

TENNESSEE’S COMPLIANCE WITH ABA POLICY

Collection, Preservation, and Testing of DNA and Other Types of Evidence						
	<i>Compliance</i>	<i>In Compliance</i>	<i>Partially in Compliance¹</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance²</i>	<i>Not Applicable</i>
Recommendation						
Recommendation #1: Preserve all biological evidence for as long as the defendant remains incarcerated.				X		
Recommendation #2: Defendants and inmates should have access to biological evidence, upon request, and be able to seek appropriate relief notwithstanding any other provision of the law.			X			
Recommendation #3: Law enforcement agencies should establish and enforce written procedures and policies governing the preservation of biological evidence.			X			
Recommendation #4: Law enforcement agencies should provide training and disciplinary procedures to ensure that investigative personnel are prepared and accountable for their performance.			X			
Recommendation #5: Ensure that adequate opportunity exists for citizens and investigative personnel to report misconduct in investigations.					X	
Recommendation #6: Provide adequate funding to ensure the proper preservation and testing of biological evidence.				X		

¹ Given that a majority of the ABA’s recommendations are composed of several parts, we used the term “partially in compliance” to refer to instances in which the State of Tennessee meets a portion, but not all, of the recommendation. This definition applies to all subsequent charts contained in this Executive Summary.

² In this publication, the Project and the Assessment Team have attempted to note as accurately as possible information relevant to the death penalty in Tennessee. The Project would welcome notification of any omissions or errors in this report so that they may be corrected in any future reprints.

Law Enforcement Identifications and Interrogations

Compliance	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #1: Law enforcement agencies should adopt guidelines for conducting lineups and photospreads in a manner that maximizes their accuracy. Sets of guidelines should address at least the subjects, and should incorporate at least the social scientific teachings and best practices, set forth in the <i>ABA's Best Practices for Promoting the Accuracy of Eyewitness Identification Procedures</i> .				X	
Recommendation #2: Law enforcement officers and prosecutors should receive periodic training on how to implement the guidelines for conducting lineups and photospreads, and training on non-suggestive techniques for interviewing witnesses.				X	
Recommendation #3: Law enforcement agencies and prosecutors' offices should periodically update the guidelines for conducting lineups and photospreads to incorporate advances in social scientific research and in the continuing lessons of practical experience.				X	
Recommendation #4: Law enforcement agencies should videotape the entirety of custodial interrogations at police precincts, courthouses, detention centers, or other places where suspects are held for questioning, or, where videotaping is impractical, audiotape the entirety of such custodial interrogations.			X		
Recommendation #5: Ensure adequate funding to ensure proper development, implementation, and updating of policies and procedures relating to identifications and interrogations.				X	
Recommendation #6: Courts should have the discretion to allow a properly qualified expert to testify both pre-trial and at trial on the factors affecting eyewitness accuracy.			X		
Recommendation #7: Whenever there has been an identification of the defendant prior to trial, and identity is a central issue in a case tried before a jury, courts should use a specific instruction, tailored to the needs of the individual case, explaining the factors to be considered in gauging lineup accuracy.	X				

Crime Laboratories and Medical Examiner Offices

<i>Compliance</i>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #1: Crime laboratories and medical examiner offices should be accredited, examiners should be certified, and procedures should be standardized and published to ensure the validity, reliability, and timely analysis of forensic evidence.		X			
Recommendation #2: Crime laboratories and medical examiner offices should be adequately funded.				X	

Prosecutorial Professionalism

<i>Compliance</i>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #1: Each prosecutor's office should have written policies governing the exercise of prosecutorial discretion to ensure the fair, efficient, and effective enforcement of criminal law.				X	
Recommendation #2: Each prosecutor's office should establish procedures and policies for evaluating cases that rely on eyewitness identification, confessions, or the testimony of jailhouse snitches, informants, and other witnesses who receive a benefit.				X	
Recommendation #3: Prosecutors should fully and timely comply with all legal, professional, and ethical obligations to disclose to the defense information, documents, and tangible objects and should permit reasonable inspection, copying, testing, and photographing of such disclosed documents and tangible objects.		X			
Recommendation #4: Each jurisdiction should establish policies and procedures to ensure that prosecutors and others under the control or direction of prosecutors who engage in misconduct of any kind are appropriately disciplined, that any such misconduct is disclosed to the criminal defendant in whose case it occurred, and that the prejudicial impact of any such misconduct is remedied.				X	
Recommendation #5: Prosecutors should ensure that law enforcement agencies, laboratories, and other experts under their direction or control are aware of and comply with their obligation to inform prosecutors about potentially exculpatory or mitigating evidence.				X	
Recommendation #6: The jurisdiction should provide funds for the effective training, professional development, and continuing education of all members of the prosecution team, including training relevant to capital prosecutions.	X				

