



SPONSOR: Sen. Buckson & Rep. D. Short
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DELAWARE STATE SENATE
152nd GENERAL ASSEMBLY

SENATE BILL NO. 118

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE EXTREME CRIMES
PROTECTION ACT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 4209, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4209. Punishment, procedure for determining punishment, review of punishment and method of punishment for
4 first-degree murder committed by adult offenders.

5 (a) *Punishment for first-degree murder.* —

6 (1) ~~Any~~ Except as provided by paragraph (a)(2) of this section, any person who is convicted of first-degree
7 murder for an offense that was committed after the person had reached the person's eighteenth birthday ~~shall~~ may be
8 punished by death or by imprisonment for the remainder of the person's natural life without benefit of probation or
9 parole or any other ~~reduction, said~~ reduction. The penalty authorized by this paragraph (a)(1) is to be determined in
10 accordance with this section.

11 (2) A person who is convicted by a verdict of "guilty, but mentally ill", under § 401 of this title, may not be
12 punished by death.

13 (b) *Separate hearing on issue of punishment for first-degree murder.* —

14 (1) ~~Upon~~ On a conviction of guilt of a defendant of first-degree murder, the Superior Court shall conduct a
15 separate hearing to determine whether the defendant should be sentenced to death or to life imprisonment without
16 benefit of probation or parole as authorized by subsection (a) of this section.

17 (2) If the defendant was convicted of first-degree murder by a jury, ~~this hearing shall~~ the hearing required
18 under paragraph (b)(1) of this section is to be conducted by the trial judge before that jury as soon as practicable after
19 the return of the verdict of guilty.

20 a. Alternate jurors shall may not be excused from the case ~~prior to~~ before submission of the issue of guilt
21 to the trial jury and may, but need not be, separately sequestered until a verdict on guilt is entered. If the verdict of

22 the trial jury is guilty of first-degree murder ~~said alternates shall~~ the alternate jurors are to sit as alternate jurors on
23 the issue of punishment.

24 b. If, for any reason satisfactory to the Court, ~~any a~~ a member of the trial jury is excused from participation
25 in the hearing on punishment, the trial judge shall replace ~~such juror or jurors with alternate juror or jurors. the~~
26 juror with an alternate juror.

27 c. If a jury of 12 jurors cannot participate in the hearing a separate and new jury, plus alternates, shall
28 must be selected for the hearing in accordance with the applicable rules of the Superior Court and laws of
29 Delaware, unless the defendant ~~or defendants~~ and the State stipulate to the use of a lesser number of jurors.

30 ~~(2)(3)~~ If the defendant was convicted of first-degree murder by the Court, after a trial and waiver of a jury trial
31 or after a plea of guilty or nolo contendere, ~~the hearing shall~~ the hearing required under paragraph (b)(1) of this section
32 is to be conducted by the trial judge before a jury, plus alternates, empaneled for that purpose and selected in
33 accordance with the applicable rules of the Superior Court and laws of Delaware, unless ~~said~~ the jury is waived by the
34 State and the defendant in which case the hearing ~~shall is to~~ be conducted, if possible, by and before the trial judge who
35 entered the finding of guilty or accepted the plea of guilty or nolo contendere.

36 (c) Procedure at punishment hearing. —

37 (1) The sole determination for the jury or judge at the hearing ~~provided for by this section shall be required~~
38 under subsection (b)(1) of this section is the penalty to be imposed upon on the defendant for the conviction of first-
39 degree murder.

40 a. At the hearing, evidence may be presented as to any matter that the Court deems relevant and
41 admissible to the penalty to be imposed.

42 b. The evidence ~~shall must~~ include matters relating to any mitigating circumstance and to any aggravating
43 circumstance, ~~including, but not limited to, those~~ including the aggravating circumstances ~~enumerated in under~~
44 subsection (e) of this section.

45 c. Notice in writing of any aggravating circumstances and any mitigating circumstances ~~shall must~~ be
46 given to the other side party by the party seeking to introduce evidence of ~~such~~ the circumstances.

