

Position Paper of The Arc of Pennsylvania with Respect to Death Penalty Legislation for
Citizens with Mental Retardation.

Approved: February 2004

SUMMARY

The Arc of Pennsylvania completely supports the U.S. Supreme Court's *Atkins* decision to ban the death penalty for persons with mental retardation. Further, it supports legislation in the General Assembly that will properly implement the Court's decision in Pennsylvania by 1) identifying defendants protected by *Atkins* through the application of an acceptable definition of mental retardation, and 2) determining whether a defendant meets this definition before he or she is tried for the capital crime 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 mental retardation 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. The Court considered several issues, including whether a person with mental retardation is adversely affected by their areas of reasoning, judgment, and control of their impulses, whether such an individual acts with the level of moral culpability that characterizes the most serious adult criminal conduct, and whether their impairments can jeopardize the eligibility and fairness of capital proceedings against defendants with mental retardation. The Court concluded the following: "such punishment is excessive and that the Constitution places a substantive restriction to the State's power to take the life of a mentally retarded offender."

Before the *Atkins* decision, at last 18 states had passed laws to protect citizens who have mental retardation from the death penalty. Pennsylvania was not among them. 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 during a court proceeding such a determination will be made, and other procedural and evidentiary issues.

POSITION

The Arc of Pennsylvania recognizes that the execution of individuals with mental retardation violates the U.S. Constitution's Eighth Amendment ban on cruel and unusual punishment and is also aware that often members of the general public do not recognize characteristics of mental retardation, which could inevitably lead to the wrongful death of persons with mental retardation.

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

1. **Wrongful Execution:** Ensure that no individual with mental retardation is executed.
2. **Definition:** With respect to defining mental retardation for purposes of implementing *Atkins*, The Arc of Pennsylvania believes there ought to be a consistent definition of mental retardation that protects people with mental retardation to the greatest possible extent. Toward that end, the Supreme Court in its *Atkins* decision stated the following:

Supreme Court: “Clinical definitions of mental retardation require not only sub-average intellectual functioning, but also significant limitations in adaptive skills.”

To guide its decision in this regard, the Pennsylvania legislature should look to the definitions that are nationally recognized and accepted, primarily that of the American Association on Mental Retardation (AAMR) or secondarily the one published in the American Psychiatric Association’s (APA) “Diagnostic Criteria from DSM-IV.”

AAMR 2002: “Mental retardation is a disability characterized by significantly sub-average intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical adaptive skills. This disability originates before age 18.”

(Mental retardation cannot be faked; there is generally well-documented evidence of this disability in the individual’s medical, school and public welfare service files.)

APA Diagnostic Criteria From DSM-IV: “a) Significantly sub-average intellectual functioning; an IQ of approximately 70 or below on an individually administered IQ test; b) concurrent deficits or impairments in present adaptive functioning [i.e., the person’s effectiveness in meeting the standards expected for his/her cultural group] in at least 2 of the following areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health & safety, and c) onset before the age of 18 yrs.”

(Mental retardation is not the same as mental illness and these terms cannot and should not be used interchangeably; the APA DSM IV definition is referenced as supporting language from a credible national organization.)

3. **Pretrial Determination:** Defendants must have the option of a fair, pretrial judicial determination of mental retardation. *(A. Having the same jury decide whether mental retardation exists immediately after handing down a guilty verdict and being prejudiced by hearing evidence of the crime makes it impossible for a defendant with mental retardation to have his or her condition established fairly, B. Capital cases are almost always longer, more labor intensive, and more expensive for the system than non-capital cases, and C. it is wrong to put a defendant through a capital trial if capital punishment is not an option - it is no small thing, of course, to be on trial for your life, and so a pre-trial determination*

elimination death as a sentencing option is both the fair and humane thing to do for a person with mental retardation.)

4. **Sentence Reviews:** Ensure that the legislation is applied retroactively to protect individuals with mental retardation. *(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 mental retardation.)*