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Determining Intellectual Disability in Death Penalty Cases: A State-by-State Analysis

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Abstract
In *Moore v. Texas* (2017), the U.S. Supreme Court ruled that Texas death penalty definitions of intellectual disability were inadequate because they strayed too far from clinical definitions. This study examines how each state defines intellectual disability with regard to death penalty eligibility. It reveals a wide variation in the standards used by states, with no clear consensus on definitions of intellectual disability or who should measure it. Variations pertain to age at onset, proof of intellectual disability status at the time of the crime, burden of proof required to make the intellectual disability determination, and who makes the final decision. Implications and suggestions for the future are discussed.

Keywords
death penalty, capital punishment, intellectual disability

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Introduction

In *Atkins v. Virginia* (2002), the U.S. Supreme Court ruled that executing intellectually disabled individuals violated the Eighth Amendment ban on cruel and unusual punishment. However, the Court gave little guidance to states on how to define and measure intellectual disability during a determination of eligibility for the death penalty. Therefore, each state was left to create its own standards. Recently, in *Moore v. Texas* (2017), the Supreme Court ruled that the standards Texas had created in response to *Atkins* were inadequate because they were not based on current medical standards, forcing the state to revise its definitions of intellectual disability. How do other states determine intellectual disability regarding eligibility for the death penalty? Is there a wide variation among states? Varying definitions can literally mean life or death for individuals with intellectual disabilities. Accordingly, this study examines each state's definition of intellectual disability and the standards each uses to determine an individual's eligibility for the death penalty.

History of Intellectual Disability and the Death Penalty

The U.S. Supreme Court began exploring whether executing individuals with intellectual disabilities violated the Eighth Amendment in the case of *Penry v. Lynaugh* (1988), which dealt with an intellectually disabled (then referred to as "mentally retarded") man accused of raping and murdering a woman in Texas. Although a psychologist testified at trial that Penry possessed the "mental age of a 6½-year-old" (*Penry v. Lynaugh*, 1988, p. 308), Penry was still found competent to stand trial and was sentenced to death for his crimes. The Supreme Court ruled that the Texas jury should have been able to hear evidence of intellectual disability as a possible mitigating factor when considering sentencing, but at that time it did not believe executing such an individual violated the Eighth Amendment. The Court reasoned that no national consensus existed for such a ruling because at that time Georgia was the only state banning death penalty sentences for the intellectually disabled. "The clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures," Justice Sandra Day O'Connor wrote in her majority opinion (*Penry v. Lynaugh*, 1988, p. 331). Therefore, because no state legislative consensus existed and juries continued to hand down death sentences despite potential mental issues, the Court reasoned that executing the intellectually disabled was still permitted and did not violate the Eighth Amendment ban on cruel and unusual punishment.

Fourteen years later, the Supreme Court changed its position. In *Atkins v. Virginia* (2002), it ruled that executing intellectual disabled people did violate the Eighth Amendment, claiming that a national consensus was emerging because 16 more states had banned executions for such individuals since *Penry*. However, the Court did not just blindly go along with the national consensus; it examined the issue carefully.

> Our independent evaluation of the issue reveals no reason to disagree with the judgment of the legislatures that have recently addressed the matter and concluded that death is not a suitable punishment for a mentally retarded criminal. We are not persuaded that the execution of mentally retarded criminals will measurably advance the deterrent or the retributive purpose of the death penalty. (*Atkins v. Virginia*, 2002, p. 321)

The Court argued that the purpose of the death penalty was to deter calculating criminals from committing crimes; however, because of their impairments, those with intellectual disabilities were more likely to act on impulse, making the deterrence motivation for the death penalty less relevant. Justice John Paul Stevens continued in his majority opinion by arguing that offenders with intellectual disabilities should be a protected class of individuals because of the greater likelihood of their giving false confessions (Perske, 2011), tending to seem unremorseful in the eyes of jurors, and possibly being judged more harshly on the future dangerousness scale because of their disabilities. Justice Stevens went further, noting, "Mentally retarded defendants in the aggregate face a special risk of wrongful conviction" (*Atkins v. Virginia*, 2002, p. 321).

In sum, the Supreme Court in *Atkins v. Virginia* (2002) argued that the intellectually disabled deserve special protection in the criminal justice system (see also Abeles, 2010; Macvaugh & Gilbert, 2009; Romano, 2003). How, though, should courts decide who should receive this special protection? The Supreme Court gave little guidance, simply concluding that capital punishment was banned for everyone "within the range of mentally retarded offenders about whom there is a national consensus" (*Atkins v. Virginia*, 2002, p. 317). The Court further declared that it was up to the states to decide how intellectual disability should be defined, concluding that "we leave to the States the task of developing appropriate ways to enforce the constitutional restriction" (*Atkins v. Virginia*, 2002, p. 317). Finally, the Court noted that most states with such legislation in place used clinical definitions from the American Psychological Association (APA, 2010) and the American Association on Intellectual and Developmental Disabilities (AAIDD, 2018), which generally are based on a three-pronged approach. To qualify as intellectually disabled, an individual must have (1) intellectual deficits (usually indicated by IQ scores) and (2) adaptive deficits (such as severe social and behavioral problems); furthermore, (3) these deficits must have manifested during the developmental period (usually before age 18). However, as the results of this study reveal, the freedom the Court allowed the states to develop their own definitions has resulted in some states requiring that defendants fulfill more criteria than those set forth in the clinical definitions.

