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FORCED INTO EXECUTION: INVOLUNTARILY MEDICATING MENTALLY ILL INMATES TO ACHIEVE COMPTENTECY FOR EXECUTION

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INTRODUCTION

Uniformity is absent in the laws of the United States. Not only do the laws vary from state to state, but punishments vary from county to county. The only way to curtail these variations in punishment is for the United States Supreme Court to take a stance on the issues. One area where the Supreme Court stance is lacking is mental illness, and in particular, as it relates to capital punishment. On September 11, 2013, the Texas Court of Criminal Appeals decided *Staley v. State*[1] and held that the trial court's sanction of involuntary medication is not allowed under the competency to be executed statue.[2] In 1991, Steven Staley was convicted of capital murder in Tarrant County.[3] Staley and his two accomplices robbed a restaurant and killed the manager.[4] Staley was found guilty and sentenced to death in February of 2006.[5]

In 1991, Staley's mental health began to decline and his execution was stayed because he was considered mentally ill and could not to be executed.[6] The state argued in favor of forcibly medicating Staley and justified its request by highlighting the fact that the medication would not only help him with his paranoid schizophrenia but would also enforce his death sentenced.[7] The trial court ordered Staley to be involuntarily medicated and affirmed his execution.[8] However, the Court of Appeals reversed the trial court's decision stating that "the trial court's order mandating involuntary medication of appellant was not permitted under the competency-to-be executed statute and did not meet the requirements of other statutes that may permit involuntary medication."[9]

In his opinion, Justice Alcala highlighted that the trial court lacked authority to order involuntary medication of Staley and that the "competency finding must be reversed because that determination [was] wholly dependent on that unauthorized involuntary medication" of Staley."[10] The Texas Court of Criminal Appeals however was silent on the issue of whether the Texas

Constitution allows the execution of someone who has been involuntarily medicated.[11] Consequently, the Court of Criminal Appeals reasoned that the state violated Staley's constitutional rights by involuntarily medicating him in order to make him fit for execution.[12] Forcibly medicating inmates is a violation of the inmates "Due Process, Equal Protection, and Free Speech clause of both the Federal and State Constitutions."[13]

Part I of this paper will look at the Supreme Court's ruling on the modern era of capital punishment. Part I begins with a brief review on the history of the modern era of capital punishment and in particular how capital punishment intersects with mental illness. Then it will discuss how competency is determined in Texas. Part II lays the foundation for involuntary medication and the mentally ill in prison and discusses how different courts have handled issues related to involuntarily medicating inmates for the purpose of execution. Part III will discuss the ethical dilemmas associated with forcibly medicating inmates as it relates to the constitutional safeguards for people's rights. The paper will then discuss the four classes of medication administered in the prison system followed by some recommendations stated in Part IV. This paper concludes in Part V by addressing the crux issue of forcible medication of the mentally ill, its blatant violation of the constitutional rights, and the lack of response by the Supreme Court.

PART I: CAPITAL PUNISHMENT AND TEXAS

A. A LOOK AT THE MODERN ERA OF CAPITAL PUNISHMENT

In 1972, the Supreme Court decided *Furman v. Georgia* in which it held that the death penalty constituted cruel and unusual punishment.[14] This case invalidated most capital punishment statutes in the United States.[15] As a result of state death penalty statutes being invalidated, the states were forced to create a new capital punishment statute that satisfied the requirements of

Furman.[16] This led to the states making several different capital punishment requirements, some of which were held constitutional and others were not.[17]

In 2002, the Supreme Court in *Atkins v. Virginia* held that it was unconstitutional to execute a mentally ill person because "the execution of mentally retarded criminals will [not] measurably advance the deterrent or the retributive purpose of the death penalty."[18]

In his opinion, Justice Stevens noted that mentally ill prisoners' inadequacies do not necessitate an exclusion from criminal sanctions, but instead weaken their culpability.[19] As a result of these deficiencies, the Court's death penalty jurisprudence provided two reasons to agree with the legislative consensus on why the mentally ill should be excluded from the death penalty.[20] The first reason looks at the theory of retribution and deterrence.[21] Retribution requires that the punishment fit the crime, and deterrence requires that punishment deter crimes in the future and deter similar crimes from being committed. In examining retribution and deterrence, it is important to look at the culpability of the defendant. If the culpability of the average defendant is inadequate to support a death sentence, then the culpability of the mentally ill defendant does not warrant death as well.[22] Because mentally ill defendants are less culpable, they are less likely to understand that execution is a possibility for their crime. Accordingly, the theory of retribution is not satisfied.[23]