Defense Services

<div style="border: 1px solid black; padding: 2px; display: inline-block; margin-bottom: 5px;">Compliance</div> <div style="border: 1px solid black; padding: 2px; display: inline-block;">Recommendation</div>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation #1: Guideline 4.1 of the <i>ABA Guidelines on the Appointment and Performance of Defense Counsel in Death Penalty Cases (ABA Guidelines)</i> —The Defense Team and Supporting Services		X			
Recommendation #2: Guideline 5.1 of the <i>ABA Guidelines</i> —Qualifications of Defense Counsel		X			
Recommendation #3: Guideline 3.1 of the <i>ABA Guidelines</i> —Designation of a Responsible Agency			X		
Recommendation #4: Guideline 9.1 of the <i>ABA Guidelines</i> —Funding and Compensation			X		
Recommendation #5: Guideline 8.1 of the <i>ABA Guidelines</i> —Training		X			

Direct Appeal Process

<i>Compliance</i>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation		X			
<p>Recommendation #1: In order to (1) ensure that the death penalty is being administered in a rational, non-arbitrary manner, (2) provide a check on broad prosecutorial discretion, and (3) prevent discrimination from playing a role in the capital decision-making process, direct appeals courts should engage in meaningful proportionality review that includes cases in which a death sentence was imposed, cases in which the death penalty was sought but not imposed, and cases in which the death penalty could have been sought but was not.</p>		X			

State Post-Conviction Proceedings

Compliance	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #1: All post-conviction proceedings at the trial court level should be conducted in a manner designed to permit adequate development and judicial consideration of all claims. Trial courts should not expedite post-conviction proceedings unfairly; if necessary, courts should stay executions to permit full and deliberate consideration of claims. Courts should exercise independent judgment in deciding cases, making findings of fact and conclusions of law only after fully and carefully considering the evidence and the applicable law.		X			
Recommendation #2: The State should provide meaningful discovery in post-conviction proceedings. Where courts have discretion to permit such discovery, the discretion should be exercised to ensure full discovery.				X	
Recommendation #3: Trial judges should provide sufficient time for discovery and should not curtail discovery as a means of expediting the proceedings.				X	
Recommendation #4: When deciding post-conviction claims on appeal, state appellate courts should address explicitly the issues of fact and law raised by the claims and should issue opinions that fully explain the bases for dispositions of claims.	X				
Recommendation #5: On the initial state post-conviction application, state post-conviction courts should apply a “knowing, understanding and voluntary” standard for waivers of claims of constitutional error not preserved properly at trial or on appeal.			X		
Recommendation #6: When deciding post-conviction claims on appeal, state appellate courts should apply a “knowing, understanding and voluntary” standard for waivers of claims of constitutional error not raised properly at trial or on appeal and should liberally apply a plain error rule with respect to errors of state law in capital cases.			X		
Recommendation #7: The State should establish post-conviction defense organizations, similar in nature to the capital resource centers de-funded by Congress in 1996, to represent capital defendants in state post-conviction, federal <i>habeas corpus</i> , and clemency proceedings.		X			
Recommendation #8: The State should appoint post-conviction defense counsel whose qualifications are consistent with the <i>ABA Guidelines on the Appointment and Performance of Counsel in Death Penalty Cases</i> . The State should compensate appointed counsel adequately and, as necessary, provide sufficient funds for investigators and experts.		X			
Recommendation #9: State courts should give full retroactive effect to U.S. Supreme Court decisions in all proceedings, including second and successive post-conviction proceedings, and should consider in such proceedings the decisions of federal appeals and district courts.		X			

State Post-Conviction Proceedings (Con't.)