Challenging State Definitions

The first major challenge to a state's definition of intellectual disability in a capital punishment case came in the Supreme Court case of *Hall v. Florida* (2014). According to Florida law, an individual had to have a score of 70 or lower on an IQ test before the intellectual disability screening could continue. If a defendant scored 71 or higher, any further exploration of the issue was terminated; the defendant was deemed not to be intellectually disabled and was therefore eligible for the death penalty. However, the case of Florida defendant Robert Hall provided compelling evidence that despite an IQ score of 71, which put him just one point beyond the range of consideration, he suffered from severe intellectual impairment. The Court thus ruled that the Florida standards were too rigid and did not take into account the standard error of measurement that should always be considered when IQ tests are administered. The *Hall* Court clarified that although *Atkins* did not provide specific instructions or guidelines, it also "did not give the States unfettered discretion to define the full scope of the constitutional protection" (*Hall v. Florida*, 2014, p. 17). The Court claimed that Florida's "rigid rule … creates an unacceptable risk that persons with intellectual disability will be executed and thus is unconstitutional" (*Hall v. Florida,* 2014, p. 22). Therefore, the Court advised states to adhere

more closely to clinical definitions; however, the Court was still unclear on how closely states must adhere to clinical definitions, thus leaving opportunities for significant differences in protections among the states (Mukherjee & Westphal, 2015).

Most recently, the Texas definition of intellectual disability in death penalty cases was challenged in *Moore v. Texas* (2017). After *Atkins v. Virginia* (2002) had declared the execution of intellectually disabled persons unconstitutional, the Texas Court of Criminal Appeals began to see many appellate cases from people on death row who claimed to be intellectually disabled. Judges on the Texas Court of Criminal Appeals had to determine whether these defendants were in fact intellectually disabled; however, the Texas legislature had not yet passed a law that specifically defined intellectual disability. Therefore, the court decided to create its own standards.

In 2004, the Texas Court of Criminal Appeals considered the appeal of Jose Garcia Briseno (*Ex Parte Briseno*, 2004). Briseno had been found guilty of murder and sentenced to death, but he claimed to be intellectually disabled and requested that the sentence be converted to life on the basis of *Atkins v. Virginia* (2002). Because the Texas legislature had not yet passed guidelines on how to determine intellectual disability following the *Atkins* decision, the Texas Court of Appeals elected to issue its own guidelines. It started with a three-pronged clinical approach to determine intellectual disability, following medical standards, but then added seven more factors, which became known as the *Briseno* factors, named after this case (*Ex Parte Briseno*, 2004). Under the *Briseno* factors, for a person to be deemed intellectually disabled, the answers to the following questions also had to be considered (*Ex Parte Briseno,* 2004, pp. 8-9):

1. Did those who knew the person best during the developmental stage—his family, friends, teachers, employers, authorities—think he was mentally retarded at that time, and, if so, act in accordance with that determination?
2. Has the person formulated plans and carried them through, or is his conduct impulsive?
3. Does his conduct show leadership, or does it show that he is led around by others?
4. Is his conduct in response to external stimuli rational and appropriate, regardless of whether it is socially acceptable?
5. Does he respond coherently, rationally, and on point to oral or written questions, or do his responses wander from subject to subject?
6. Can the person hide facts or lie effectively in his own or others' interests?
7. Putting aside any heinousness or gruesomeness surrounding the capital offense, did the commission of that offense require forethought, planning, and complex execution of purpose? (*Ex Parte Briseno,* 2004, pp. 8-9)

When developing these additional seven standards, the Texas Court of Criminal Appeals stated that its role was to "define that level and degree of mental retardation at which a consensus of Texas citizens would agree that a person should be exempted from the death penalty" (*Ex Parte Briseno,* 2004, p. 4). The court referred to the fictional character "Lennie" in John Steinbeck's classic novel *Of Mice and Men* as an example of a person most Texans would agree should be exempt from the death penalty; it then based its additional legal criteria on that character, going

outside the definitions of the medical community. In fact, some scholars argue that these additional *Briseno* standards may be the cause of the low rate of success for *Atkins* claims in Texas, 17 percent, compared with the national success rate of 55 percent (Blume, Johnson, & Seeds, 2009).

In *Moore v. Texas* (2017), the constitutionality of the Texas *Briseno* factors in determining intellectual disability was challenged. Moore, convicted of a Texas murder, claimed to be intellectually disabled; however, on the basis of the *Briseno* factors, a Texas appellate court declared Moore not to be intellectual disabled partly because he was able to "live on the streets, mow lawns, and play pool for money" (*Moore v. Texas*, 2017, p. 12). The Supreme Court took issue with the Texas *Briseno* factors at least partly because they focused on an individual's strengths, whereas the medical community determines intellectual disability by focusing on an individual's weaknesses. The Supreme Court ruled that Texas had strayed too far from clinical definitions because its definition could make people eligible for the death penalty even though they fit clinical definitions of intellectual disability.

Justice Ruth Bader Ginsberg wrote in her opinion that many of the factors in *Briseno* "are an invention of the CCA [Court of Criminal Appeals] untied to any acknowledged source" (*Moore v. Texas*, 2017, p. 2), and that "no citation to any authority, medical or judicial, accompanied the *Briseno* court's recitation of the seven factors" (*Moore v. Texas*, 2017, pp. 5-6). Furthermore, the *Briseno* factors "create an unacceptable risk that persons with intellectual disability will be executed" (*Moore v. Texas*, 2017, p. 14), just as the Supreme Court had noted in *Hall* 3 years earlier. However, even in *Moore*, the Court still gave latitude to the states, saying that "the views of medical experts do not dictate a court's intellectual-disability determination" (*Moore v. Texas*, 2017, p. 17). Yet, the Court invalidated Texas practices in *Moore* because with the additional seven factors Texas had disregarded medical standards in an extreme manner (see also Crowell, 2017).

What about other states? How do they define intellectual disability? How closely do states follow clinical definitions and how much do state definitions vary? Are some states with more stringent standards for determining intellectual disability executing individuals who could avoid the death penalty in a state with less stringent standards? This study examines these questions by looking at current statutes from all states that use the death penalty. First, however, it is important that we summarize prior research in this area.

Prior Research

A number of researchers have examined the varying ways in which states define intellectual disability in regard to death penalty eligibility. Keyes and Edwards (1997) undertook a state-by-state analysis of emerging laws prohibiting capital punishment for people with intellectual disabilities. Their study was conducted before *Atkins v. Virginia* (2002), which banned the execution of the intellectually disabled nationally. However, following *Penry v. Lynaugh* (1989), states began to prohibit such executions on their own, leading to the national consensus that swayed the Court to enact a federal ban in *Atkins.* Keyes and Edwards found that 11 states, plus the federal government, had enacted legislation banning the execution of such persons, and they analyzed the history of the statutes in each state and the wide variation in the requirements and procedures (or lack thereof) used in determining intellectual disability.

