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## Testimony of Reverend Patrick Delahanty, CCK Policy Analyst

Before the Interim Joint Judiciary Committee  
of the Kentucky General Assembly

October 16, 2001

Mr. Chairman and members of the committee, my name is Patrick Delahanty and I work as a Policy Analyst for the Catholic Conference of Kentucky, the policy arm of the Roman Catholic Bishops of the Commonwealth. I am also the Chairperson of the Kentucky Coalition to Abolish the Death Penalty. I thank you for the opportunity to speak to you today.

In 1988 Representative Dottie Priddy introduced legislation to prohibit the state from executing persons who are mentally retarded. That bill passed in the House, but not in the Senate. In 1990 Representative Priddy and Senator Danny Meyer introduced companion bills to achieve this ban. The bill passed overwhelmingly in both houses with 34 Senators and 88 Representatives voting for it. Governor Wallace Wilkinson signed it into law.

Kentucky became the 3<sup>rd</sup> state to ban the practice of executing mentally retarded persons. Fifteen additional states have now done so.

In both 1988 and 1990, sponsors of the legislation wanted to be sure that all mentally retarded persons facing the death penalty would be included in the legislation should it become law, even those who were already under a sentence of death. In both years the Corrections Cabinet was asked if anyone currently on death row had mental retardation as already defined in Kentucky law.

In 1988, Corrections Commissioner Doug Sapp wrote Mr. Norman Lawson at LRC answering

the following question: "If it were decided that mentally retarded inmates would not be executed using the definition of KRS 504.060(6), how many inmates currently on death row would be affected?"

"None," wrote Commissioner Sapp.

In 1990, in response to Senator Danny Meyer, who raised a question similar to the one above, Corrections Cabinet Secretary John T. Wigginton wrote, "Staff has advised that at the present time, there are no inmates on death row who meet that definition."

Assured that no mentally retarded persons were on death row, the sponsors allowed the bill to be prospective rather than retroactive.

It now seems that the Corrections Cabinet was mistaken. There appears to be at least one inmate who is mentally retarded. His name is David Skaggs. Skaggs was convicted and sentenced to death for a double murder committed in 1981. Last October the Kentucky Supreme Court ordered a new sentencing trial. His attorneys plan to argue he is mentally retarded and should not face a death sentence. They may prevail; they may not.

The Kentucky Coalition to Abolish the Death Penalty supports legislation that allows a person sentenced to death before July 1990 the opportunity to prove that he is, in fact, mentally retarded. The court should make this determination in a manner similar to that used by those making this claim after the law became effective.

The Department of Corrections' website lists 15 persons besides Skaggs who were tried and convicted before July 1990 and remain under a sentence of death. Certainly not all could successfully claim to have mental retardation, but there is the possibility that one or two others also went unnoticed by the Corrections Cabinet.

The credibility and reliability of our justice system demands the fair application of punishment. To have a state law forbidding the execution of mentally retarded persons and not apply it to all mentally retarded persons undermines that credibility and reliability. Therefore, when this bill comes to your committee we urge you to support it unanimously, as did those who served on this committee in 1990.

Thank you for your consideration of this important issue.

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