47 d. ~~prior to the punishment hearing,~~ The notice required under paragraph (c)(1)c. of this section must be
48 provided before the hearing required under subsection (b)(1) of this section, and after the verdict on guilt, unless ~~in~~
49 ~~the discretion of the Court such advance notice is dispensed with as~~ the Court deems advance notice impracticable.

50 e. ~~The defendant's record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere~~
51 ~~of the defendant contendere, or the absence of any such prior criminal convictions and pleas shall also be~~ pleas, is
52 admissible in evidence.

53 (2) ~~At the hearing required under subsection (b)(1) of this section,~~ the Court shall permit argument by the
54 ~~State, the defendant and/or State and the defendant or~~ the defendant's counsel, on the punishment to be imposed. ~~Such~~
55 The argument shall is to consist of opening statements by each, unless waived, opening summation by the State,
56 rebuttal summation by the defendant ~~and/or or~~ the defendant's ~~counsel~~ counsel, and closing summation by the State.

57 (3)a. ~~Upon~~ On the conclusion of the evidence and ~~arguments~~ arguments, the judge shall give the jury
58 appropriate instructions and the jury shall retire to deliberate and report to the Court an answer to all of the following
59 questions:

60 1. Whether the jury unanimously finds that the evidence shows ~~beyond a reasonable doubt beyond all~~
61 doubt the existence of at least 1 aggravating circumstance ~~as enumerated in~~ under subsection (e) of this
62 ~~section; and~~ section.

63 2. As to each aggravating circumstance alleged by the State under paragraph (c)(1) of this section,
64 whether the jury unanimously finds that the evidence shows beyond all doubt the existence of the aggravating
65 circumstance.

66 ~~2.3. Whether, by a preponderance of the evidence,~~ Whether the jury unanimously finds, beyond all
67 doubt, after weighing all relevant evidence in aggravation or mitigation which bear ~~upon~~ on the particular
68 circumstances or details of the commission of the offense and the character and propensities of the ~~offender,~~
69 defendant, the aggravating circumstances found to exist beyond all doubt outweigh beyond all doubt the
70 mitigating circumstances found to exist. In weighing all relevant evidence in aggravation or mitigation, the
71 jury may not give any weight to an aggravating circumstance unless the jury unanimously determines that the
72 evidence shows the existence of the aggravating circumstance beyond all doubt. The jury may give the
73 appropriate weight to a mitigating circumstance alleged by the defendant regardless of whether the existence
74 of the mitigating circumstance has been proven beyond all doubt.

75 b.1. The jury shall report to the Court its finding on the question of the existence of ~~statutory aggravating~~
76 ~~circumstances as enumerated in subsection (e) of this section. In order to find the existence of a statutory~~
77 ~~aggravating circumstance as enumerated in subsection (e) of this section beyond a reasonable doubt, each~~
78 aggravating circumstance alleged by the State under paragraph (c)(1) of this section. To find the existence of an
79 aggravating circumstance alleged by the State beyond all doubt, the jury must be unanimous as to the existence of

80 that statutory aggravating circumstance. ~~As to any statutory aggravating circumstances enumerated in subsection~~
81 ~~(e) of this section which were alleged but for which the jury is not unanimous, the jury shall report the number of~~
82 ~~the affirmative and negative votes on each such circumstance.~~

83 2. ~~The jury shall report to the Court by the number of the affirmative and negative votes its~~
84 ~~recommendation on the question as to whether, by a preponderance of the evidence, after weighing all~~
85 ~~relevant evidence in aggravation or mitigation which bear upon the particular circumstances or details of the~~
86 ~~commission of the offense and the character and propensities of the offender, the aggravating circumstances~~
87 ~~found to exist outweigh the mitigating circumstances found to exist. To find beyond all doubt that, after~~
88 ~~weighing all relevant evidence in aggravation or mitigation, which bear on the particular circumstances or~~
89 ~~details of the commission of the offense and the character and propensities of the defendant, the aggravating~~
90 ~~circumstances found to exist outweigh beyond all doubt the mitigating circumstances found to exist, the jury~~
91 ~~must be unanimous in that conclusion.~~

