



SPONSOR: Sen. Buckson & Rep. D. Short
Sens. Lawson, Pettyjohn, Wilson; Reps. Spiegelman,
Yearick

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

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

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

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

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

(c) *Procedure at punishment hearing.* —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) In the instructions to the jury the Court shall include instructions ~~for it to weigh and consider any mitigating circumstances or aggravating circumstances and any of the statutory aggravating circumstances set forth in subsection (e) of this section which may be raised by the evidence. The jury shall be instructed to weigh any mitigating factors against the aggravating factors. that, in connection with a finding beyond all doubt, even after finding the defendant guilty of first-degree murder beyond a reasonable doubt it is possible that a juror 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, is sufficient to preclude the imposition of the death penalty.~~

(d) *Determination of sentence.* —

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

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

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

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

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

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

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

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

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

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

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

1. Whether the defendant has a significantly subaverage level of intellectual ~~functioning~~; functioning.

2. Whether the defendant's adaptive behavior is substantially ~~impaired~~; and impaired.

3. Whether the conditions described in paragraphs ~~(d)(1) and (d)(2)~~ (d)(3)a.1. and (d)(3)a.2 of this section existed before the defendant became 18 years of age.

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

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

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

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

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

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

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

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

(e) *Aggravating circumstances.* —

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

p. The victim was pregnant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Affirm the sentence of death.

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

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

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

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.

Author: Senator Buckson