With respect to deterrence, excluding the mentally ill from execution will not deter them from committing a crime because:

> The theory of deterrence in capital sentencing is predicated upon the notion that the increased severity of the punishment will inhibit criminal actors from carrying out murderous conduct. Yet it is the same cognitive and behavioral impairments that make these defendants less morally culpable…that also make it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information.[24]

Therefore, the objective of deterrence is not met by forcibly executing the mentally ill.[25]

The second reason the Court's death penalty jurisprudence provides is that the mentally retarded have a reduced capacity which makes them ineligible for death.[26] Consequently, they are not able to give adequate assistance to their lawyers, unable to behave accordingly during trial, and unable to show regret for their crimes.[27] As a result, the Supreme Court in *Atkins* held that "construing and applying the Eighth Amendment in the light of our 'evolving standards of decency,' we therefore conclude that such punishment is excessive and that the Constitution 'places a substantive restriction on the State's power to take the life' of a mentally retarded offender."[28]

However, the court did not provide a clear guideline for the states to follow in regard to sentencing for mentally ill defendants found guilty of crimes deserving of the death penalty. The aftermath of the *Atkins* decision resulted in courts having substantive and procedural leeway to use experts to show that persons with mental illness are "'by definition' less culpable and can never deserve a death sentence."[29] In order to determine mental retardation, many states use different IQ standards.[30] In addition to implementing different IQ standards, many states have different definitions of what characteristics constitute mental illness. As a result, "when states implement the *Atkins* ban, some will do so in ways that will permit execution of persons whom many mental health professionals would deem mentally retarded."[31]

B. HOW TEXAS COURTS DETERMINE COMPETENCY OF DEFENDANTS

In 1999, the Texas Legislature established the statutory procedures to guide the courts in determining whether a defendant is competent to stand trial.[32] Article 46.05 of the Texas Code of Criminal Procedure explicitly states that an incompetent inmate cannot be executed.[33] Article 46.05 further explains that if the trial court concludes that the prisoner lacks the mental requisite capacity for execution, then the Court of Criminal Appeals must review "whether any existing

execution date should be withdrawn and a stay of execution issued while that court is conducting its review or, if a stay is not issued during the review, after entry of its judgment."[34]

However, an ever-growing problem present in Texas, as well as other states, is incompetency for execution statutes do not address the administration of involuntary medication.[35] Involuntary medication of death row inmates has become an increasingly important issue. The Supreme Court has only addressed involuntary medication of inmates' not on death row and the lower courts and courts of appeals have only addressed involuntary medication as it relates to competency. The next section further explains the Supreme Court and the lower courts stance on forcibly medicating inmates.

PART II: BACKGROUND

A. CASE LAW

This section discusses relevant case law as it pertains to whether a state can order forced medication for the purpose of restoring an inmate's competency to be executed. First, it will address how the Supreme Court has ruled on involuntarily medicating inmates. Then it will discuss how lower courts have ruled on involuntarily medicating inmates on death row to make them competent for execution.

1. UNITED STATES SUPREME COURT ADDRESS FORCIBLE MEDICATION OF INMATES

Although the United States Supreme Court has not directly answered the question of whether a state may forcibly medicate a defendant on death row for the purpose of restoring the defendant's competency to be executed, the Court has discussed relevant cases regarding involuntary medication of the mentally ill in prison. The landmark case in which the state forcibly medicated an inmate was *Washington v. Harper*.[36] In 1976, Walter Harper was sentenced to prison

for robbery.[37] He was paroled in 1980, but in December of 1981 the State revoked his parole when he later assaulted two nurses.[38] Harper was sent to the Special Offender Center. He initially consented to treatment, but in November of 1982, he refused treatment and the doctor forcibly medicated him.[39] Washington Supreme Court found that under the Due Process Clause, the State could administer medication to a competent, nonconsenting inmate only if the State proved by "clear, cogent, and convincing" evidence that the medication was "both necessary and effective for furthering a compelling state interest."[40]

According to Washington prison policy, when a psychiatrist diagnoses an inmate with a mental illness and concludes that the inmate should be treated, so long as the inmate "suffers from a mental disorder and is gravely disabled or poses a likelihood of serious harm to himself, others, or their property," the inmate may be involuntarily treated with medication.[41] Harper argued that forcibly medicating him was a violation of the Due Process, Equal Protection, and Free Speech Clauses of both the Federal and State Constitution.[42] The Supreme Court reviewed Washington Supreme Court's decision and agreed that Harper had a liberty interest against involuntary medication.[43]

