

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 804 Session of  
2003

INTRODUCED BY BOSCOLA, PICCOLA, RAFFERTY, MUSTO AND WAUGH,  
JUNE 9, 2003

REFERRED TO JUDICIARY, JUNE 9, 2003

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  
18 the result of interference by government officials with  
19 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 is mentally retarded as defined  
12 in section 9711.1(a) (relating to mental retardation of  
13 defendant) and the time for raising the claim under this  
14 subsection had already expired as of the effective date  
15 of section 9711.1(a).

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

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

29 (4) For purposes of this subchapter, "government  
30 officials" shall not include defense counsel, whether

1 appointed or retained.

2 \* \* \*

3 § 9546. Relief and order.

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

9 (b.1) Finding.--Upon a finding that evidence has been  
10 presented that is sufficient to establish, by a preponderance of  
11 the evidence, mental retardation as defined in section 9711.1(a)  
12 (relating to mental retardation of defendant), the court shall  
13 direct further proceedings in accordance with section  
14 9711.1(c)(2).

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

24 § 9711. Sentencing procedure for murder of the first degree.

25 \* \* \*

26 (c) Instructions to jury.--

27 (1) Before the jury retires to consider the sentencing  
28 verdict, and if the defendant has provided notice in  
29 compliance with section 9711.1(c)(1) (relating to mental  
30 retardation of defendant) and has presented evidence in

1 support of the section 9711.1 defense, the court shall  
2 instruct the jury that it shall begin its deliberations by  
3 considering whether the defendant is mentally retarded as  
4 defined in section 9711.1(a). If the jury unanimously finds  
5 by a preponderance of the evidence that the defendant is  
6 mentally retarded, it shall impose a sentence of life  
7 imprisonment. Otherwise, the jury shall proceed to  
8 consideration of aggravating and mitigating circumstances as  
9 provided in paragraphs (1) and (2). Failure to determine that  
10 the defendant is mentally retarded shall not preclude the  
11 jury from considering the evidence of the defendant's  
12 diminished mental capacity as a mitigating circumstance. This  
13 section shall not be deemed to require unanimity for  
14 consideration of mitigating circumstances, nor shall this  
15 section be deemed to supersede any mitigating circumstances  
16 regarding diminished mental capacity currently enumerated in  
17 subsection (e) on the following matters:

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

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

22 (iii) Aggravating circumstances must be proved by  
23 the Commonwealth beyond a reasonable doubt; mitigating  
24 circumstances must be proved by the defendant by a  
25 preponderance of the evidence.

26 (iv) The verdict must be a sentence of death if the  
27 jury unanimously finds at least one aggravating  
28 circumstance specified in subsection (d) and no  
29 mitigating circumstance or if the jury unanimously finds  
30 one or more aggravating circumstances which outweigh any

1 mitigating circumstances. The verdict must be a sentence  
2 of life imprisonment [in all other cases.] if the jury  
3 reaches another conclusion concerning aggravating and  
4 mitigating circumstances.

5 (v) The court may, in its discretion, discharge the  
6 jury if it is of the opinion that further deliberation of  
7 aggravating and mitigating circumstances will not result  
8 in a unanimous agreement as to the sentence, in which  
9 case the court shall sentence the defendant to life  
10 imprisonment.

11 (2) The court shall instruct the jury that if it finds  
12 at least one aggravating circumstance and at least one  
13 mitigating circumstance, it shall consider, in weighing the  
14 aggravating and mitigating circumstances, any evidence  
15 presented about the victim and about the impact of the murder  
16 on the victim's family. The court shall also instruct the  
17 jury on any other matter that may be just and proper under  
18 the circumstances.

19 \* \* \*

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

21 § 9711.1. Mental retardation of defendant.

22 (a) Elements for proof.--A defendant is mentally retarded  
23 for purposes of capital sentencing if the defendant establishes  
24 all of the following elements by a preponderance of evidence:

25 (1) That the defendant's full-scale intelligence  
26 quotient is 70 or lower on a standardized, individually  
27 administered test for which raw data has been provided and  
28 which accounts for all potential margin of error.

29 (2) That the defendant has significant impairment in  
30 adaptive behavior in the areas of social responsibility and

1     personal independence.

2           (3) That the defendant's impairments are primarily  
3     attributable to a diagnosis of mental retardation present  
4     before the defendant attained 18 years of age and revealed by  
5     contemporaneous written records from early childhood, unless  
6     the defendant was deprived of schooling or other social  
7     service contacts in which such contemporaneous records would  
8     have been created.

9     (b) Waiver of confidentiality.--A defendant who raises an  
10    issue of mental retardation waives confidentiality and  
11    privileges so that the defendant's medical, corrections,  
12    military and scholastic records may be reviewed by the parties  
13    and the defendant's previous physicians, teachers and mental  
14    health providers may be contacted by current mental health  
15    examiners to learn of the defendant's background relative to the  
16    claim of mental retardation.

17    (c) Applicability.--

18           (1) If a defendant who has not yet been sentenced to  
19    death as of the effective date of this section wishes to  
20    raise the issue of mental retardation, the defendant must  
21    file pretrial notice of such intention. The issue shall then  
22    be placed before the jury at the time of sentencing in  
23    accordance with section 9711(c)(1) (relating to sentencing  
24    procedure for murder of the first degree). Where the  
25    defendant does not file such notice, the court, either on its  
26    own motion or on the motion of the Commonwealth, may direct  
27    the defendant to provide reasons for the failure to file.

28           (2) If a defendant who has already been sentenced to  
29    death as of the effective date of this section wishes to  
30    raise the issue of mental retardation, and postsentence

1 motions are still pending, the defendant may amend the  
2 motions to raise the claim that imposition of the death  
3 penalty would have been barred under section 9711(c)(1) if it  
4 had been in effect at the time of the sentencing hearing.  
5 Upon a finding that evidence has been presented sufficient to  
6 establish mental retardation as provided under subsection  
7 (a), the court shall vacate the sentence of death, impanel a  
8 jury unless waived by the defendant and the Commonwealth, and  
9 conduct an evidentiary hearing at which the issue of the  
10 mental retardation shall be determined. Such hearing shall be  
11 conducted in accordance with section 9711(c)(1).

12 (3) If a defendant who has already been sentenced to  
13 death as of the effective date of this section wishes to  
14 raise the issue of mental retardation and direct appeal is  
15 still pending, the defendant may, after disposition of the  
16 appeal, raise the issue in a Post Conviction Relief Act  
17 petition pursuant to section 9545(b) (relating to  
18 jurisdiction and proceedings).

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