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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO CRIMINAL PROCEDURE - SENTENCE OF DEATH FOR CERTAIN
FELONIES

Introduced By: Senators Tassoni, Doyle, and DeVall

Date Introduced: January 11, 2012

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 12 of the General Laws entitled "CRIMINAL PROCEDURE" is
2 hereby amended by adding thereto the following chapter:

3 CHAPTER 19.4

4 SENTENCE OF DEATH FOR CERTAIN FELONIES

5 **12-19.4-1. Sentence of Death. – Trial by jury –** In all cases tried by jury in which the
6 penalty of death may be imposed pursuant to section 11-23-2.1, and in which the attorney general
7 has recommended to the court that such a sentence be imposed, the court shall, upon return of a
8 verdict of guilty of murder in the first degree by the jury, instruct the jury to determine whether it
9 has been proven beyond a reasonable doubt that the murder committed by the defendant involved
10 one of the circumstances enumerated in section 11-23-2 or 11-23-2.1 as the basis for imposition
11 of a sentence of life imprisonment without parole. If after deliberation, the jury finds that one or
12 more of the enumerated circumstances was present, it shall state in writing, signed by the
13 foreperson of the jury, which circumstance or circumstances it found beyond a reasonable doubt.
14 Upon return of an affirmative verdict, the court shall conduct a presentence hearing. At the
15 hearing, the court shall permit the attorney general and the defense to present additional evidence
16 relevant to a determination of the sentence to be imposed as provided for in section 12-19.2-4.
17 After hearing evidence and argument relating to the presence or absence of aggravating and
18 mitigating factors, the court shall, in its discretion, sentence the defendant to death. If the trial

1 court is reversed on appeal because of error only in the presentence hearing, the new proceedings
2 before the trial court which may be ordered shall pertain only to the issue of sentencing.

3 **12-19.4-2. Consideration of aggravating and mitigating circumstances –** At the
4 presentence hearing, following a finding that one or more of the circumstances enumerated in
5 sections 11-23-2 or 11-23-2.1 as the basis for imposition of a sentence of death or life
6 imprisonment without parole was involved in the first degree murder of which the defendant has
7 been convicted, the court shall consider evidence regarding the nature and circumstances of the
8 offense and the personal history, character, record, and propensities of the defendant which are
9 relevant to the sentencing determination. After hearing evidence and argument regarding the
10 aggravating and mitigating circumstances relating to the offense and the defendant, the court
11 shall, in its discretion, sentence the defendant to death or life imprisonment without parole or to
12 life imprisonment. The court shall state on the record its reasons for imposing its sentence.

13 **12-19.4-3. Imposition of death sentence upon defendant with a mental disability**
14 **prohibited –** (a) As used in this section, the term “a mental disability” means significantly sub-
15 average general intellectual functioning existing concurrently with deficits in adaptive behavior
16 and manifested during the period from conception to eighteen (18). The term “significantly sub-
17 average general intellectual functioning,” for the purpose of this section, means performance that
18 is two (2) or more standard deviations from the mean score on a standardized intelligence test
19 specified in the rules of the department of developmental disabilities behavioral healthcare and
20 hospitals (BHDDH). The term “adaptive behavior”, for the purpose of this definition, means the
21 effectiveness or degree with which an individual meets the standards of personal independence
22 and social responsibility expected of his or her age, cultural group, and community. The
23 department of developmental disabilities behavioral healthcare and hospitals (BHDDH) shall
24 adopt rules to specify the standardized intelligence tests as provided in this subsection.

25 (b) A sentence of death may not be imposed upon a defendant convicted of a felony
26 punishable by death if it is determined in accordance with this section that the defendant has a
27 mental disability.

28 (c) A defendant charged with a felony punishable by death who intends to raise a mental
29 disability as a bar to the death sentence must give notice of such intention in accordance with the
30 rules of court governing notices of intent to offer expert testimony regarding mental health
31 mitigation during the penalty phase of a capital trial.

