
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1966

Session of
1977

INTRODUCED BY O'DONNELL, W. D. HUTCHINSON, GIAMMARCO, GARZIA,
B. F. O'BRIEN, BITTINGER, SHUMAN, FRYER, LYNCH, RYAN, REED,
DONATUCCI, GALLEN, RITTER, CIMINI, GRIECO, SCHWEDER, HASAY,
MACKOWSKI, FREIND, E. Z. TAYLOR, HELFRICK, POTT, SCHEAFFER,
STAIRS, KLINGAMAN, LEHR, DeWEESE, STUBAN, DIETZ,
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R. R. FISCHER, WILT, HASKELL, NOYE, ZORD, D. M. FISHER,
MOWERY, BUTERA, BURD, DININNI, GATSKI, ZEARFOSS, L. E. SMITH,
WASS, MADIGAN, BELOFF, MANMILLER, CESSAR AND SALVATORE,
DECEMBER 8, 1977

REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 8, 1977

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for the imposition
3 of sentences for murder.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 1311 of Title 18, act of November 25,
7 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated
8 Statutes, subsection (g) amended July 9, 1976 (P.L.586, No.142),
9 is amended to read:

10 § 1311. Sentencing for murder.

11 (a) Findings by jury.--The jury before whom any person shall
12 be tried for murder, shall, if they find such person guilty
13 thereof, ascertain in their verdict whether the person is guilty
14 of murder of the first degree, murder of the second degree or

1 murder of the third degree.

2 (b) Instructions to jury and recording verdict.--In a trial
3 for murder, the court shall inform the jury prior to their
4 deliberations, as to the penalties for murder of the first
5 degree, murder of the second degree and murder of the third
6 degree. [The court shall also inform the jury that if they find
7 the defendant guilty of murder of the first degree, it will be
8 their further duty to determine whether the killing was
9 accompanied by any aggravating or mitigating circumstances as
10 set forth in subsection (d) of this section after hearing such
11 additional evidence as may be submitted upon that question.]

12 Whenever the jury shall agree upon a verdict of murder of the
13 first degree they shall immediately return and render the same,
14 which shall be recorded, and shall not thereafter be subject to
15 reconsideration by the jury, or any member thereof.

16 (c) Procedure at sentencing hearing.--After such verdict is
17 recorded and before the jury is permitted to separate, the court
18 shall proceed to receive such additional evidence not previously
19 received from the trial as may be relevant and admissible upon
20 the question of aggravating and mitigating circumstances and
21 shall permit such argument by counsel, and deliver such charge
22 thereon as may be just and proper in the circumstances.

23 Aggravating circumstances must be proved beyond a reasonable
24 doubt. Mitigating circumstances must be proved by a
25 preponderance of the evidence. The jury shall then retire and
26 consider the aggravating and mitigating circumstances and render
27 such verdict respecting them as they shall agree upon. A failure
28 of the jury to agree upon the aggravating and mitigating
29 circumstances shall not be held to impeach or in any way affect
30 the validity of the verdict already recorded, and whenever the

1 court shall be of the opinion that further deliberation by the
2 jury will not result in an agreement upon the aggravating and
3 mitigating circumstances, it may, in its discretion, discharge
4 the jury from further consideration thereof, in which event if
5 no retrial is directed, the court shall sentence the defendant
6 to life imprisonment upon the verdict theretofore rendered by
7 the jury and recorded as aforesaid and the jury shall be so
8 informed prior to their deliberations. The court shall impose
9 the sentence so fixed as in other cases. If the defendant has
10 waived a jury trial or pleaded guilty, the sentencing proceeding
11 shall be conducted before a jury impaneled for that purpose
12 unless waived by the defendant, in which case the trial judge
13 shall hear the evidence and determine the penalty in the same
14 manner as would a jury. The death penalty shall not be imposed
15 unless the verdict of the jury or, in a non-jury trial or in a
16 guilty plea, the verdict of the court, includes a finding of at
17 least one aggravating circumstance.

18 [(d) Aggravating and mitigating circumstances.--If a murder
19 of the first degree is accompanied by at least one of the
20 following aggravating circumstances and none of the following
21 mitigating circumstances, the person convicted shall be
22 sentenced to death. If a murder of the first degree is not
23 accompanied by any of the following aggravating circumstances or
24 is accompanied by at least one of the following mitigating
25 circumstances the person convicted shall be sentenced to life
26 imprisonment:]

27 (d) Sentencing verdict by the jury.--After hearing all the
28 evidence, the jury shall deliberate and render a sentencing
29 verdict to the court based upon the following matters:

30 (1) whether an aggravating circumstance exists as

1 enumerated in subsection (e);

2 (2) whether sufficient mitigating circumstances exist as
3 enumerated in subsection (f), which outweigh the aggravating
4 circumstances found to exist; and

5 (3) based on these considerations, whether the defendant
6 should be sentenced to life imprisonment or death.

