he gave "monosyllabic answers and even corrected himself at their suggestion when his response did not fit their account." The man was convicted of rape and murder and given a death sentence, which was commuted to life in prison after early DNA tests cast doubt on his guilt. Last year, new tests on DNA evidence in the case prompted Virginia Gov. James Gilmore to pardon the defendant, who had spent 18 years in prison for the crime.

Mentally retarded people also are susceptible to coercion from criminals. Penal Code, art. 7.01 allows a person to be held criminally responsible as a party to an offense, even if that person did not actually commit the crime. It is not uncommon for a criminal to use a mentally retarded person as a scapegoat to avoid justice.

Most mentally retarded people have limited resources and cannot afford expensive lawyers or expert testimony. Court-appointed lawyers often are not trained to recognize mental retardation and may not know to request a competency hearing. Appointed experts may not be properly qualified. The insanity defense offers little protection for mentally retarded offenders and is rarely used. Current legislative proposals would help address these problems by establishing specific procedures to examine whether a defendant is mentally retarded and allowing juries to receive this information and to decide if someone is mentally retarded. This would help attorneys, judges, and juries focus on mental retardation as a specific issue instead of lumping it together with other trial procedures and issues that courts must consider. Current legislative proposals also would specify that experienced, qualified experts must determine if an offender is mentally retarded.

Enacting a statutory definition of mental retardation with a definitive IQ cutoff would protect from execution mentally retarded offenders with IQs in the high end of the range. The average person believes that a mentally retarded person is someone who cannot read or write, has difficulty speaking, and cannot survive without assistance. That description fits only about 6 percent of the mentally retarded population. Juries may think that defendants who are capable of driving, working, or reading and writing are faking their mental retardation. It is unlikely, however, that someone could fake mental retardation.

These proposals would not limit the role of juries. Juries still would decide the guilt or innocence of mentally retarded defendants, and in some cases, juries would decide whether a defendant was mentally retarded.

Opponents of changing current law say: New legislation is unnecessary because Texas already has safeguards to protect defendants who lack the mental capacity to understand the consequences of their crimes. There is no credible evidence that a person fitting the Health and Safety Code definition of mental retardation has been executed in Texas or is on death row. Courts can declare someone incompetent to stand trial, or a defendant may be found not guilty by reason of insanity. Juries can consider mental retardation as a mitigating circumstance when imposing a sentence. If even one juror votes that a defendant's mental retardation mitigates his or her guilt, the defendant cannot be sentenced to death. Also, prosecutors typically will not seek the death penalty when they know the defendant is mentally retarded because of the time, expense, and difficulty in proving competence and culpability for a conviction. Current legislative proposals would not address concerns about unprepared defense counsel, yet would continue to rely on counsel to bring up the issue of a defendant's mental retardation.

The decision to sentence a mentally retarded offender to death should continue to be made on a case-by-case basis instead of imposing a blanket prohibition against executing the mentally retarded. It would be unfair to strip juries of their ability to decide appropriate punishment for a capital murderer. Juries already can consider mental retardation as a mitigating factor in the punishment phase of capital trials. Also, whether or not a defendant is mentally retarded should not be determined in a pre-trial hearing before a judge only, as most legislation proposes. In every other finding of fact, including competence to stand trial, a jury of 12 people makes the determination. Pre-trial hearings would be unnecessary and burdensome.

Barring capital punishment on the basis of a certain score on an IQ test would be arbitrary. There might be no appreciable intellectual difference between an offender who scores 71 and one who scores 70, making the latter ineligible for the death penalty. Much of the criminal population falls in the IQ range of 70 to 85, and not much difference in intellectual functioning exists across that population. In fact, a definition of mental retardation using only IQ instead of the three-pronged definition in the Health and Safety Code could be dangerous because it would be relatively easy for an offender to fake mental retardation.

Impact on appeals. *Supporters say:* Prohibiting the execution of mentally retarded offenders would not lead to a large number of new appeals because mental retardation already may be raised in the appeals process. Inmates who had gone through the state appeals process likely could not have a new appeal unless they could show new evidence of mental retardation, which already is allowed as a ground for appeal.

Opponents of changing the law say: Proposed legislation could lengthen the appeals process unnecessarily and extend the suffering of victims' families and friends. If some proposed changes were enacted, current death-row inmates could be eligible to raise mental retardation on a new appeal even if they did not raise it at the time of their trial. Texas' procedures in capital murder cases have been well established through litigation and may not withstand change easily. Changes to the law could be subject to court scrutiny, halting executions while challenges were litigated. While most of the proposed bills state that

they would not be retroactive to include offenders already on death row who allege mental retardation, defense and prosecution attorneys agree that a new law likely would result in additional appeals.

Public opinion. *Supporters of changing the law say:* Exempting mentally retarded offenders from the death penalty would bring Texas law into line with public opinion. In a February 2001 Scripps Howard Texas Poll, 66 percent of Texans opposed executing mentally retarded offenders. Even among supporters of capital punishment, only 16 percent of respondents nationwide and 20 percent in Harris County supported executing mentally retarded offenders, according to a *Houston Chronicle* poll published in February 2001. Thirteen states and the federal government already outlaw executing these offenders, and at least three other states are considering similar legislation. In addition, many nations around the world prohibit execution of the mentally retarded. Even some countries that appear on the U.S. State Department's list of human-rights violators do not execute mentally retarded offenders.

Opponents of changing the law say: Texans also express public opinion when they serve on capital juries, which are drawn from a cross-section of Texans chosen at random. It takes only a single juror to give a capital offender a life sentence instead of death. If the majority of Texans are against executing the mentally retarded, it stands to reason that most people on a jury would feel that way and would vote for life.

Equal protection. *Supporters say:* Changing the law would not create equal-protection issues for those who have mental impairments other than mental retardation. The Court of Criminal Appeals already considers post-developmental organic brain damage in the same manner as mental retardation in cases it reviews. Brain damage incurred after commission of the crime — in a prison brawl, for example — can be considered by the courts in a claim of incompetence to be executed.

Opponents of changing the law say: A special exception for mentally retarded offenders could raise equal-protection issues. Proposed legislation would bar the execution of mentally retarded offenders but would not protect offenders with other mental disabilities. For example, a paranoid schizophrenic or a person who suffers a traumatic brain injury in a car accident at age 20 and who subsequently has the same IQ and level of functioning as a mentally retarded person would not be exempted automatically from execution.

— by Lynn Leifker