
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1370 Session of
2007

INTRODUCED BY MANDERINO, BELFANTI, BISHOP, BUXTON, CALTAGIRONE,
CARROLL, CREIGHTON, CURRY, DALEY, FABRIZIO, FAIRCHILD,
FRANKEL, FREEMAN, GEORGE, GIBBONS, JAMES, JOSEPHS, KENNEY,
KIRKLAND, KORTZ, LEACH, LEVDANSKY, LONGIETTI, MAHONEY, MANN,
MARKOSEK, McGEEHAN, McILHATTAN, MUNDY, M. O'BRIEN, PAYTON,
RAPP, ROAE, ROSS, K. SMITH, STURLA, SCAVELLO, SHIMKUS, SURRA,
SWANGER, TANGRETTI, VITALI, WAGNER, WALKO, WATERS,
YOUNGBLOOD, McILVAINE SMITH AND SIPTROTH, JUNE 5, 2007

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 5, 2007

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 9543(a)(2) of Title 42 of the
8 Pennsylvania Consolidated Statutes is amended by adding a
9 subparagraph to read:

10 § 9543. Eligibility for relief.

11 (a) General rule.--To be eligible for relief under this
12 subchapter, the petitioner must plead and prove by a
13 preponderance of the evidence all of the following:

14 * * *

15 (2) That the conviction or sentence resulted from one or
16 more of the following:

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(ix) The existence of mental retardation as defined in section 9711(q) (relating to sentencing procedure for murder of the first degree).

* * *

Section 2. Section 9545(b)(1) of Title 42 is amended to read:

§ 9545. Jurisdiction and proceedings.

* * *

(b) Time for filing petition.--

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

(i) the failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or laws of this Commonwealth or the Constitution or laws of the United States;

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

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

(iv) the petitioner claims he is a person with mental retardation as defined in section 9711(q) (relating to sentencing procedure for murder of the first

1 degree) and the time for raising that claim has expired
2 as of the effective date of this subparagraph. Any
3 petition invoking this exception must be filed within 365
4 days of the effective date of this subparagraph or of the
5 conclusion of any appeal pending on the effective date of
6 this subparagraph from the judgment of sentence or from
7 the denial of a previous petition under this chapter.

8 * * *

9 Section 3. Sections 9546 and 9711 of Title 42 are amended by
10 adding subsections to read:

11 § 9546. Relief and order.

12 * * *

13 (a.1) Mental retardation.--Upon a finding that evidence has
14 been presented that is sufficient to establish, by a
15 preponderance of the evidence, that the petitioner is a person
16 with mental retardation as defined in section 9711(g) (relating
17 to sentencing procedure for murder of the first degree), the
18 court shall direct that the sentence of death be vacated and
19 that the defendant be sentenced to life imprisonment.

20 * * *

21 § 9711. Sentencing procedure for murder of the first degree.

22 * * *

23 (e.1) Mental retardation.--

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

26 (2) The following apply:

27 (i) At least 90 days before the commencement of
28 trial or later upon just cause shown to the court,
29 counsel for the defendant may, upon written motion
30 alleging reasonable cause to believe that the defendant

1 is a person with mental retardation, apply for an order
2 directing that a hearing to determine if the defendant is
3 not eligible for the death penalty because the defendant
4 is a person with mental retardation be conducted prior to
5 trial. The written motion must set forth in particular
6 the reasons and grounds to support the reasonable cause
7 to believe that the defendant is a person with mental
8 retardation.

9 (ii) Upon receipt of a motion for a determination
10 that the defendant is not eligible for the death penalty
11 because the defendant is a person with mental
12 retardation, the trial court shall conduct a hearing for
13 the presentation of evidence regarding the defendant's
14 mental retardation. Both the Commonwealth and the
15 defendant shall have the opportunity to present evidence,
16 including expert testimony. The court shall order an
17 expert psychiatric or psychological examination of the
18 defendant to be performed by a licensed psychiatrist or
19 licensed psychologist who is an expert in the diagnosis
20 and evaluation of mental retardation. The defendant must
21 prove that the defendant is a person with mental
22 retardation by a preponderance of the evidence.

23 (iii) Prior to the time set for the hearing on the
24 pretrial motion, the Commonwealth shall have the same
25 rights of discovery as exist under the Pennsylvania Rules
26 of Criminal Procedure, including the production of
27 reports from experts and production of any information
28 that will further a full, fair and expeditious resolution
29 of the determination of whether the defendant is a person
30 with mental retardation.