<div style="border: 1px solid black; padding: 2px; display: inline-block; margin-bottom: 5px;"><i>Compliance</i></div> <div style="border: 1px solid black; padding: 2px; display: inline-block;">Recommendation</div>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation #10: State courts should permit second and successive post-conviction proceedings in capital cases where counsels' omissions or intervening court decisions resulted in possibly meritorious claims not previously being raised, factually or legally developed, or accepted as legally valid.		X			
Recommendation #11: In post-conviction proceedings, state courts should apply the harmless error standard of <i>Chapman v. California</i> , requiring the prosecution to show that a constitutional error is harmless beyond a reasonable doubt.		X			
Recommendation #12: During the course of a moratorium, a "blue ribbon" commission should undertake a review of all cases in which individuals have been either wrongfully convicted or wrongfully sentenced to death and should recommend ways to prevent such wrongful results in the future.			X		

Clemency						
Recommendation	Compliance	In Compliance	Partially in Compliance	Not in Compliance	Insufficient Information to Determine Statewide Compliance	Not Applicable
	Recommendation #1: The clemency decision-making process should not assume that the courts have reached the merits on all issues bearing on the death sentence in a given case; decisions should be based upon an independent consideration of facts and circumstances.					X
Recommendation #2: The clemency decision-making process should take into account all factors that might lead the decision-maker to conclude that death is not the appropriate punishment.					X	
Recommendation #3: Clemency decision-makers should consider any pattern of racial or geographic disparity in carrying out the death penalty in the jurisdiction, including the exclusion of racial minorities from the jury panels that convicted and sentenced the death-row inmate.					X	
Recommendation #4: Clemency decision-makers should consider the inmate's mental retardation, mental illness, or mental competency, if applicable, the inmate's age at the time of the offense, and any evidence of lingering doubt about the inmate's guilt.					X	
Recommendation #5: Clemency decision-makers should consider an inmate's possible rehabilitation or performance of positive acts while on death row.					X	
Recommendation #6: Death-row inmates should be represented by counsel and such counsel should have qualifications consistent with the <i>ABA Guidelines</i> .			X			
Recommendation #7: Prior to clemency hearings, counsel should be entitled to compensation, access to investigative and expert resources and provided with sufficient time to develop claims and to rebut the State's evidence.			X			
Recommendation #8: Clemency proceedings should be formally conducted in public and presided over by the Governor or other officials involved in making the determination.			X			
Recommendation #9: If two or more individuals are responsible for clemency decisions or for making recommendations to clemency decision-makers, their decisions or recommendations should be made only after in-person meetings with petitioners.			X			
Recommendation #10: Clemency decision-makers should be fully educated and should encourage public education about clemency powers and limitations on the judicial system's ability to grant relief under circumstances that might warrant grants of clemency.				X		
Recommendation #11: To the maximum extent possible, clemency determinations should be insulated from political considerations or impacts.					X	

Capital Jury Instructions

<i>Compliance</i>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #1: Jurisdictions should work with attorneys, judges, linguists, social scientists, psychologists and jurors to evaluate the extent to which jurors understand instructions, revise them as necessary to ensure jurors understand applicable law, and monitor the extent to which jurors understand revised instructions.		X			
Recommendation #2: Jurors should receive written copies of court instructions to consult while the court is instructing them and while conducting deliberations.		X			
Recommendation #3: Trial courts should respond meaningfully to jurors' requests for clarification of instructions by explaining the legal concepts at issue and meanings of words that may have different meanings in everyday usage and, where appropriate, by directly answering jurors' questions about applicable law.				X	
Recommendation #4: Trial courts should instruct jurors clearly on available alternative punishments and should, upon the defendant's request during the sentencing phase, permit parole officials or other knowledgeable witnesses to testify about parole practices in the State to clarify jurors' understanding of alternative sentences.		X			
Recommendation #5: Trial courts should instruct jurors that a juror may return a life sentence, even in the absence of any mitigating factor and even where an aggravating factor has been established beyond a reasonable doubt, if the juror does not believe that the defendant should receive the death penalty.			X		
Recommendation #6: Trial courts should instruct jurors that residual doubt about the defendant's guilt is a mitigating factor. Jurisdictions should implement Model Penal Code section 210.3(1)(f), under which residual doubt concerning the defendant's guilt would, by law, require a sentence less than death.		X			
Recommendation #7: In states where it is applicable, trial courts should make clear in jury instructions that the weighing process for considering aggravating and mitigating factors should not be conducted by determining whether there are a greater number of aggravating factors than mitigating factors.			X		

