

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 751 Session of  
2007

INTRODUCED BY M. WHITE, FERLO, GORDNER, ERICKSON, COSTA, MELLOW,  
STOUT, C. WILLIAMS, EARLL, O'PAKE, KITCHEN AND BAKER,  
APRIL 9, 2007

REFERRED TO JUDICIARY, APRIL 9, 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. Sections 9543(a)(2) and 9545(b)(1) of Title 42 of  
8 the Pennsylvania Consolidated Statutes are amended to read:

9 § 9543. Eligibility for relief.

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

13 \* \* \*

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

16 (i) A violation of the Constitution of this  
17 Commonwealth or the Constitution or laws of the United  
18 States which, in the circumstances of the particular

1 case, so undermined the truth-determining process that no  
2 reliable adjudication of guilt or innocence could have  
3 taken place.

4 (ii) Ineffective assistance of counsel which, in the  
5 circumstances of the particular case, so undermined the  
6 truth-determining process that no reliable adjudication  
7 of guilt or innocence could have taken place.

8 (iii) A plea of guilty unlawfully induced where the  
9 circumstances make it likely that the inducement caused  
10 the petitioner to plead guilty and the petitioner is  
11 innocent.

12 (iv) The improper obstruction by government  
13 officials of the petitioner's right of appeal where a  
14 meritorious appealable issue existed and was properly  
15 preserved in the trial court.

16 (vi) The unavailability at the time of trial of  
17 exculpatory evidence that has subsequently become  
18 available and would have changed the outcome of the trial  
19 if it had been introduced.

20 (vii) The imposition of a sentence greater than the  
21 lawful maximum.

22 (viii) A proceeding in a tribunal without  
23 jurisdiction.

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

27 \* \* \*

28 § 9545. Jurisdiction and proceedings.

29 \* \* \*

30 (b) Time for filing petition.--

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

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

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

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

18          (iv) the petitioner claims he is a person with  
19 mental retardation as defined in section 9711(q)  
20 (relating to sentencing procedure for murder of the first  
21 degree) and the time for raising that claim has expired  
22 as of the effective date of this subparagraph. Any  
23 petition invoking this exception must be filed within 365  
24 days of the effective date of this subparagraph or of the  
25 conclusion of any appeal pending on the effective date of  
26 this subparagraph from the judgment of sentence or from  
27 the denial of a previous petition under this chapter.

28           \* \* \*

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

1 § 9546. Relief and order.

2 \* \* \*

3 (a.1) Mental retardation.--Upon a finding that evidence has  
4 been presented that is sufficient to establish, by a  
5 preponderance of the evidence, that the petitioner is a person  
6 with mental retardation as defined in section 9711(q) (relating  
7 to sentencing procedure for murder of the first degree), the  
8 court shall direct that the sentence of death be vacated and  
9 that the defendant be sentenced to life imprisonment.

10 \* \* \*

11 § 9711. Sentencing procedure for murder of the first degree.

12 \* \* \*

13 (e.1) Mental retardation.--

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

16 (2) (i) Counsel for the defendant may file a written  
17 motion alleging reasonable cause to believe that the  
18 defendant is a person with mental retardation and  
19 requesting an order directing that a hearing be conducted  
20 prior to trial to determine if the defendant is not  
21 eligible for the death penalty.

22 (ii) The motion shall be filed at least 90 days  
23 before the commencement of the trial or later upon just  
24 cause shown to the court.

25 (iii) The motion shall set forth in particular the  
26 reasons and grounds to support the reasonable cause to  
27 believe that the defendant is a person with mental  
28 retardation.

29 (iv) Upon receipt of the motion that the defendant  
30 is not eligible for the death penalty, the trial court

1 shall conduct a hearing for the presentation of evidence  
2 regarding the defendant's mental retardation. Both the  
3 Commonwealth and the defendant shall have the opportunity  
4 to present evidence, including expert testimony. The  
5 court shall order an expert psychiatric or psychological  
6 examination of the defendant, to be performed by a  
7 licensed psychiatrist or licensed psychologist who is an  
8 expert in the diagnosis and evaluation of mental  
9 retardation.