Nonetheless, the United States Supreme Court stated that the state prison's involuntary medication measures met Due Process requirements and afforded an allowable "accommodation between an inmate's liberty interest in avoiding the forced administration of antipsychotic drugs and the State's interests in providing appropriate medical treatment to reduce the danger that an inmate suffering from a serious mental disorder represents to himself or others."[44] Justice Kennedy stated that the "Due Process Clause does require certain essential procedural protections, all of which were provided by the [Washington State prison] regulation…."[45] The court logically concluded that the inmate's interests are sufficiently protected "by allowing the decision to

medicate to be made by medical professionals rather than by a judge."[46] Collectively, the Supreme Court believed that Washington's State prison procedure met the "procedural due process requirements and held that the forcible administration of medication was substantively permissible given concerns both about prison and prisoner safety and that the drugs were to 'be administered for no purpose other than treatment.'"[47]

2. LOWER COURTS ADDRESS INVOLUNTARY MEDICATION USED TO RESTORE COMPETENCY

A. LOUISIANA ADDRESSES INVOLUNTARILY MEDICATING INMATE

In 1992, Louisiana Supreme Court decided *State v. Perry* in which the court held that "the trial court's order authorizing and requiring the state to administer antipsychotic drugs to Perry against his will for purposes of execution is reversed."[48] The trial court ordered the State to administer antipsychotic drugs to Perry without his consent.[49] In light of *Washington v. Harper*, the Louisiana Supreme Court vacated the trial courts order and remanded the case.[50]

Justice Dennis stated that the trial court's order authorizing and requiring the State to administer antipsychotic drugs to Perry against his will to enforce his execution was reversed and his execution was stayed.[51] Consequently, the Louisiana Supreme Court left open the idea that the state could still execute Perry.[52] Forcibly medicating Perry was a violation of the Federal Constitution because it was not in his medical best interest to be treated, and it violated the Louisiana State Constitution because it was a violation of Perry's liberty.[53]

B. SOUTH CAROLINA ADDRESSES INVOLUNTARY MEDICATING INMATE

In 1993, South Carolina Supreme Court decided a similar issue in *Singleton v. State*.[54] The defendant, Singleton, was incompetent to be executed under the state's two-prong competency test.[55] The first prong is the cognitive prong which tests the individual's "ability to recognize the

nature of the punishment and the reason of the punishment."[56] The second prong is the assistance prong, which asses the individual's ability to assist their lawyer in ascertaining information that may lead to their exonerations or mitigate their sentence.[57]

The court reasoned that "its state constitutional protection of a right of privacy, as well as federal due process, 'require that an inmate can only receive forced medication where the inmate is dangerous to himself or others, and then only when it is in the inmate's best medical interest.'"[58] The court gave deference to the American Medical Association (AMA) and American Psychiatric Association (APA)'s opinion about the link between forced medication and execution and concluded that "justice can never be served by forcing medication on an incompetent inmate for the sole purpose of getting him well enough to execute."[59]

C. UNITED STATES COURTS OF APPEALS FOR THE EIGHTH CIRCUIT ADDRESSES INVOLUNTARY MEDICATING INMATE

In 2003, the United States Eighth Court of Appeals decided *Singleton v. Norris*.[60] Charles Laverne Singleton was denied his petition for writ of habeas corpus by the district court.[61] The district court rejected Singleton's argument that forcibly medicating him was unconstitutional once an execution date was set because it was no longer in his best interest to take the medication.[62] However, the Eighth Circuit affirmed the district court's decision and reasoned that Due Process is not violated if taking the medication is in the prisoner's best interest.[63] The court noted that the State is not in violation of the Eighth Amendment when it executes a prisoner who becomes "incompetent while on death row, but who later regained competency through forcibly administered medication" if the state was required to administer the medication.[64]

D. UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT ADDRESSES INVOLUNTARY MEDICATING INMATES

In 2009, the United States Court of Appeals of the Sixth Circuit decided *Thompson v. Bell*.[65] Gregory Thompson appealed the district court's dismissal of his habeas petition in which he sought a stay of execution due to mental incompetency.[66] According to Tennessee law, "a prisoner is not competent for execution if he lacks the mental capacity to understand the fact of the impending execution and the reason for it."[67] "Under this standard, a prisoner seeking to be found incompetent for execution in Tennessee has the initial burden to make a 'threshold showing' that his present incompetency is genuinely at issue in order to [justify] an evidentiary hearing."[68] The Sixth Circuit reasoned that Thompson failed to state a claim because he "was not being forcibly medicated at the time and that '[a]lthough he may be right that the state would forcibly medicate him if he stopped taking his medication voluntarily,' he had not presented those facts to the court."[69]