32 (d) After a defendant who has given notice of his or her intention to raise a mental
33 disability as a bar to the death sentence is convicted of a felony punishable by death and an
34 advisory jury has returned a recommended sentence of death, the defendant may file a motion to

1 determine whether the defendant has a mental disability. Upon receipt of the motion, the court
2 shall appoint two (2) experts in the field of a mental disability who shall evaluate the defendant
3 and report their findings to the court and all interested parties prior to the final sentencing hearing
4 which shall be held without a jury. At the final sentencing hearing, the court shall consider the
5 findings of the court-appointed experts and consider the findings of any other expert which is
6 offered by the state or the defense on the issue of whether the defendant has a mental disability. If
7 the court finds, by clear and convincing evidence, that the defendant has a mental disability as
8 defined in subsection (a), the court may not impose a sentence of death and shall enter a written
9 order that sets forth with specificity the findings in support of the determination.

10 (e) If a defendant waives his or her right to a recommended sentence by an advisory jury
11 following a plea of guilty or nolo contendere to a capital felony and adjudication of guilt by the
12 court, or following a jury finding of guilt of a felony punishable by death, upon acceptance of the
13 waiver by the court, a defendant who has given notice as required in subsection (c) may file a
14 motion for a determination of a mental disability. Upon granting the motion, the court shall
15 proceed as provided in subsection (d).

16 (f) If, following a recommendation by an advisory jury that the defendant be sentenced to
17 life imprisonment, the state intends to request the court to order that the defendant be sentenced to
18 death, the state must inform the defendant of such request if the defendant has notified the court
19 of his or her intent to raise a mental disability as a bar to the death sentence. After receipt of the
20 notice from the state, the defendant may file a motion requesting a determination by the court of
21 whether the defendant has a mental disability. Upon granting the motion, the court shall proceed
22 as provided as provided in subsection (d).

23 (g) The state may appeal a determination of a mental disability made under subsection
24 (4).

25 (h) This section does not apply to a defendant who was sentenced to death prior to the
26 effective date of this act.

27 SECTION 2. Sections 11-23-2 and 11-23-2.1 of the General Laws in Chapter 11-23
28 entitled "Homicide" are hereby amended to read as follows:

29 **11-23-2. Penalties for murder. --** Every person guilty of murder in the first degree shall
30 be imprisoned for life or punished by death pursuant to chapter 12-19.4. Every person guilty of
31 murder in the first degree: (1) committed intentionally while engaged in the commission of
32 another capital offense or other felony for which life imprisonment may be imposed; (2)
33 committed in a manner creating a great risk of death to more than one person by means of a
34 weapon or device or substance which would normally be hazardous to the life of more than one

1 person; (3) committed at the direction of another person in return for money or any other thing of
2 monetary value from that person; (4) committed in a manner involving torture or an aggravated
3 battery to the victim; (5) committed against any member of the judiciary, law enforcement
4 officer, corrections employee, assistant attorney general or special assistant attorney general, or
5 firefighter arising from the lawful performance of his or her official duties; (6) committed by a
6 person who at the time of the murder was committed to confinement in the adult correctional
7 institutions or the state reformatory for women upon conviction of a felony; or (7) committed
8 during the course of the perpetration or attempted perpetration of felony manufacture, sale,
9 delivery or other distribution of a controlled substance otherwise prohibited by the provisions of
10 chapter 28 of title 21; shall be [punished by death pursuant to chapter 12-19.4 or](#) imprisoned for
11 life and if ordered by the court pursuant to chapter 19.2 of title 12 that person shall not be eligible
12 for parole from imprisonment. Every person guilty of murder in the second degree shall be
13 imprisoned for not less than ten (10) years and may be imprisoned for life.

14 **11-23-2.1. Penalty for murder of a kidnapped person under the age of eighteen (18).**

15 **==** If any person under the age of eighteen (18) who is kidnapped in violation of section 11-26-1
16 by a person other than his or her natural or adopted parent dies as a direct result of the
17 kidnapping, then the person convicted of the offense shall be guilty of murder in the first degree
18 and shall be punished by [death pursuant to chapter 12-19.4 or](#) imprisonment for life, and the
19 court may, pursuant to chapter 19.2 of title 12, order that that person not be eligible for parole.

20 SECTION 3. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

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- 1 This act would permit the death penalty in certain circumstances.
- 2 This act would take effect upon passage.

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