

# MODERNIZING TENNESSEE'S INTELLECTUAL DISABILITY STATUTE

## WHY IS IT **UNLAWFUL** TO EXECUTE PEOPLE WITH INTELLECTUAL DISABILITY?

Individuals with intellectual disability have less capacity to understand their actions and circumstances, making them less culpable and placing them at special risk for wrongful execution.

In the landmark case *Atkins v. Virginia* (2002), the U.S. Supreme Court said that people with intellectual disability, because of their diminished personal culpability, should not be executed.

The Court went on to say that defendants with intellectual disability “may be less able to give meaningful assistance to their counsel and are typically poor witnesses, and their demeanor may create an unwarranted impression of lack of remorse for their crimes.”

## MODERNIZING TENNESSEE'S **DEFINITION** OF INTELLECTUAL DISABILITY

- “[A] court’s intellectual disability determination,” must be “informed by the medical community’s diagnostic framework.” - *Atkins v. Virginia*
- Tennessee’s current law (TCA § 39-13-203), written in 1990, is outdated and inconsistent with the Tennessee Supreme Court’s ruling on defining and diagnosing intellectual disability in capital cases.
- In 2011, the Tennessee Supreme Court evaluated that standard and found that the definition was too limited (*Coleman v. State of Tennessee*, 2011).
- Medical definitions can become outdated over time as the medical community learns more about intellectual disability. An updated definition needs to be one that is widely accepted and used by medical professionals for diagnosis.
- In 2017, the Diagnostic and Statistical Manual of Mental Disorders (5th ed.) (DSM-5), and Intellectual Disability: Definitions, Classification, and System of Supports (11th ed.) (AAIDD-11), were identified by the U.S. Supreme Court as the medical standards that states must use to determine intellectual disability.

- The DSM-5 is used by the medical community (psychologists, psychiatrists, etc.), and is also used to diagnose for public benefit programs (Social Security, education, etc.) Referencing the most current version of the tool means that the law will stay up to date with the science of intellectual disability.
- Tennessee's current definition relies on a single IQ score as the standard of intellectual disability, but this is not the current medical or legal standard.
- The U.S. Supreme Court has also concluded that IQ scores represent a range, not a fixed number.
- Alabama, Georgia, Louisiana, Mississippi, Missouri, Ohio, and South Carolina are a few of the states that do not require proof of a particular IQ.

## PROCEDURAL CLARITY

The constitutional protection for individuals with intellectual disability applies to both old and new cases. A procedural provision must be made for individuals with an intellectual disability already under a sentence of death, who have not had their intellectual disability fully considered by the courts. This law would make the procedural path clear in a limited number of cases.

The Tennessee Supreme Court requested this clarity in 2016 when Chief Justice Bivins wrote: "We encourage the General Assembly to consider whether another appropriate procedure should be enacted to enable defendants condemned to death prior to the enactment of the intellectual disability statute to seek a determination of their eligibility to be executed." (Payne v. State of Tennessee, 2016)

This law would only apply to cases where no court has ever held a hearing to review all available evidence of intellectual disability and decide whether or not a person's disability categorically bars their execution, and the court may still rule that they do not meet the standard and allow their execution to go forward.

THIS LAW WOULD PROTECT TENNESSEE FROM  
**UNCONSTITUTIONALLY**  
EXECUTING A PERSON WITH INTELLECTUAL DISABILITY.