1 (iv) At the hearing on the pretrial motion to
2 determine whether the defendant is a person with mental
3 retardation, the defendant has the burden of proving that
4 the defendant is a person with mental retardation by a
5 preponderance of the evidence. The court shall consider
6 the existence or absence of documentation and any reasons
7 for the existence or absence of documentation of the
8 manifestation of mental retardation before 18 years of
9 age.

10 (v) The court shall find that the defendant is not
11 eligible for the death penalty if it finds, by a
12 preponderance of the evidence, that the defendant is a
13 person with mental retardation. If the court finds that
14 the defendant is a person with mental retardation, the
15 trial shall proceed as a noncapital trial.

16 (vi) If the court enters an order under subparagraph
17 (v) finding that the defendant is a person with mental
18 retardation, the Commonwealth may appeal as of right from
19 the order under Pa.R.A.P. 311(a)(9) (relating to
20 interlocutory appeals as of right). The taking of an
21 appeal by the Commonwealth under this subparagraph stays
22 the effectiveness of the court's order and any order
23 fixing a date for trial for purposes of Pa.R.Crim.P. 600
24 (relating to prompt trial) and speedy trial rights under
25 the Constitution of the United States and the
26 Constitution of Pennsylvania.

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

30 (viii) The pretrial determination of the court shall

1 not preclude the defendant from raising any legal defense
2 or factual evidence, including the existence of mental
3 retardation, during the trial or the sentencing phase of
4 a capital trial under this section.

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

9 (3) If a defendant has already been sentenced to death
10 as of the effective date of this subsection and postsentence
11 motions are still pending or a direct appeal is still
12 pending, pursuant to rule of court, a defendant may file a
13 motion raising a claim of ineligibility for a death sentence
14 because the defendant is a person with mental retardation.
15 The trial court that imposed the sentence on the defendant
16 shall conduct an evidentiary hearing on the motion and
17 determine whether the defendant is a person with mental
18 retardation.

19 * * *

20 (p) Burden of proof.--

21 (1) A defendant who raises a defense of mental
22 retardation must prove the elements of the definition of
23 "person with mental retardation" in subsection (q) by a
24 preponderance of the evidence.

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

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

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

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

4 (q) Definition.--As used in this section, the term "person
5 with mental retardation" means a person who has a mental
6 disability characterized by significant limitations in
7 intellectual functioning and in adaptive behavior as expressed
8 in conceptual, social and practical adaptive skills, to whom all
9 of the following apply:

10 (1) The person's full-scale intelligence quotient is two
11 standard deviations below the mean as determined by a
12 standardized test generally accepted in the profession and
13 individually administered by a licensed psychologist.

14 (2) The person has significant limitations, as
15 determined by a standardized test generally accepted in the
16 profession and individually administered by a licensed
17 psychologist, in adaptive behavior as manifested by
18 performance which is at least two standard deviations below
19 the mean of:

20 (i) conceptual, social or practical adaptive
21 behavior; or

22 (ii) an overall score on a standardized measure of
23 conceptual, social and practical skills.

24 (3) The person's mental disability was present before 18
25 years of age as demonstrated by contemporaneous written
26 records. However, contemporaneous written records shall not
27 be required where the defendant establishes that such written
28 records are lost or missing or that the defendant was
29 deprived of schooling or other social services contacts in
30 which such contemporaneous records would be created.

1 Section 4. This act shall apply as follows:

2 (1) This act shall apply to persons who are sentenced on
3 or after the effective date of this section.

4 (2) If a defendant who has already been sentenced to
5 death as of the effective date of this section wishes to
6 raise the issue of mental retardation and postsentence
7 motions are still pending, the defendant may, pursuant to
8 court rule, amend the postsentence motions to raise the claim
9 that imposition of the death penalty would have been barred
10 under 42 Pa.C.S. § 9711(e.1) if it had been in effect at the
11 time of the sentencing hearing. The trial court that imposed
12 the sentence on the defendant shall conduct an evidentiary
13 hearing on the motion. Upon a finding that evidence has been
14 presented sufficient to establish that the defendant is a
15 person with mental retardation as provided under 42 Pa.C.S. §
16 9711(e.1), the court shall vacate the sentence of death and
17 shall sentence the defendant to life imprisonment.

18 (3) If a defendant who has already been sentenced to
19 death as of the effective date of this section wishes to
20 raise the issue of mental retardation and direct appeal is
21 still pending, the defendant may, pursuant to rule of court,
22 after disposition of the appeal, raise the issue in a Post
23 Conviction Relief Act petition under 42 Pa.C.S. § 9545(b)
24 after the disposition of the appeal.

25 Section 5. This act shall take effect immediately.