92 (4) ~~In the instructions to the jury the Court shall include instructions for it to weigh and consider any~~
93 ~~mitigating circumstances or aggravating circumstances and any of the statutory aggravating circumstances set forth in~~
94 ~~subsection (e) of this section which may be raised by the evidence. The jury shall be instructed to weigh any mitigating~~
95 ~~factors against the aggravating factors. that, in connection with a finding beyond all doubt, even after finding the~~
96 ~~defendant guilty of first-degree murder beyond a reasonable doubt it is possible that a juror may still harbor residual or~~
97 ~~lingering doubt as to the defendant's guilt and that the existence of such doubt, whether held individually or~~
98 ~~collectively, is sufficient to preclude the imposition of the death penalty.~~

99 (d) *Determination of sentence.* —

100 (1)a. ~~If a jury is impaneled, the Court shall discharge that jury after it has reported its findings and~~
101 ~~recommendation to the Court. A sentence of death shall may not be imposed unless the jury, if a jury is impaneled, first~~
102 ~~finds all of the following unanimously and ~~beyond a reasonable doubt~~ beyond all doubt:~~

103 1. ~~the~~ The existence of at least 1 statutory aggravating circumstance as ~~enumerated in~~ under
104 subsection (e) of this section.

105 2. After weighing all relevant evidence in aggravation or mitigation which bears on the particular
106 circumstances or details of the commission of the offense and the character and propensities of the defendant,
107 that the aggravating circumstances unanimously found to exist beyond all doubt outweigh beyond all doubt
108 the mitigating circumstances found to exist.

109 b. If a jury is not impaneled, a sentence of death shall ~~may~~ not be imposed unless the Court ~~does~~ all of the
110 following:

111 1. ~~finds beyond a reasonable doubt~~ Finds beyond all doubt the existence of at least 1 statutory
112 aggravating circumstance as ~~enumerated in~~ under subsection (e) of this section.

113 2. Makes a specific finding as to each of the aggravating circumstances alleged by the State as
114 required by paragraph (c)(1) of this section, whether the evidence shows beyond all doubt the existence of the
115 aggravating circumstance.

116 3. Finds beyond all doubt after weighing all relevant evidence in aggravation or mitigation which
117 bears on the particular circumstances or details of the commission of the offense and the character and
118 propensities of the defendant, that the aggravating circumstances found to exist beyond all doubt outweigh
119 beyond all doubt the mitigating circumstances found to exist.

120 c. If a jury has been impaneled and if the existence of at least 1 statutory aggravating circumstance as
121 enumerated in subsection (e) of this section has been found beyond a reasonable doubt by the jury, the Court, after
122 considering the findings and recommendation of the jury and without hearing or reviewing any additional
123 evidence, shall impose a sentence of death if the Court finds by a preponderance of the evidence, after weighing all
124 relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the
125 commission of the offense and the character and propensities of the offender, that the aggravating circumstances
126 found by the Court to exist outweigh the mitigating circumstances found by the Court to exist. The jury's
127 recommendation concerning whether the aggravating circumstances found to exist outweigh the mitigating
128 circumstances found to exist shall be given such consideration as deemed appropriate by the Court in light of the
129 particular circumstances or details of the commission of the offense and the character and propensities of the
130 offender as found to exist by the Court. The jury's recommendation shall not be binding upon the Court. If a jury
131 makes the finding required under paragraph (d)(1)a. of this section, the Court may impose a sentence of death.

132 d. If a jury has not been impaneled and if the existence of at least 1 statutory aggravating circumstance as
133 enumerated in subsection (e) of this section has been found beyond a reasonable doubt by the Court, it shall
134 impose a sentence of death if the Court finds by a preponderance of the evidence, after weighing all relevant
135 evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission
136 of the offense and the character and propensities of the offender, that the aggravating circumstances found by the
137 Court to exist outweigh the mitigating circumstances found by the Court to exist. If a Court makes the finding
138 required under paragraph (d)(1)b. of this section, the Court may impose a sentence of death.

