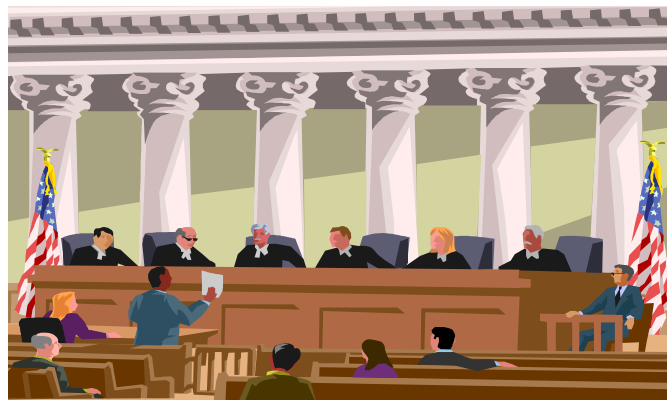


## Supreme Court Ruling Highlights Need to Examine Mental Retardation and Crime



retarded people, the dissenters strongly argued against this rationale.

The U.S. Supreme Court, in a 6-3 decision, voted to ban executing mentally retarded criminals based on provisions of the Eighth Amendment of the U.S. Constitution. While the majority opinion cited legislative and public sentiment against the death penalty for re-



The majority based their decision on the trend of 18 (up from 2) states with the death penalty that passed similar legislation. It was their finding that this trend, plus public opinion, showed a growing national consensus against executing the retarded. The dissenters argued that 18 states out of the 38 states that do allow capital punishment is hardly a consensus. Justice Scalia wrote that if any executions are “so morally repugnant as to violate our national standards of decency, surely the consensus it points to must be one that has set its righteous face against ALL such executions.”

Those states who have not yet enacted legislation banning executing the mentally retarded will now have to grapple with this serious issue. Many erroneously believe that IQ alone is the sole determining factor in being diagnosed with mental retardation. However, according to The Arc, a national organization that advocates for the retarded and their families, the American Association on Mental Retardation, and the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), mental retardation must also **have been present before the age of 18 and must include significant limitations in adaptive skills in daily living, such as those needed to live, work and play in the community.** Fears that those on death row will now claim to be retarded, or can “fake it” appear to be unfounded based on the three criteria that must be met.

Thus, there is controversy surrounding this important ruling even within the body that made it. This topic

will undoubtedly be debated in the foreseeable future on the local, state and national levels. But it is not the only issue facing our mentally retarded citizens who come into contact with the law. Louisiana Law currently does not ban executing the mentally retarded. A recent effort to change this was introduced by Rep. Holden during the 2001 Regular Session of the Legislature as House Bill 886.

### Mental Retardation Quick Facts

- ◆ There are approximately 7 million people with mental retardation in the United States
- ◆ Approximately 1.5 to 2.5% of the U.S. population is mentally retarded
- ◆ Between 4 and 10% of people in the criminal justice system are mentally retarded.
- ◆ One out of 10 American families is directly affected by mental retardation
- ◆ Mental retardation cuts across racial, ethnic, educational, social and economic lines.

From The Arc and American Association on Mental Retardation

## Policy Implications

While the recent Supreme Court decision requires the states to ban executing mentally retarded offenders, we know that the mentally retarded do become involved with the criminal justice system, not only as offenders, but also as victims.

The work of the Juvenile Justice Commission established by House Concurrent Resolution 94 of the 2001 Regular Legislative Session positions Louisiana to enact reforms to develop, implement and evaluate needs-based programs throughout the system. Policies should emerge to more accurately identify and accommodate those juveniles who enter the system and meet the criteria as mentally retarded. Adults also need to be assessed and treated appropriately if they meet the same criteria.

People with mental retardation share the following characteristics, in varying degrees that can lead them to become involved in the system and in being victimized:

- ▶ Are often easily led, willing to talk, and have a poor understanding of cause/effect and consequences of their action, often putting them at higher risk of unjust incarceration
- ▶ Are often impulsive, which may result in acts that people of average abilities could refrain from
- ▶ Will often attempt to hide their disability to avoid the stigma of the disability.
- ▶ Often exhibit low self-esteem, poor tolerance for frustration, and desire to please authority figures,

and often will acquiesce to the wishes of other individuals who are perceived to be more influential.

Source: The American Association on Mental Retardation

## What we can do

- √ **Remember** that the Constitution and the Bill of Rights provides that all citizens, including those with disabilities, have access to fair and equitable treatment under the law.

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

- *Eighth Amendment*

- √ **Abide** by the provisions of the Americans with Disabilities Act and modify relevant policies, procedures and practices to serve these individuals in the most effective and productive manner.

- √ **Provide** opportunities for law enforcement, prosecutors, defense attorneys, the judiciary and lawmakers to have information and training on effective ways of gathering information from and about these citizens, and effective and appropriate sanctions.

- √ **Ensure** that when individuals with retardation are committed to the correctional system, education, rehabilitation and reasonable accommodations are provided. This includes the making available the same opportunities for community based services and interventions that are available for other individuals in the system.

Sources: The Arc and The American Association of Mental Retardation