Ceci, Scullin, and Kanaya (2003) argued that IQ tests are an inadequate and unreliable mechanism for determining intellectual disability, especially when it comes to serious issues such as death penalty eligibility (see also Gresham & Reschly, 2011; Kane, 2003; Salekin & Doane, 2009; Young, 2012). To illustrate, the researchers compared IQ scores obtained with different versions of IQ tests and found that the IQ score for one person can fluctuate by as much as 5 points, depending on the examination. In their sample, 38 percent of students with a score on the cusp of a designation of intellectual disability (just above 70) had a score below 70 on a retest, putting them in the category of intellectually disabled. The stability of IQ test results is questionable, yet they can be used to decide if a defendant in a capital case will live or die.

Ellis (2003) reviewed the *Atkins v. Virginia* (2002) decision and made detailed recommendations for how state legislatures should create adequate statutes, based on medical knowledge, for determining intellectual disability; factors addressed included specific definitions, burden of proof, and who should make the final determination. Similarly, Barker (2017) reviewed the decisions in *Atkins v. Virginia* (2002), *Hall v. Florida* (2014), and *Moore v. Texas* (2017) and concluded that a clear national consensus exists that intellectually disabled persons should be spared execution; however, there is little agreement on how to determine who falls into this category and who does not because of the Court's lack of clarity and its insistence that state legislatures create their own standards. Barker argued that the Court's lack of clarity has created a problem of under-inclusiveness in determinations of intellectual disability and death penalty eligibility (see also Cheung, 2013; Cooke, Delalot, & Werner, 2015; Olley, 2013).

Wood, Packman, Howell, and Bongar (2014) also analyzed how state statutes determine intellectual disability. They found significant differences in state laws and suggested that the United States implement a national gold standard for determining intellectual disability. Their study, however, was conducted before *Hall v. Florida* (2014), which was the first time the Supreme Court had criticized and struck down a state's method of determining intellectual disability and instructed states to adhere more closely to the clinical definitions. Therefore, state legislatures could have altered their definitions and methods of determination on the basis of the decisions in *Hall v. Florida* (2014) and/or *Moore v. Texas* (2017). An updated analysis of state statutes would contribute to the knowledge and literature in this area, which is the rationale for the current study.

Current Study

This study examines state legislation to determine intellectual disability and death penalty eligibility after the Supreme Court's admonition to states and new directives in *Hall v. Florida* (2014) and *Moore v. Texas* (2017). Do state statutes still vary widely? How closely are states adhering to clinical definitions? Our study examines these questions by looking at current statutes from all states that use the death penalty.

The goal of this updated study is to provide an important contribution to the literature by examining how closely the criminal justice system follows medical knowledge of and medical standards for determining intellectual disability. If the state definitions vary widely, it is possible for one state to execute a person who would be found ineligible for execution in another state on the basis of a different standard for determining intellectual disability, potentially violating *Atkins v. Virginia* (2002). The existence of such variations could indicate that executions of persons with a clinical definition of intellectual disability are still occurring in the United States.

Methods

This study reviews state laws to determine how definitions of intellectual disability vary in comparison with clinical definitions from one state to the next. Specifically, we used a content analysis to examine the statutes defining intellectual disability with regard to death penalty eligibility in each state. Content analysis is commonly applied in this context; it has been used frequently for examining differences in state statutes (e.g., Stearns, 2000; Boots, Bihari, & Elliott, 2009; McCann & Pimley, 2018).

Law databases (LexisNexis and Westlaw) were used to identify state statutes relevant to intellectual disability and the death penalty. To locate the most current version of each statute, each state's legislative website (found with Google) was searched by using the terms "intellectual disability," "intellectually disabled," "death penalty," "mental retardation," and "IQ score." Only states in which the death penalty is an approved form of punishment (as of September 1, 2018) were included. Therefore, the analysis includes 31 states, plus the federal government, yielding a total of 32 jurisdictions for examination. After the statutes had been assembled, they were examined to find similarities and differences among the states. The most common similarities and differences were grouped together into categories. Unique factors included in a statute were also documented.

Clinical Definitions

Even though the Supreme Court never gave specific orders for states to use only clinical definitions when defining intellectual disability, most states do include some form of clinical definitions in their standards. Therefore, it is important to review the main clinical standards regarding intellectual disability before exploring the state definitions. The following represent the intellectual definitions of the three major psychological and psychiatric associations in the United States.

1. American Association on Intellectual and Developmental Disabilities (AAIDD, 2018): "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."
2. American Psychiatric Association (APA-MD, 2013): "Significant subaverage intellectual functioning: an IQ of approximately 70 or below on an individually administered IQ test (criterion A); concurrent deficits or impairments in present adaptive functioning in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (criterion B); and the onset is before age 18 years (criterion C)."
3. American Psychological Association (APA, 2010): "Mental retardation refers to (a) significant limitations in general intellectual functioning; (b) significant limitations in adaptive functioning, which exist concurrently; and (c) onset of intellectual and adaptive limitations before the age of 22 years."