139 (2) ~~Otherwise,~~ If a sentence of death is not imposed under paragraph (d)(1) of this section, the Court shall
140 impose a sentence of imprisonment for the remainder of the defendant's natural life without benefit of probation or
141 parole or any other reduction.

142 (3) a. Not later than 90 days before trial the defendant may file a motion with the Court alleging that the
143 defendant had ~~a serious intellectual developmental disorder~~ an intellectual disability at the time the crime was
144 committed. ~~Upon~~ On the filing of the motion, the Court shall order an evaluation of the defendant for the purpose of
145 providing evidence of any of the following:

- 146 1. Whether the defendant has a significantly subaverage level of intellectual ~~functioning;~~ functioning.
- 147 2. Whether the defendant's adaptive behavior is substantially ~~impaired;~~ and impaired.
- 148 3. Whether the conditions described in paragraphs ~~(d)(1) and (d)(2)~~ (d)(3)a.1. and (d)(3)a.2 of this
149 section existed before the defendant became 18 years of age.

150 b. During the hearing authorized by subsections (b) and (c) of this section, the defendant and the State
151 may present relevant and admissible evidence on the issue of the defendant's alleged ~~serious intellectual~~
152 ~~developmental disorder,~~ intellectual disability, or in rebuttal thereof. The defendant ~~shall have~~ has the burden of
153 proof to demonstrate by clear and convincing evidence that the defendant had ~~a serious intellectual developmental~~
154 ~~disorder~~ an intellectual disability at the time of the offense. Evidence presented during the hearing ~~shall~~ must be
155 considered by the jury in making its ~~recommendation to the Court pursuant to~~ determination under paragraph
156 (c)(3) of this section as to whether the aggravating circumstances unanimously found to exist beyond all doubt
157 outweigh beyond all doubt the mitigating circumstances found to exist. The jury ~~shall~~ may not make any
158 ~~recommendation to the Court~~ determination on the question of whether the defendant had ~~a serious intellectual~~
159 ~~developmental disorder~~ an intellectual disability at the time the crime was committed.

160 c. If the defendant files a motion ~~pursuant to~~ under this paragraph (d)(3) claiming he or she had a serious
161 intellectual developmental disorder at the time the crime was committed, the Court, in determining the sentence to
162 be imposed, shall make specific findings as to the existence of ~~a serious intellectual developmental disorder~~ an
163 intellectual disability at the time the crime was committed. ~~If~~ Notwithstanding any other provision of this section
164 to the contrary, if the Court finds that the defendant has established by clear and convincing evidence that the
165 defendant had ~~a serious intellectual developmental disorder~~ an intellectual disability at the time the crime was
166 ~~committed, notwithstanding any other provision of this section to the contrary,~~ committed, the Court shall impose
167 a sentence of imprisonment for the remainder of the defendant's natural life without benefit of probation or parole
168 or any other reduction. If the Court determines that the defendant has failed to establish by clear and convincing

169 evidence that the defendant had ~~a serious intellectual developmental disorder~~ an intellectual disability at the time
170 the crime was committed, the Court shall proceed to determine the sentence to be imposed ~~pursuant to the~~
171 ~~provisions of~~ under this subsection. Evidence on the question of the defendant's alleged ~~serious intellectual~~
172 ~~developmental disorder~~ intellectual disability presented during the hearing ~~shall~~ must be considered by the Court
173 in its determination ~~pursuant to~~ under this section as to whether the aggravating circumstances found to exist
174 beyond all doubt outweigh beyond all doubt the mitigating circumstances found to exist.

175 d. ~~When used in this paragraph:~~ For purposes of this paragraph (d)(3):

176 1. "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards
177 of personal independence expected of the individual's age group, sociocultural ~~background~~ background, and
178 community setting, as evidenced by significant limitations in not less than 2 of the following adaptive skill
179 areas: communication, self-care, home living, social skills, use of community resources, self-direction,
180 functional academic skills, work, leisure, ~~health or safety;~~ health, or safety.

