

Adopted by voice

AMERICAN BAR ASSOCIATION
SECTION OF INDIVIDUAL RIGHTS AND RESPONSIBILITIES
CRIMINAL JUSTICE SECTION
COMMISSION ON MENTAL AND PHYSICAL DISABILITY LAW
ABA DEATH PENALTY MORATORIUM IMPLEMENTATION PROJECT
ABA DEATH PENALTY REPRESENTATION PROJECT
BEVERLY HILLS BAR ASSOCIATION

RECOMMENDATION

1 RESOLVED, That the American Bar Association, without taking a position supporting or
2 opposing the death penalty, urges each jurisdiction that imposes capital punishment to implement
3 the following policies and procedures:

4 1. Defendants should not be executed or sentenced to death if, at the time of the offense,
5 they had significant limitations in both their intellectual functioning and adaptive
6 behavior, as expressed in conceptual, social, and practical adaptive skills, resulting from
7 mental retardation, dementia, or a traumatic brain injury.

8 2. Defendants should not be executed or sentenced to death if, at the time of the offense,
9 they had a severe mental disorder or disability that significantly impaired their capacity
10 (a) to appreciate the nature, consequences or wrongfulness of their conduct, (b) to
11 exercise rational judgment in relation to conduct, or (c) to conform their conduct to the
12 requirements of the law. A disorder manifested primarily by repeated criminal conduct
13 or attributable solely to the acute effects of voluntary use of alcohol or other drugs does
14 not, standing alone, constitute a mental disorder or disability for purposes of this
15 provision.

16 3. Mental Disorder or Disability after Sentencing

17 (a) *Grounds for Precluding Execution.* A sentence of death should not be carried out if
18 the prisoner has a mental disorder or disability that significantly impairs his or her
19 capacity (i) to make a rational decision to forgo or terminate post-conviction proceedings
20 available to challenge the validity of the conviction or sentence; (ii) to understand or
21 communicate pertinent information, or otherwise assist counsel, in relation to specific
22 claims bearing on the validity of the conviction or sentence that cannot be fairly resolved
23 without the prisoner's participation; or (iii) to understand the nature and purpose of the
24 punishment, or to appreciate the reason for its imposition in the prisoner's own case.
25 Procedures to be followed in each of these categories of cases are specified in (b) through
26 (d) below.

27 (b) *Procedure in Cases Involving Prisoners Seeking to Forgo or Terminate Post-*
28 *Conviction Proceedings.* If a court finds that a prisoner under sentence of death who
29 wishes to forgo or terminate post-conviction proceedings has a mental disorder or
30 disability that significantly impairs his or her capacity to make a rational decision, the
31 court should permit a next friend acting on the prisoner's behalf to initiate or pursue
32 available remedies to set aside the conviction or death sentence.

33 (c) *Procedure in Cases Involving Prisoners Unable to Assist Counsel in Post-Conviction*
34 *Proceedings.* If a court finds at any time that a prisoner under sentence of death has a
35 mental disorder or disability that significantly impairs his or her capacity to understand or
36 communicate pertinent information, or otherwise to assist counsel, in connection with
37 post-conviction proceedings, and that the prisoner's participation is necessary for a fair
38 resolution of specific claims bearing on the validity of the conviction or death sentence,
39 the court should suspend the proceedings. If the court finds that there is no significant
40 likelihood of restoring the prisoner's capacity to participate in post-conviction
41 proceedings in the foreseeable future, it should reduce the prisoner's sentence to the
42 sentence imposed in capital cases when execution is not an option.

43 (d) *Procedure in Cases Involving Prisoners Unable to Understand the Punishment or its*
44 *Purpose.* If, after challenges to the validity of the conviction and death sentence have
45 been exhausted and execution has been scheduled, a court finds that a prisoner has a
46 mental disorder or disability that significantly impairs his or her capacity to understand
47 the nature and purpose of the punishment, or to appreciate the reason for its imposition in
48 the prisoner's own case, the sentence of death should be reduced to the sentence imposed
49 in capital cases when execution is not an option.

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