



The Judiciary Review

Report from the Senate Judiciary Committee (D)

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June 2003

Ban on Execution of Mentally Retarded Clears Senate

■ Senate Bill 26 Printer's No. 968

The legislation establishes procedures to implement the United States Supreme Court decision in *Atkins v. Virginia* prohibiting the imposition of the death penalty for a mentally retarded criminal defendant. The legislation requires a pretrial determination of mental retardation upon proof by a preponderance of the evidence that the defendant is a person with mental retardation. The determination is made by the court after completing a court ordered psychological evaluation and an evidentiary hearing. Mental retardation is defined as:

- An individual with significant sub-average intellectual functioning evidenced by an intelligence quotient of 70 or below on an individually administered I.Q. test.
- Mental retardation manifested in individual prior to the age of 18.
- Mental retardation exists concurrently with impairment in adaptive behavior in two or more adaptive skill areas.

The Commonwealth is provided with immediate pretrial appellate rights following the court's determination. The appeal stays all proceedings without regard to the speedy trial rights of the defendant. If the determination of mental retardation is sustained on appeal, the case proceeds as a non-capital first-degree murder prosecution with life imprisonment without parole as the punishment upon conviction. A determination that the defendant is

not a person with mental retardation authorizes the Commonwealth to proceed with a capital case. In either case, the jury may not be informed of the pre-trial determination concerning mental retardation.

The provisions are applicable to all persons currently sentenced to death and to all capital proceedings occurring on or after the effective date of this act—including post-sentencing motions and direct appeals. Defendants, who are currently convicted and sentenced may raise the issue of mental retardation in a Post Conviction Relief Petition within 365 days of the effective date of the act or the conclusion of any pending direct or collateral appeal.

Current Status: House Judiciary Committee

Commonwealth Court Considers Challenge to Venue Law

On June 18 the Commonwealth Court issued an opinion sustaining and overruling the preliminary objections of the Commonwealth in *North Central Pennsylvania Trial Lawyers Association v. Weaver*. There, petitioners alleged that Act 127 of 2002, providing for venue in medical malpractice cases, was unconstitutional as violative of the Supreme Court's plenary authority under Article V, section 10(c) and various sections of Article III of the Pennsylvania Constitution. The Commonwealth Court overruled the Preliminary Objections of the Commonwealth relating to the petitioner's Article V, section 10(c) claims.

Criminal Matters

■ Senate Bill 733 Printer's No. 851

The legislation amends Title 18 to further provide for the offense of aggravated assault. The legislation adds a member of the armed forces of the United States to the list of officers, agents, employees and other agents at § 2702 (c).

Current Status: Senate Calendar—Third Consideration

■ House Bill 1006 Printer's No. 1182

The legislation amends Title 18 to further provide for the offense of aggravated assault. The legislation adds a transportation security, administration airport security, screener and municipal employees to the list of officers, agents, employees and other agents at § 2702 (c).

Current Status: Senate Calendar—Second Consideration

■ Senate Bill 699 Printer's No. 809

The legislation amends section 1728.3 of the Judicial Code to provide for the imposition and use of a crime lab user's fee. The legislation authorizes the Court of Common Pleas to impose a laboratory user's fee where forensic laboratory services are performed either by the Pennsylvania State Police or a crime lab in a first or second class county for the investigation of any federal, state or municipal crime or any civil action arising from the investigation of the crime.

Current Status: Senate Appropriations Committee

Civil Matters

■ Senate Bill 684 Printer's No. 787

The legislation establishes the Genetic Testing Confidentiality Act. The act provides that genetic tests may not be obtained without the person's informed consent which must include an explanation of the tests to be performed, purposes, potential uses, limitations and interpretations of the tests to be performed. Prior informed consent is not required in certain limited circumstances including emergency situations. Further, the legislation provides for the use, disclosure and dissemination of such confidential genetic information and provides a civil cause of action for the unauthorized disclosure. Each disclosure is considered a separate act for purposes of civil liability. The legislation requires individuals and institutions to establish written procedures for maintaining confidentiality and for disclosure of records within six months of the effective date of this act.

*Current Status: Senate Calendar—
Second Consideration*

■ Senate Bill 711 Printer's No. 810

This bill amends the Judicial Code to allow a crime victim or other eligible person to recover all reasonable litigation costs when bringing a civil action under Pennsylvania's "Son of Sam Law."

*Current Status: Senate Calendar—
Third Consideration*

■ House Bill 898 Printer's No. 2094

This legislation establishes the Fraud Against Taxpayers Act, similar to the federal False Claims Act, to prohibit false claims against the Commonwealth and its political subdivisions and providing for civil suits to remedy such claims. A person who makes a false claim is liable to the Commonwealth or a political subdivision for three times

the amount of damages sustained because of the false claim or three times the amount of interest accumulated on those damages calculated at a rate of prime plus 2%, whichever is greater. The person making the false claim is also liable for the costs of the legal action to recover the penalties or damages, and for a civil penalty of \$5,000 to \$10,000 for each false claim. Reduced assessments may be imposed by the court at not more than two times the amount of damages plus the costs of the prosecution and the interest accumulated under limited circumstances.

*Current Status: Senate Calendar—
Second Consideration*

■ House Bill 89 Printer's No. 108

The bill amends section 2102 of Title 20 to provide that any compensation awarded pursuant to the victim compensation fund established under the Air Transportation Safety and System Stabilization Act as a result of the person's death caused

by the September 11, 2001 terrorists attacks, is not subject to division if there is a surviving parent of the victim/decedent.

*Current Status: Senate Calendar—
Second Consideration*

Bills Previously Reported in the Judiciary Review.

■ Senate Bill 95 Printer's No. 821

Providing omnibus amendments to divorce actions.

*Previously Reported—May 2003
Current status: House Judiciary
Committee*

■ Senate Bill 521 Printer's No. 962

Providing for assessment and commitment of sexually violent delinquent children and young adults.

*Previously Reported—May 2003
Current status: House Judiciary
Committee*



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