E. OVERVIEW OPINION OF COURT RULING ON MEDICATION AND THE MENTALLY ILL

The lower court's rulings confirm that the state cannot forcibly medicate the mentally ill in order to make them competent for execution.[70] In deciding if forcibly medicating the inmates should be allowed, courts have to first decide if the medication is in the inmate's best interest.[71] Afterward, the court can then examine the states reasons for forcibly medicating inmates and ensures that the two interests – the prisoner's and the state's – are in line. Regardless of whether the Supreme Court rules on this issue, ethical concerns regarding involuntary medication of death row inmates will continue to pose challenges.

PART III: FORCIBLY MEDICATED

A. FORCIBLY MEDICATED AND THE ETHICAL DILEMMA

There are many ethical concerns surrounding the issue of forcibly medicating inmates in order to execute them. A majority of mental health professionals believe it is unethical to treat inmates for the purpose of execution. The American Psychiatric Association (APA) has vehemently argued against forcibly medicating inmates.[72] The APA regards forced medication by physicians as a type of participation in the actual execution itself.[73] Assisting with the execution is often seen as a violation of the Hippocratic Oath.[74] Additionally, the APA has made ethical objections concerning clinical objectives.[75] They believe that assisting in execution via forcibly medicating inmates is inconsistent with the goals of clinical psychiatric treatment, to bring the inmate to "a state of mental well-being" not to make them competent for execution.[76]

Another issue that the APA looks at is the inmate's desires regarding their own mental health. Similar to individuals not in prisons, psychiatrists believe that inmates wishes as to their mental health should be taken into consideration when considering to medicate the inmate.[77] Psychiatrists will not forcibly medicate their patients if their patients do not want to be treated and the psychiatrist has conclusive verification that they do not want to be treated.[78] In death penalty cases involving mentally incompetent prisoners, the treating physician faces a moral dilemma because they know that any treatment prescribed may act as a double edge sword. On one side the treatment will help the inmate get better and on the other side they know that treatment will also make the inmate competent for execution.[79]

B. CONSTITUTIONAL PROTECTION: THE GOOD, THE BAD AND THE IN BETWEEN OF MEDICATING INMATES

Proponents of psychotropic drugs argue that the drugs serve a purpose in the prisons.[80] The drugs make it possible for mentally ill inmates to function in the prison community, therefore making the transition from the hospital population to prison population smooth.[81] Furthermore, psychotropic medication allows inmates to participate in other forms of therapy, such as psychotherapy, in which physicians can better help inmates learn about their conditions and how it can be treated.[82] Additionally, these medications reduce violence and disruptiveness by "diminishing or eliminating hallucinations and delusions," consequently making it easier for prison officials to work with inmates in a more humane and respectable manner.[83]

On the other hand, there are those who argue that prisoners should have the right to refuse such medication. They argue for court intervention because they believe that courts work to create justice and equality for all regardless of whether the person is in prison or out of prison. These opponents want courts to prevent state sanctioned abuse of the administration of these drugs.[84]

C. THE TYPES OF PSYCHOTROPIC USED IN THE PRISON SYSTEM

Mental illness is changing with every decade. How people view and treat mental illness is different today than it was ten decades ago and it will be different in the next ten decades. With this change in perspective comes the change in treatment as well. Most psychotropic drugs act as a powerful tranquillizer, which over time diminishes the symptoms of "psychosis and curb violent tendencies, achieving the correctional end: control."[85] But currently there is no medication that can permanently cure mental illness and the continued use of such medication may lead to adverse side effects.[86]

There are four classes of psychotropic drugs used to treat inmates in prisons.[87] The first class of psychotropic drugs is antipsychotic drugs which are used to control and subdue acute and

chronic psychotic illnesses such as schizophrenia.[88] The second class of psychotropic drugs is antidepressants which are used to treat biochemical depression.[89] The third class of drugs used is lithium which is used to treat maniac depression.[90] Lastly, anxiety medicine helps keep inmates calm and aids prison officials who work with the mentally ill.[91] Drugs such as these are used to treat inmate's medical conditions and make life in prison easier for them. These drugs were intended for medical purposes only, not for state purposes.

