

AMENDMENTS TO LB 36

(Amendments to Standing Committee amendments, AM828)

Introduced by Avery, 28.

1 1. Insert the following new amendments:

2 1. Insert the following new section:

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

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

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

17 (3) Notwithstanding any other provision of law, the death
18 penalty shall not be imposed upon any person unless at least
19 one of the following was admitted as evidence at the person's
20 trial: (a) Deoxyribonucleic acid conclusively proving that the
21 person committed the offense; (b) a video recording of the person
22 confessing to the offense, including video recordings of all

1 prior interrogations of the person by a peace officer; or (c) a
2 video recording conclusively proving that the person committed the
3 offense.

4 (4) If (a) a jury renders a verdict finding the existence
5 of one or more aggravating circumstances as provided in section
6 29-2520 or (b) (i) the information contains a notice of aggravation
7 as provided in section 29-1603 and (ii) the defendant waives his or
8 her right to a jury determination of the alleged aggravating
9 circumstances, the court shall hold a hearing prior to any
10 sentencing determination proceeding as provided in section 29-2521
11 upon a verified motion of the defense requesting a ruling that the
12 penalty of death be precluded under subsection (2) of this section.
13 If the court finds, by a preponderance of the evidence, that the
14 defendant is a person with mental retardation, the death sentence
15 shall not be imposed. A ruling by the court that the evidence
16 of diminished intelligence introduced by the defendant does not
17 preclude the death penalty under subsection (2) of this section
18 shall not restrict the defendant's opportunity to introduce such
19 evidence at the sentencing determination proceeding as provided in
20 section 29-2521 or to argue that such evidence should be given
21 mitigating significance.

22 5. On page 15, line 2, after "sections" insert
23 "28-105.01,".

24 6. Renumber the remaining sections and correct internal
25 references accordingly.

26 2. Renumber the remaining amendments accordingly.