



The Judiciary Review

Report from the Senate Judiciary Committee (D)

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SENATE CONSIDERS RESTRICTIONS ON DEATH PENALTY FOR DEFENDANTS WITH MENTAL RETARDATION

■ *Senate Bill 751* *Printer's No. 822*

Currently, there are no statutory provisions in Pennsylvania law to specifically address or implement the United States Supreme Court decision in *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242 (2002). That decision announced a per se prohibition on the execution of the mentally retarded. The current capital sentencing statute does not provide a definition of mental retardation or any specific procedures for raising such an issue that would allow such condition to be considered in a capital trial or at sentencing.

The legislation amends chapter 95 and chapter 97 of Title 42 (Judiciary and Judicial Procedure) to provide for the consideration of mental retardation in capital cases both in the prosecution stage and in the post-conviction relief stage.

Amendments to the Post Conviction Relief Act are applicable to all persons currently sentenced to death and to all capital proceedings occurring on or after the effective date of this act. Defendants who have been convicted and sentenced but have post-trial motions or direct appeals pending may, pursuant to rule of court, file a motion with the court alleging reasonable cause to believe that the defendant is mentally retarded as defined in section 9711(q) and ineligible for the death penalty. The legislation authorizes a convicted defendant to file a post conviction relief petition alleging that the defendant is mentally retarded and

was sentenced to death. The post conviction petition alleging mental retardation may be filed within one year of the effective date of this amending act.

Amendments to the death penalty sentencing statute prohibit the imposition of the death penalty for a defendant convicted of first-degree murder who is determined to be mentally retarded and establishes procedures for the consideration of such. The bill requires that the defendant establish mental retardation by a preponderance of the evidence. The court is required to order a psychological or psychiatric examination of the defendant prior to the evidentiary hearing. The discovery rights of the Commonwealth relating to the pre-trial hearing on mental retardation are the same as currently available including the right to experts and production of reports.

To establish that the defendant is a person with mental retardation the following must be proved at the pretrial hearing:

- *The mental retardation manifested in the individual prior to the age of 18.*
- *The person 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 person's full-scale intelligence quotient is two standard deviations below the mean as determined by a standardized test generally accepted in the profession and individually administered.*

■ *The person has significant limitations in adaptive behavior as manifested by performance that is two deviations below the mean of:*

- *Conceptual, social or practical adaptive behavior.*
- *An overall score on a standardized measure of conceptual, social and practical skills.*

At the pre-trial evidentiary hearing, if the court determines that the defendant is a person with mental retardation it shall declare that the person is ineligible for the death penalty and the case shall proceed as a non-capital case. In such a case, if the defendant is convicted of first-degree murder, he may be sentenced to life imprisonment without parole. If the court determines that the person is not a person with mental retardation, the district attorney may certify the case as a capital case with the possibility that either the death penalty or life imprisonment without parole may be imposed. However, in either case, the jury may not be informed of the court's pre-trial determination and it does not preclude the defendant from raising any legal defense in the prosecution of the offense. The act takes effect in 60 days.

Current Status—House of Representatives

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Megan’s Law Amendments

■ **Senate Bill 1136** **Printer’s No. 1485**

The legislation amends chapter 97, subchapter H of Title 42 (Judicial Procedure) commonly referred to as Megan’s Law to establish certain residency restrictions for sexually violent predators and to insure the registration and tracking of all sex offenders.

Section 9795.2 is amended to provide that when a sex offender or sexually violent predator is sentenced to a state or county correctional institution, at the time of intake the institution shall provide the Pennsylvania State Police (PSP) with information necessary for registering the offender or sexually violent predator.

Residency restrictions are included in the subchapter by the addition of section 9795.6. Individuals required to register pursuant to section 9795.1 who are classified as sexually violent predators are prohibited from establishing residency or occupying a residence within 1000 feet of the residence of the SVP’s victim if the victim is a child under the age of 18. Further an SVP shall not establish residence or occupy a residence within 1000 feet of any elementary or secondary school, licensed day care facility or children’s playground.

The Sex Offenders Assessment Board (SOAB) may recommend additional restrictions to the court as part of its assessment of the offender based on the offenders’ mental abnormality or personality disorder that the court may include in its sentencing order. If the victim is under the age of 18 the SOAB may recommend additional residency restrictions to the court as part of its assessment of the offender based on the offenders’ mental abnormality or personality disorder that the court may include in its sentencing order.

An individual who establishes a residence or occupies residential premises in a prohibited area commits a misdemeanor of the first degree punishable by a maximum

term of imprisonment of five years and a maximum fine of \$10,000. An SVP must be notified of the residency restrictions prior to release from incarceration. An SVP who is in violation of the residency restriction on the effective date of this act shall have 30 days from the effective date of this act to establish a new residency. Finally, the Department of Corrections and the Pennsylvania Board of Probation and Parole is required to give the district attorney in the county where the SVP plans to reside ten (10) days notice of the contemplated parole or release of an SVP.

Current Status—Senate Appropriations Committee

■ **Senate Bill 366** **Printer’s No. 404**

The legislation amends Title 23 (Domestic Relations) to provide special consideration to companion animals in divorce proceedings under this title. A companion animal is defined as an animal commonly referred to as a pet or one that has been bought, bred, raised or otherwise acquired in accordance with applicable law for the primary purpose of providing the owner with assistance in relation to a disability, security or companionship rather than for business or agricultural purposes.

Current Status—Senate Calendar-Second Consideration

■ **House Bill 642** **Printer’s No. 2557**

The legislation amends Title 18 (Crimes and Offenses) relating to neglect of a care dependent person and harassment and stalking of a care dependent person. The legislation amends section 2713 (neglect of care-dependent person) by adding an offense graded as a misdemeanor of the second degree to knowingly or recklessly endanger the welfare of a care-dependent person. The offense is committed by failing to do those things necessary to promote the physical welfare of a person to whom the caretaker has a responsibility as a

caregiver, particularly in private homes, not licensed by the Department of Public Welfare, and which houses three or less care-dependent persons. The legislation defines the terms ‘legal entity’ and ‘private care residence’.

Further, the legislation establishes penalties for a violation of this new subsection (a) (3) that is graded as a misdemeanor of the first degree. However, the grading increases to a felony of the third degree if the course of neglectful conduct is classified as ongoing.

Current Status—Senate Calendar-Second Consideration

■ **House Bill 1152** **Printer’s No. 1400**

The legislation amends Title 13 (Commercial Code) to reflect changes needed to adapt to the electronic format for commercial documents. House Bill 1152 would adopt revisions to Division 1 and Division 7 of the Uniform Commercial Code. Minor revisions would also be made to other sections of Title 13 to provide conformity with the updated language of Divisions 1 and 7.

Current Status—Senate Calendar-Third Consideration

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