

**FACT SHEET:  
THE DEATH PENALTY**

**Q. What are the facts about the death penalty and people with mental retardation?**

**A.** The facts are:

- Six individuals with mental retardation were executed in the United States in 1995.
- Mental retardation is more prevalent (4% to 10%, according to various researchers) in the criminal justice system than it is in the population at large (1.5% to 2.5%).
- People with mental retardation function at lower levels, both adaptively and intellectually, than the population at large.
- Characteristics associated with mental retardation (i.e., easily led; willingness to talk; and poor understanding of cause/effect and consequences of their actions) often put these individuals at higher risk of unjust incarceration.
- People with mental retardation are often impulsive, which may result in acts that people of average abilities could refrain from.
- Individuals with mental retardation will often attempt to hide their disability to avoid the stigma of disability.
- People with mental retardation often exhibit lowered 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.
- The death penalty is disproportionate to the level of culpability possible for people with mental retardation.
- Executing people with mental retardation does not serve justice.

**Q. What is the judiciary's position?**

**A.** The U.S. Supreme Court has acknowledged that the majority of the citizenry are in favor of the death penalty, but are against executing people with mental retardation (*Penry v. Lynaugh*, 1989). The court's acknowledgment did not alter their opinion that the consensus must come from legislative action on the part of the states and the federal government that would lead to a prohibition of execution of people with mental retardation.

**Q. What has government done?**

A. Since the decision in Penry, eleven of the forty death penalty states have enacted legislation to prohibit the execution of people with mental retardation (Arkansas, Colorado, Georgia, Indiana, Kansas, Kentucky, Maryland, New Mexico, New York, Tennessee, & Washington). Also, the federal government has enacted legislation that prohibits the execution of people with mental retardation (18 USCA s 3597[c], 1994)

**Q. What are the policy implications of the death penalty for people with mental retardation?**

A. The expressed purpose of the death penalty is to exact justice in the form of punishment and retribution, and to act as a deterrent from future criminal acts. Crimes punishable by death vary from state to state, but typically include murder, and special circumstances in crimes such as robbery, torture, kidnapping, treason and rape.

Since 1976, over 18 people with various levels of mental disabilities have been executed for capital crimes. In 1995, the United States executed over 30 people, six of whom had documented evidence of mental disabilities. One must ask if capital punishment in these cases served the purpose of justice?

The question of whether a person with mental retardation should be held responsible for a criminal act is not debatable. Individuals whose capabilities are greater than those of people whose disabilities require either extensive or pervasive supports must be held responsible, by some form of incarceration, even to potentially drastic levels, inclusive of life imprisonment. Still, the U.S. Supreme Court has consistently held that mental retardation and mental disabilities constitute mitigating circumstances, and evidence of its existence must be included in jury deliberations, both in the guilt/innocence phase and the sentencing phase (see Penry, 1989).

The reasonable assumption that there must always exist an opportunity for active rehabilitation clearly has to extend to those offenders with mental retardation. Given that individuals who have mental retardation often display various characteristics that should necessarily preclude the imposition of the extreme penalty, the American criminal justice system must seriously reconsider the question of executing such individuals. Any rational analysis of this problem would suggest that the level of culpability necessary for the imposition of the extreme (death) penalty does not exist in a person who has mental retardation.

In those states where there is still no ban on the execution of people with mental retardation, an effort must be made to prohibit such executions. The enactment by eleven state legislatures may not constitute sufficient evidence of a national consensus that the Supreme Court could not determine in Penry, but it does show a distinct national trend.

**Q. What are the implications for people with mental retardation?**

A. People with mental retardation should not be eligible for the death penalty. This is not to suggest that people with mental retardation should not be punished when they break the law, nor does it suggest that people with mental retardation are not responsible for their actions. It

suggests that people with mental retardation cannot be held culpable for crimes to the extent that the death penalty would be considered an appropriate punishment.

### **References and Resources**

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*Barbara Ransom*, Public Interest Law Firm of Philadelphia, 125 South 9th Street, Suite 700  
Philadelphia, PA 19107 (215) 627-7100

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