

1 **State of Arkansas**
2 **78th General Assembly**
3 **Regular Session, 1991**
4 **By: Senator Pagan**

A Bill

SENATE BILL

For An Act To Be Entitled

8 "AN ACT TO PROHIBIT THE EXECUTION OF DEFENDANTS WITH
9 MENTAL RETARDATION; AND FOR OTHER PURPOSES."

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11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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13 SECTION 1. No person with mental retardation shall be sentenced to
14 death or executed. Mental retardation shall be determined as defined by the
15 American Association on Mental Deficiency as "significantly subaverage general
16 intellectual functioning existing concurrently with deficits in adaptive
17 behavior and manifested during the developmental period." The burden of proof
18 is on the defendant to demonstrate mental retardation by a preponderance of
19 the evidence. The decision in the trial court concerning mental retardation
20 is subject to direct appeal to the Arkansas Supreme Court by either party.

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22 SECTION 2. If the issue of mental retardation arises before or at
23 trial, the court shall make the initial determination out of the presence of
24 the jury as to whether the defendant is mentally retarded as a matter of law.
25 If that decision is made adverse to the defendant, the jury may hear proof of
26 the issue, without knowledge of the court's decision in this regard. If the
27 issue goes to the jury, the court shall instruct the jury concerning the
28 prohibition, the burden of proof, and the definition.

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30 SECTION 3. If the issue of mental retardation is presented after a
31 sentence of death, it shall be brought to the attention of the original trial
32 court by petition and the court shall decide the issue as a matter of law. If
33 the court determines that the defendant is mentally retarded, then the death
34 sentence shall be reduced to a sentence of life without parole.

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1 SECTION 4. All provisions of this act of a general and permanent nature
2 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
3 Revision Commission shall incorporate the same in the Code.

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5 SECTION 5. If any provision of this act or the application thereof to
6 any person or circumstance is held invalid, such invalidity shall not affect
7 other provisions or applications of the act which can be given effect without
8 the invalid provision or application, and to this end the provisions of this
9 act are declared to be severable.

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11 SECTION 6. All laws or parts of laws in conflict with this act are
12 hereby repealed.

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