

THE ROMAN CATHOLIC
ARCHDIOCESE OF ATLANTA



Beyond a Reasonable Doubt
Intellectual Disabilities and the
Death Penalty in Georgia

Maggie Rousseau, M.Ed.

Director, Disabilities Ministry

Roman Catholic Archdiocese of Atlanta

mrousseau@archatl.com

Definition of Intellectual Disability (ID)

- Intellectual disability is a disability characterized by significant limitations in both **intellectual functioning** and in **adaptive behavior**, which covers many everyday social and practical skills. This disability originates **before the age of 18**.

Intellectual Functioning

- Intellectual functioning, also called ***intelligence***, refers to general mental capacity, such as learning, reasoning, problem solving, and so on.
- One way to measure intellectual functioning is an IQ test. Generally, an IQ test score of around 70 or as high as 75 indicates a limitation in intellectual functioning.

Adaptive Behavior

What is adaptive behavior?

Adaptive behavior is the collection of conceptual, social, and practical skills that are learned and performed by people in their everyday lives.

Definition of skills:

- **Conceptual skills**—language and literacy; money, time, and number concepts; and self-direction.
- **Social skills**—interpersonal skills, social responsibility, self-esteem, gullibility, naïveté (i.e., wariness), social problem solving, and the ability to follow rules/obey laws and to avoid being victimized.
- **Practical skills**—activities of daily living (personal care), occupational skills, healthcare, travel/transportation, schedules/routines, safety, use of money, use of the telephone.

Age of Onset

- This condition is one of several developmental disabilities—that is, there is evidence of the disability during the developmental period, which in the US is operationalized as before the age of 18.
- However, AAIDD has recently expanded the definition to extend beyond 18 to before the individual attains the age of 22.

Intellectual Disability, Race, and the Death Penalty

“A [Death Penalty Information Center review](#) of 136 cases through April 15, 2021 in which courts overturned prisoners’ death sentences because of intellectual disability has found that intellectually disabled defendants of color are particularly vulnerable to capital punishment. More than 82% of the death-row prisoners whose death sentences have been vacated as a result of intellectual disability (112 of 136, 82.4%) are persons of color.”

Background

ID and the Death Penalty in GA

- In 1986, Jerome Bowden, a man with intellectual disability, was executed in Georgia and caused such a backlash that Georgia was the first state that voluntarily banned the execution of people with intellectual disability in 1988.
- This was 14 years before the Supreme Court ruled on the matter in *Atkins v. Virginia*.

The *Atkins* Decision

- In 2002, the United States Supreme Court ruled in *Atkins v. Virginia* that the execution of individuals with intellectual disability was a **violation of the Eighth Amendment's protection against cruel and unusual punishment.**
- Additionally, the ruling stated that a diagnosis of intellectual disability, **regardless of severity, categorically excludes defendants with intellectual disability from execution.**
- The *Atkins* decision **left it up to individual states to decide on the standard of proof** they would use to determine intellectual disability.

Other SCOTUS rulings

- In the Supreme Court's 2014 decision in *Hall v. Florida*, and again in the 2017 decision in *Moore v. Texas*, the court ruled that medical standards must inform the state's enforcement of *Atkins* protections. The court acknowledged that there was **professional medical consensus** as it related to intellectual disability and this must guide state the 8th Amendment definition of intellectual disability.

Current Process in Georgia

- Under the current process in Georgia a defendant with an intellectual disability the prosecutor must persuade the jury of their guilt beyond a reasonable doubt and the defendant must prove and their intellectual disability simultaneously beyond a reasonable doubt.
- Juries trying these cases have the option of returning a verdict of guilty, not guilty, or guilty but with intellectual disability.
- Georgia is the only state that requires **the jury** to make an intellectual disability determination at the same time as they are deciding guilt.
- If found guilty but with intellectual disability, the death penalty is automatically off the table.
- In Georgia post-*Atkins*, no defendant has been able to prove their intellectual disability beyond a reasonable doubt.

