



March 8, 2021

Office of the Governor
1st Floor, State Capitol
600 Dr. Martin L. King, Jr. Blvd.
Nashville, TN 37243

**Re: Our Concerns with Application of the Death Penalty
(Arising in the Context of Clemency Petition for Pervis Payne)**

Dear Governor Lee,

I am writing to you as the Executive Director of [Fair and Just Prosecution](#) (FJP), an organization that brings together a network of elected prosecutors from around the country committed to promoting a justice system grounded in fairness, equity, compassion, and fiscal responsibility. I am writing to express deep-seated concerns our organization has with the death penalty, as set forth below, and, in particular, concerns with the use of this sanction in the context of individuals with intellectual disabilities. We know that these issues have come up in the context of your consideration of requests to commute the death sentence of Pervis Payne, a Black man currently facing execution on Tennessee's death row.

Our nation has failed to address serious concerns around application and use of the death penalty and now [growing numbers](#) of prosecutors and law enforcement leaders are standing together in urging a movement away from this sanction. Time and again, we have executed individuals with long histories of debilitating mental illness, childhoods marred by unspeakable physical and mental abuse, and trial lawyers so derelict in their duties and obligations that they never bothered to uncover long histories of illness and trauma. We have also likely executed the innocent.¹ Studies tell us that the death penalty is unequally and arbitrarily applied, ineffective at improving public safety, and a huge drain of taxpayer resources.²

Race also plays a deeply unjust role in the application of the death penalty. Researchers have documented that defendants of color are disproportionately likely to be sentenced to die – this is particularly and uniquely true when the victim is white.³ People of color have accounted for a disproportionate 43% of executions in the United States since 1976, and 55% of defendants

¹ Cohen, A. (2012), *Yes, America, We Have Executed an Innocent Man*, The Atlantic, <https://www.theatlantic.com/national/archive/2012/05/yes-america-we-have-executed-an-innocent-man/257106/>.

² ACLU, *The Case Against the Death Penalty*, <https://www.aclu.org/other/case-against-death-penalty>.

³ ACLU, *Race and the Death Penalty*, <https://www.aclu.org/other/race-and-death-penalty>.

currently awaiting execution are people of color.⁴ Strikingly, while 80% of all death penalty cases involve white victims, only one-half of all murder victims are white.⁵

These problems with the administration of the death penalty are amplified in the context of individuals with intellectual disabilities. Individuals with intellectual disabilities may be more likely to confess to a crime they did not commit⁶ and they are less capable of collaborating with their attorneys to present a strong defense.⁷ Moreover, courts and juries may perceive their testimony to be less credible.⁸ In recognition of these dynamics, the United States Supreme Court in *Atkins v. Virginia*, 536 U.S. 304 (2002), found that executing intellectually disabled individuals is unconstitutional and in violation of the Eighth Amendment prohibition on cruel and unusual punishment. The Supreme Court also stressed that executing intellectually disabled people will not “measurably advance the deterrent or the retributive purpose of the death penalty.”⁹

Prosecutors and law enforcement leaders across the country recognize that the death penalty does not advance public safety and can instead undermine vital community trust in law enforcement. In December of 2020, nearly 100 current and former elected prosecutors, Attorneys General, and law enforcement leaders, as well as former United States Attorneys and Department of Justice officials, [brought their voices](#) together in opposition to the application of the death penalty.¹⁰ They explained,

“Our tasks become increasingly difficult when people do not believe that the legal system is operating fairly. Public safety is inextricably tied to the community’s trust in the fairness and moral authority of our justice system. When people believe the state is

⁴ Death Penalty Information Center, *Executions by Race and Race of Victim*, <https://deathpenaltyinfo.org/executions/executions-overview/executions-by-race-and-race-of-victim>.

⁵ *Id.*

⁶ See, e.g., Leo, R. (2009), *False Confessions: Causes, Consequences, and Implications*, *The Journal of the American Academy of Psychiatry and the Law*, <https://www.jaapl.org/content/jaapl/37/3/332.full.pdf>; Schatz, S. (2018), *Interrogated with Intellectual Disabilities: The Risks of False Confession*, *Stanford Law Review*, <https://pubmed.ncbi.nlm.nih.gov/29486553/>.

⁷ *Atkins v. Virginia*, 536 U.S. 304 (2002). (“Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial, but, by definition, they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand others’ reactions. Their deficiencies do not warrant an exemption from criminal sanctions, but diminish their personal culpability.”)

⁸ See, e.g., Henry, L., Ridley, A., Perry, J., and Crane, L. (2011), *Perceived credibility and eyewitness testimony of children with intellectual disabilities*, *Journal of Intellectual Disability Research*, <https://pubmed.ncbi.nlm.nih.gov/21265903/>; Gudjonsson, G. and Henry, L. (2003), *Child and adult witnesses with intellectual disability: The importance of suggestibility*, *Legal and Criminological Psychology*, <https://www.cac-sc.org/resources/FIPR%20Articles/Child%20and%20adult%20witnesses%20with%20intellectual%20disability-The%20importance%20of%20suggestibility.pdf>; Kebbell, M., Hatton, C., and Johnson, S. (2010), *Witnesses with intellectual disabilities in court: What questions are asked and what influence do they have*, *Legal and Criminological Psychology*, <https://bpspsychub.onlinelibrary.wiley.com/doi/abs/10.1348/135532504322776834>.

⁹ *Atkins v. Virginia*, 536 U.S. 304 (2002).

¹⁰ Fair and Just Prosecution (2020), *Joint Statement by Criminal Justice and Law Enforcement Leaders in Opposition to Application of the Federal Death Penalty*, <https://fairandjustprosecution.org/wp-content/uploads/2020/12/FJP-Federal-Death-Penalty-Joint-Statement.pdf>.

executing a person, or applying the death penalty, unjustly – as do many in our nation who oppose the death penalty in increasing numbers – their trust in our system of government and law enforcement is undermined. Our jobs get harder, as do the jobs of others who seek to keep our communities safe."

We hope you will take these views into account as you consider the pending clemency petition from Pervis Payne, an intellectually disabled Black man facing execution. Please let us know if we can be of any further assistance in regard to this case.

Sincerely yours,

A handwritten signature in black ink that reads "Miriam Krinsky". The signature is written in a cursive, flowing style.

Miriam Krinsky

Executive Director

Fair and Just Prosecution (a sponsored project of the Tides Center)

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