181 2. ~~"Serious intellectual developmental disorder"~~ "Intellectual disability" means that an individual has
182 significantly subaverage intellectual functioning that exists concurrently with substantial deficits in adaptive
183 behavior and both the significantly subaverage intellectual functioning and the deficits in adaptive behavior
184 were manifested before the individual became 18 years of ~~age;~~ and age.

185 3. "Significantly subaverage intellectual functioning" means ~~an intelligent quotient of 70 or below~~
186 ~~obtained by assessment with 1 or more of the standardized,~~ performance that is 2 or more standard deviations
187 from the mean score, and accounting for the standard error of measurement on standardized, individually
188 administered general intelligence tests developed for the purpose of assessing intellectual functioning.

189 (4) After the Court determines the sentence to be imposed, ~~it~~ the Court shall set forth in writing the findings
190 ~~upon on~~ on which ~~its~~ the Court's sentence is based. ~~If a jury is impaneled, and if the Court's decision as to whether the~~
191 ~~aggravating circumstances found to exist outweigh the mitigating circumstances found to exist differs from the jury's~~
192 ~~recommended finding;~~ If a jury is impaneled and unanimously concludes that the aggravating circumstances
193 unanimously found beyond all doubt to exist outweigh beyond all doubt the mitigating circumstances found to exist
194 and the Court imposes a sentence of imprisonment for the remainder of the person's natural life without benefit of
195 probation or parole or any other reduction, the Court shall also state with specificity the reasons for ~~its~~ the Court's
196 decision not to accept the jury's recommendation.

197 (e) *Aggravating circumstances.* —

198 (1) ~~In order for~~ For a sentence of death to be imposed, the jury, unanimously, or the judge where applicable,
199 must find that the evidence established ~~beyond a reasonable doubt~~ beyond all doubt the existence of at least 1 of the
200 following aggravating ~~circumstances which shall apply~~ circumstances, which applies with equal force to accomplices
201 convicted of ~~such a first-degree~~ murder:

202 a. The murder was committed by a person in, or who has escaped from, the custody of a law-enforcement
203 officer or place of confinement.

204 b. The murder was committed for the purpose of avoiding or preventing an arrest or for the purpose of
205 effecting an escape from ~~eustody~~. the custody of a law-enforcement officer or a place of confinement.

206 c. The murder was committed against any law-enforcement officer, corrections employee, firefighter,
207 paramedic, emergency medical technician, fire ~~marshal~~ marshal, or fire police officer while such victim was
208 engaged in the performance of official duties.

209 d. The murder was committed against a any currently-serving or former Governor, Lieutenant-Governor,
210 member of the General Assembly, judicial officer, a former judicial officer, Attorney General, former Attorney
211 General, or Assistant or Deputy Attorney General or former Assistant or Deputy Attorney General, State Detective
212 or former State Detective, Special Investigator or former Special Investigator, during, or because of, the exercise
213 of an the victim's official duty.

214 e. The murder was committed against a person who was held or otherwise detained by the defendant as a
215 shield or hostage. shield or hostage or for ransom or reward.

216 f. ~~The murder was committed against a person who was held or detained by the defendant for ransom or~~
217 ~~reward. [Repealed.]~~

218 g. The murder was committed against a person who was a witness to a crime or who had been a
219 nongovernmental informant or had otherwise provided any investigative, law-enforcement, or police agency with
220 information concerning criminal activity and who was killed for the purpose of preventing the ~~witness's~~
221 individual's appearance or testimony in any grand jury, eriminal criminal, or civil proceeding involving ~~such the~~
222 crime, or in retaliation for the witness's individual's appearance or testimony in any grand jury, eriminal criminal,
223 or civil proceeding involving such crime. the crime or for the individual's activities as a nongovernmental
224 informant or in providing information concerning criminal activity to an investigative, law-enforcement, or police
225 agency.

