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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

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A N A C T

RELATING TO CRIMINAL OFFENSES - HOMICIDE

Introduced By: Representatives O'Brien, Corvese, McKiernan, Johnston, and Lima

Date Introduced: January 26, 2017

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1           SECTION 1. Chapter 11-23 of the General Laws entitled "Homicide" is hereby amended  
2 by adding thereto the following section:

3           **11-23-2.3. Penalty for an ambush murder of a first responder.**

4           (a) For the purpose of this section, the term "first responder" means any member of any  
5 police force or fire department or fire district of the state or any city or town, investigators of the  
6 department of attorney general appointed pursuant to §42-9-8.1, inspectors and agents of the  
7 Rhode Island state fugitive task force, or any person acting in the capacity of a rescue attendant or  
8 member of a rescue squad, and any officer or member in active service in any incorporated  
9 protective department cooperating with fire departments, and any person performing the duties of  
10 a firefighter in a town or city, and any member of any volunteer fire company or volunteer rescue  
11 squad or member of any voluntary ambulance association, whether the company or squad is  
12 incorporated or not.

13           (b) Every person guilty of murder in the first degree of a first responder who the court  
14 finds was murdered while in the performance of the first responder's official duties and who the  
15 court finds was murdered in an manner involving ambush whereby the victim was unsuspectingly  
16 lured to a location and murdered deliberately without provocation, shall be eligible for  
17 punishment by death.

18           (c) Separate proceedings on issue of penalty. - Upon conviction or adjudication of guilt of  
19 a defendant of the murder in the first degree of a first responder, the court shall conduct a separate

1 sentencing proceeding to determine whether the defendant should be sentenced to death or life  
2 imprisonment. The proceeding shall be conducted by the trial judge before the trial jury as soon  
3 as practicable. If, through impossibility or inability, the trial jury is unable to reconvene for a  
4 hearing on the issue of penalty, having determined the guilt of the accused, the trial judge may  
5 summon a special jury to determine the issue of the imposition of the penalty. If the trial jury has  
6 been waived, or if the defendant pleaded guilty, the sentencing proceeding shall be conducted  
7 before a jury impaneled for that purpose, unless waived by the defendant. In the proceeding,  
8 evidence may be presented as to any matter that the court deems relevant to the nature of the  
9 crime and the character of the defendant and shall include matters relating to the aggravating  
10 factor enumerated in subsection (h) of this section and which notice has been properly provided  
11 or mitigating circumstances enumerated in subsection (i) of this section. Any such evidence that  
12 the court deems to have probative value may be received, regardless of its admissibility under the  
13 exclusionary rules of evidence, provided the defendant is accorded a fair opportunity to rebut any  
14 hearsay statements. However, this subsection shall not be construed to authorize the introduction  
15 of any evidence secured in violation of the Constitution of the United States or the Constitution of  
16 the State of Rhode Island. The state and the defendant or the defendant's counsel shall be  
17 permitted to present argument for or against sentence of death.

18 (d) Findings and recommended sentence by the jury. This subsection applies only if the  
19 defendant has not waived their right to a sentencing proceeding by a jury.

20 (1) After hearing all of the evidence presented regarding the existence of the aggravating  
21 factor and any mitigating circumstances, the jury shall deliberate and determine if the state has  
22 proven, beyond a reasonable doubt, the existence of an aggravating factor set forth in subsection  
23 (g) of this section.

24 (2) The jury shall return findings identifying whether or not the aggravating factor had  
25 been found to exist. A finding that the aggravating factor exists must be unanimous. If the jury:

26 (i) Does not unanimously find the existence of the aggravating factor, the defendant is  
27 ineligible for a sentence of death;

28 (ii) Unanimously finds that the aggravating factor exists, the defendant is eligible for a  
29 sentence of death and the jury shall make a recommendation to the court as to whether the  
30 defendant shall be sentenced to life imprisonment without the possibility of parole or to death.  
31 The recommendation shall be based on a weighing of all of the following:

32 (A) The aggravating factor which exists;

33 (B) Whether the aggravating factor outweighs the mitigating circumstances found to  
34 exist;

1 (C) Based on the considerations in subsections (d)(2)(ii)(A) and (d)(2)(ii)(B) of this  
2 section, whether the defendant should be sentenced to life imprisonment without the possibility of  
3 parole or to death.

