



Metropolitan Nashville and Davidson County, TN

Legislation Text

File #: RS2021-867, **Version:** 1

A Resolution urging the Tennessee General Assembly to support HB0001/SB1236 and supporting clemency for Pervis Payne, a person living with an intellectual disability.

WHEREAS, House Bill 0001/Senate Bill 1236, currently pending before the Tennessee General Assembly, would amend state law to allow a defendant who has been sentenced to the death penalty to petition a trial court to determine whether the defendant is ineligible for the death penalty due to intellectual disability; and

WHEREAS, current law, as determined by the Supreme Court of the United States, prohibits the imposition of a death penalty sentence if it is found that a defendant, at the time of committing first degree murder, had an intellectual disability; and

WHEREAS, in the 2002 case *Atkins v. Virginia*, the U.S. Supreme Court held that executing a person with intellectual disabilities is unconstitutional under the Eighth Amendment, but allowed for a state to create its own definition of "intellectual disability"; and

WHEREAS, in 2014, the U.S. Supreme Court narrowed this holding. In *Hall v. Florida*, the Court determined that a bright-line IQ threshold for determining intellectual disability is unconstitutional; and

WHEREAS, HB001/SB1236 would provide a much-needed update to Tennessee state law to make it consistent with the constitutional requirements outlined by the U.S. Supreme Court; and

WHEREAS, this legislation would further provide a procedural mechanism for individuals with intellectual disability who have been sentenced to death to obtain a determination from a trial court that they are ineligible for the death penalty, which the Tennessee Supreme Court has advised legislators to consider; and

WHEREAS, the American Bar Association has endorsed this legislation, saying it will "ensure that Tennessee provides all defendants facing the ultimate sanction with at least one opportunity to prove they are not eligible for a death sentence because of their intellectual disability"; and

WHEREAS, this legislation would greatly assist Pervis Payne, a person with an intellectual disability on death row in Tennessee who has consistently maintained his innocence since his conviction 33 years ago; and

WHEREAS, the Tennessee Supreme Court has acknowledged that Mr. Payne has presented undisputed evidence of intellectual disability but concluded that no procedural mechanism exists for him to present his claim; and

WHEREAS, there is ample evidence to conclude that Mr. Payne is a person living with intellectual disability. His diagnosis of intellectual disability is consistent with the standards set by the American Association of Intellectual and Developmental Disabilities and the American Psychiatric Association; and

WHEREAS, in addition, Mr. Payne has maintained his innocence for the 33 years he has been on death row, has no history of violence, and had never been arrested. Possible exculpatory evidence containing DNA has gone missing and DNA on other key evidence is too degraded to provide conclusive proof; and

WHEREAS, execution of Mr. Payne would be not only unjust, but unconstitutional under the Eighth Amendment to the U.S. Constitution. Without laws like HB001/SB1236 in place, Mr. Payne has no other possible recourse, unless he is granted clemency by Governor Bill Lee; and

WHEREAS, the Tennessee General Assembly must enact HB001/SB1236 as soon as possible in order to protect individuals with intellectual disability from execution, and to give those on death row the opportunity to prove their ineligibility for the death penalty, consistent with the U.S. Constitution. In the meantime, Governor Bill Lee should grant clemency to Pervis Payne, a person with an intellectual disability currently on death row in Tennessee.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY:

Section 1. That the Metropolitan Council hereby goes on record as supporting HB0001/SB1236 currently pending in the Tennessee General Assembly regarding death sentences of individuals with intellectual disability and urging Governor Bill Lee to grant clemency to Mr. Pervis Payne, a person with an intellectual disability currently on death row in Tennessee.

Section 2. The Metropolitan Clerk is directed to send a copy of this Resolution to each member of the Davidson County Delegation to the Tennessee General Assembly and to Governor Bill Lee.

Section 3. This Resolution shall take effect from and after its adoption, the welfare of The Metropolitan Government of Nashville and Davidson County requiring it.