

# UN expert calls on US states to halt impending executions of mentally disabled prisoners

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A United Nations human rights investigator has called on the US states of Georgia and Texas to halt the impending executions of two mentally disabled men scheduled in the upcoming week, condemning the state killings as a breach of the US Constitution and a violation of international law.

Barring any last-minute reprieve, Yokamon Hearn will be executed in Texas tonight. In Georgia on Monday, the State Board of Pardons and Paroles denied commutation of the death sentence of Warren Hill, opening the way for his execution. Hill's execution, originally set for tonight, has been rescheduled for Monday, July 23, as Georgia changes over to a single-drug execution protocol.

Both condemned men demonstrate clear signs of mental disability. In a 6-3 decision in June 2002, the US Supreme Court ruled that execution of the mentally retarded is a violation of the Constitution's Eighth Amendment ban on "cruel and unusual punishment." The high court's ruling, however, left it to the states to determine what constitutes mental retardation.

Christof Heyns, the UN special rapporteur on extrajudicial summary or arbitrary executions, stated it would be a "violation of death penalty safeguards" to execute individuals suffering from "psychosocial disabilities." A spokesman for the French Ministry of Foreign Affairs this week also appealed to Georgia to halt the execution there as a "first step to abolishing the death penalty" worldwide.

The life stories and legal cases of the two men to be put to death have similarities: a history of mental disability, poor legal representation, and a blatant disregard of these factors by the court systems in their respective cases.

Warren Lee Hill, Jr., now 52, was convicted in the 1990 beating death of his cellmate, when he was already serving a life sentence for the 1986 murder of his girlfriend. Hill's attorneys asked the Georgia State Board of Pardons and Paroles to commute his sentence to life without parole. Former president Jimmy Carter also petitioned the board for Hill's clemency. The board denied Hill's appeal, as well as his attorneys' request for a 90-day day stay of execution.

Hill's attorney, Brian Kammer, denounced the decision of the Georgia board, stating, "This shameful decision violates Georgia's and our nation's moral values and renders meaningless state and federal constitutional protections against wrongful execution of persons with mental disabilities."

Tests have shown that Hill has an IQ of about 70, which puts him in the range of mild mental retardation. In their petition for clemency, Hill's attorneys included a statement from two of his former elementary school teachers, who said it was "obvious" to them that he was mentally disabled. The *Atlanta Journal-Constitution* reported the teachers said Hill could not read or write at grade level and was "virtually non-communicative."

The juries at Hill's two murder trials were not informed of his IQ or signs of his mental disability. According to the *Journal-Constitution*, in a June 18 letter to the Georgia pardons board, Richard Handspike, the nephew of the inmate killed by Hill in 1990, wrote that his family "feels strongly that persons with any kind of significant mental disabilities should not be put to death."

In 1988, Georgia was the first US state to outlaw the execution of inmates with learning disabilities. But the state statute requires that mental impairment be proved

“beyond a reasonable doubt,” setting the bar higher than in any other state. In 2002, a lower Georgia Court found Hill to be “mentally retarded.” However, the Georgia Supreme Court overturned this ruling in 2003, saying that Hill’s mental disability had not been proven according to the “reasonable doubt” standard.

Defense attorney Kammer has filed an appeal with the US Supreme Court as a final effort to halt his client’s execution. In a perverse turn of events, Hill’s execution has been delayed until Monday solely due to the fact that Georgia is changing its lethal execution protocol.

The state of Texas will put 33-year-old Yokamon Laneal Hearn to death tonight despite clear evidence that he has suffered brain damage since early childhood. Hearn was convicted and sentenced to death for a 1998 murder in connection with a carjacking.

In the course of Hearn’s capital trial, his attorney conducted virtually no investigation into his life history. The jury that sentenced him to death did not know, among other things, that he was neglected by his parents, had a history of mental health problems, and had been diagnosed with Fetal Alcohol Syndrome due to his mother’s excessive drinking during pregnancy.

Hearn’s post-trial lawyer, who filed his habeas appeal, also failed to conduct a detailed investigation into Hearn’s life circumstances and mental disabilities. Hearn’s current counsel hoped to get relief for their client following a US Supreme Court decision in March of this year, which held that defendants were entitled to have federal courts review their “ineffective assistance of counsel” claims even if those claims were otherwise procedurally barred.

However, earlier this month US District Judge Sidney A. Fitzwater ruled that Hearn was not entitled to further relief. This decision was based on a 5th Circuit Court ruling that so narrowly interpreted the US Supreme Court decision as to make it virtually inapplicable to cases in Texas.

Yokamon Hearn and Warren Hill’s executions will be the 24th and 25th executions in the US in 2012 if they proceed as scheduled. According to the Death Penalty Information Center, from 1976—when the Supreme Court reinstated the death penalty—to 2002, 44 individuals with some form of mental retardation were sent to their deaths. It is unclear how many state killings of the mentally disabled have taken place since

the high court’s 2002 ruling outlawing executions of the mentally retarded.



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