PART IV: RECOMMENDATIONS FOR LEGALLY ENFORCING INVOLUNTARY MEDICATION

A. COMPETENCY TO CONSENT TO TREATMENT AND COMPETENCY TO STAND TRIAL MUST BE DETERMINED BEFORE INVOLUNTARY MEDICATION IS DETERMINED

Competency to consent to treatment has different requirements from competency to stand trial. The two must be analyzed individually to determine whether it is proper to involuntarily medicate a mentally ill inmate.[92] Involuntarily medicating a prisoner in order to achieve competence cannot be appraised without first examining a defendant's competency to make decisions because the two situations serve different purposes.[93] Competency to stand trial serves the trial process purpose, and competency to make decisions serves a medical purpose.[94] In order to permit involuntary medication of an inmate, the state has to prove that there is a convincing state interest in enforcing involuntary medication, and "there must be a finding that such medication is the least intrusive means of accomplishing that interest."[95]

B. INVOLUNTARY MEDICATION MUST BE CONSTITUTIONALLY SIGNIFICANT

Inmates on death row have the same constitutional protections as inmates not on death row and individuals not in prison. In order for involuntary medication to be constitutionally allowed

the process must not "require the intrusive administration of anything because it has no effect on the defendant's mental processes or it has no effect upon the defendant's participation in the trial process."[96] However, criminal defendants do not have the right to remain incompetent or be incompetent.[97] This is so because there is "no right stated in the constitution to remain incompetent to stand trial. There is only a right to be free from, or have limited, certain constitutionally significant implications of the remedy for the lack of competence." [98]

PART V: RECOMMENDATIONS FOR REMOVING FORCIBLY MEDICATING THE MENTALLY ILL

A. COMMUTED SENTENCE TO LIFE IN PRISON

Instead of involuntarily medicating mentally ill prisoners, the court can consider commuting the mentally ill inmate's death sentence to life in prison.[99] As history would have it "since the Supreme Court reinstated capital punishment in 1976, no state has participated in an execution involving a prisoner found incompetent for execution and then restored to sanity."[100] A reasonable alternative to involuntary medicating mentally ill prisoners would be to "commute their death sentences to consecutive life terms with no parole."[101] By commuting mentally ill prisoners sentencing to life in prison without parole when "a convicted felon becomes incompetent for execution reflects both the constitutional and common law prohibition against executing a mentally incompetent individual as cruel and unusual punishment."[102]

There are two perspectives which this alternative needs to be analyzed from – the state and the medical community.[103] From the state standpoint, "the societal value of restoring competency for the express purpose to execute does not outweigh the inmate's right to commutation."[104] This alternative works in favor of the State because the State has an obligation to protect the mentally ill inmates from themselves, to protect the prisons officials and officers from the inmate, and to

diminish criminal acts in society.[105] If the state involuntarily mediates mentally ill prisoners in order to reinstate their mental capacity, "then the state achieves its societal goal of protecting the community against dangerous offenders." [106]

This alternative may not be positively accepted by the medical community. From a medical standpoint "if a physician withholds psychiatric or medical treatment, then incompetency has been prolonged, and the state will forego execution."[107] While this may be a good thing for the inmate, medical professionals take an oath to do no wrong. If they withhold treatment from a patient in order for them to not qualify for execution, they would be violating that oath and may thus "inhumanely confines the inmate to a life of mental anguish and torment."[108]

Another alterative that the state could take instead of involuntarily medicating the inmate would be to toll the statutory period for filing an appeal until the inmate becomes competent again or agrees to be medicated.[109] The United States Court of Appeals for the Ninth Circuit has mandated these types of tolling under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) because it is grounded on the constitutional right to counsel.[110]

> The court reasoned that communication is an essential ingredient to effective counsel; an incompetent client could not be expected to communicate effectively with his attorney. Therefore, whenever an incompetent petitioner raises a claim that could potentially benefit from his ability to rationally communicate with his counsel, the circuit requires equitable tolling of the AEDPA's one-year statute of limitations. Collateral proceedings only resume after the inmate's competence has been restored.[111]

With the collateral appeals waived, "the state could proceed directly to carrying out the sentence of death. In addition, this system would prevent inmates from taking advantage of tolling rules by filing appeals and then claiming incompetence ad infinitum."[112]

B. COURT APPOINTED NEXT FRIEND

Another alternative to involuntary medicating mentally ill inmate is for the court to appoint a next friend. A next friend has been used in court dating back to the 1607s.[113] A person has next-

friend standing when the person "appears in court on behalf of detained prisoners who are themselves unable to seek relief."[114] There are two requirements that a next friend must meet. Those requirements are "first, a next-friend must provide an adequate explanation… [as to] why the real party in interest cannot appear on his own behalf to prosecute the action. Second, the next-friend must be truly dedicated to the best interests of the person on whose behalf he seeks to litigate."[115] Ideally, the nest-friend would make the decisions and participate in the appeals process on the behalf of the mentally ill prisoner.

