

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 26

Session of  
2003

INTRODUCED BY HELFRICK, KUKOVICH, KITCHEN, HUGHES, FUMO,  
M. WHITE, COSTA, ERICKSON, SCHWARTZ, O'PAKE, LAVALLE,  
A. WILLIAMS AND FERLO, JANUARY 22, 2003

REFERRED TO JUDICIARY, JANUARY 22, 2003

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, prohibiting the  
3 imposition of the death sentence in cases of mental  
4 retardation.

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

7 Section 1. Section 9545(b)(1) of Title 42 of the  
8 Pennsylvania Consolidated Statutes is amended to read:

9 § 9545. Jurisdiction and proceedings.

10 \* \* \*

11 (b) Time for filing petition.--

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

16 (i) the failure to raise the claim previously was  
17 the result of interference by government officials with  
18 the presentation of the claim in violation of the

1 Constitution or laws of this Commonwealth or the  
2 Constitution or laws of the United States;

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

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

11 (iv) the petitioner claims he is a person with  
12 mental retardation as defined in section 9711(p)  
13 (relating to sentencing procedure for murder of the first  
14 degree) and the time for raising that claim has expired  
15 as of the effective date of this subparagraph. Any  
16 petition invoking this exception must be filed within 365  
17 days of the effective date of this subparagraph.

18 \* \* \*

19 Section 2. Sections 9546 and 9711 of Title 42 are amended by  
20 adding subsections to read:

21 § 9546. Relief and order.

22 \* \* \*

23 (a.1) Mental retardation.--Upon a finding that evidence has  
24 been presented that is sufficient to establish, by a  
25 preponderance of the evidence, that the petitioner is a person  
26 with mental retardation as defined in section 9711(p) (relating  
27 to sentencing procedure for murder of the first degree), the  
28 court shall direct that the sentence of death be vacated and  
29 that the defendant be sentenced to life imprisonment.

30 \* \* \*

1 § 9711. Sentencing procedure for murder of the first degree.

2 \* \* \*

3 (e.1) Mental retardation.--

4 (1) No person with mental retardation shall be eligible  
5 for the death penalty.

6 (2) (i) If counsel in a capital case has a good faith  
7 belief that the defendant is a person with mental  
8 retardation, counsel shall file a motion, supported by an  
9 appropriate offer of proof, with the court requesting a  
10 finding that the defendant is not eligible for the death  
11 penalty because he is a person with mental retardation.

12 (ii) Upon receipt of a motion for a determination  
13 that the defendant is not eligible for the death penalty  
14 because he is a person with mental retardation, the trial  
15 court shall conduct a hearing for the presentation of  
16 evidence regarding the defendant's mental retardation.  
17 Both the Commonwealth and the defendant shall have the  
18 opportunity to present evidence, including expert  
19 testimony. The defendant shall have the burden of proof  
20 to determine mental retardation.

21 (iii) The court shall find that the defendant is not  
22 eligible for the death penalty, if it finds, by a  
23 preponderance of the evidence, that the defendant is a  
24 person with mental retardation. If the court finds that  
25 the defendant is a person with mental retardation, the  
26 trial shall proceed as a noncapital trial.

27 (iv) If the court finds that the defendant is  
28 eligible for the death penalty, the trial may proceed as  
29 a capital case.

30 (v) The pretrial determination of the court shall

1       not preclude the defendant from raising any legal defense  
2       during the trial.

3           (vi) The jury shall not be informed of the prior  
4       proceedings or the court's findings concerning the  
5       defendant's motion with respect to the issue of mental  
6       retardation.

7           (vii) If a capital trial results in a verdict of  
8       guilty of murder of the first degree, the parties may  
9       present evidence to the jury on the issue of mental  
10       retardation.

11           (viii) If the defendant presents evidence and  
12       arguments regarding mental retardation, the court shall  
13       submit a special question to the jury as to whether the  
14       defendant is a person with mental retardation as defined  
15       in this section. Once the issue of mental retardation is  
16       raised, the Commonwealth has the burden of disproving it  
17       beyond a reasonable doubt.

18           (ix) The special question shall be considered and  
19       answered by the jury prior to the consideration of  
20       aggravating and mitigating factors and the determination  
21       of sentence. If the jury determines that the defendant is  
22       a person with mental retardation, the court shall  
23       sentence the defendant to life imprisonment.

24           (x) If the jury unanimously determines that the  
25       defendant is not a person with mental retardation as  
26       defined by this section, the jury may then consider any  
27       evidence of mental retardation presented during the  
28       sentencing hearing in determining aggravating and  
29       mitigating factors and the defendant's sentence.

30       (3) (i) If a defendant has already been sentenced to

1 death as of the effective date of this subsection and  
2 postsentence motions are still pending or a direct appeal  
3 is still pending, a defendant may file a motion raising a  
4 claim that he is ineligible for a death sentence because  
5 he is a person with mental retardation and the trial  
6 court that imposed the sentence on the defendant shall  
7 conduct an evidentiary hearing on the motion and  
8 determine whether the defendant is a person with mental  
9 retardation as defined in section 9711(p) (relating to  
10 sentencing procedure for murder of the first degree).

11 (ii) If a defendant has been convicted of murder of  
12 the first degree and sentenced to death and is in custody  
13 awaiting execution of the sentence of death as of the  
14 effective date of this subsection, a defendant may file a  
15 petition under Subchapter B of Chapter 95 (relating to  
16 post conviction relief), seeking appropriate relief from  
17 the sentence of death on the grounds that he is a person  
18 with mental retardation as defined in section 9711(p)  
19 within 365 days of the effective date of this subsection.

20 \* \* \*

21 (p) Definition.--As used in this section, the term "a person  
22 with mental retardation" means an individual who has  
23 significantly subaverage intellectual functioning as evidenced  
24 by an intelligence quotient of 70 or below on an individually  
25 administered intelligence quotient test and significant  
26 impairment in adaptive behavior, and that the mental retardation  
27 is manifested before the individual attains 18 years of age.

28 Section 3. This act shall apply to persons who are sentenced  
29 on or after the effective date of this act.

30 Section 4. This act shall take effect in 60 days.