State Statutes

Table 1 shows interesting variations among the states in the standards used to determine intellectual disability and death penalty eligibility. The most common differences pertain to (1) the specificity of the definitions themselves, (2) age at onset, (3) required proof of disability during the course of the crime, (4) required IQ score, (5) who chooses the expert evaluator, and (6) the burden-of-proof standard required to prove intellectual disability. As noted earlier, only 31 states and the federal government allow the death penalty in the United States. Accordingly, they are the only jurisdictions included in the table.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Alabama Ala. Code § 15-24-2 (2017)	"During the developmental period"	Not specified	None specified, states "as measured by appropriate standardized testing instruments"	Not specified	Not specified	Significant subaverage general intellectual functioning resulting in or associated with concurrent impairments in adaptive behavior.
Arizona Ariz. Rev. Stat. § 13-753 (2017)	Before age 18	Not specified	70 or below	Clear and convincing evidence	Trial court	A condition based on a mental deficit that has resulted in significantly subaverage general intellectual functioning existing concurrently with significant limitations in adaptive functioning.
Arkansas Ark. Code Ann. § 5-4-618 (2017)	"In the developmental period, but no later than age eighteen (18) years of age"	Yes	65 or below	Preponderance of the evidence	Not specified	Significantly subaverage general intellectual functioning accompanied by significant deficits or impairments in adaptive functioning.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
California Cal. Pen. Code § 1376 (2017)	Before age 18	Not specified	None specified	Preponderance of the evidence	Not specified	Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.
Colorado Colo. Rev. Stat. § 18-1.3-1402 (2017)	"Manifested and documented during the developmental period"; no specific age given	Not specified	None specified	Clear and convincing evidence	Not specified	Significantly subaverage general intellectual functioning existing concurrently with substantial deficits in adaptive behavior. The requirements for documentation may be excused by the court upon a finding that extraordinary circumstances exist. (The court does not define "extraordinary circumstances.")
Florida Fla. Stat. § 921.137 (2017)	"Manifested during the period from conception to age 18"	Not specified	"Two or more standard deviations from the mean score on a standardized intelligence test"	Clear and convincing evidence	Trial court	Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.
Georgia Ga. Code § 17-7-131 (2017)	"Manifested during the developmental period"; no specific age given	Not specified	None specified	Beyond a reasonable doubt	Court-appointed, or chosen and paid by defense	Significantly subaverage intellectual functioning resulting in or associated with impairments in adaptive behavior.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Idaho Idaho Code § 19-2515A (2017)	Before age 18	Not specified	70 or below	Preponderance of the evidence	Court	Significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two (2) of the following skill areas: communication, self-care, home living, social or interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety.
Indiana Ind. Code § 35-36-9-2 (2017)	Before age 22	Not specified	None specified	Clear and convincing evidence	Not specified	Significantly subaverage intellectual functioning; and substantial impairment of adaptive behavior.
Kansas Kan. Stat. § 76-12b01 (2017)	Before age 18	Not specified	"Two or more standard deviations from the mean score on a standardized intelligence test"	Not specified	Not specified	Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.
Kentucky Ky. Rev. Stat. § 532.130 (2017)	"Manifested during the developmental period"	Not specified	70 or below	Preponderance of the evidence	Not specified	Significant subaverage intellectual functioning existing concurrently with substantial deficits in adaptive behavior.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Louisiana La. Code Crim. Proc. art. 905.5.1 (2017)	"The onset of which must occur during the developmental period"	Not specified	None specified	Preponderance of the evidence	Not specified	Deficits in intellectual functions such as reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing. (b) Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility; and that, without ongoing support, limit functioning in one or more activities of daily life including, without limitation, communication, social participation, and independent living, across multiple environments such as home, school, work, and community.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Mississippi Miss. Code § 41-21-61 (2017)	Before age 18	Not specified	None specified	Preponderance of the evidence	Not specified	Significantly subaverage intellectual functioning, existing concurrently with related limitations in two (2) or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work, and (ii) whose recent conduct is a result of having an intellectual disability and poses a substantial likelihood of physical harm to himself or others in that there has been (A) a recent attempt or threat to physically harm himself or others, or (B) a failure and inability to provide necessary food, clothing, shelter, safety, or medical care for himself.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Missouri Mo. Rev. Stat. § 565.030 (2017)	"Manifested and documented before age 18"	Not specified	None specified	Preponderance of the evidence	Not specified	Substantial limitations in general functioning characterized by significantly subaverage intellectual functioning with continual extensive related deficits and limitations in two or more adaptive behaviors such as communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure and work.
Montana Mont. Code Ann. § 53-20-202 (2017)	Before age 18	Not specified	None specified	Not specified	Not specified	Disabilities attributable to intellectual disability, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to intellectual disability and requiring treatment similar to that required by intellectually disabled individuals if the disability originated before the person attained age 18, has continued or can be expected to continue indefinitely, and results in the person having a substantial disability.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Nebraska Neb. Rev. Stat. § 28-105.01 (2017)	None specified	Not specified	70 or below	Preponderance of the evidence	Not specified	Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.
Nevada Nev. Rev. Stat. § 174.098 (2017)	"Manifested during the developmental period"	Not specified	None specified	Preponderance of the evidence	Prosecution	Significant subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior.
New Hampshire N.H. Rev. Stat. § 171-A:2 (2017)	During the developmental period	Not specified	None specified	Not specified	Not specified	Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.
North Carolina N.C. Gen. Stat. § 15A-2005 (2017)	Must provide evidence of manifestation before age 18	Not specified	70 or below	Clear and convincing evidence (pretrial) Preponderance of the evidence (sentencing)	Not specified	Significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning (defined as having significant limitations in two or more of the following adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure skills and work skills).

