

DEATH PENALTY

ISSUE

Death Penalty Legislation for Persons with Intellectual Disabilities regarding implementation of Atkins Decision in Pennsylvania

SUMMARY

The Arc of Pennsylvania supports the U.S. Supreme Court's *Atkins* decision to ban the death penalty for persons with intellectual disabilities (referred to as mental retardation in the *Atkins* decision). Further, it supports legislation in the General Assembly that will properly implement the Court's decision in Pennsylvania by

- 1) identifying defendant protected by *Atkins* through the application of an acceptable definition of intellectual disabilities, and
- 2) determining whether a defendant meets this definition before he or she is tried for the capital crime of which he or she is accused.

The Arc of Pennsylvania calls upon the Pennsylvania's General Assembly to adopt legislation that protects the rights of persons with intellectual disabilities and ensures fair and effective Constitutional procedures and protections.

BACKGROUND

In 2002, the United States Supreme Court, in *Atkins v. Virginia*, found that the execution of persons with mental retardation violated the U.S. Constitution's Eighth Amendment ban on cruel and unusual punishment and is unconstitutional. With *Atkins* establishing a class of citizens who are exempt from the death penalty, legislation is now needed in Pennsylvania to establish how our judicial system will implement *Atkins*, such as who will fall within this class, when such a determination will be made during a court proceeding, and other procedural and evidentiary issues.

POSITION

The execution of individuals with intellectual disabilities violates the U.S. Constitution's Eighth Amendment ban on cruel and unusual punishment.

The following information must be taken into account and utilized when developing state legislation regarding the death penalty and persons with intellectual disabilities:

The Arc of Pennsylvania Position Statement

1. **Wrongful Execution:** Ensure that no individual with intellectual disabilities is executed.
2. **Definition:** With respect to defining intellectual disabilities for purposes of implementing Atkins, The Arc of Pennsylvania believes there ought to be a consistent, agreed upon definition of intellectual disabilities applied in capital cases. The Arc recommends the use of the current edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) which provides common language and standard criteria for the classification of mental disorders. Distinction should be made between mental illness and intellectual disabilities.
3. **Pretrial Determination:** Defendants must have the option of a fair, pretrial judicial determination of intellectual disabilities. Pretrial determinations should be based on diagnostic evidence based on the individual's medical, school and public welfare service files. It is prejudicial to have the same jury decide whether intellectual disabilities exists immediately after handing down a guilty verdict based on hearing evidence. Pretrial determinations will save the costs of retroactively determined non-capital cases. Also it is cruel and unusual punishment to submit a defendant to an unwarranted capital trial. It is no small thing to be on trial for one's life so a pretrial determination eliminating death as a sentencing option is both the fair and humane thing to do for a person with intellectual disabilities.
4. **Sentence Reviews:** Ensure that the legislation is applied retroactively to protect individuals with intellectual disabilities. (*It is estimated by the PA Department of Corrections that as many as 10% of the persons currently sitting on death row in Pennsylvania have intellectual disabilities.*)

Approved by The Arc of Pennsylvania Board of Directors January 25, 2012