10 (v) Prior to the time set for the hearing on the  
11 pretrial motion, the Commonwealth shall have the same  
12 rights of discovery as exist under the Pennsylvania Rules  
13 of Criminal Procedure, including, but not limited to, the  
14 production of reports from experts and production of any  
15 information that will further a full, fair and  
16 expeditious resolution of the determination of whether  
17 the defendant is a person with mental retardation.

18 (vi) The court shall find that the defendant is not  
19 eligible for the death penalty, if it finds that the  
20 defendant is a person with mental retardation. If the  
21 court finds that the defendant is eligible for the death  
22 penalty, the trial may proceed as a capital case. If the  
23 court finds that the defendant is a person with mental  
24 retardation, the trial shall proceed as a noncapital  
25 trial.

26 (vii) If the court enters an order under  
27 subparagraph (vi) finding that the defendant is a person  
28 with mental retardation, the Commonwealth may appeal as  
29 of right from the order under Pa.R.A.P. 311 (a)(9)  
30 (relating to interlocutory appeals as of right). The

1       taking of an appeal by the Commonwealth under this  
2       subsection stays the effectiveness of the court's order  
3       and any order fixing a date for trial for purposes of  
4       Pa.R.Crim.P. 600 (relating to prompt trial) and speedy  
5       trial rights under the Constitution of the United States  
6       and the Constitution of Pennsylvania.

7       (viii) The pretrial determination of the court shall  
8       not preclude the defendant from raising any legal defense  
9       or factual evidence including, but not limited to, the  
10      existence of mental retardation during the trial or the  
11      sentencing phase of a capital trial under this section.

12      (ix) The jury shall not be informed of the prior  
13      proceedings or the court's findings concerning the  
14      defendant's motion with respect to the issue of mental  
15      retardation.

16      (3) If a defendant has already been sentenced to death  
17      as of the effective date of this subsection and postsentence  
18      motions are still pending or a direct appeal is still  
19      pending, pursuant to rule of court a defendant may file a  
20      motion raising a claim that he is ineligible for a death  
21      sentence because he is a person with mental retardation. The  
22      trial court that imposed the sentence on the defendant shall  
23      conduct an evidentiary hearing on the motion and determine  
24      whether the defendant is a person with mental retardation as  
25      defined in subsection (q).

26      \* \* \*

27      (p) Burden of proof.--

28      (1) A defendant who raises a claim of mental retardation  
29      must prove the elements of subsection (q) by a preponderance  
30      of the evidence.

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

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

5               (ii) The defendant's previous physicians, teachers  
6               and mental health providers may be contacted by the  
7               parties and current mental health examiners to learn of  
8               the defendant's background relative to the claim of  
9               mental retardation.

10       (q) Definition.--As used in this section, the term "person  
11       with mental retardation" means a person who has a mental  
12       disability characterized by significant limitations in  
13       intellectual functioning and in adaptive behavior as expressed  
14       in conceptual, social and practical adaptive skills, which the  
15       defendant must prove by establishing all of the following  
16       elements by a preponderance of the evidence:

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

21               (2) That he has significant limitations, as determined  
22               by a standardized test generally accepted in the profession  
23               and individually administered by a licensed psychologist, in  
24               adaptive behavior as manifested by performance that is at  
25               least two standard deviations below the mean of:

26                       (i) conceptual, social or practical adaptive  
27                       behavior; or

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

30               (3) That his mental disability was present before the

age of 18 as demonstrated by contemporaneous written records.  
However, contemporaneous written records shall not be  
required where the defendant establishes that such written  
records are lost or missing or that the defendant was  
deprived of schooling or other social services contacts in  
which such contemporaneous records would be created.

Section 3. (a) The amendment or addition of 42 Pa.C.S. §§  
9543(a)(2), 9545(b)(1), 9546 (a.1) and 9711(e.1), (p) and (q)  
shall apply to persons who are sentenced on or after the  
effective date of this act.

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

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



1 appeal.

2 Section 4. This act shall take effect immediately.