

Intellectual Disability and the Death Penalty

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1

S.L. 2001-346

- Effective for trials beginning on or after Oct. 1, 2001
- “[N]o defendant who is mentally retarded shall be sentenced to death”
- MR = “Significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, both of which were manifested before the age of 18.”



2

Atkins v. Virginia, 536 U.S. 304 (2002) (Stevens, J.)

- The 8th Amendment prohibits the imposition of the death penalty on intellectually disabled defendants.
 - (1) “Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, [intellectually disabled people] do not act with the level of moral culpability that characterizes the most serious adult criminal conduct.”
 - (2) “[T]heir impairments can jeopardize the reliability and fairness of capital proceedings against mentally retarded defendants.”
- “[C]linical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18.”



3

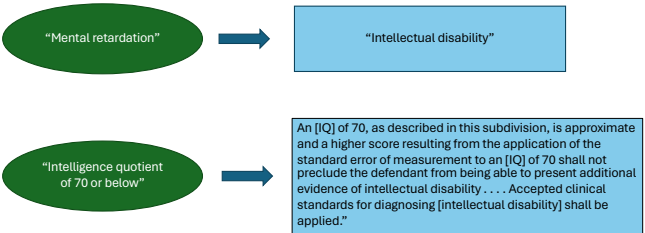
Hall v. Florida, 572 U.S. 701 (2014) (Kennedy, J.)

- States cannot define intellectual disability in a way that absolutely requires an IQ test score of 70 or lower.
- “Florida law defines intellectual disability to require an IQ test score of 70 or less. . . . This rigid rule . . . creates an unacceptable risk that persons with intellectual disability will be executed, and thus is unconstitutional.”
 - (1) A strict cutoff fails to recognize the measurement error that is inherent in IQ testing.
 - (2) A strict cutoff fails to recognize that “other evidence” beyond test results is pertinent to determining intellectual disability: “Intellectual disability is a condition, not a number”



4

2015 Statutory Revision



5

Moore v. Texas, 581 U.S. 1 (2017) (Ginsburg, J.)

- Courts must apply the current “diagnostic framework” used by the “medical community” in determining intellectual disability; “cling[ing] to superseded standards” and imposing requirements that the medical community does not use create an impermissible risk that an intellectually disabled person will be executed



6

Procedure

- D may seek pretrial determination
 - Must submit appropriate affidavits in support of claim
 - Court may agree to hear the issue
 - Court must hear the issue if the State agrees
 - Burden is on D to provide clear and convincing evidence of ID
 - If D succeeds, court must declare case noncapital

7

Procedure

- D may seek determination during penalty phase
 - D may submit "evidence raising the issue of intellectual disability"
 - If so, judge must submit the issue to the jury
 - Burden is on D to prove ID by a preponderance of the evidence
 - ID "shall be considered and answered by the jury prior to the consideration of aggravating or mitigating factors and the determination of sentence"

8