



SPONSOR: Sen. Adams & Rep. Spence;  
Sens. Sharp, Winslow; Rep. Smith &  
Van Sant & Wagner

DELAWARE STATE SENATE

141st GENERAL ASSEMBLY

SENATE BILL NO. 449

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DEATH PENALTY.

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

1           Section 1. Amend Section 4209(c)(3)a. of Title 11 of the Delaware Code by striking the phrase "and  
2 recommend" as it appears in the first sentence thereof, and by substituting in lieu thereof the phrase "and report".

3           Section 2. Amend Section 4209(c)(3)b. by striking said subparagraph in its entirety, and by substituting in lieu  
4 thereof the following:

5           "(c)(3)b.1. The jury shall report to the Court its finding on the question of the existence of statutory  
6 aggravating circumstances as enumerated in subsection (e) of this section. In order to find the existence  
7 of a statutory aggravating circumstance as enumerated in subsection (e) of this section beyond a  
8 reasonable doubt, the jury must be unanimous as to the existence of that statutory aggravating  
9 circumstance. As to any statutory aggravating circumstances enumerated in subsection (e) of this  
10 section which were alleged but for which the jury is not unanimous, the jury shall report the number of  
11 the affirmative and negative votes on each such circumstance.

12          2. The jury shall report to the Court by the number of the affirmative and negative votes its  
13 recommendation on the question as to whether, by a preponderance of the evidence, after weighing all  
14 relevant evidence in aggravation or mitigation which bear upon the particular circumstances or details  
15 of the commission of the offense and the character and propensities of the offender, the aggravating  
16 circumstances found to exist outweigh the mitigating circumstances found to exist."

17          Section 3. Amend Section 4209(d)(1) of Title 11 of the Delaware Code by striking said paragraph in its entirety,  
18 and by substituting in lieu thereof the following:

19           "(d)(1) *Determination of sentence.* -- (1) If a jury is impaneled, the Court shall discharge that jury after it has  
20 reported its findings and recommendation to the Court. A sentence of death shall not be imposed unless the jury, if a jury  
21 is impaneled, first finds unanimously and beyond a reasonable doubt the existence of at least one statutory aggravating  
22 circumstance as enumerated in subsection (e) of this section. If a jury is not impaneled, a sentence of death shall not be  
23 imposed unless the Court finds beyond a reasonable doubt the existence of at least one statutory aggravating circumstance  
24 as enumerated in subsection (e) of this section. If a jury has been impaneled and if the existence of at least one statutory  
25 aggravating circumstance as enumerated in subsection (e) of this section has been found beyond a reasonable doubt by the  
26 jury, the Court, after considering the findings and recommendation of the jury and without hearing or reviewing any  
27 additional evidence, shall impose a sentence of death if the Court finds by a preponderance of the evidence, after  
28 weighing all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the  
29 commission of the offense and the character and propensities of the offender, that the aggravating circumstances found by  
30 the Court to exist outweigh the mitigating circumstances found by the Court to exist. If a jury has not been impaneled and  
31 if the existence of at least one statutory aggravating circumstance as enumerated in subsection (e) of this section has been  
32 found beyond a reasonable doubt by the Court, it shall impose a sentence of death if the Court finds by a preponderance of  
33 the evidence, after weighing all relevant evidence in aggravation or mitigation which bears upon the particular  
34 circumstances or details of the commission of the offense and the character and propensities of the offender, that the  
35 aggravating circumstances found by the Court to exist outweigh the mitigating circumstances found by the Court to  
36 exist."

37           Section 4. Amend Section 4209(e)(1) by striking the phrase "the judge must find that the evidence established  
38 beyond a reasonable doubt" as it appears in the first sentence of said paragraph, and by substituting in lieu thereof the  
39 following:

40           "the jury, unanimously, or the judge where applicable, must find that the evidence established beyond a  
41 reasonable doubt".

42           Section 5. Amend Section 4209(g)(2)b. of Title 11 of the Delaware Code by inserting between the phrases "supports  
43 the" and "judge 's finding" as they appear in said subparagraph the phrase "jury's or the".

44           Section 6. This Act shall apply to all defendants tried, re-tried, sentenced or re-sentenced after its effective date.  
45 This Act shall not apply to any defendant sentenced prior to its effective date unless a new trial or new sentencing hearing is  
46 ordered in the case.

47           Section 7. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such  
48   invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid  
49   provision or application, and to that end the provisions of this Act are declared to be severable.

#### SYNOPSIS

This Act will conform Delaware's death penalty sentencing procedures to the new rule announced by the United States Supreme Court in Ring v Arizona. It is unclear as to whether the Court's opinion in Ring will be found to be applicable to Delaware's statutory system. However, the uncertainty created by the Supreme Court's ruling in Ring must be resolved promptly to ensure that all pending death penalty case will be finally resolved in a constitutional and timely fashion.

This Act will bar the Court from imposing a death sentence unless a jury (unless waived by the parties) first determines unanimously and beyond a reasonable doubt that at least one statutory aggravating circumstance exists. If a statutory aggravating circumstance is found by the jury to exist, the procedures set forth in Delaware's current death penalty sentencing statute will apply. The Court will continue to be responsible for ultimately determining the sentence to be imposed, after weighing all relevant evidence presented in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the offenses and the character and propensities of the offender. The provisions of the Act will apply to all cases and defendants tried, re-tried, sentenced or re-sentenced after its effective date.

Author: Senator Adams