226 h. ~~The defendant paid or was paid by another person or had agreed to pay or be paid by another person or~~
227 ~~had conspired to pay or be paid by another person for the killing of the victim. [Repealed.]~~

228 i. The defendant was previously convicted of another murder or manslaughter or of a felony involving the
229 ~~use of, or threat of, force or violence upon another person.~~ any degree of rape or kidnapping or the intentional or
230 reckless infliction of serious physical injury on another person by means of a firearm or other deadly weapon, or
231 an attempt to commit a crime under this paragraph (e)(1)i.

232 j. The murder was committed while the defendant was engaged in the commission of, or attempt to
233 commit, or flight after committing or attempting to commit any degree of rape, ~~unlawful sexual intercourse, arson,~~
234 kidnapping, robbery, sodomy, burglary, the burglary of a dwelling, or home invasion.

235 k. The defendant's course of conduct resulted in the deaths of 2 or more persons where the deaths are a
236 probable consequence of the defendant's conduct.

237 l. The murder was outrageously or wantonly vile, ~~horrible~~ horrible, or inhuman in that it involved torture,
238 depravity of mind, use of an explosive ~~device or poison~~ device, weapon of mass destruction, or poison, or the
239 defendant used such means on the victim ~~prior to~~ before murdering the victim.

240 m. The defendant caused or directed another to commit murder or committed murder as an agent or
241 employee of another person.

242 n. The defendant was under a sentence of life imprisonment, whether for natural life or otherwise, at the
243 time of the commission of the murder.

244 o. ~~The murder was committed for pecuniary gain.~~ [Repealed.]

245 p. The victim was pregnant.

246 q. The victim was particularly vulnerable due to a severe intellectual, ~~mental~~ mental, or physical
247 disability.

248 r. ~~The victim was 62 years of age or older.~~ [Repealed.]

249 s. ~~The victim was a child 14 years of age or younger, and the murder was committed by an individual~~
250 ~~who is at least 4 years older than the victim.~~ [Repealed.]

251 t. ~~At the time of the killing, the victim was or had been a nongovernmental informant or had otherwise~~
252 ~~provided any investigative, law enforcement or police agency with information concerning criminal activity, and~~
253 ~~the killing was in retaliation for the victim's activities as a nongovernmental informant or in providing information~~
254 ~~concerning criminal activity to an investigative, law enforcement or police agency.~~ [Repealed.]

255 u. The murder was premeditated and the result of substantial planning. Such planning must be as to the
256 commission of the murder itself and not simply as to the commission or attempted commission of any underlying
257 felony.

258 v. The murder was committed for the purpose of interfering with the victim's free exercise or enjoyment
259 of any right, ~~privilege~~ privilege, or immunity protected by the First Amendment to the United States Constitution,
260 or because the victim has exercised or enjoyed ~~said~~ those rights, privileges, or immunities, or because of the
261 victim's race, religion, color, disability, national ~~origin~~ origin, or ancestry.

262 (2) ~~In any case where~~ If the defendant has been convicted of murder in the first degree in violation of ~~any~~
263 ~~provision of § 636(a)(2)-(6)~~ § 636(a)(2) through (6) of this title, that conviction ~~shall establish~~ establishes the existence
264 of a ~~statutory~~ an aggravating circumstance and the jury, or judge where appropriate, ~~shall~~ is to be so instructed. This
265 ~~provision shall~~ paragraph (e)(2) does not preclude the jury, or judge where applicable, from considering and finding the
266 ~~statutory~~ aggravating circumstances ~~listed in~~ under this subsection and any other aggravating circumstances established
267 by the ~~evidence~~. evidence beyond all doubt.

268 (f) *Method and imposition of sentence of death.* —

269 (1)a. The imposition of a sentence of death ~~shall be upon such~~ is to be on terms and conditions as ~~the trial~~
270 ~~court may impose in its~~ imposed by the Court in the Court's sentence, including the place, the number of witnesses
271 ~~which shall not to~~ exceed 10, and conditions of ~~privacy~~, privacy.

272 ~~b. and shall~~ The imposition of a sentence of death must occur between the hours of 12:01 a.m. and 3:00
273 a.m. on the date set by the ~~trial court~~. Court.