Rodney Young



Young vs State of Georgia Case#21-782

- PETITION FOR A WRIT OF CERTIORARI was filed with the US Supreme Court on Nov. 22, 2021 on behalf of Mr. Rodney Young to determine:
 - (1) Whether requiring a capital defendant to prove his intellectual disability beyond a reasonable doubt violates the due process clause by creating an unacceptable risk that a constitutional right will go unenforced
 - (2) Whether requiring a capital defendant to prove his intellectual disability beyond a reasonable doubt violates the Eighth Amendment by creating an unacceptable risk that an intellectually disabled person will be executed.

Reply from State of Georgia expected January 26, 2022

[Microsoft Word - 2021.11.19 Young FINAL CLEAN.docx \(supremecourt.gov\)](#)

[Language Mistake in Georgia Death Penalty Law Creates a Daunting Hurdle - The New York Times \(nytimes.com\)](#)

Standard of Proof

- The **Burden of Proof** is the obligation that rests on one party to persuade the trier of facts that the information they have presented is truthful.
- The **Standard of Proof** is the degree of certainty that the trier of facts must be persuaded to in order to find in favor of the facts presented by the party with the burden of proof.
- The more stringent the standard of proof a party bears, the higher risk they bear for an incorrect decision.
- There are 3 primary standards of proof seen in litigation in the U.S.: **Beyond a Reasonable Doubt, Clear and Convincing Evidence** and **Preponderance of the Evidence.**

“[B]etter that
ten guilty
persons
escape, than
that one
innocent
suffer.”

Sir William Blackstone



Beyond a Reasonable Doubt

- **Despite the *Atkins*, *Hall*, and *Moore* Supreme Court** rulings, Georgia is the only state in the country that uses the most difficult standard of proof in order to meet the legal standard of Intellectual Disability: “Beyond a Reasonable Doubt.”
- This standard is an extremely difficult legal obstacle to overcome, and Georgia is an outlier in requiring it.
- Of all the states that still have the death penalty, all but 2 (AZ, FL) use the standard of “Preponderance of the Evidence” at sentencing. (4 states are non-specified).
- Because of Georgia’s incredibly high standard of proof, Georgia continues to execute people with intellectual disability.

Preponderance of the Evidence

- Simply reducing the standard to “Clear and Convincing Evidence” at sentencing will not ensure that no person with an intellectual disability will be executed because that standard of proof is still too stringent to provide sufficient guarantees.
- All states seeking to comply with *Atkins* have lowered their standard of proof for intellectual disability at sentencing to a Preponderance of the Evidence. This is the only way we can ensure that Georgia lives up to its constitutional mandate.

What have other states done?

- Capital punishment is currently authorized in 27 states, by the federal government and the U.S. military.
- In recent years, New Mexico (2009), Illinois (2011), Connecticut (2012), Maryland (2013), New Hampshire (2019), Colorado (2020) and Virginia (2021) have legislatively abolished the death penalty, replacing it with a sentence of life imprisonment with no possibility for parole.
- The Nebraska Legislature also abolished capital punishment in 2015, but it was reinstated by a statewide vote in 2016. Additionally, courts in Washington and Delaware recently ruled that the states' capital punishment laws are unconstitutional.

2021 Tennessee

- A bipartisan bill in Tennessee created a procedure by which death-row prisoners can obtain judicial review of claims that they are ineligible for the death penalty because of intellectual disability.
- This bill was inspired by the case of Pervis Payne a Tennessee death-row prisoner with strong evidence of intellectual disability. Payne repeatedly attempted to obtain court review of his intellectual disability claim. A defect in Tennessee law prevented death-row prisoners from presenting those claims of intellectual disability to the state courts if their death sentences had already been upheld on appeal before the U.S. Supreme Court ruled in 2002 that the death penalty could not be used against individuals with intellectual disability.

