
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2384 Session of
2008

INTRODUCED BY SABATINA, VEREB, D. O'BRIEN, BISHOP, BRENNAN,
CALTAGIRONE, COHEN, CREIGHTON, GIBBONS, GINGRICH, HARHAI,
HARKINS, W. KELLER, KENNEY, KOTIK, MAHONEY, MANN, MANTZ,
McGEEHAN, MENSCH, MYERS, M. O'BRIEN, REICHLEY, RUBLEY,
SIPTROTH, K. SMITH, R. STEVENSON, SURRA, SWANGER, THOMAS AND
YOUNGBLOOD, MARCH 24, 2008

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 24, 2008

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 jurisdiction and proceedings, for relief and order and for
4 sentencing procedure for murder of the first degree; and
5 providing for mental retardation of defendant.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Sections 9545(b), 9546 and 9711(c) of Title 42 of
9 the Pennsylvania Consolidated Statutes are amended to read:

10 § 9545. Jurisdiction and proceedings.

11 * * *

12 (b) Time for filing petition.--

13 (1) Any petition under this subchapter, including a
14 second or subsequent petition, shall be filed within one year
15 of the date the judgment becomes final, unless the petition
16 alleges and the petitioner proves that:

17 (i) the failure to raise the claim previously was

1 the result of interference by government officials with
2 the presentation of the claim in violation of the
3 Constitution or laws of this Commonwealth or the
4 Constitution or laws of the United States;

5 (ii) the facts upon which the claim is predicated
6 were unknown to the petitioner and could not have been
7 ascertained by the exercise of due diligence; [or]

8 (iii) the right asserted is a constitutional right
9 that was recognized by the Supreme Court of the United
10 States or the Supreme Court of Pennsylvania after the
11 time period provided in this section and has been held by
12 that court to apply retroactively[.]; or

13 (iv) the petitioner is a person with mental
14 retardation as set forth in section 9711.1(a) (relating
15 to mental retardation of defendant) and the time for
16 raising the claim under this subsection had already
17 expired as of the effective date of section 9711.1.

18 (2) Any petition invoking an exception provided in
19 paragraph (1) shall be filed within 60 days of the date the
20 claim could have been presented[.], except that a claim
21 invoking paragraph (1)(iv) shall be filed within one year of
22 the effective date of section 9711.1 or of the conclusion of
23 any appeal that is pending on the effective date either from
24 the judgment of sentence or from the denial of a previous
25 petition filed under this chapter.

26 (3) For purposes of this subchapter, a judgment becomes
27 final at the conclusion of direct review, including
28 discretionary review in the Supreme Court of the United
29 States and the Supreme Court of Pennsylvania, or at the
30 expiration of time for seeking the review.

1 (4) For purposes of this subchapter, "government
2 officials" shall not include defense counsel, whether
3 appointed or retained.

4 * * *

5 § 9546. Relief and order.

6 (a) General rule.--If the court rules in favor of the
7 petitioner, it shall order appropriate relief and issue
8 supplementary orders as to rearraignment, retrial, custody,
9 bail, discharge, correction of sentence or other matters that
10 are necessary and proper.

11 (d) Review of order in death penalty cases.--An order under
12 this subchapter granting the petitioner final relief in a case
13 in which the death penalty has been imposed shall be directly
14 appealable by the Commonwealth to the Supreme Court pursuant to
15 its rules. An order under this subchapter denying a petitioner
16 final relief in a case in which the death penalty has been
17 imposed shall not be reviewable in the Superior Court but shall
18 be reviewable only by petition for allowance of appeal to the
19 Supreme Court.

20 (e) Establishing a claim of mental retardation.--Upon a
21 finding that evidence has been presented that is sufficient to
22 establish, by a preponderance of the evidence, that the
23 petitioner is a person with mental retardation as defined in
24 section 9711.1(a) (relating to mental retardation of defendant),
25 the court shall direct further proceedings in accordance with
26 section 9711.1(c).

27 § 9711. Sentencing procedure for murder of the first degree.

28 * * *

29 (c) Instructions to jury.--

30 (1) Before the jury retires to consider the sentencing

1 verdict, if the defendant has provided notice in
2 compliance with section 9711.1(c)(1) (relating to mental
3 retardation of defendant) and if the defendant has
4 presented evidence in support of a claim that he is a
5 person with mental retardation pursuant to section
6 9711.1, the court shall instruct the jury that it shall
7 begin its deliberations by considering whether the
8 defendant has established, by a preponderance of the
9 evidence, that he is a person with mental retardation as
10 defined in section 9711.1(a). If the jury unanimously
11 finds that the defendant has established that he is a
12 person with mental retardation as defined in section
13 9711.1(a), the court shall impose a sentence of life
14 imprisonment. The court may, in its discretion, discharge
15 the jury if it determines that further deliberation will
16 not result in a unanimous agreement as to whether the
17 defendant is a person with mental retardation as defined
18 in section 9711.1(a), in which case the court shall
19 impose a sentence of life imprisonment. However, if the
20 jury unanimously finds that the defendant has failed to
21 establish that he is a person with mental retardation as
22 defined in section 9711.1(a), the court shall instruct
23 the jury that it shall proceed to consideration of
24 aggravating and mitigating circumstances as provided in
25 this subsection. The jury's determination that the
26 defendant has failed to establish that he is a person
27 with mental retardation as defined in section 9711.1(a)
28 shall not preclude the jury from considering evidence of
29 the defendant's diminished mental capacity as a
30 mitigating circumstance as enumerated in subsection (e).

1 The court shall further instruct the jury on the
2 following matters:

3 (i) The aggravating circumstances specified in
4 subsection (d) as to which there is some evidence.

