

Although individuals with an intellectual disability have been categorically exempt from the death penalty since 2002, Texas does not have a statute that sets forth how and when courts should determine whether a capital defendant qualifies for this exemption. See *Atkins v. Virginia*, 536 U.S. 304 (2002). This silence on the part of the legislature has left courts to develop *ad hoc* procedures without the benefit of legislative fact-finding.

Texas is in dire need of legislation that codified a definition of intellectual disability that is rooted in science and creates cost-efficient procedure for these determinations that can be easily implemented and reviewed:

- For over a decade, Texas courts used a set of judicially crafted guidelines to assess a defendant’s cognitive impairment that had no basis in accepted medical standards. This practice was criticized by the U.S. Supreme court in *Moore v. Texas*.
- The rules can prevent unnecessary hearings by requiring that defendants supply credible evidence to obtain a hearing on the issue of their intellectual disability.
- Courts can then schedule a hearing and appoint a disinterested expert or experts to evaluate the defendant.
- After the hearing, if the court or jury (whichever is the agreed finder of fact) finds that the defendant has an intellectual disability, he or she can still be prosecuted for capital murder. If convicted, he or she will be sentenced to life without parole.

**FACTS:**

- 19 death penalty states require or explicitly permit pretrial determinations of a defendant’s intellectually disability:

Alabama	Idaho	Missouri	South Carolina
Arizona	Indiana	Nevada	South Dakota
Arkansas	Kentucky	Ohio	Tennessee
California	Louisiana	Oklahoma	Utah
Colorado	Mississippi	Pennsylvania	

- Pretrial determinations avoid the cost of proceeding to a death penalty trial, which can cost as much as \$2.5 million for county taxpayers.
- Any error from a pretrial proceeding would result in simply another hearing. By contrast trial determination errors can only be corrected with a new punishment trial, which entail weeks of jury selection, intensive investigations to present a full case to the jury, and millions of dollars in taxpayer spending.
- This procedure is similar to determinations that are made for juveniles, who are also categorically exempt from the death penalty.
- **A HEARING BEFORE A JURY IS NOT A “SECOND TRIAL.”** Under this bill the scheduled hearing will deal *only* with the issue of whether the defendant is intellectually disabled, **NOT THE FACTS OF THE OFFENSE**. HB 1139 tracks the procedure used in competency proceedings, which are held in courts throughout the state on regular (if not daily) basis.