

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Hardin**

A Bill

SENATE BILL 231

For An Act To Be Entitled

8 "AN ACT TO PROHIBIT THE SENTENCING OF A MENTALLY RETARDED
9 DEFENDANT TO DEATH; AND FOR OTHER PURPOSES."

Subtitle

12 "AN ACT TO PROHIBIT THE SENTENCING OF A MENTALLY RETARDED
13 DEFENDANT TO DEATH."

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

17 SECTION 1. (a) As used in this section, "mental retardation" means:

18 (1) Significantly subaverage general intellectual functioning
19 accompanied by significant deficits or impairments in adaptive functioning
20 manifest in the developmental period, but no later than age 18; and

21 (2) Deficits in adaptive behavior; and

22 (3) There is a *rebuttable* presumption of mental retardation when
23 a defendant has an intelligence quotient (I.Q.) of 65 or below.

24 (b) No defendant with mental retardation at the time of committing
25 capital murder shall be sentenced to death.

26 (c) The defendant has the burden of proving mental retardation *at the*
27 *time of committing the offense* by a preponderance of the evidence.

28 (d) A defendant on trial for capital murder *shall* raise the *special*
29 *sentencing provision* of mental retardation by motion prior to trial. *Prior to*
30 *trial*, the court shall determine if the defendant is mentally retarded. If
31 the court determines that the defendant is not mentally retarded, the
32 defendant may raise the question of mental retardation to the *jury for*
33 *determination de novo during the sentencing phase of the trial. At the time*
34 *the jury retires to decide mitigating and aggravating circumstances, the jury*
35 *shall be given a special verdict form on mental retardation. If the jury*

1 unanimously determines that the defendant was mentally retarded at the time of
2 the commission of capital murder, then the defendant will automatically be
3 sentenced to life imprisonment without possibility of parole.

4 (e) If the court determines that the defendant is mentally retarded,
5 then the jury shall not be "death qualified," but the jury shall sentence the
6 defendant to life imprisonment without possibility of parole upon conviction.

7 (f) However, this requirement shall not be deemed to require unanimity
8 for consideration of any mitigating circumstance, nor shall this provision be
9 deemed to supersede any suggested mitigating circumstance regarding mental
10 defect or disease currently found in Arkansas Code Annotated §5-4-605.

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

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15 SECTION 3. If any provision of this act or the application thereof to
16 any person or circumstance is held invalid, such invalidity shall not affect
17 other provisions or applications of the act which can be given effect without
18 the invalid provision or application, and to this end the provisions of this
19 act are declared to be severable.

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21 SECTION 4. All laws and parts of laws in conflict with this act are
22 hereby repealed.

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/s/ Senator Hardin

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