

COMMITTEE BILL ANALYSIS

Bill: Senate Bill 397

Printer's No.: 380

Sponsor: Senator M. White

Prepared by: Gregg Warner

Synopsis: This bill amends the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, to prohibit the imposition of the death penalty on a person with mental retardation.

Summary: Several sections of the Judicial Code are amended so that a sentence of death shall not be imposed upon any person who establishes by a preponderance of the evidence that he is a person with mental retardation.

Procedure

Section 9711 provides the sentencing procedure for murder of the first degree. The section is amended to include the procedure for determining whether a defendant is a person with mental retardation.

A "person with mental retardation" is defined by the bill as a person who has a mental disability characterized by significant limitations in intellectual functioning and in adaptive behavior as expressed in conceptual, social and practical adaptive skills. The defendant must establish that his full-scale intelligence quotient is two standard deviations below the mean, as determined by a standardized test. The defendant must also show that he has significant limitations, as determined by a standardized test, in adaptive behavior. The mental retardation must have been present before the individual attained 18 years of age as demonstrated by contemporaneous written records unless the records are lost or missing or the defendant was deprived of schooling or social services in which the records would have been created.

Counsel for the defendant in a capital case may file a written motion alleging that there is reasonable cause to believe that the defendant is a person with mental retardation and request an order directing that a hearing be conducted prior to trial to determine if the defendant is not eligible for the death penalty. The motion shall be filed at least 90 days before the commencement of the trial or later upon just cause shown. The court shall conduct a hearing for the presentation of evidence regarding the defendant's mental retardation. Both the Commonwealth and the defendant shall have the opportunity to present evidence. The Commonwealth shall have the opportunity for discovery. The court shall order a psychiatric or psychological examination of the defendant performed by a licensed psychiatrist or licensed psychologist who is an expert in the diagnosis and evaluation of mental retardation.

The defendant shall have the burden of proof by a preponderance of the evidence to show that he is a person with mental retardation. If the court finds that the defendant is a person with mental retardation, the trial shall proceed as a noncapital trial. The Commonwealth has the right to appeal. If the court finds that the defendant is eligible for the death penalty, the trial may proceed as a capital case. The pretrial determination by the court shall not preclude the defendant from raising any legal defense during the trial. The jury shall not be informed of the prior proceedings or the court's findings concerning the defendant's mental retardation.

Defendants who were already sentenced to death

The amendments to section 9711 also provide the procedure for a defendant who has already been sentenced to death and postsentence motions are still pending or a direct appeal is still pending on the effective date of this legislation. The defendant may file a motion raising a claim that he is ineligible for the death sentence because he is a person with mental retardation. The trial court shall conduct a hearing on the motion and determine whether the defendant is a person with mental retardation.

Sections 9543, 9545 and 9546 (provisions of the Post Conviction Relief Act) provide the procedure for a defendant who has been sentenced to death and is in custody awaiting execution. Within 365 days of this legislation's effective date or of the conclusion of any appeal pending on the effective date of this legislation, the defendant may file a petition under the Post Conviction Relief Act seeking appropriate relief from the sentence of death on the grounds that the defendant is a person with mental retardation. The petition may be brought outside the Post Conviction Relief Act's one-year time limit.

If the court finds by a preponderance of the evidence that the petitioner is a person with mental retardation, the court shall vacate the sentence of death and impose a sentence of life imprisonment.

Waiver of confidentiality

A defendant who raises a claim of mental retardation waives confidentiality. The defendant's medical, corrections, military and scholastic records may be reviewed by the parties. The defendant's previous physicians, teachers and mental health providers and current mental health examiners may be contacted by the parties to learn of the defendant's background related to the claim of mental retardation.

Applicability and effective date

Except for the provisions relating to defendants who have already been sentenced to death, this legislation applies to persons who are sentenced on or after the effective date of this act.

This act takes effect immediately.

Background:

Definition

The definition of the term "person with mental retardation" is based on the one in use by the American Association of Mental Retardation and for a finding that the defendant is a person with mental retardation it does not require a specific number such as below-70 on an intelligence quotient test.

Case law

In June 2002 the United States Supreme Court decided Atkins v. Virginia, 536 U.S. 304 (U.S. 2002). The Supreme Court held that executing an individual with mental retardation was unconstitutional but left it to each state to determine how to implement the decision.

In Commonwealth v. Miller, 888 A.2d 624 (Pa. 2005), Pennsylvania Supreme Court Justice Eakin, in a concurring opinion, noted that Atkins was no longer a recent decision and urged the General Assembly to act without further delay.

Legislative history

The Senate has passed this legislation several times. Last session this legislation was introduced as Senate Bill 628. The Senate passed Senate Bill 628 by a vote of 45 to 2. The House Judiciary Committee reported the bill from committee but the House re-referred the bill to the House Appropriations Committee where it remained for the rest of the session.