

## Justice and Accountability for the Severely Mentally Ill Protection for Society

### HB 16 – Preclude the Use of the Death Penalty for Individuals with Severe Mental Illness

Rep. David Floyd (R-Bardstown) and Rep. Darryl T. Owens (D-Louisville)

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Rep. Mike Cherry (D-Princeton)  
Rep. Jesse Crenshaw (D-Lexington)  
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Rep. Bob DeWeese (R-Louisville)  
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Rep. Arnold Simpson (D-Covington)  
Rep. Jim Wayne (D-Louisville)  
Rep. Alecia Webb-Edgington (R-Ft. Wright)  
Rep. Ron Weston (D-Louisville)  
Rep. Susan Westrom (D-Lexington)  
Rep. Addia Wuchner (R-Florence)

HB 16 only applies to those who are determined by a judge to have been **severely mentally ill** at the time of the offense. Severe mental illness results in diminished capacity to appreciate the consequences of one's conduct or to exercise rational judgment. The death penalty cannot serve as a deterrent for someone who cannot understand the consequences of his/her actions.

In 1990, the Kentucky General Assembly passed legislation precluding the death penalty for **mentally retarded persons**, based on the premise that individuals with mental retardation had diminished capacity.

The U.S. Supreme Court has since ruled that individuals with **mental retardation and juvenile offenders (under the age of 18)** cannot be subject to the death penalty due to their diminished capacity. The Court held that it is inconsistent with evolving standards of decency and would be **cruel and unusual punishment** to execute persons whose moral culpability is less due to their mental condition and development.

**Persons with severe mental illness are similarly lacking in moral culpability and are not deterred by threatened punishment.** In the year 2010, we know and understand more about mental illness than ever before; it is time to remove this small group of severely impaired individuals from the ultimate punishment.

#### **How does the court define and determine "severe mental illness"?**

The determination of severe mental illness would be made in the same manner as Kentucky law already provides for those who may be mentally retarded: A pre-trial hearing is held before a Judge; both prosecution and defense can present expert testimony with the Judge making a ruling as to whether the individual was severely mentally ill or not. If the Judge rules that the defendant was suffering from severe mental illness at the time of the offense, then the trial would proceed, but the death penalty could not be imposed by the jury or a Judge. If a Judge rules that the individual was not severely mentally ill at the time of the offense, then the trial would proceed and the death penalty could be considered, along with other punishments. Examples of severe mental illnesses include schizophrenia and other psychotic disorders, bipolar disorder, and severe post traumatic stress disorder.

**Under HB 16, individuals found to be severely mentally ill would still be subject to prosecution for the crime and eligible for all other penalties, including Life Without Parole, holding them accountable to society while keeping them behind bars and unable to cause further harm.**

The proposed legislation does **not** apply to:

- Those individuals currently sentenced to death and awaiting execution; or
- Those whose actions are attributable solely to the voluntary use of alcohol or other drugs.

The following national groups have endorsed legislation precluding the use of the death penalty for individuals with severe mental illness:

- ✓ American Bar Association
- ✓ American Psychiatric Association
- ✓ American Psychological Association
- ✓ Mental Health America
- ✓ Murder Victims' Families for Human Rights
- ✓ National Alliance on Mental Illness (NAMI)

For more information, please contact Sheila A. Schuster, Ph.D. at 1-877-894-0222 or [advocacyaction@bellsouth.net](mailto:advocacyaction@bellsouth.net)