

AMENDMENTS TO LB 36

Introduced by Avery, 28.

1           1. Insert the following new section:

2           Section 1. Section 28-105.01, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           28-105.01 (1) Notwithstanding any other provision of law,  
5 the death penalty shall not be imposed upon any person who was  
6 under the age of eighteen years at the time of the commission of  
7 the crime.

8           (2) Notwithstanding any other provision of law, the  
9 death penalty shall not be imposed upon any person with mental  
10 retardation. As used in this subsection, ~~(3) As used in subsection~~  
11 ~~(2) of this section,~~ mental retardation means significantly  
12 subaverage general intellectual functioning existing concurrently  
13 with deficits in adaptive behavior. An intelligence quotient of  
14 seventy or below on a reliably administered intelligence quotient  
15 test shall be presumptive evidence of mental retardation.

16           (3) Notwithstanding any other provision of law, the death  
17 penalty shall not be imposed upon any person if the only evidence  
18 admitted at trial against such person is eyewitness or informant  
19 testimony.

20           (4) If (a) a jury renders a verdict finding the existence  
21 of one or more aggravating circumstances as provided in section  
22 29-2520 or (b) (i) the information contains a notice of aggravation  
23 as provided in section 29-1603 and (ii) the defendant waives his or

1 her right to a jury determination of the alleged aggravating  
2 circumstances, the court shall hold a hearing prior to any  
3 sentencing determination proceeding as provided in section 29-2521  
4 upon a verified motion of the defense requesting a ruling that the  
5 penalty of death be precluded under subsection (2) of this section.  
6 If the court finds, by a preponderance of the evidence, that the  
7 defendant is a person with mental retardation, the death sentence  
8 shall not be imposed. A ruling by the court that the evidence  
9 of diminished intelligence introduced by the defendant does not  
10 preclude the death penalty under subsection (2) of this section  
11 shall not restrict the defendant's opportunity to introduce such  
12 evidence at the sentencing determination proceeding as provided in  
13 section 29-2521 or to argue that such evidence should be given  
14 mitigating significance.

15           2. On page 15, line 2, after "sections" insert  
16 "28-105.01,".

17           3. Renumber the remaining sections and correct internal  
18 references accordingly.