However, there are those who believe that next-friend is unconstitutional because it takes away the prisoners right to make their own legal decisions.[116] Next- friend dispossesses the mentally ill prisoner from deciding if they want to appeal their sentencing and how to go about strategizing with their lawyer about their appeal.[117] Some argue that his does more harms than forcibly medicating the inmate.

C. HYBRID APPROACH

Another option, and perhaps the best option, would be for the state to instead of suing to "forcibly medicate the inmate… the state could cede control of the medication issue to a next friend."[118] This would give the next-friend the option to have the mentally ill inmate forcible medicating or have the filing period run by choosing to forgo to litigate the forcible medication.[119] This option would solve the issue many states have come across regarding forcibly medicating the mentally ill prisoners. This option "would allow those with the inmate's interest at heart to advocate on the inmate's behalf regarding his medical treatment. In addition, provided that the next friend sought to have the inmate medicated, these procedures would protect an inmate's right to autonomy in deciding how and whether to pursue any collateral relief."[120]

PART VI: CONCLUSION

Involuntary medication has been a long-standing problem in the prison system, particularly when it comes to inmates on death row. Courts have attempted to answer this question for decades. In *Furman*, the Court held the death penalty violated the eighth and fourteenth amendments because capital punishment constituted cruel and unusual punishment.[121] In *Atkins* the court held that the mentally ill could not receive the death penalty because it was constituted excessive punishment and thus the "Constitution place[ed] restrictions on the State's power to take the life of a mentally retarded offender."[122] *Harper* took on the first step towards inmates concerns of involuntary medication. In *Harper*, the Court held that "an inmate's interests are adequately protected, and perhaps better served, by allowing the decision to medicate to be made by medical professionals rather than a judge."[123] Additionally, *Perry, Singleton, Norris,* and *Thompson* all addressed issues concerning involuntary medication but only as it related to incompetence to stand trial and not as it related to mental illness. These cases, along with many others, have not addressed the issue of involuntary medication and mental illness.

Through different studies, and articles published by judges, lawyers, and mental health professionals, there has been a shift towards making involuntary medicating the mentally ill unconstitutional. But without a firm and clear answer, this argument will continue to go on. Perhaps the only way to put an end to the notion of forcibly medicating the mentally ill is for the Supreme Court to decide, as they did in *Furman*, that such practice is unconstitutional. In doing so they will force states to rewrite their death penalty statutes as it pertains to the mentally ill. It should be unconstitutional for mentally ill defendants found guilty of capital punishment to be executed. But without a statute confirming this stance, States will continue to issue executions for the mentally ill as they see fit.

