

# URGENT ACTION

## GEORGIA SET TO KILL INTELLECTUALLY DISABLED MAN

**For the third time in four years, the State of Georgia has set an execution date for Warren Hill, who has been on death row since 1991. All the experts who have assessed him, including those retained by the state, agree that he has intellectual disability, which would render his execution unconstitutional. He is due to be put to death on 27 January.**

In 2002 a state judge found that **Warren Hill** – who was sentenced to death in 1991 for the 1990 murder of fellow prisoner Joseph Handspike – had “significantly sub-average general intellectual functioning”, but that he had not, beyond a reasonable doubt, proved his “adaptive deficits”. Georgia’s 1988 law prohibiting the use of the death penalty against anyone found “beyond a reasonable doubt” to have “mental retardation”, defined this as having “significantly sub-average general intellectual functioning” resulting in “impairments in adaptive behaviour”.

The US Supreme Court ruled in 2002 in *Atkins v. Virginia* that the execution of people with “mental retardation” (now usually known as intellectual disability) violates the US Constitution. Warren Hill’s lawyers appealed in light of the *Atkins* ruling. This time the trial-level judge decided that the standard of proof should be “a preponderance of the evidence”, and that under this lower standard, Warren Hill’s impairment did amount to intellectual disability. However, the state appealed to the Georgia Supreme Court which in 2003 ruled four to three that the “beyond a reasonable doubt” standard was acceptable in this context. In 2011 the US Court of Appeals for the 11<sup>th</sup> Circuit ruled seven to four that, even if Georgia had “somehow inappropriately struck the balance” in its statute, US law prevented a federal court from acting, even if it considered the state Supreme Court’s decision upholding that law to be “incorrect or unwise”.

In 2012, the state judge again found that Warren Hill had intellectual disability by a preponderance of the evidence, but did not meet Georgia’s “beyond a reasonable doubt” standard. The latter is not used anywhere else in the USA in such cases – most states use the preponderance of the evidence standard, under which Warren Hill has been found intellectually disabled. Accordingly, Warren Hill is being denied *Atkins* protection because of his geographical location. In such circumstances, Amnesty International considers that his execution would amount to the arbitrary deprivation of life in violation of article 6 of the International Covenant on Civil and Political Rights, to which the USA is a state party.

### **Please write immediately in English or your own language:**

- Expressing concern that once again the State of Georgia is set to execute Warren Hill;
- Calling for the execution to be stopped and for his death sentence to be commuted;
- Noting that all experts who have assessed him agree that he has intellectual disability;
- Arguing that his execution would violate international law and US treaty obligations.

### **PLEASE SEND APPEALS BEFORE 27 JANUARY 2015 TO:**

Chairman, Georgia Board of Pardons and Paroles

Terry Barnard,  
2 Martin Luther King, Jr. Drive, SE Suite 458, Balcony Level, East  
Tower Atlanta, GA 30334-4909, USA  
Fax: +1 404-651-6670  
Email: laqsmith@pap.state.ga.us  
**Salutation: Dear Chairman Barnard**

### **And copies to:**

Governor of Georgia  
Nathan Deal  
Office of the Governor, 206 Washington Street, 111 State Capitol  
Atlanta, Georgia 30334, USA  
Fax: +1 404-657-7332  
Email: <http://gov.georgia.gov/webform/contact-governor-international-form> or <http://gov.georgia.gov/webform/contact-governor-domestic-form>

**Also send copies to diplomatic representatives accredited to your country. Please insert local diplomatic addresses below:**

Name Address 1 Address 2 Address 3 Fax Fax number Email Email address Salutation Salutation

Please check with your section office if sending appeals after the above date.

**AMNESTY  
INTERNATIONAL**



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### ADDITIONAL INFORMATION

International law and standards prohibit the use of the death penalty against people with mental and intellectual disabilities. Amnesty International believes that Warren Hill's execution would also amount to an arbitrary deprivation of life, as banned under article 6 of the International Civil and Political Rights (ICCPR) which the USA ratified in 1992. The UN Human Rights Committee, which oversees compliance with the ICCPR, has stated, regarding the right to liberty, that 'arbitrariness' should not be equated to 'against the law', but interpreted more broadly, to include notions of inappropriateness, injustice and lack of predictability.

In *Hall v. Florida* in 2014, the US Supreme Court, clarifying its *Atkins* ruling, emphasized the importance of medical expertise. "Society relies upon medical and professional expertise to define and explain how to diagnose the mental condition at issue... In determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinions." Every expert who has assessed Warren Hill agrees that he has intellectual disability.

In 2013, an 11<sup>th</sup> Circuit panel ruled two to one that the federal Antiterrorism and Effective Death Penalty Act (AEDPA) barred Warren Hill's successive petition. In support of that petition, his lawyers had filed affidavits from the three experts who had testified for the state in 2000 that they did not believe Hill had intellectual disability. In their affidavits, all three revealed that they now considered that Hill did have intellectual disability, thereby agreeing with the four experts presented by the defence in 2000. In their affidavits, the three stated that their 2000 evaluation had been "extremely and unusually rushed", and that their experience gained since then and advances in knowledge about intellectual disability, rendered their previous conclusions erroneous. Now, to "a reasonable degree of scientific certainty", they had concluded that Warren Hill met the criteria for intellectual disability.

In the 2013 ruling, the dissenting judge wrote: "The perverse consequences of such an application of AEDPA is that a federal court must acquiesce to, even condone, a state's insistence on carrying out the unconstitutional execution of a mentally retarded person... The idea that courts are not permitted to acknowledge that a mistake has been made which would bar an execution is quite incredible for a country that not only prides itself on having the quintessential system of justice but attempts to export it to the world as a model of fairness". She referred to "the preposterous burden of proof Georgia demands" in such cases. No other US state requires proof of intellectual disability beyond a reasonable doubt in the death penalty context. Indeed, a majority of the USA's 32 death penalty states, and the federal government, utilize the "preponderance of the evidence" standard, under which the Georgia trial-level judge found Warren Hill to have intellectual disability.

In the *Hall v. Florida* ruling, the US Supreme Court said: "The death penalty is the gravest sentence our society may impose. Persons facing that most severe sanction must have a fair opportunity to show that the Constitution prohibits their execution... The States are laboratories for experimentation, but those experiments may not deny the basic dignity the Constitution protects." The State of Georgia's "beyond a reasonable doubt" standard effectively means that Warren Hill is being denied that "fair opportunity" to show that his execution is prohibited.

According to Warren Hill's lawyers, the family of the murder victim in this case opposes this execution given his intellectual disability, and several jurors from the original trial have indicated that they do not now consider his execution appropriate.

There have been three executions in the USA this year, one in Georgia, and 1,397 executions since the US Supreme Court approved new capital laws in 1976, 56 of them in Georgia. Amnesty International opposes the death penalty in all cases, unconditionally.

Name: Warren Hill

Gender m/f: M

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