

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 814 Session of
1995

INTRODUCED BY MARSICO, PICCOLA, CALTAGIRONE, RYAN, WOZNIAK,
McGEEHAN, NAILOR, BIRMELIN, PERZEL, SANTONI, KENNEY, CLARK,
TRELLO, BLAUM, HERSHEY, COY, ARMSTRONG, GEIST, MAITLAND,
TULLI, PITTS, CORNELL, DEMPSEY, STABACK, M. N. WRIGHT,
FICHTER, GORDNER, PETTIT, McCALL, BOSCOLA, MELIO, LYNCH,
MILLER, BROWN, PHILLIPS, RAYMOND, MASLAND, E. Z. TAYLOR,
BATTISTO, CLYMER, BUNT, DeLUCA, FEESE, TRUE, HENNESSEY,
CIVERA, O'BRIEN, TIGUE, WOGAN, EGOLF, DRUCE, COWELL,
HUTCHINSON, FARGO, LEH, BELFANTI, BROWNE, STERN, HESS,
BARLEY, ARGALL, GLADECK, MAYERNIK, MICOZZIE AND ZUG,
FEBRUARY 14, 1995

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MARCH 21, 1995

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 sentencing ~~procedure for murder of the first degree.~~ <—

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

6 Section 1. Section 9711(d) of Title 42 of the Pennsylvania
7 Consolidated Statutes is amended by adding a paragraph to read:

8 § 9711. Sentencing procedure for murder of the first degree.

9 * * *

10 (d) Aggravating circumstances.--Aggravating circumstances
11 shall be limited to the following:

12 * * *

13 (17) At the time of the killing, the victim was in her

third trimester of pregnancy or the defendant had knowledge
of the victim's pregnancy.

* * *

SECTION 2. SECTIONS 9712(A), 9713(A) AND 9714 OF TITLE 42
ARE AMENDED TO READ:

§ 9712. SENTENCES FOR OFFENSES COMMITTED WITH FIREARMS.

(A) MANDATORY SENTENCE.--[ANY] EXCEPT AS PROVIDED UNDER
SECTION 9716 (RELATING TO TWO OR MORE MANDATORY MINIMUM
SENTENCES APPLICABLE), ANY PERSON WHO IS CONVICTED IN ANY COURT
OF THIS COMMONWEALTH OF MURDER OF THE THIRD DEGREE, VOLUNTARY
MANSLAUGHTER, RAPE, INVOLUNTARY DEVIATE SEXUAL INTERCOURSE,
ROBBERY AS DEFINED IN 18 PA.C.S. § 3701(A)(1)(I), (II) OR (III)
(RELATING TO ROBBERY), ROBBERY OF A MOTOR VEHICLE, AGGRAVATED
ASSAULT AS DEFINED IN 18 PA.C.S. § 2702(A)(1) (RELATING TO
AGGRAVATED ASSAULT) OR KIDNAPPING, OR WHO IS CONVICTED OF
CRIMINAL ATTEMPT, CRIMINAL SOLICITATION OR CRIMINAL CONSPIRACY
[TO COMMIT ANY OF THESE CRIMES] TO COMMIT MURDER, VOLUNTARY
MANSLAUGHTER, RAPE, INVOLUNTARY DEVIATE SEXUAL INTERCOURSE,
ROBBERY AS DEFINED IN 18 PA.C.S. § 3701(A)(1)(I), (II) OR (III),
ROBBERY OF A MOTOR VEHICLE, AGGRAVATED ASSAULT AS DEFINED IN 18
PA.C.S. § 2702(A)(1) OR KIDNAPPING, SHALL, IF THE PERSON VISIBLY
POSSESSED A FIREARM DURING THE COMMISSION OF THE OFFENSE, BE
SENTENCED TO A MINIMUM SENTENCE OF AT LEAST FIVE YEARS OF TOTAL
CONFINEMENT NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE OR
OTHER STATUTE TO THE CONTRARY.

* * *

§ 9713. SENTENCES FOR OFFENSES COMMITTED ON PUBLIC
TRANSPORTATION.