4 (3) Only if all twelve (12) jurors shall determine that the defendant should be sentenced  
5 to death, the jury's recommendation to the court shall be a sentence of death. If fewer than twelve  
6 (12) jurors determine that the defendant should be sentenced to death, the jury's recommendation  
7 to the court shall be a sentence of life imprisonment without the possibility of parole.

8 (e) Imposition of sentence of life imprisonment or death.

9 (1) If the jury has recommended a sentence of:

10 (i) Life imprisonment without the possibility of parole, the court shall impose the  
11 recommended sentence;

12 (ii) Death, the court, after considering the circumstances relating to the aggravating factor  
13 found by the jury and all mitigating circumstances, may impose a sentence of life imprisonment  
14 without the possibility of parole or a sentence of death.

15 (2) If the defendant waived their right to a sentencing proceeding by a jury, the court,  
16 after considering the existence of the aggravating factor and mitigating circumstances, may  
17 impose a sentence of life imprisonment without the possibility of parole or a sentence of death.  
18 The court may impose a sentence of death only if the court finds that the aggravating factor has  
19 been proven to exist beyond a reasonable doubt.

20 (f) Order of the court in support of sentence of death. In each case in which the court  
21 imposes a sentence of death, the court shall, considering the records of the trial and the sentencing  
22 proceedings, enter a written order addressing the aggravating factor set forth in subsection (h) of  
23 this section found to exist, the mitigating circumstances in subsection (i) of this section  
24 reasonably established by the evidence, whether there is sufficient evidence of the aggravating  
25 factor to warrant the death penalty, and whether the aggravating factor outweighs the mitigating  
26 circumstances reasonably established by the evidence. If the court does not issue its order  
27 requiring the death sentence within thirty (30) days after the rendition of the judgment and  
28 sentence, the court shall impose a sentence of life imprisonment without the possibility of parole.

29 (g) Review of judgment and sentence. The judgment of conviction and sentence of death  
30 shall be subject to automatic review by the Rhode Island supreme court and disposition rendered  
31 within two (2) years after the filing of a notice of appeal. Such review by the supreme court shall  
32 have priority over all other cases and shall be heard in accordance with rules adopted by the  
33 supreme court.

34 (h) Aggravating factor. The aggravating factor shall be limited to the following:

1           (1) The victim of the murder was a first responder, as defined herein, who was engaged in  
2 the performance of their official duties and who was unsuspectingly lured to a location and  
3 murdered deliberately and without provocation.

4           (i) Mitigating circumstances. Mitigating circumstances shall consist of any of the  
5 following:

6           (1) The defendant has no significant history of prior criminal activity;

7           (2) The murder was committed while the defendant was under the influence of extreme  
8 mental or emotional disturbance;

9           (3) The defendant was an accomplice in the murder committed by another person and  
10 their participation was relatively minor;

11           (4) The defendant acted under extreme duress or under the substantial domination of  
12 another person;

13           (5) The capacity of the defendant to appreciate the criminality of their conduct or to  
14 conform their conduct to the requirements of law was substantially impaired;

15           (6) The age of the defendant at the time of the crime; and

16           (7) The existence of any other factors in the defendant's background that would mitigate  
17 against imposition of the death penalty.

18           (j) Punishment of death under this section shall be administered by the method of lethal  
19 injection.

20           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO CRIMINAL OFFENSES - HOMICIDE

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1           This act would provide for the death penalty in situations where first responders are  
2 murdered by way of ambush.

3           This act would take effect upon passage.

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