274 ~~c.~~ The trial court Court shall permit ~~one~~ 1 adult member of the immediate family of the victim, as defined
275 in § 4350(e) of this title, or the victim's designee, to witness the ~~execution~~ imposition of a sentence of death
276 ~~pursuant to~~ under the rules of the ~~court~~, Court, if the family provides reasonable notice of its desire to be so
277 represented.

278 ~~d. Punishment of death shall, in all cases,~~ The imposition of a sentence of death must be inflicted by
279 intravenous injection of a substance ~~or substances~~ in a ~~lethal~~ quantity sufficient to cause death and until ~~such~~ the
280 person sentenced to death is ~~dead~~, dead.

281 ~~e. and such execution procedure shall be determined and supervised by the~~ The Commissioner of the
282 Department of ~~Correction~~. Correction shall determine and supervise the procedure for the imposition of a sentence
283 of death.

284 ~~f.~~ The administration of the required lethal substance ~~or substances~~ required by this section ~~shall not be~~
285 ~~construed to be~~ is not the practice of medicine and any pharmacist or pharmaceutical supplier is authorized to
286 dispense drugs to the Commissioner or the Commissioner's designee, without prescription, for carrying out ~~the~~
287 ~~provisions of this section, notwithstanding any other provision of law.~~

288 ~~g. Such sentence~~ The imposition of a sentence of death may not be carried out until final review ~~thereof~~
289 of the sentence is had by the Delaware Supreme Court ~~as provided for in~~ under subsection (g) of this section.

290 h. The Court or the Governor may suspend the ~~execution~~ imposition of ~~the a~~ a sentence of death until a
291 later date to be specified, solely to permit completion of the process of judicial review of the conviction.

292 (2)a. If the ~~execution of the sentence of death as provided above~~ method of imposing a sentence of death
293 under paragraph (f)(1) of this section is held unconstitutional by a court of competent jurisdiction, ~~then punishment of~~
294 death shall, in all cases, the imposition of the sentence is to be inflicted by hanging by the neck.

295 b. The imposition of a sentence of death ~~shall be upon such~~ is to be on terms and conditions ~~as the trial~~
296 court may impose in its imposed by the Court in the Court's sentence, including the place, the number of ~~witnesses~~
297 witnesses not to exceed 10, and conditions of privacy.

298 ~~c. Such sentence~~ The imposition of a sentence of death may not be carried out until final review ~~thereof~~
299 of the sentence is had by the Delaware Supreme Court ~~as provided in~~ under subsection (g) of this section.

300 d. The Court or the Governor may suspend the ~~execution~~ imposition of ~~the a~~ a sentence until a later date to
301 be specified, solely to permit completion of the process of judicial review of the conviction.

302 (g) Automatic review of death penalty by Delaware Supreme Court. —

303 (1)a. Whenever the death penalty is imposed, and ~~upon~~ on the judgment becoming final in the ~~trial court,~~
304 Court, the recommendation Delaware Supreme Court shall review the determination on and imposition of that penalty
305 ~~shall be reviewed on the record by the Delaware Supreme Court.~~ on the record.

306 b. Absent an appeal having been taken by the defendant ~~upon~~ on the expiration of 30 days after the
307 sentence of death has been imposed, the ~~Clerk~~ Prothonotary of the Superior Court shall require a complete
308 transcript of the punishment hearing under subsection (c) of this section to be prepared ~~promptly and within~~
309 promptly.

310 c. Within 10 days after receipt of ~~that~~ the transcript the clerk shall transmit the transcript, together with a
311 notice prepared by the ~~clerk,~~ Prothonotary to the Delaware Supreme Court.

312 d. The notice ~~shall~~ under paragraph (g)(1)c. of this section must set forth the title and docket number of
313 the case, the name of the defendant, the name and address of any ~~attorney~~ attorney for the defendant and State, and
314 a narrative statement of the judgment, the ~~offense~~ offense, and the punishment prescribed.