Why work for change?

“There is no legitimate interest in wrongly executing ten intellectually disabled persons in order to avoid erroneously sparing the life of one person who is not intellectually disabled.” [Microsoft Word - 2021.11.19 Young FINAL CLEAN.docx \(supremecourt.gov\)](#).

Warren Lee Hill

- Warren Hill was executed despite “all seven mental health experts who have ever evaluated Hill, both the State’s and Hill’s, now unanimously agree that he is mentally retarded.”

<https://deathpenaltyinfo.org/news/intellectual-disability-georgia-inmate-appeals-intellectual-disability-claim-to-u-s-supreme-court> (quoting his cert petition).



Legislative Advocacy in Georgia

2017

- Senate Bill 185 was introduced by Senator Elena Parent (D), with Senators Fran Millar (R), Vincent Fort (D), Nan Orrock (D), and Horacena Tate (D) signing on as co-sponsors.
- The Senate Judiciary Committee held a hearing on the bill during the 2017 legislative session.

2018

House Bill 768 was introduced in the Georgia House of Representatives. It was sponsored by Rep. Scott Hilton (R), Rep. David Dreyer (D), Rep. Brett Harrell (R), Rep. Scot Turner (R), Rep. Scott Holcomb (D).

This bill proposed **two** distinct opportunities to raise an ID claim:

An option for a **pre-trial evidentiary hearing with a judge at a clear and convincing standard.**

If the pre-trial option is not taken OR the judge rules that there is not an ID, there will **be an additional post-conviction, pre-sentencing evidentiary hearing with the jury on the ID claim at a preponderance of the evidence standard.**

This is similar to the processes in both NC and OK.

HB 768 Outcome

- A hearing was held on HB 768 in 2018 the week before crossover day by Rep. Ed Setzler's subcommittee of the House Judiciary Non-Civil Committee.
- We faced opposition from District Attorneys and the Prosecuting Attorneys Council (PAC) as well as strong concerns from the Chairman of the Subcommittee of Judiciary Non-Civil Committee that heard the bill.
- An amendment was offered to the bill removing all of the procedural changes and only lowering the standard of proof to clear and convincing. The bill was not voted on by the Subcommittee or full Committee of House Judiciary Non-Civil.

2021-22 HB485

Repeal the Death Penalty

- *Georgia's standard for proving intellectual disability in capital cases is the highest in the nation, risking sending people with intellectual disabilities to death.*
- The change to the standard of proof should be prioritized.

What you can do?

- **Host a teach-in in your community** to educate local constituents on this issue.
- **Donate your time and skills** Lobbying isn't the only way to have an impact!
- **Connect with us and sign up for our mailing list:** <https://gacadp.org>

For More Information

- Check out the webinar ***Intellectual Disability and the Death Penalty: AAIDD's Legal Defense of the Definition*** available online www.aaidd.org (Click on 'Education Archive' under the 'Education' tab – AAIDD Members Access Only)
- Read ***An Empirical Assessment of Georgia's Beyond a Reasonable Doubt Standard to Determine Intellectual Disability in Capital Cases***
https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2969802
- Updated information on standard of proof (<https://www.americanbar.org/content/dam/aba/publications/criminaljustice/2021/scj2021-capital-punishment.pdf>)
- [States and Capital Punishment \(ncsl.org\)](http://ncsl.org)

Contact:

Maggie Rousseau, Disabilities Ministry

mrousseau@archatl.com

Frank Mulcahy, Georgia Catholic Conference

fmulcahy@georgiacc.org

Jayna Hoffacker, Justice & Peace Ministry

jhoffacker@archatl.com

Georgia Catholics Against the Death Penalty <https://gacadp.org>

Deacon Erik Wilkerson

ewilkinson@ihmatlanta.org

Brian Stull, Attorney ACLU Capital Punishment Project

bstull@aclu.org