(A) MANDATORY SENTENCE.--[ANY] EXCEPT AS PROVIDED UNDER
SECTION 9716 (RELATING TO TWO OR MORE MANDATORY MINIMUM

1 SENTENCES APPLICABLE), ANY PERSON WHO IS CONVICTED IN ANY COURT
2 OF THIS COMMONWEALTH OF MURDER OF THE THIRD DEGREE, VOLUNTARY
3 MANSLAUGHTER, RAPE, INVOLUNTARY DEVIATE SEXUAL INTERCOURSE,
4 ROBBERY AS DEFINED IN 18 PA.C.S. § 3701(A)(1)(I), (II) OR (III)
5 (RELATING TO ROBBERY), ROBBERY OF A MOTOR VEHICLE, ARSON AS
6 DEFINED IN 18 PA.C.S. § 3301(A) (RELATING TO ARSON AND RELATED
7 OFFENSES), KIDNAPPING OR AGGRAVATED ASSAULT AS DEFINED IN 18
8 PA.C.S. § 2702(A)(1) (RELATING TO AGGRAVATED ASSAULT), OR WHO IS
9 CONVICTED OF CRIMINAL ATTEMPT, CRIMINAL SOLICITATION OR CRIMINAL
10 CONSPIRACY [TO COMMIT ANY OF THESE CRIMES] TO COMMIT MURDER,
11 VOLUNTARY MANSLAUGHTER, RAPE, INVOLUNTARY DEVIATE SEXUAL
12 INTERCOURSE, ROBBERY AS DEFINED IN 18 PA.C.S. § 3701(A)(1)(I),
13 (II) OR (III), ROBBERY OF A MOTOR VEHICLE, ARSON AS DEFINED IN
14 18 PA.C.S. § 3301(A), KIDNAPPING OR AGGRAVATED ASSAULT, SHALL BE
15 SENTENCED TO A MINIMUM SENTENCE OF AT LEAST FIVE YEARS OF TOTAL
16 CONFINEMENT IF THE CRIME OCCURS IN OR NEAR PUBLIC TRANSPORTATION
17 AS DEFINED IN SUBSECTION (B), NOTWITHSTANDING ANY OTHER
18 PROVISION OF THIS TITLE OR OTHER STATUTE TO THE CONTRARY.

19 * * *

20 § 9714. SENTENCES FOR SECOND AND SUBSEQUENT OFFENSES.

21 (A) MANDATORY SENTENCE.--ANY PERSON WHO IS CONVICTED IN ANY
22 COURT OF THIS COMMONWEALTH OF MURDER OF THE THIRD DEGREE,
23 VOLUNTARY MANSLAUGHTER, AGGRAVATED ASSAULT AS DEFINED IN 18
24 PA.C.S. § 2702(A)(1) OR (2) (RELATING TO AGGRAVATED ASSAULT),
25 RAPE, INVOLUNTARY DEVIATE SEXUAL INTERCOURSE, ARSON AS DEFINED
26 IN 18 PA.C.S. § 3301(A) (RELATING TO ARSON AND RELATED
27 OFFENSES), KIDNAPPING [OR], BURGLARY OF AN OCCUPIED DWELLING,
28 ROBBERY AS DEFINED IN 18 PA.C.S. § 3701(A)(1)(I), (II) OR (III)
29 (RELATING TO ROBBERY), [OR] ROBBERY OF A MOTOR VEHICLE OR WHO IS
30 CONVICTED OF CRIMINAL ATTEMPT, CRIMINAL CONSPIRACY OR CRIMINAL

