

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1996 Session of  
2009

INTRODUCED BY MATZIE, D. COSTA, BELFANTI, SIPTROTH, WAGNER AND  
WHEATLEY, SEPTEMBER 22, 2009

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 22, 2009

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for race in  
3 sentencing in capital cases.

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

6 Section 1. Chapter 97 of Title 42 of the Pennsylvania  
7 Consolidated Statutes is amended by adding a subchapter to read:

8 SUBCHAPTER I

9 RACE IN SENTENCING IN CAPITAL CASES

10 Sec.

11 § 9799.11. Prohibition.

12 § 9799.12. Proof of racial discrimination.

13 § 9799.13. Hearing procedure.

14 § 9799.11. Prohibition.

15 No person shall be sentenced to death or shall be executed  
16 under any judgment sought or obtained on the basis of race.

17 § 9799.12. Proof of racial discrimination.

18 (a) Finding.--A finding that race was the basis of the

1 decision to seek or impose a death sentence may be established  
2 if the court finds race was a significant factor in decisions to  
3 seek or impose the sentence of death in the county, the  
4 prosecutorial district or this Commonwealth at the time the  
5 death sentence was sought or imposed.

6 (b) Evidence.--Evidence relevant to establish a finding that  
7 race was a significant factor in the decision to seek or impose  
8 the sentence of death in this Commonwealth at the time the death  
9 sentence was sought or imposed may include statistical evidence  
10 or other evidence, including, but not limited to, sworn  
11 testimony of attorneys, prosecutors, law enforcement officers,  
12 jurors or other members of the criminal justice system or both.  
13 Regardless of these factors, one or more of the following  
14 applies:

15 (1) Death sentences were sought or imposed significantly  
16 more frequently upon persons of one race than upon persons of  
17 another race.

18 (2) Death sentences were sought or imposed significantly  
19 more frequently as punishment for capital offenses against  
20 persons of one race than as punishment for capital offenses  
21 against persons of another race.

22 (3) Race was a significant factor in decisions to  
23 exercise peremptory challenges during jury selection.  
24 A juror's testimony under this subsection shall be consistent  
25 with Rule 606(b) of the Pennsylvania Rules of Evidence.

26 (c) Burden of proof.--The defendant has the burden of  
27 proving race was a significant factor in a decision to seek or  
28 impose the sentence of death at the time the death sentence was  
29 sought or imposed. The Commonwealth may offer evidence in  
30 rebuttal of the claims or evidence of the defendant. The

1 Commonwealth may rebut a statistical showing of Statewide racial  
2 disparities by introducing statistical evidence or other  
3 evidence demonstrating racial discrimination did not occur at  
4 the time the death penalty was sought or imposed. The court may  
5 consider evidence of a program implemented prior to the  
6 defendant's trial for the purpose of eliminating racial  
7 disparities in its evaluation of whether the Commonwealth has  
8 adequately addressed those disparities.

9 § 9799.13. Hearing procedure.

10 (a) Duties of defendant.--The defendant shall state with  
11 particularity how evidence supports a claim race was a  
12 significant factor in a decision to seek or impose the sentence  
13 of death in this Commonwealth at large at the time the death  
14 sentence was sought or imposed. The claim shall be raised by the  
15 defendant at the pretrial conference or in postconviction  
16 proceedings.

17 (b) Scheduling.--The court shall schedule a hearing on the  
18 claim and shall prescribe a time for the submission of evidence  
19 by both parties.

20 (c) Finding.--If the court finds that race was a significant  
21 factor in decisions to seek or impose the sentence of death in  
22 this Commonwealth at the time the death sentence was sought or  
23 imposed, it shall order that a death sentence shall not be  
24 sought or that the death sentence imposed by the judgment shall  
25 be vacated and the defendant resentenced to life imprisonment  
26 without the possibility of parole.

27 (d) Motion by defendant.--Notwithstanding a time limitation  
28 contained in 42 Pa.C.S. Ch. 95 (relating to post-trial matters),  
29 a defendant may seek relief from the defendant's death sentence  
30 upon the ground that racial considerations played a significant

1 part in the decision to seek or impose a death sentence by  
2 filing a motion seeking relief. The motion shall be filed within  
3 one year of the effective date of this subchapter.

4 (e) Procedures and hearing.--Except as specifically stated  
5 in this section, the procedures and hearing on the motion  
6 seeking relief from a death sentence upon the ground that race  
7 was a significant factor in the decision to seek or impose the  
8 sentence of death in this Commonwealth at the time the death  
9 sentence was sought or imposed shall follow and comply with 42  
10 Pa.C.S. Ch.95.

11 Section 2. This act shall apply retroactively.

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