Judicial Independence						
Compliance		In Compliance	Partially in Compliance	Not in Compliance	Insufficient Information to Determine Statewide Compliance	Not Applicable
Recommendation						
Recommendation #1: States should examine the fairness of their judicial election/appointment process and should educate the public about the importance of judicial independence and the effect of unfair practices on judicial independence.			X			
Recommendation #2: A judge who has made any promise regarding his/her prospective decisions in capital cases that amounts to prejudgment should not preside over any capital case or review any death penalty decision in the jurisdiction.					X	
Recommendation #3: Bar associations and community leaders should speak out in defense of judges who are criticized for decisions in capital cases; bar associations should educate the public concerning the roles and responsibilities of judges and lawyers in capital cases; bar associations and community leaders should publicly oppose any questioning of candidates for judicial appointment or re-appointment concerning their decisions in capital cases; and purported views on the death penalty or on <i>habeas corpus</i> should not be litmus tests or important factors in the selection of judges.			X			
Recommendation #4: A judge who observes ineffective lawyering by defense counsel should inquire into counsel's performance and, where appropriate, take effective actions to ensure the defendant receives a proper defense.					X	
Recommendation #5: A judge who determines that prosecutorial misconduct or other unfair activity has occurred during a capital case should take immediate action to address the situation and to ensure the capital proceeding is fair.					X	
Recommendation #6: Judges should do all within their power to ensure that defendants are provided with full discovery in capital cases.					X	

Racial and Ethnic Minorities					
Compliance	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #1: Jurisdictions should fully investigate and evaluate the impact of racial discrimination in their criminal justice systems and develop strategies that strive to eliminate it.		X			
Recommendation #2: Jurisdictions should collect and maintain data on the race of defendants and victims, on the circumstances of the crime, on all aggravating and mitigating circumstances, and on the nature and strength of the evidence for all potential capital cases (regardless of whether the case is charged, prosecuted, or disposed of as a capital case). This data should be collected and maintained with respect to every stage of the criminal justice process, from reporting of the crime through execution of the sentence.		X			
Recommendation #3: Jurisdictions should collect and review all valid studies already undertaken to determine the impact of racial discrimination on the administration of the death penalty and should identify and carry out any additional studies that would help determine discriminatory impacts on capital cases. In conducting new studies, states should collect data by race for any aspect of the death penalty in which race could be a factor.			X		
Recommendation #4: Where patterns of racial discrimination are found in any phase of the death penalty administration, jurisdictions should develop, in consultation with legal scholars, practitioners, and other appropriate experts, effective remedial and prevention strategies to address the discrimination.			X		
Recommendation #5: Jurisdictions should adopt legislation explicitly stating that no person shall be put to death in accordance with a sentence sought or imposed as a result of the race of the defendant or the race of the victim. To enforce this law, jurisdictions should permit defendants and inmates to establish <i>prima facie</i> cases of discrimination based upon proof that their cases are part of established racially discriminatory patterns. If a <i>prima facie</i> case is established, the State should have the burden of rebutting it by substantial evidence.			X		

Racial and Ethnic Minorities (Con't.)