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Ohio Ohio Rev. Code § 5123.01 (2017)	Manifested during the developmental period	Not specified	Not specified	Not specified	Not specified	Significantly subaverage general intellectual functioning existing concurrently with deficiencies in adaptive behavior.
Oklahoma Okla. Stat. tit. 21, § 701.10b (2017)	Evidence of manifestation before age 18	Not specified	70 or below	Clear and convincing evidence (pretrial) Preponderance of the evidence (sentencing)	Not specified	Significantly subaverage general intellectual functioning, existing concurrently with significant limitations in adaptive functioning, defined as significant limitations in two or more of the following adaptive skill areas; communication, self-care, home living, social skills, community use, self-direction, health, safety, functional academics, leisure skills and work skills.
Oregon Or. Rev. Stat. § 427.005 (2017)	Before age 18	Yes	70 or below	Clear and convincing evidence (pretrial) Preponderance of the evidence (post-trial)	Not specified	Significantly subaverage general intellectual functioning, existing concurrently with significant impairment in adaptive behavior, which means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for age and cultural group.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Pennsylvania Pa. C.S. § 50:4102 (2017)	Before age 22	Yes	None specified	Preponderance of the evidence	Not specified	Significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social and interpersonal skills, use of community resources, self-direction, functional academic skills, work, health and safety.
South Carolina S.C. Code § 16-3-20 (2017)	Manifested during the developmental period	Yes	None specified	Beyond a reasonable doubt	Trial court	Significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.
South Dakota S.D. Codified Laws § 23A-27A-26.2 (2017)	Manifested and documented before age 18	Yes	70 or below	Preponderance of the evidence	Designated by state attorney	Significant subaverage general intellectual functioning existing concurrently with substantial related deficits in applicable adaptive skill areas.
Tennessee Tenn. Code § 39-13-203 (2017)	"Manifested during the developmental period or by age 18"	Yes	70 or below	Preponderance of the evidence	Not specified	Significantly subaverage general intellectual functioning as evidenced by a functional IQ of 70 or below; deficits in adaptive behavior.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Texas *Ex parte Briseno,* 135 S. W. 3d 1 (Tex. Crim. App. 2004)	Before age 18	Not specified	70 or below	Preponderance of the evidence	Not specified	Significant subaverage general intellectual functioning existing concurrently with substantial related deficits in applicable adaptive skill areas. Plus answers to seven questions.
Utah Utah Code § 77-15a-102 (2017)	Before age 22	Not specified	None specified	Preponderance of the evidence	Department of Human Services must appoint at least two mental health experts to examine defendant and report to the court	Significant subaverage general intellectual functioning that results in and exists concurrently with significant deficiencies in adaptive functioning that exist primarily in the areas of reasoning or impulse control, or in both of these areas; and the subaverage general intellectual functioning and the significant deficiencies in adaptive functioning are both manifested prior to age 22.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Virginia Va. Code § 19.2-264.3:1.1 (2017)	Before age 18	Not specified	At least two standard deviations below the mean	Preponderance of the evidence	Court chooses. Law specifically states defendant cannot provide an examiner.	(i) Significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social and practical adaptive skills.
Washington Wash. Rev. Code § 10.95.030 (2017)	Manifested during the developmental period, defined as "the period of time between conception and the eighteenth birthday"	Not specified	70 or lower	Preponderance of the evidence	Trial court	The individual has (i) significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior, which means the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age.

State	Age at Onset of Disability	Must Prove Disability on Date Crime Occurred	IQ	Burden of Proof Required	Who Chooses Expert?	Statute's Definition of Intellectual Disability
Wyoming Wyo. Stat. § 6-2-102 (2017)	Must be documented before age 18	Not specified	70 or below	Not specified	Not specified	Significant subaverage general intellectual functioning existing concurrently with substantial related deficits in applicable adaptive skill areas.
U.S. Government 18 U.S. Code § 3596 (2017)	None specified	Not specified	None specified	Not specified	Not specified	The statute states that a sentence of death shall not be carried out upon a person who has mental retardation. The statute does not define mental retardation, or discuss at what stage in the criminal proceedings the determination of mental retardation must be made.

Definitions. The initial definitions of intellectual disability in the state statutes are similar and seem to follow the clinical definitions closely, for the most part. The APA, APA-MD, and AAIDD all use similar language and criteria to define intellectual disability: (1) significant subaverage general intellectual functioning existing concurrently with (2) substantial deficits in adaptive functioning. Most state statutes require both of these criteria to be met if a defendant is to be deemed intellectually disabled. As Table 1 shows, most states include language very similar to that of the clinical definitions (30 of the 32 jurisdictions). As an exception, the federal government does not specifically define intellectual disability, simply stating that "a sentence of death shall not be carried out upon a person who has mental retardation," with no further clarifications. Montana (Mont. Code Ann. § 53-20-202) also differs from the other states, with a unique definition (discussed further below).

Most state statutes define the "intellectual functioning" criterion as a below-average IQ score (with variation discussed below); however, some states do not go any further to define what this means or how it is measured. Colorado has a unique addition in its statute, stating that the requirement for documentation to prove "significantly subaverage general intellectual functioning" may be waived by the court "upon a finding that extraordinary circumstances exist"; however, "extraordinary circumstances" is not defined (Colo. Rev. Stat. § 18-1.3-1402). Louisiana

also has a unique definition for intellectual functioning, stating that it refers to "reasoning, problem solving, planning, abstract thinking, judgment, academic learning, and learning from experience, confirmed by both clinical assessment and individualized, standardized intelligence testing" (La. Code Crim. Proc. art. 905.5.1). Alabama simply states that intellectual disability is determined by using "appropriate standardized testing instruments," but does not specify further (Ala. Code § 15-24-2).

The second criterion, regarding "adaptive functioning," also gets little further definition or explanation in most states; however, a few states do provide further clarification. Virginia states that limited adaptive behavior is "expressed in conceptual, social and practical adaptive skills" (Va. Code § 19.2-264.3:1.1). Louisiana states that it consists of "deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility; and that, without ongoing support, limit functioning in one or more activities of daily life including, without limitation, communication, social participation, and independent living, across multiple environments such as home, school, work, and community" (La. Code Crim. Proc. art. 905.5.1).

Utah defines "significant deficiencies in adaptive functioning" as "exist[ing] primarily in the areas of reasoning or impulse control, or in both of these areas" (Utah Code § 77–15a–102). The Oregon and Washington laws state that "adaptive functioning" means "the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age" (Or. Rev. Stat. § 427.005; Wash. Rev. Code § 10.95.030). Mississippi, Missouri, North Carolina, Idaho, Oklahoma, Pennsylvania, South Carolina, and South Dakota all state that deficits or impairments in present adaptive functioning must be present in at least two of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Miss. Code § 41-21-61; Mo. Rev. Stat. § 565.030; N.C. Gen. Stat. § 15A-2005; Idaho Code § 19-2515A; Okla. Stat. tit. 21, § 701.10b; Pa. C.S. § 50:4102; S.C. Code § 16-3-20; S.D. Codified Laws § 23A-27A-26.2). All other jurisdictions (17 states) give no further definition for deficiencies in adaptive functioning.

