

1 AMENDMENT TO SENATE BILL 472

2 AMENDMENT NO. _____. Amend Senate Bill 472, AS AMENDED,
3 with reference to the page and line numbers of Senate
4 Amendment No. 4, by replacing lines 23 through 33 on page 20,
5 all of page 21, and lines 1 through 21 on page 22 with the
6 following:

7 "(725 ILCS 5/114-15 new)

8 Sec. 114-15. Mental retardation.

9 (a) In a first degree murder case in which the State
10 seeks the death penalty as an appropriate sentence, any party
11 may raise the issue of the defendant's mental retardation by
12 motion. A defendant wishing to raise the issue of his or her
13 mental retardation shall provide written notice to the State
14 and the court as soon as the defendant reasonably believes
15 such issue will be raised.

16 (b) If a motion to disqualify a case as a capital case
17 based upon the mental retardation of the defendant is filed,
18 the issue of the defendant's mental retardation shall be
19 determined in a pretrial hearing. The court shall be the fact
20 finder on the issue of the defendant's mental retardation and
21 shall determine the issue by a preponderance of evidence in
22 which the moving party has the burden of proof. The court may
23 appoint an expert in the field of mental retardation. The

1 defendant and the State may offer experts from the field of
2 mental retardation. The court shall determine admissibility
3 of evidence and qualification as an expert.

4 (c) In determining whether the defendant is mentally
5 retarded, the mental retardation must have manifested itself
6 by the age of 18. An intelligence quotient (IQ) of 75 or
7 below is presumptive evidence of mental retardation. IQ tests
8 and psychometric tests administered to the defendant must be
9 the kind and type recognized by experts in the field of
10 mental retardation. In order for the defendant to be
11 considered mentally retarded, a low IQ must be accompanied by
12 significant deficits in adaptive behavior in at least 2 of
13 the following skill areas: communication, self-care, social
14 or interpersonal skills, home living, self-direction,
15 academics, health and safety, use of community resources, and
16 work.

17 (d) If the court determines that a capital defendant is
18 mentally retarded, the case shall no longer be considered a
19 capital case and the procedural guidelines established for
20 capital cases shall no longer be applicable to the defendant.
21 The State may appeal such a ruling to the extent permitted by
22 Rules of the Illinois Supreme Court.

23 (e) Evidence of mental retardation that did not result in
24 disqualifying the case as a capital case, may be introduced
25 as evidence in mitigation during a capital sentencing
26 hearing. A failure of the court to determine that the
27 defendant is mentally retarded does not preclude the court
28 during trial from allowing evidence relating to mental
29 disability should the court deem it appropriate. However, if
30 no pre-trial motion to disqualify the case as a capital case
31 based upon mental retardation was filed, and evidence of
32 mental retardation is presented by the defendant in
33 mitigation at the capital sentencing hearing, the trier of
34 fact shall determine if the defendant is mentally retarded.

1 If the defendant is found to be mentally retarded, the court
2 shall sentence the defendant to a term of imprisonment under
3 Chapter V of the Unified Code of Corrections."