315 e. The Court shall, if necessary, appoint counsel to respond to the State's positions in the review
316 proceedings.

317 (2) The Supreme Court shall limit its review under this section to the ~~recommendation~~ determination on and
318 imposition of the penalty of death and shall ~~determine:~~ determine all of the following:

319 a. Whether, considering the totality of evidence in aggravation and mitigation which bears ~~upon~~ on the
320 particular circumstances or details of the offense and the character and propensities of the ~~offender,~~ defendant, the
321 death penalty was ~~either~~ arbitrarily or capriciously imposed or recommended, or disproportionate to the penalty
322 recommended or imposed in similar cases arising under this section.

323 b. Whether the evidence supports ~~jury's or the judge's finding of a statutory~~ the unanimous finding by the
324 jury or the judge's finding of an aggravating circumstance ~~as enumerated in~~ beyond all doubt under subsection (e)
325 of this section and, where applicable, § ~~636(a)(2)-(6)~~ 636(a)(2) through (6) of this ~~title.~~ beyond a reasonable
326 doubt.

327 (3) The Supreme Court shall permit the defendant and the State to submit briefs within the time provided by
328 ~~the Court,~~ Court and shall permit them ~~the defendant and the State~~ to present oral argument to the Court.

329 (4) With regard to review of the sentence ~~in accordance with~~ under this subsection, the Court shall:

330 a. Affirm the sentence of death.

331 b. Set aside the sentence of death and remand for correction of any errors occurring during the hearing
332 and for imposition of the appropriate penalty. ~~Such errors shall~~ The errors do not affect the determination of guilt
333 and ~~shall~~ do not preclude the reimposition of death where appropriately determined after a new hearing on
334 punishment.

335 c. Set forth ~~its~~ the Court's findings as to the reasons for ~~its~~ the Court's actions.

336 (h) *Ordinary review not affected by section.* — Any error in the guilt phase of the trial may be raised as provided
337 by law and rules of court and ~~shall be~~ is in addition to the review of punishment provided by this section.

338 Section 2. This Act is known as “The Extreme Crimes Protection Act”.

SYNOPSIS

This Act revises Delaware's death penalty statute to ensure its compliance with the United States Constitution, as interpreted by the United States Supreme Court in *Hurst v. Florida*, and by the Delaware Supreme Court in *Rauf v. State*. In accordance with these cases, this Act requires that before a death sentence can be imposed, a jury, unless waived by the defendant, must first unanimously determine all of the following:

- (1) That at least 1 aggravating circumstance exists.
- (2) Which, if any, statutory and non-statutory aggravating circumstances alleged by the State exist.
- (3) Whether all of the aggravating circumstances found to exist outweigh all of the mitigating circumstances found to exist.

This Act requires that the jury or Court determining the appropriate sentence must make the required findings beyond all doubt. This heightened standard is greater than the usual criminal standard of beyond a reasonable doubt. The beyond all doubt standard recognizes that even after finding the defendant guilty of first-degree murder beyond a reasonable doubt it is possible that a juror or the Court may still harbor residual or lingering doubt as to the defendant's

guilt and that the existence of such doubt, whether held individually or collectively by a jury, or by a Court, is sufficient to preclude the imposition of the death penalty.

This Act revises Delaware's death penalty statute to comply with the United States Supreme Court's holding in *Hall v. Florida*, interpreting standards set forth in *Atkins v. Virginia*. This Act adopts the term "intellectual disability" used by the United States Supreme Court.

This Act recognizes developing trends in death penalty jurisprudence and the American Bar Association's Resolution 122A (2006), of August 8, 2006, by prohibiting the imposition of the death penalty upon a person who has been found "guilty, but mentally ill", as defined by § 401 of Title 11 of the Delaware Code.

This Act narrows the scope of some of the most commonly used statutory aggravating circumstances - those applicable in cases involving defendants with previous convictions for violent felonies and murders committed during the commission of other enumerated felonies. Several other statutory aggravating circumstances have been combined to eliminate duplication, eliminated entirely, or otherwise clarified.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

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