END NOTES

[1] Staley v. State, 420 S.W.3d 785, 787 (Tex. Crim. App. 2013).
[2] *Id*.
[3] *Id*.
[4] *Id*.
[5] *Id*.
[6] Jordan Smith, *Court Rules Judge Didn't Have Right to Forcibly Medicate Death Row Inmate*, THE AUSTIN CHRONICLE (Sept. 11, 2013, 12:48 PM), http://www.austinchronicle.com/daily/news/2013-09-11/court-rules-judge-didnt-have-right-to-forcibly-medicate-death-row-inmate/.
[7] *Id.*
[8] *Staley*, 420 S.W.3d at 787.
[9] *Id*.
[10] *Id*. at 795.
[11] Smith, *supra* note 6.
[12] *Staley*, 420 S.W.3d at 799.
[13] Washington v. Harper, 494 U.S. 210, 217 (1990).
[14] Furman v. Georgia, 408 U.S. 238, 239-40 (1972); *Id*. at 306 (Stewart, J., concurring) ("The penalty of death differs from all other forms of criminal punishment, not in degree but in kind. It is unique in its total irrevocability. It is unique in its rejection of rehabilitation of the convict as a basic purpose of criminal justice. And it is unique, finally, in its absolute renunciation of all that is embodied in our concept of humanity.").
[15] *Id*. at 417.
[16] Coker v. Georgia, 433 U.S. 584, 593 (1977); *Id.* at 593-94 ("With their death penalty statutes for the most part invalidated, the States were faced with the choice of enacting modified capital punishment laws in an attempt to satisfy the requirements of Furman or of being satisfied with life imprisonment as the ultimate punishment for *any* offense. Thirty-Five States immediately reinstituted the death penalty for at least limited kinds of crime.").
[17] *Id*.; *Id.* at 591 (noting that in 1976, five cases immediately challenged the constitutionality of their death sentences. Gregg v. Georgia, 428 U.S. 158 (1976), which affirmed the death penalty statue, Woodson v. North Carolina, 428 U.S. 280., struck down the death penalty statue because mandatory death sentences were unconstitutional, Jurek v. Texas, 428 U.S. 262 (1976), which upheld the death penalty, Roberts v. Louisiana, 428 U.S. 325 (1976), which stuck down the death penalty for mandating death penalty for certain crimes, and Proffitt v. Florida, 428 U.S. 242 (1976), which upheld the death penalty statue).
[18] Atkins v. Virginia, 536 U.S. 304, 321 (2002).
[19] *Id*. at 318.
[20] *Id*.
[21] *Id*. at 319.
[22] *Id*.
[23] *Id*. at 320.
[24] *Id*.
[25] *Id*.
[26] Atkins v. Virginia, 536 U.S. 304, 320 (2002).
[27] *Id*. at 320-21.
[28] *Id.* at 321 (quoting Ford v. Wainwright, 477 U.S. 399, 405 (1986)).
[29] Douglas Mossman, Atkins v. Virginia*: A Psychiatric Can of Worms*, 33 N.M. L. REV. 255, 274 (2003) (omitted footnote).
[30] *Id*.
[31] *Id.* at 274-75.
[32] Kristin Houlé, *Mental Illness and the Death Penalty Resource Guide*, Mar. 2008, at 1, http://tcadp.org/wp-content/uploads/2010/06/MIDP-Resource-Guide-second-edition.pdf ("In Texas, the state legislature did not establish a statute governing the process to determine competency to be executed until 1999, and the U.S. Fifth Circuit Court of Appeals, which considers cases from Texas, Louisiana, and Mississippi, has never found a death row inmate incompetent for execution.").
[33] TEX. CRIM. PROC. CODE ANN. § 46.05(a) (West 2007).
[34] *Id*. at § 46.05(l).

[35] Brian D. Shannon & Victor R. Scarano, *Incompetency to be Executed: Conditions Ethical Challenges & Time for A Change in Texas*, 45 TEX. TECH. L. REV. 419, 430 (2013).
[36] Washington v. Harper, 494 U.S. 210 (1990).
[37] *Id*. at 213.
[38] *Id*. at 214.
[39] *Id*.
[40] Edward Richards, *Right to Refuse Medical Care,* PUB. HEALTH L. MAP, http://biotech.law.lsu.edu/map/RightToRefuse MedicalCare.html (last updated Apr. 19, 2009).
[41] *Id*.
[42] *Id*. at 217.
[43] Richards, *supra* note 40.
[44] *Washington*, 494 U.S. 210 at 236.
[45]*Id*.
[46] Shannon & Scarano, *supra* note 35, at 433.
[47] Shannon & Scarano, *supra* note 35, at 433 (footnote omitted).
[48] State v. Perry, 610 So. 2d 746, 771 (La. 1992) (noting that the court concluded that the state could not medicate an incompetent death row prisoner against his will with antipsychotic drugs and carry out his death sentence while he was under the influence of the drugs).
[49] *Id*. at 747.
[50] Shannon & Scarano, *supra* note 35, at 438.
[51] State v. Perry, 610 So. 2d 746, 771 (La. 1992).
[52] Shannon & Scarano, *supra* note 35, at 438.
[53] Shannon & Scarano, *supra* note 35, at 439.
[54] Singleton v. State, 313 S.C. 75, 77 (1993) (noting that the defendant was incompetent to be executed under a two-prong test adopted as the law in the state for determining incompetency, and justice was not served by forcing medication on an incompetent inmate in order to get him well enough to be executed).
[55] *Id*. at 90.
[56] *Id*. at 79.
[57]*Id*.
[58] Shannon & Scarano, *supra* note 35, at 440 (footnote omitted).
[59] *Singleton*, 313 S.C. at 89; Shannon & Scarano, *supra* note 35, at 441.
[60] Singleton v. Norris, 319 F.3d 1018, 1020 (8th Cir. 2003) (noting that the administration of mandatory antipsychotic medication to a habeas petitioner did not become unconstitutional once an execution date was set however, there was no prohibition against executing a prisoner restored to competency through proper medical care).
[61] *Id*.
[62] *Id*.
[63] Michelle L. Brunsvold, *Medicating to Execute:* Singleton v. Norris, 79 CHI -KENT L. REV.1291, 1292 (2004).
[64] *Id*.
[65] Thompson v. Bell, 580 F.3d 423 (6th Cir. 2009).
[66] *Id*. at 432.
[67] *Id*. at 429 (quoting Van Tran v. State, 6 S.W.3d 257, 266 (Tenn.1999)).
[68] *Id*. (quoting Van Tran v. State, 6 S.W.3d 257, 268-69 (Tenn.1999)) (alteration in original).
[69] Shannon & Scarano, *supra* note 35, at 444.
[70] Shannon & Scarano, *supra* note 35, at 446.
[71] Shannon & Scarano, *supra* note 35, at 446.
[72] Ebrahim J. Kermani & Jay E. Kantor, *Psychiatry and the Death Penalty: The Landmark Supreme Court Cases and Their Ethical Implications for the Profession,* 22 BULL AM ACAD. PSYCHIATRY L. 95, 98 (1994).
[73] *Id*.
[74] *Id*.
[75] *Id*. at 99.
[76] *Id*.at 99-100 ("Being beneficent and acting in the patient's best interest can no longer be seen simply as providing happiness for the patient. In principle, that goal of psychiatry to restore autonomy may be quite consistent with helping to make a person competent to be executed.").
[77] *Id*. at 100.
[78] *Id*.