Other than the federal government, Montana is the only jurisdiction that includes basic definitions that stray from the commonly used clinical definitions. Montana defines developmental disabilities as "attributable to intellectual disability, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to intellectual disability and requiring treatment similar to that required by intellectually disabled individuals … if the disability has continued or can be expected to continue indefinitely, and results in the person having a substantial disability" (Mont. Code Ann. § 53-20-202). "Substantial disability" is not further defined.

Age at onset. Many states (18) specifically include in their statutes that evidence of intellectual disability must have occurred before the age of 18 years for the defendant to be classified as ineligible for the death penalty. In contrast, Indiana, Pennsylvania, and Utah use a later age at onset: 22 years old (Ind. Code § 35-36-9-2; Pa. C.S. § 50:4102; Utah Code § 77–15a–102). Therefore, in these three states any evidence of intellectual disability occurring between the ages of 18 and 22 is applicable, whereas it is not applicable in the other 18 states. Alabama, Colorado, Georgia, Kentucky, Louisiana, Missouri, Nevada, Ohio, and South Carolina do not give a specific

age; instead, they say that the intellectual disability must have "manifested during the developmental period," but no definition of "developmental period" is provided (Ala. Code § 15-24-2; Colo. Rev. Stat. § 18-1.3-1402; Ga. Code § 17-7-131; Ky. Rev. Stat. § 532.130; La. Code Crim. Proc. art. 905.5.1; Mo. Rev. Stat. § 565.030; Nev. Rev. Stat. § 174.098; Ohio Rev. Code § 5123.01; S.C. Code §16-3-20). Louisiana has similar but slightly different language: "the onset of which must occur during the developmental period" (La. Code Crim. Proc. art. 905.5.1). Florida and Washington include interesting language that the intellectual disability must have "manifested during the period from conception to age 18" (Florida) and "between conception and the eighteenth birthday" (Washington); no other states mention conception in their statutes (Fla. Stat. § 921.137; Wash. Rev. Code § 10.95.030).

Tennessee has a slight variation that the intellectual disability must have "manifested during the developmental period or by age 18," hinting that the developmental period may not include the later teenage years (Tenn. Code § 39-13-203). Wyoming, South Dakota, Missouri, North Carolina, Oklahoma, and Colorado specifically say that the disability must have been "documented" during the developmental period or before age 18 (Wyo. Stat. § 6-2-102; S.D. Codified Laws § 23A-27A-26.2; Mo. Rev. Stat. § 565.030; N.C. Gen. Stat. § 15A–2005; Okla. Stat. tit. 21, § 701.10b; Colo. Rev. Stat. §18-1.3-1402). However, as mentioned previously, Colorado says the documentation requirement can be waived for "extraordinary circumstances." No other state mentions the requirement of documentation during a specific time of the defendant's life. Nebraska and the federal government are the only two jurisdictions without official age or lifetime period requirements (Neb. Rev. Stat. § 28-105.01; 18 U.S. Code § 3596).

During Course of the Crime. Most states do not specifically say the intellectual disability must be proven to have existed at the time of the crime; however, according to state statutes, Arkansas, Oregon, Pennsylvania, South Carolina, South Dakota, and Tennessee defendants must prove that the intellectual disability existed at the time the crime in question occurred if they are to be ineligible for the death penalty (Ark. Code Ann. § 5-4-618; Or. Rev. Stat. § 427.005; Pa. C.S. § 50:4102 S.C. Code § 16-3-20; S.D. Codified Laws § 23A-27A-26.3; Tenn. Code § 39-13-203). The other 26 jurisdictions do not have that requirement.

IQ scores. Most states determine "significant subaverage intellectual functioning" by administering an IQ test. However, according to state statutes, the qualifying scores differ by state. Twelve states define an IQ score of "70 or below" as evidence of limited intellectual functioning. Sixteen jurisdictions (including the federal government) do not indicate a specific IQ score in their statutes. Virginia, Florida, and Kansas have unique language indicating that the score must be "at least two standard deviations below the mean," (Va. Code § 19.2-264.3:1.1) or "two or more standard deviations from the mean score" (Fla. Stat. § 921.137; Kan. Stat. § 76-12b01), but no specific number is given. Arkansas has a more stringent standard to prove intellectual disability, in that the IQ score must be 65 or below (Ark. Code Ann. § 5-4-618). Arkansas is the only state with this specific requirement. South Dakota includes very specific language stating that if an IQ score is above 70, that alone is evidence that no intellectual disability exists and nothing else is relevant (S.D. Codified Laws § 23A-27A-26.2), whereas Alabama states simply that intellectual disability is "measured by appropriate standardized

testing instruments" but does not provide more details or even mention IQ testing (Ala. Code § 15-24-2).

Expert Evaluator Choice. Eight states specifically include in their statutes that the expert evaluating a defendant's intellectual disability can be appointed only by the government, in the form of the trial court (Arizona, Florida, Idaho, South Carolina, Virginia, and Washington) or the prosecution (Nevada and South Dakota) (Ariz. Rev. Stat. § 13-753; Fla. Stat. § 921.137; Idaho Code § 19–2515A; S.C. Code § 16-3-20; Va. Code § 19.2-264.3:1.1; Wash. Rev. Code § 10.95.030; Nev. Rev. Stat § 174.098; S.D. Codified Laws § 23A-27A-26.2). Utah law requires that the state's "Department of Human Services must appoint at least two mental health experts to examine defendant and report to the court" (Utah Code § 77-15a-102). In Georgia, the expert evaluation can be "court-appointed or defense can pay for the experts they choose" (Ga. Code § 17-7-131). In Idaho, the "court is authorized to appoint at least one (1) expert at public expense upon a showing by an indigent defendant that there is a need to inquire into questions of the defendant's mental retardation. The defendant shall pay the costs of examination if he is financially able" (Idaho Code §19–2515A). In all other jurisdictions (20 states and the federal government), the statutes do not specifically say whether the defense can choose the evaluator or whether the government has the right to choose who performs the expert evaluation to determine intellectual disability.