5 (ii) The mitigating circumstances specified in
6 subsection (e) as to which there is some evidence.

7 (iii) Aggravating circumstances must be proved by
8 the Commonwealth beyond a reasonable doubt; mitigating
9 circumstances must be proved by the defendant by a
10 preponderance of the evidence.

11 (iv) The verdict must be a sentence of death if the
12 jury unanimously finds at least one aggravating
13 circumstance specified in subsection (d) and no
14 mitigating circumstance or if the jury unanimously finds
15 one or more aggravating circumstances which outweigh any
16 mitigating circumstances. The verdict must be a sentence
17 of life imprisonment [in all other cases] if the jury
18 reached another conclusion concerning aggravating and
19 mitigating circumstances.

20 (v) The court may, in its discretion, discharge the
21 jury if it is of the opinion that further deliberation of
22 aggravating and mitigating circumstances will not result
23 in a unanimous agreement as to the sentence, in which
24 case the court shall sentence the defendant to life
25 imprisonment.

26 (2) The court shall instruct the jury that if it finds
27 at least one aggravating circumstance and at least one
28 mitigating circumstance, it shall consider, in weighing the
29 aggravating and mitigating circumstances, any evidence
30 presented about the victim and about the impact of the murder

1 on the victim's family. The court shall also instruct the
2 jury on any other matter that may be just and proper under
3 the circumstances.

4 * * *

5 Section 2. Title 42 is amended by adding a section to read:

6 § 9711.1. Mental retardation of defendant.

7 (a) Elements of proof.--A defendant is a person with mental
8 retardation if he has a mental disability characterized by
9 significant limitations in intellectual functioning and in
10 adaptive behavior as expressed in conceptual, social and
11 practical adaptive skills, which the defendant must prove by
12 establishing all of the following elements by a preponderance of
13 the evidence:

14 (1) That his full-scale intelligence quotient is two
15 standard deviations below the mean as determined by a
16 standardized test generally accepted in the profession and
17 individually administered by a licensed psychologist.

18 (2) That he has significant limitations in relevant
19 adaptive behavior as measured by an examination of the
20 following factors as they existed before the defendant's
21 arrest for the capital offense:

22 (i) whether those who knew the defendant best during
23 the developmental stage, including his family, friends,
24 teachers, employers or authorities, thought he was
25 mentally retarded at that time, and, if so, whether they
26 acted in accordance with that determination;

27 (ii) whether the defendant formulated plans and
28 carried them through or whether his conduct was
29 impulsive;

30 (iii) whether the conduct of the defendant

1 demonstrated leadership or whether his conduct
2 demonstrated that he was led by others;

3 (iv) whether the defendant's conduct in response to
4 external stimuli was rational and appropriate, regardless
5 of whether it was socially acceptable;

6 (v) whether the defendant responded coherently,
7 rationally and on point to oral or written questions or
8 whether his responses wandered from subject to subject;

9 (vi) whether the defendant was able to hide facts or
10 lie effectively in his own or others' interests;

11 (vii) disregarding any heinousness or gruesomeness
12 surrounding the capital offense, whether the commission
13 of that offense required forethought, planning and
14 complex execution of purpose; and

15 (viii) whether the defendant appreciated the
16 criminality of his conduct.

17 (3) That his mental disability was present before the
18 age of 18 as demonstrated by contemporaneous written records.
19 However, contemporaneous written records shall not be
20 required where the defendant establishes that such written
21 records are lost or missing or that the defendant was
22 deprived of schooling or other social services contacts in
23 which such contemporaneous records would be created.

24 (b) Waiver of confidentiality.--A defendant who raises a
25 claim of mental retardation waives confidentiality and
26 privileges. The following apply:

27 (1) The defendant's medical, corrections, military and
28 scholastic records may be reviewed by the parties.

29 (2) The defendant's previous physicians, teachers and
30 mental health care providers may be contacted by the parties

1 and current mental health examiners to learn of the
2 defendant's background relative to the claim of mental
3 retardation.

4 (c) Applicability.--

5 (1) If a defendant who has not yet been sentenced to
6 death as of the effective date of this section wishes to
7 raise the issue of mental retardation, the defendant must
8 file pretrial notice of such intention. The issue shall then
9 be placed before the jury at the time of sentencing in
10 accordance with section 9711(c)(1) (relating to sentencing
11 procedure for murder of the first degree) unless both the
12 defendant and the Commonwealth agree to a pretrial
13 determination by the court. If the defendant does not file
14 notice, the court, either on its own motion or on the motion
15 of the Commonwealth, may direct the defendant to provide
16 reasons for the failure to file.

17 (2) If a defendant who has already been sentenced to
18 death as of the effective date of this section wishes to
19 raise the issue of mental retardation, and postsentence
20 motions are still pending, the defendant must amend the
21 motions to raise the claim that imposition of the death
22 penalty would have been barred under section 9711(c)(1) if it
23 had been in effect at the time of the sentencing hearing.
24 Upon a finding that evidence has been presented sufficient to
25 establish mental retardation as defined in subsection (a),
26 the court shall vacate the sentence of death, impanel a jury,
27 unless waived by the defendant and the Commonwealth, and
28 conduct an evidentiary hearing at which the issue of mental
29 retardation shall be determined by the trier of fact. The
30 hearing shall be conducted in accordance with section

1 9711(c)(1).

2 (3) If a defendant who has already been sentenced to
3 death as of the effective date of this section wishes to
4 raise a claim of mental retardation and direct appeal is
5 still pending, the defendant must, after disposition of the
6 appeal, raise the claim under Subchapter B of Chapter 95
7 (relating to post conviction relief) in a petition pursuant
8 to section 9545(b) (relating to jurisdiction and
9 proceedings).

10 Section 3. This act shall take effect in 60 days.