[79] Shannon & Scarano, *supra* note 35, at 426.
[80] Jami Floyd, *The Administration of Psychotropic Drugs to Prisoners: State of the Law and Beyond*, 78 CALIF. L. REV. 1243, 1253(1990).
[81] *Id*.
[82] *Id*.
[83] *Id*.
[84] *Id.* at 1254; *Id.* at 1253 ("The widespread use of psychotropic drugs in prisons present is correspondingly high opportunity for abuse. The drugs themselves are highly dangerous, and they may be forced onto prisoners for behavior control and not necessarily for medical treatment.").
[85] *Id*. at 1247.
[86] *Id*.
[87] *Id*.
[88] Jami Floyd, *The Administration of Psychotropic Drugs to Prisoners: State of the Law and Beyond*, 78 CALIF. L. REV. 1243, 1247(1990); *Id*. at 1247-48 ("The medication was a major breakthrough in the treatment of schizophrenia, and is now widely considered the treatment of choice for that condition. Although antipsychotics do not cure schizophrenia, they do control the symptoms.").
[89] *Id*.
[90] *Id*. at 1247-48 ("When administered properly, lithium promotes behavioral and emotional stability, obviating any need for the individual's institutionalization.").
[91] *Id*.
[92] David M. Siegel, Albert J. Grudzinskas Jr. & Debra A Pinals, *Old Law Meets New Medicine: Revisiting Involuntary Psychotropic Medication of the Criminal Defendants*, 2001 WIS. L. REV. 307, 365 (2001); *Id.* at 366 ("[C]ompetence to consent to treatment is generally brought to the attention of the court only after there has been a clinical examination or intervention…. Competence to stand trial… is raised in the context of criminal proceedings, typically by the defendant's counsel of the court.").
[93] *Id*. at 366.
[94] *Id*.
[95] *Id*. at 368.
[96] *Id*.
[97] *Id*.
[98] *Id*. at 365.
[99] Nancy C. Horton, *Restoration of Competency for Execution: Furious Solo Furore Punitur*, 44 SW L. J. 1191, 1224 (2016).
[100] *Id*.
[101] *Id*. at 1225.
[102] *Id*.
[103] *Id*.
[104] *Id*.
[105] *Id*.
[106] *Id*.
[107] *Id*. at 1226.
[108] *Id*.
[109] Dominic Rupprecht, *Compelling Choice: Forcibly Medicating Death Row Inmates to Determine Whether They Wish to Pursue Collateral Relief*, 114 PEN ST L. REV. 333, 358 (2009).
[110] *Id*.
[111] *Id*.
[112] *Id*.
[113] *Id*. at 360.
[114] Tracy Bateman Farrell, Annotation, *Next-Friend Standing for Purposes of Bringing Federal Habeas Corpus Petition*, 5 A.L.R. Fed 2d 427, 2 (2018)
[115] *Id*.
[116] Rupprecht, *supra* note 110, at 362.
[117] *Id*.
[118] *Id*. at 363.
[119] *Id*.
[120] *Id*.

[121] Furman v. Ga., 408 U.S. 238, 239 (1972).
[122] Atkins v. Virginia, 536 U.S. 304, 321 (2002).
[123] Washington v. Harper, 494 U.S. 210, 231 (1990).