ABLENH
DISABILITY JUSTICE ADVOCATES

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My name is Louis Esposito, and I serve as the Executive Director of ABLE NH, New Hampshire's statewide grassroots organization working to advance inclusion, access, and full participation for people with disabilities. I submit this testimony in strong opposition to HB 1749 because it would reinforce a punishment system that is structurally incapable of treating people with cognitive, psychiatric, and neurological impairments in a fair, accurate, or humane way.

Capital punishment is not applied to a neutral population. It is imposed on a group that research has consistently shown to be heavily impaired, traumatized, and neurologically vulnerable.

A comprehensive clinical review of death row prisoners found that they are "frequently intellectually limited and academically deficient," with "histories of significant neurological insult" being common, along with developmental histories of trauma, family disruption, and substance abuse (Cunningham & Vigen, 2002). Across multiple clinical studies, large proportions of death row inmates scored in the borderline or intellectually disabled range of functioning, with many showing severe functional illiteracy despite (Cunningham & Vigen, 2002). These impairments directly affect the ability to understand legal proceedings, assist counsel, and respond effectively to interrogation.

Psychiatric disability is also pervasive. Clinical studies reviewed by Cunningham and Vigen (2002) consistently found high rates of major depression, psychosis, mood disorders, and trauma-related conditions among death row prisoners, at levels far exceeding both the general population and the general prison population. Importantly, the harsh conditions of death row were found to worsen these conditions, further degrading psychological functioning over time.

This matters because capital punishment requires precise fact-finding, meaningful participation in one's own defense, and reliable assessments of intent, remorse, and culpability. Yet the population most likely to be subjected to death sentences is disproportionately impaired in exactly those capacities.

The Supreme Court recognized this reality in *Atkins v. Virginia* (2002), which barred the execution of people with intellectual disabilities because of their reduced culpability and heightened vulnerability to wrongful conviction and sentencing. The

Court specifically warned that such defendants have diminished ability to understand and process information, to communicate, to control impulses, and to respond in ways that juries interpret fairly.

However, research shows that states have systematically undermined this constitutional protection through procedural design. An empirical study of all known post-Atkins cases found that when juries, rather than judges, decide whether a defendant has an intellectual disability, findings in favor of disability are almost nonexistent. Nationwide, out of 244 post-Atkins cases, there were only three jury findings of intellectual disability (Blume, Johnson, & Seeds, 2010). In contrast, judges found intellectual disability far more often when they served as the decision-maker.

This is not because juries encounter weaker cases. It is because juries are structurally ill-suited to evaluate disability in the capital context. Blume et al. (2010) show that jurors are prone to reject disability claims even when clinical evidence is overwhelming, in part because cognitive impairments are misread as dangerousness, lack of remorse, or moral failing. The same traits that mark disability become aggravating factors in the eyes of death-qualified jurors.

The problem becomes even more severe when disability determinations are made alongside sentencing. Research demonstrates that jurors struggle to separate disability from the emotional impact of crime evidence, leading them to weigh impairments against the defendant rather than as categorical protection (Blume et al., 2010). This produces what the Supreme Court explicitly sought to avoid in *Atkins*: arbitrary, unreliable, and biased death sentences.

The consequences are not theoretical. Hundreds of people sentenced to death after *Atkins* have later been found to have intellectual disabilities that should have exempted them from execution. These failures fall disproportionately on people of color, reflecting the intersection of racial and cognitive bias in capital sentencing.

HB 1749 would deepen New Hampshire's entanglement in this broken system. It would extend or reinforce a framework that we already know systematically fails to identify disability, misreads impairment as dangerousness, and allows irreversible punishment to be imposed on people whose neurological and psychological conditions make fair adjudication impossible.

A punishment that cannot be administered reliably to people with cognitive and psychiatric disabilities is not just flawed. It is unjust.

Respectfully submitted,

Louis Esposito, Ed.D.
Executive Director, ABLE NH

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