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7/16/2003

Senate of Pennsylvania

TO: The Honorable Members of the House of Representatives
FROM: Senator Edward W. Helfrick 
SUBJECT: Senate Bill 26
DATE: July 15, 2003

Senate Bill 26 is my legislation implementing the United States Supreme Court decision in *Atkins v. Virginia*, which declared that the execution of the mentally retarded violates the Eighth Amendment protections against cruel and unusual punishment. Senate Bill 26 passed the Senate by a vote of 48-1 in June. Representative Russ Fairchild has introduced companion legislation in the House.

Senate Bill 26 and Rep. Fairchild's legislation provides for pre-trial determination of mental retardation of the defendant by a judge, consistent with procedure involving constitutional matters of law. Advocates for the mentally retarded, legal groups, and churches support these bills. The legislation is opposed by district attorneys, who favor a post-conviction determination of mental retardation by the jury that convicted the defendant.

Prosecutors have forwarded the case of *Commonwealth v. Joseph Miller* as an example to support their position. However, as you will note in the attached memorandum, their arguments are not supported by the facts of the case.

I would appreciate your review of this matter. Additionally, if you would like to review the pertinent opinions and transcripts of the *Miller* case as relating to this matter, please contact my office.