Compliance	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #6: Jurisdictions should develop and implement educational programs applicable to all parts of the criminal justice system to stress that race should not be a factor in any aspect of death penalty administration. To ensure that such programs are effective, jurisdictions also should impose meaningful sanctions against any state actor found to have acted on the basis of race in a capital case.		X			
Recommendation #7: Defense counsel should be trained to identify and develop racial discrimination claims in capital cases. Jurisdictions also should ensure that defense counsel are trained to identify biased jurors during <i>voir dire</i> .			X		
Recommendation #8: Jurisdictions should require jury instructions indicating that it is improper to consider any racial factors in their decision-making and that they should report any evidence of racial discrimination in jury deliberations.		X			
Recommendation #9: Jurisdictions should ensure that judges recuse themselves from capital cases when any party in a given case establishes a reasonable basis for concluding that the judge's decision-making could be affected by racially discriminatory factors.				X	
Recommendation #10: States should permit defendants or inmates to raise directly claims of racial discrimination in the imposition of death sentences at any stage of judicial proceedings, notwithstanding any procedural rule that otherwise might bar such claims, unless the State proves in a given case that a defendant or inmate has knowingly and intelligently waived the claim.			X		

Mental Retardation					
<i>Compliance</i>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #1: Jurisdictions should bar the execution of individuals who have mental retardation, as defined by the AAIDD (formerly the AAMR). Whether the definition is satisfied in a particular case should be based upon a clinical judgment, not solely upon a legislatively prescribed IQ measure, and judges and counsel should be trained to apply the law fully and fairly. No IQ maximum lower than 75 should be imposed in this regard. Testing used in arriving at this judgment need not have been performed prior to the crime.			X		
Recommendation #2: All actors in the criminal justice system should be trained to recognize mental retardation in capital defendants and death-row inmates.			X		
Recommendation #3: The jurisdiction should have in place policies that ensure that persons who may have mental retardation are represented by attorneys who fully appreciate the significance of their client's mental limitations. These attorneys should have training sufficient to assist them in recognizing mental retardation in their clients and understanding its possible impact on their clients' ability to assist with their defense, on the validity of their "confessions" (where applicable) and on their eligibility for capital punishment. These attorneys should also have sufficient funds and resources (including access to appropriate experts, social workers and investigators) to determine accurately and prove the mental capacities and adaptive skill deficiencies of a defendant who counsel believes may have mental retardation.				X	
Recommendation #4: For cases commencing after <i>Atkins v. Virginia</i> or the State's ban on the execution of the mentally retarded (the earlier of the two), the determination of whether a defendant has mental retardation should occur as early as possible in criminal proceedings, preferably prior to the guilt/innocence phase of a trial and certainly before the penalty stage of a trial.	X				
Recommendation #5: The burden of disproving mental retardation should be placed on the prosecution, where the defense has presented a substantial showing that the defendant may have mental retardation. If, instead, the burden of proof is placed on the defense, its burden should be limited to proof by a preponderance of the evidence.	X				

Mental Retardation (Con't.)

<div style="border: 1px solid black; padding: 2px; display: inline-block; margin-left: auto; margin-right: auto;"><i>Compliance</i></div> <div style="border: 1px solid black; padding: 2px; display: inline-block; margin-left: auto; margin-right: auto;">Recommendation</div>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation #6: During police investigations and interrogations, special steps should be taken to ensure that the <i>Miranda</i> rights of a mentally retarded person are sufficiently protected and that false, coerced, or garbled confessions are not obtained or used.				X	
Recommendation #7: The jurisdiction should have in place mechanisms to ensure that, during court proceedings, the rights of mentally retarded persons are protected against “waivers” that are the product of their mental disability.	X				

Mental Illness					
<i>Compliance</i>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #1: All actors in the criminal justice system, including police officers, court officers, prosecutors, defense attorneys, judges, and prison authorities, should be trained to recognize mental illness in capital defendants and death-row inmates.			X		
Recommendation #2: During police investigations and interrogations, special steps should be taken to ensure that the <i>Miranda</i> rights of a mentally ill person are sufficiently protected and that false, coerced, or garbled confessions are not obtained or used.				X	
Recommendation #3: The jurisdiction should have in place policies that ensure that persons who may have mental illness are represented by attorneys who fully appreciate the significance of their mental disabilities. These attorneys should have training sufficient to assist them in recognizing mental disabilities and understanding its possible impact on their clients' ability to assist with their defense, on the validity of their "confessions" and on their eligibility for capital punishment. These attorneys should also have sufficient funds and resources to determine accurately and prove the disabilities of a defendant who counsel believes may have mental disabilities.				X	
Recommendation #4: Prosecutors should employ, and trial judges should appoint, mental health experts on the basis of their qualifications and relevant professional experience, not on the basis of the expert's prior status as a witness for the State. Similarly, trial judges should appoint qualified mental health experts to assist the defense confidentially according to the needs of the defense, not on the basis of the expert's current or past status with the State.		X			
Recommendation #5: Jurisdictions should provide adequate funding to permit the employment of qualified mental health experts in capital cases. Experts should be paid in an amount sufficient to attract the services of those who are well trained and current in their fields. Compensation should not place a premium on quick and inexpensive evaluations, but should be sufficient to ensure a thorough evaluation that will uncover pathology that a superficial or cost-saving evaluation might miss.				X	

