

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2256 Session of 2012

INTRODUCED BY WATERS, MATZIE, BRADFORD, BROWNLEE, CALTAGIRONE,
D. COSTA, FABRIZIO, FRANKEL, GIBBONS, KIRKLAND, MAHONEY,
PARKER, PAYTON, PRESTON, WHEATLEY AND YOUNGBLOOD,
MARCH 16, 2012

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 16, 2012

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in sentencing, providing
3 for race in sentencing in capital cases.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Chapter 97 of Title 42 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter to read:

8 SUBCHAPTER I

9 RACE IN SENTENCING

10 IN CAPITAL CASES

11 Sec.

12 9799.11. Prohibition.

13 9799.12. Proof of racial discrimination.

14 9799.13. Hearing procedure.

15 § 9799.11. Prohibition.

16 No person shall be sentenced to death or shall be executed
17 under any judgment sought or obtained on the basis of race.

1 § 9799.12. Proof of racial discrimination.

2 (a) Finding.--A finding that race was the basis of the
3 decision to seek or impose a death sentence may be established
4 if the court finds race was a significant factor in decisions to
5 seek or impose the sentence of death in the county, the
6 prosecutorial district or this Commonwealth at the time the
7 death sentence was sought or imposed.

8 (b) Evidence.--Evidence relevant to establish a finding that
9 race was a significant factor in the decision to seek or impose
10 the sentence of death in this Commonwealth at the time the death
11 sentence was sought or imposed may include statistical evidence
12 or other evidence, including, but not limited to, sworn
13 testimony of attorneys, prosecutors, law enforcement officers,
14 jurors or other members of the criminal justice system or both.
15 Regardless of these factors, one or more of the following
16 applies:

17 (1) Death sentences were sought or imposed significantly
18 more frequently upon persons of one race than upon persons of
19 another race.

20 (2) Death sentences were sought or imposed significantly
21 more frequently as punishment for capital offenses against
22 persons of one race than as punishment for capital offenses
23 against persons of another race.

24 (3) Race was a significant factor in decisions to
25 exercise peremptory challenges during jury selection.
26 A juror's testimony under this subsection shall be consistent
27 with Rule 606(b) of the Pennsylvania Rules of Evidence.

28 (c) Burden of proof.--The defendant has the burden of
29 proving race was a significant factor in a decision to seek or
30 impose the sentence of death at the time the death sentence was

1 sought or imposed. The Commonwealth may offer evidence in
2 rebuttal of the claims or evidence of the defendant. The
3 Commonwealth may rebut a statistical showing of Statewide racial
4 disparities by introducing statistical evidence or other
5 evidence demonstrating racial discrimination did not occur at
6 the time the death penalty was sought or imposed. The court may
7 consider evidence of a program implemented prior to the
8 defendant's trial for the purpose of eliminating racial
9 disparities in its evaluation of whether the Commonwealth has
10 adequately addressed those disparities.

11 § 9799.13. Hearing procedure.

12 (a) Duties of defendant.--The defendant shall state with
13 particularity how evidence supports a claim race was a
14 significant factor in a decision to seek or impose the sentence
15 of death in this Commonwealth at large at the time the death
16 sentence was sought or imposed. The claim shall be raised by the
17 defendant at the pretrial conference or in postconviction
18 proceedings.

19 (b) Scheduling.--The court shall schedule a hearing on the
20 claim and shall prescribe a time for the submission of evidence
21 by both parties.

22 (c) Finding.--If the court finds that race was a significant
23 factor in decisions to seek or impose the sentence of death in
24 this Commonwealth at the time the death sentence was sought or
25 imposed, it shall order that a death sentence shall not be
26 sought or that the death sentence imposed by the judgment shall
27 be vacated and the defendant resentenced to life imprisonment
28 without the possibility of parole.

29 (d) Motion by defendant.--Notwithstanding a time limitation
30 contained in Chapter 95 (relating to post-trial matters), a

1 defendant may seek relief from the defendant's death sentence
2 upon the ground that racial considerations played a significant
3 part in the decision to seek or impose a death sentence by
4 filing a motion seeking relief. The motion shall be filed within
5 one year of the effective date of this subchapter.

6 (e) Procedures and hearing.--Except as specifically stated
7 in this section, the procedures and hearing on the motion
8 seeking relief from a death sentence upon the ground that race
9 was a significant factor in the decision to seek or impose the
10 sentence of death in this Commonwealth at the time the death
11 sentence was sought or imposed shall follow and comply with
12 Chapter 95.

13 Section 2. This act shall take effect in 60 days.