Burden of Proof Required. The burden of proof required can also significantly influence any determination of a defendant's intellectual disability during a consideration of death penalty eligibility under *Atkins v. Virginia* (2002). As Table 1 shows, the standards regarding burden of proof also vary by state. Sixteen states use the standard of preponderance of the evidence, which means a judge or jury must find, according to the evidence, that it is more likely than not that a defendant meets the state requirements for a determination of intellectual disability and therefore is ineligible for the death penalty. Four states (Arizona, Colorado, Florida, and Indiana) use the much higher standard of "clear and convincing evidence," which means the defendant must present evidence that leaves the judge or jury with "a firm belief or conviction that it is highly probable that the factual contentions of the claim or defense are true" (Ariz. Rev. Stat. § 13-753; Colo. Rev. Stat. § 18-1.3-1402; Fla. Stat. § 921.137; Ind. Code § 35-36-9-2; *Colorado v. New Mexico, 1984).*

Georgia and South Carolina are the only states with the highest standard possible to determine intellectual disability—beyond a reasonable doubt (Ga. Code § 17-7-131; S.C. Code §16-3-20). This means the defense must present evidence that leaves little to no reasonable doubt in a judge or juror's mind that the defendant meets the state's requirements for a determination of intellectual disability. If the defense does not meet the highest possible standard, the defendant is eligible for the death penalty. Georgia refers to its intellectual disability statute as the "guilty but mentally retarded" (GBMR) statute. In one analysis, it was noted that during more than 30 years following the enactment of this statute, no Georgia defendant facing the death penalty was ever found intellectually disabled, and this high standard for burden of proof was identified as the cause (Lucas, 2017). An example of a defendant who was adversely affected by Georgia's standard of proof was Warren Hill. He was executed by the state of Georgia in 2015 despite experts' claims that he was intellectually disabled. The state

judge said that Hill would meet the standard of preponderance of the evidence used in most states, but because he had a job, he did not meet the standard of "beyond a reasonable doubt," which is the standard judges in Georgia must use according to that state's laws (Lucas, 2017).

Three states (North Carolina, Oklahoma, and Oregon) use bifurcated standards when determining intellectual disability (N.C. Gen. Stat. § 15A-2005; Okla. Stat. tit. 21, § 701.10b; Or. Rev. Stat. § 427.005). In each of these states, the standard of proof during pretrial proceedings is clear and convincing evidence; however, at the sentencing phase of the trial, the requirement regarding burden of proof is lowered to a preponderance of the evidence. Alabama, Kansas, Montana, New Hampshire, Ohio, Wyoming, and the federal government do not provide specific standards regarding burden of proof in their statutes (Ala. Code § 15-24-2; Kan. Stat. § 76–12b01; Mont. Code Ann. § 53-20-202; N.H. Rev. Stat. § 171-A:2 Ohio Rev. Code § 5123.01; Wyo. Stat. § 6-2-102; 18 U.S. Code § 3596).

Discussion and Conclusion

Even though the Supreme Court continues to give states the discretion to craft their own intellectual disability laws regarding death penalty eligibility, in *Atkins* the Court emphasized "consistency in the direction of change" (*Atkins v. Virginia*, 2002, p. 327). Accordingly, we examined the current status of state statutes for determining intellectual disability and death penalty eligibility. The key finding is that little consistency exists. Key differences are noted across states, usually regarding age at onset, burden of proof required, IQ score standard, who chooses the evaluator, and whether intellectual disability during the course of the crime must be specifically proven.

Important policy implications are connected to our findings. Although most states do include language from clinical definitions in their statutes, wide variations make it likely that one person could be found intellectually disabled in one state but not in another state, creating potential violations of *Atkins v. Virginia* (2002) and the Eighth Amendment. Imprecise and unclear definitions of intellectual disability by states can literally have life-or-death consequences. For example, in Texas, Robert Sparks was convicted of murdering family members because he heard voices that told him those family members were planning to kill him. Evidence was presented showing that Sparks suffered from severe mental illness: diagnoses of delusional psychosis and schizoaffective disorder, which includes hallucinations. A psychologist testified that Sparks "meets the full criteria for a diagnosis" of intellectual disability. However, because the state definition differed from clinical definitions, Sparks was not deemed intellectually disabled by a court and was executed on September 29, 2019 (McCullough, 2019).

States should rely on the clinical community to craft proper and precise definitions for determining intellectual disability in death penalty cases (Cheung, 2013; French, 2005). Ideally, states should more uniformly define intellectual disability and how to determine such in the criminal justice system if they are to lessen the likelihood of executions of intellectually disabled persons. Future research should follow this evolution of state statutes and intellectual disability determination in the criminal justice system.

Cases and Statutes

18 U.S. Code § 3596 (2017).

Ala. Code § 15-24-2 (2017).

Ariz. Rev. Stat. § 13-753 (2017).

Ark. Code Ann. § 5-4-618 (2017).

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

Cal. Pen. Code § 1376 (2017).

Colo. Rev. Stat. § 18-1.3-1402 (2017).

Colorado v. New Mexico, 467 U.S. 310, 316 (1984).

Ex parte Briseno, 135 S. W. 3d 1 (Tex. Crim. App. 2004).

Fla. Stat. § 921.137 (2017).

Ga. Code § 17-7-131 (2017).

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

Idaho Code § 19-2515A (2017).

Ind. Code § 35-36-9-2 (2017).

Kan. Stat. § 76-12b01 (2017).

Ky. Rev. Stat. § 532.130 (2017).

La. Code Crim. Proc. art. 905.5.1 (2017).

Miss. Code § 41-21-61 (2017).

Mo. Rev. Stat. § 565.030 (2016).

Mont. Code Ann. § 53-20-202 (2017).

Moore v. Texas, 581 U.S. ___ (2017).

N.C. Gen. Stat. § 15A-2005 (2017).

Neb. Rev. Stat. § 28-105.01 (2017).

Nev. Rev. Stat. § 174.098 (2017).

N.H. Rev. Stat. § 171-A:2 (2017).