Mental Illness (Con't.)					
<i>Compliance</i>	<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation					
Recommendation #6: Jurisdictions should forbid death sentences and executions for everyone who, at the time of the offense, had significant limitations in intellectual functioning and adaptive behavior as expressed in conceptual, social, and practical adaptive skills, resulting from mental retardation, dementia, or a traumatic brain injury.			X		
Recommendation #7: The jurisdiction should forbid death sentences and executions for everyone who, at the time of the offense, had a severe mental disorder or disability that significantly impaired the capacity (a) to appreciate the nature, consequences or wrongfulness of the conduct, (b) to exercise rational judgment in relation to the conduct, or (c) to conform one's conduct to the requirements of the law.			X		
Recommendation #8: To the extent that a mental disorder or disability does not preclude imposition of the death sentence pursuant to the law, jury instructions should communicate clearly that a mental disorder or disability is a mitigating factor, not an aggravating factor, in a capital case; that jurors should not rely upon the factor of a mental disorder or disability to conclude that the defendant represents a future danger to society; and that jurors should distinguish between the defense of insanity and the defendant's subsequent reliance on mental disorder or disability as a mitigating factor.			X		
Recommendation #9: Jury instructions should adequately communicate to jurors that the defendant is receiving medication for a mental disorder or disability, that this affects the defendant's perceived demeanor, and that this should not be considered in aggravation.			X		
Recommendation #10: The jurisdiction should have in place mechanisms to ensure that, during court proceedings, the rights of persons with mental disorders or disabilities are protected against "waivers" that are the product of a mental disorder or disability. In particular, the jurisdiction should allow a "next friend" acting on a death-row inmate's behalf to initiate or pursue available remedies to set aside the conviction or death sentence, where the inmate wishes to forego or terminate post-conviction proceedings but has a mental disorder or disability that significantly impairs his or her capacity to make a rational decision.		X			

Mental Illness (Con't.)						
<i>Compliance</i>		<i>In Compliance</i>	<i>Partially in Compliance</i>	<i>Not in Compliance</i>	<i>Insufficient Information to Determine Statewide Compliance</i>	<i>Not Applicable</i>
Recommendation						
<p>Recommendation #11: The jurisdiction should stay post-conviction proceedings where a prisoner under sentence of death has a mental disorder or disability that significantly impairs his or her capacity to understand or communicate pertinent information, or otherwise to assist counsel, in connection with such proceedings and the prisoner's participation is necessary for a fair resolution of specific claims bearing on the validity of the conviction or death sentence. The jurisdiction should require that the prisoner's sentence be reduced to the sentence imposed in capital cases when execution is not an option if there is no significant likelihood of restoring the prisoner's capacity to participate in post-conviction proceedings in the foreseeable future.</p>				X		
<p>Recommendation #12: The jurisdiction should provide that a death-row inmate is not "competent" for execution where the inmate, due to a mental disorder or disability, has significantly impaired capacity to understand the nature and purpose of the punishment or to appreciate the reason for its imposition in the inmate's own case. It should further provide that when such a finding of incompetence is made after challenges to the conviction's and death sentence's validity have been exhausted and execution has been scheduled, the death sentence shall be reduced to the sentence imposed in capital cases when execution is not an option.</p>				X		
<p>Recommendation #13: Jurisdictions should develop and disseminate—to police officers, attorneys, judges, and other court and prison officials—models of best practices on ways to protect mentally ill individuals within the criminal justice system. In developing these models, jurisdictions should enlist the assistance of organizations devoted to protecting the rights of mentally ill citizens.</p>		X				