

There is No Doubt: Illinois Should Abolish the Death Penalty for the Mentally Retarded  
By Andrea D. Lyon<sup>1</sup>

On April 15, 2002, the much anticipated Report of Governor Ryan's Commission on Capital Punishment was released. While a majority of the commission favored abolition, they did not recommend that, but rather recommended a number of reforms. The commission was unanimous in its recommendation that the state of Illinois forbid capital punishment for the mentally retarded: "Recommendation 68: Illinois should adopt a statute which prohibits the imposition of the death penalty for those who have been found to be mentally retarded."

If Illinois did ban capital punishment for the mentally retarded, it would join sixteen other death penalty states that have done so. Even the Texas legislature was in favor of such a ban, but in June 2001, Texas Governor Rick Perry vetoed a bill that would have barred the death penalty for persons with mental retardation.

The United States Supreme Court is about to address the constitutionality of capital punishment for the mentally retarded. In 1989, the Court decided in *Penry v. Lynaugh* that executing persons with mental retardation was not a violation of the Eighth Amendment since mental retardation could instead be used as a mitigating factor. The majority didn't feel there was a "national consensus" against executing those with mental retardation since then there were only two states, Maryland and Georgia, which prohibited such executions. Since then, 16 more states have enacted laws prohibiting the execution of the mentally retarded, and the federal death penalty statute also forbids such executions. But that "national consensus" has changed and the Court is going to reconsider the issue in the case of Daryl Atkins, a Virginia death row inmate with mental retardation.

Mental retardation is a lifelong condition of impaired or incomplete mental development, characterized by three criteria: significantly subaverage intellectual functioning; concurrent and related limitations in two or more adaptive skill areas; and manifestation before age eighteen. You can't "catch" mental retardation, nor cure it.

Intelligence quotient tests (IQ tests) measure intellectual functioning and serve as a good

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shorthand for understanding the scope of the problem. According to the Human Rights Watch report on mental retardation and the death penalty, the vast majority of people in the United States have I.Q.s between 80 and 120, with an I.Q. of 100 considered average. To be diagnosed as having mental retardation, a person must have an I.Q. below 70-75, i.e. *significantly* below average. If a person scores below 70 on a properly administered and scored I.Q. test, he or she is in the bottom 2 percent of the American population. An estimated 89 percent of all people with retardation have I.Q.s in the 51-70 range. An I.Q. in the 60 to 70 range is approximately the scholastic equivalent to the third grade.

In other words, executing a person with mental retardation with an IQ of 69 is like executing someone who functions at the level that a ten year old does. Someone with mental retardation is significantly limited in what they are able to do, and in their ability to think ahead. An adult with mental retardation may have trouble driving a car, following directions, participating in hobbies or work of any complexity, or behaving in socially appropriate ways. He or she may have trouble sitting or standing still, or may smile constantly and inappropriately. For most people with mental retardation, limited adaptive skills make ordinary life extremely difficult unless a caring family or social support system exists to provide assistance and structure.

Those persons facing a sentence of death usually come from extremely deprived conditions and have not received any such support – even if anyone recognized it was needed at all. They commonly come from poverty, are victims of or witnesses to violence in their homes, and have few if any resources to cope with this lifelong condition. The environment in which they grew up is often riddled with crime, and they are easy prey to more cunning criminals who lead them into criminal activity.

A person with mental retardation simply cannot see the world the way most of us are fortunate enough to be able to. For example, Morris Mason, whose I.Q. was 62-66, was executed in 1985 in Virginia after being convicted of rape and murder. Before his execution, Mason asked one of his legal advisors for advice on what to wear to his funeral.

This is not to say that people with mental retardation are not responsible for their actions; that is a different inquiry altogether. But to inflict the ultimate sanction on a person who may live in a 25 year old body, but can only comprehend at the level of an eight year old child is cruel, and should be unusual. It should be banned altogether.