Ohio Rev. Code § 5123.01 (2017).

Okla. Stat. tit. 21, § 701.10b (2017).

Or. Rev. Stat. § 427.005 (2017).

Pa. C.S. § 50:4102 (2017).

Penry v. Lynaugh, 492 U.S. 302 (1989).

S.C. Code § 16-3-20 (2017).

S.D. Codified Laws § 23A-27A-26.2 (2017).

Tenn. Code § 39-13-203 (2017).

Utah Code § 77-15a-102 (2017).

Va. Code § 19.2-264.3:1.1 (2017).

Wash. Rev. Code § 10.95.030 (2017).

Wyo. Stat. § 6-2-102 (2017).

References

Abeles, N. (2010). In the public interest: Intellectual disability, the Supreme Court, and the death penalty. *American Psychologist, 65*(8), 743–749.

American Association on Intellectual and Developmental Disabilities (AAIDD). (2018). *Definition of intellectual disability.* Retrieved from http://aaidd.org/intellectual-disability/definition#.VGfnLJPF-1J

American Psychiatric Association (APA-MD). (2013). *Diagnostic and statistical manual of mental disorders (DSM-5).* Arlington, VA: American Psychiatric Publishing.

American Psychological Association (APA). (2010). Division 33, IDD/ASD Psychology. In J. W. Jacobson & J. A. Mulick (Eds.), *Manual of diagnosis and professional practice in mental retardation* (pp. 13–53). Washington, DC: Author.

Barker, C. (2017). Substantial guidance without substantive guides: Resolving the requirements of Moore v. Texas and Hall v. Florida. *Vanderbilt Law Review, 70*(3), 1027–1069.

Blume, J., Johnson, S., & Seeds, C. (2009). Of Atkins and men: Deviations from clinical definitions of mental retardation in death penalty cases. *Cornell Journal of Law and Public Policy, 18*(3), 689–733.

Boots, D., Bihari, J., & Elliott, E. (2009). The state of the castle. *Criminal Justice Review, 34*(4), 515–535.

Ceci, S. J., Scullin, M., & Kanaya, T. (2003). The difficulty of basing death penalty eligibility on IQ cutoff scores for mental retardation. *Ethics & Behavior, 13*(1), 11–18.

Cheung, N. (2013). Defining intellectual disability and establishing a standard of proof: Suggestions for a national model standard. *Health Matrix: Journal of Law-Medicine, 23*(1), 317–352.

Cooke, B., Delalot, D., & Werner, T. (2015). Hall v. Florida: Capital punishment, IQ, and persons with intellectual disabilities. *The Journal of the American Academy of Psychiatry and the Law, 43*(2), 230–234.

Crowell, H. (2017). The writing is on the wall: How the Briseno factors create an unacceptable risk of executing people with intellectual disability. *Texas Law Review, 94*(4), 743–784.

Ellis, J. (2003). Mental retardation and the death penalty: A guide to state legislative issues. *Mental and Physical Disability Law Reporter, 27*(1), 11–24.

French, L. A. (2005). Mental retardation and the death penalty: The clinical and legal legacy. *Federal Probation, 69*(1), 16–21.

Gresham, F. M., & Reschly, D. J. (2011). Standard of practice and Flynn effect: Testimony in death penalty cases. *Intellectual and Developmental Disabilities, 49*(3), 131–140.

Kane, H. (2003). Straight talk about IQ and the death penalty. *Ethics & Behavior, 13*(1), 27–34.

Keyes, D., & Edwards, W. (1997). Mental retardation and the death penalty: Current status of exemption legislation. *Mental and Physical Disability Law Reporter, 21*(5), 687–696.

Lucas, L. (2017). An empirical assessment of Georgia's beyond a reasonable doubt standard to determine intellectual disability in capital cases (May 16, 2017). 33 Ga. St. U. L. Rev. 553 (2017); Georgia State University College of Law, Legal Studies Research Paper No. 2017-15.

Macvaugh, G. S. III, & Gilbert S. (2009). Atkins v. Virginia: Implications and recommendations for forensic practice. *Journal of Psychiatry & Law, 37*(2/3), 131–188.

McCann, W., & Pimley, N. (2018). Mixed mandates: Issues concerning organizational and statutory definitions of terrorism in the United States. *Terrorism and Political Violence,*1–24. doi: 10.1080/09546553.2017.1404457

McCullough, J. (2019). Texas executes Robert Sparks after brutal death of his wife, stepsons. *Texas Tribune*. Retrieved from https://www.texastribune.org/2019/09/25/texas-execution-robert-sparks/

Mukherjee, M., & Westphal, A. (2015). Shifting diagnostic systems for defining intellectual disability in death penalty cases: Hall vs. Florida. *Journal of Autism and Developmental Disorders, 45*(7), 2277–2278.

Olley, J. G. (2013). Definition of intellectual disability in criminal court cases. *Intellectual and Developmental Disabilities, 51*(2), 117–121.

Perske, R. (2011). Perske's list: False confessions from 75 persons with intellectual disability. *Intellectual and Developmental Disabilities, 49*(5), 365–373.

Romano, J. F. (2003). Kinder, gentler, and more capricious: The death penalty after Atkins v. Virginia. *St. John's Law Review, 77*(1), 123–156.

Salekin, K. L., & Doane, B. (2009). Malingering intellectual disability: The value of available measures and methods. *Applied Neuropsychology, 16*(2), 105–113.

Stearns, P. (2000). Access to and cost of reproduction of patient medical records: A comparison of state laws. *Journal of Legal Medicine, 21*(1), 79–108.

Wood, S. E., Packman, W., Howell, S., & Bongar, B. (2014). A failure to implement: Analyzing state responses to the Supreme Court's directives in Atkins v. Virginia and suggestions for a national standard. *Psychiatry, Psychology & Law, 21*(1), 16–46.

Young, G. W. (2012). A more intelligent and just Atkins: Adjusting for the Flynn effect in capital determinations of mental retardation or intellectual disability. *Vanderbilt Law Review, 65*(2), 615–676.

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