7 [(1)] (e) Aggravating circumstances.--Aggravating
8 circumstances shall be limited to the following:

9 [(i)] (1) The victim was a fireman, peace officer or
10 public servant concerned in official detention as defined in
11 section 5121 of this title (relating to escape), who was
12 killed in the performance of his duties.

13 [(ii)] (2) The defendant paid or was paid by another
14 person or had contracted to pay or be paid by another person
15 or had conspired to pay or be paid by another person for the
16 killing of the victim.

17 [(iii)] (3) The victim was being held by the defendant
18 for ransom or reward, or as a shield or hostage.

19 [(iv)] (4) The death of the victim occurred while
20 defendant was engaged in the hijacking of an aircraft.

21 [(v)] (5) The victim was a witness to a murder or other
22 felony committed by the defendant and was killed for the
23 purpose of preventing his testimony against the defendant in
24 any grand jury or criminal proceeding involving such
25 offenses.

26 [(vi)] (6) The defendant committed a killing while in
27 the perpetration of a felony.

28 [(vii)] (7) In the commission of the offense the
29 defendant knowingly created a grave risk of death to another
30 person in addition to the victim of the offense.

1 [(viii)] (8) The offense was committed by means of
2 torture.

3 [(ix)] (9) The defendant has been convicted of another
4 Federal or State offense, committed either before or at the
5 time of the offense at issue, for which a sentence of life
6 imprisonment or death was imposable or the defendant was
7 undergoing a sentence of life imprisonment for any reason at
8 the time of the commission of the offense.

9 [(2)] (f) Mitigating circumstances.--Mitigating
10 circumstances shall include the following:

11 [(i) The age, lack of maturity, or youth of the
12 defendant at the time of the killing.

13 [(ii) The victim was a participant in or consented to
14 the defendant's conduct as set forth in section 1311(d)
15 of this title or was a participant in or consented to the
16 killing.

17 [(iii) The defendant was under duress although not
18 such duress as to constitute a defense to prosecution
19 under section 309 of this title (relating to duress).]

20 (1) The defendant has so significant history of prior
21 criminal activity.

22 (2) The offense was committed while the defendant was
23 under the influence of extreme mental or emotional
24 disturbance.

25 (3) The victim was a participant in the defendant's
26 conduct or consented to the act.

27 (4) The defendant was an accomplice in the offense
28 committed by another person and his participation was
29 relatively minor.

30 (5) The defendant acted under extreme duress or under

1 the substantial domination of another person although not
2 such duress to constitute a defense to prosecution under
3 section 309 (relating to duress).

4 (6) The capacity of the defendant to appreciate the
5 criminality of his conduct or to conform his conduct to the
6 requirements of law was substantially impaired.

7 (7) The age of the defendant at the time of the crime.

8 (8) Any other mitigating evidence relevant to the
9 character and record of the defendant.

10 [(e) Guilty pleas and non-jury trials.--In cases of pleas of
11 guilty, or trial by court, the court shall impose sentence in
12 accordance with Rules of Criminal Procedure as promulgated by
13 the Supreme Court of Pennsylvania.

14 (f) Record of death sentence to Governor.--Where a sentence
15 of death is imposed, the clerk of the court wherein conviction
16 takes place, shall within ten days after such sentence of death,
17 transmit a full and complete record of the trial and conviction
18 to the Governor.]

19 (g) Review of death sentence.--

20 (1) A sentence of death shall be subject to automatic
21 review by the Supreme Court of Pennsylvania within the time
22 prescribed by general rule. [In the event that the sentence
23 of death shall for any reason be invalidated then the
24 convicted defendant shall undergo the sentence of life
25 imprisonment.]

26 (2) The Supreme Court of Pennsylvania shall consider the
27 punishment as well as any errors enumerated by way of appeal.

28 (3) With regard to the sentence, the court shall
29 determine:

30 (i) whether the sentence of death was imposed under

1 the influence of passion, prejudice, or any other
2 arbitrary factor,

3 (ii) whether the evidence supports the jury's or
4 judge's finding of a statutory aggravating circumstance
5 as enumerated in subsection (e), and

6 (iii) whether the sentence of death is excessive or
7 disproportionate to the penalty imposed in similar cases,
8 considering both the crime and the defendant.

9 (4) The court, with regard to review of death sentences,
10 shall be authorized to:

11 (i) affirm the sentence of death; or

12 (ii) vacate the sentence of death and remand for
13 imposition of life sentence.

14 (h) Record of death sentence to Governor.--Where a sentence
15 of death is upheld by the Supreme Court, the prothonotary of the
16 Supreme Court, upon final disposition of the case, shall
17 transmit a full and complete record of the trial, conviction and
18 review to the Governor.

19 Section 2. This act shall take effect in 60 days.