1 SOLICITATION TO COMMIT [ANY OF THESE CRIMES, OR WHO IS CONVICTED
2 OF AGGRAVATED ASSAULT IN WHICH THE OFFENDER INTENTIONALLY,
3 KNOWINGLY OR RECKLESSLY CAUSES SERIOUS BODILY INJURY TO ANOTHER
4 UNDER CIRCUMSTANCES MANIFESTING EXTREME INDIFFERENCE TO THE
5 VALUE OF HUMAN LIFE,] MURDER, VOLUNTARY MANSLAUGHTER, AGGRAVATED
6 ASSAULT AS DEFINED IN 18 PA.C.S. § 2702(A)(1) OR (2), RAPE,
7 INVOLUNTARY DEVIATE SEXUAL INTERCOURSE, ARSON AS DEFINED IN 18
8 PA.C.S. § 3301(A), KIDNAPPING, BURGLARY OF AN OCCUPIED DWELLING,
9 ROBBERY AS DEFINED IN 18 PA.C.S. § 3701(A)(1)(I), (II) OR (III)
10 OR ROBBERY OF A MOTOR VEHICLE SHALL, IF [THEY HAVE PREVIOUSLY
11 BEEN CONVICTED OF] AT THE TIME OF THE COMMISSION OF THE CURRENT
12 OFFENSE THE PERSON HAD PREVIOUSLY BEEN CONVICTED OF A CRIME OF
13 VIOLENCE AS SPECIFIED IN SUBSECTION (B), BE SENTENCED TO A
14 MINIMUM SENTENCE OF AT LEAST [FIVE] 15 YEARS OF TOTAL
15 CONFINEMENT NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE OR
16 OTHER STATUTE TO THE CONTRARY. UPON CONVICTION FOR A THIRD OR
17 SUBSEQUENT CRIME OF VIOLENCE AS SPECIFIED IN SUBSECTION (B), THE
18 COURT SHALL, SENTENCE THE OFFENDER TO LIFE IMPRISONMENT WITHOUT
19 PAROLE.

20 (B) PRIOR CONVICTIONS FOR CRIMES OF VIOLENCE.--

21 (1) FOR THE PURPOSES OF SUBSECTION (A), AN OFFENDER
22 SHALL BE DEEMED TO HAVE PRIOR CONVICTIONS FOR CRIMES OF
23 VIOLENCE IF [BOTH OF THE FOLLOWING CONDITIONS HOLD:

24 (1) THE] THE OFFENDER WAS PREVIOUSLY CONVICTED IN THIS
25 COMMONWEALTH OR ANY OTHER STATE OR THE DISTRICT OF COLUMBIA
26 OR IN ANY FEDERAL COURT OF MURDER, VOLUNTARY MANSLAUGHTER,
27 AGGRAVATED ASSAULT AS DEFINED IN 18 PA.C.S. § 2702(A)(1) OR
28 (2), RAPE, INVOLUNTARY DEVIATE SEXUAL INTERCOURSE, ROBBERY AS
29 DEFINED IN 18 PA.C.S. § 3701(A)(1)(I), (II) OR (III), ROBBERY
30 OF A MOTOR VEHICLE, ARSON AS DEFINED IN 18 PA.C.S. § 3301(A),

1 KIDNAPPING [OR AGGRAVATED ASSAULT IN WHICH THE OFFENDER
2 INTENTIONALLY, KNOWINGLY OR RECKLESSLY CAUSES SERIOUS BODILY
3 INJURY TO ANOTHER UNDER CIRCUMSTANCES MANIFESTING EXTREME
4 INDIFFERENCE TO THE VALUE OF HUMAN LIFE], BURGLARY OF AN
5 OCCUPIED DWELLING, OR CRIMINAL ATTEMPT, CRIMINAL CONSPIRACY
6 OR CRIMINAL SOLICITATION TO COMMIT ANY OF THESE CRIMES, AN
7 EQUIVALENT CRIME UNDER THE LAWS OF THE COMMONWEALTH IN EFFECT
8 PRIOR TO THE EFFECTIVE DATE OF TITLE 18 (RELATING TO CRIMES
9 AND OFFENSES) OR AN EQUIVALENT CRIME IN ANOTHER JURISDICTION.

10 (2) THE PREVIOUS CONVICTION NEED NOT BE FOR THE SAME
11 CRIME AS THE INSTANT OFFENSE FOR THIS SECTION TO BE
12 APPLICABLE.

13 [(2) THE PREVIOUS CONVICTION OCCURRED WITHIN SEVEN YEARS
14 OF THE DATE OF THE COMMISSION OF THE INSTANT OFFENSE, EXCEPT
15 THAT ANY TIME DURING WHICH THE OFFENDER WAS INCARCERATED IN
16 ANY PENITENTIARY, PRISON OR OTHER PLACE OF DETENTION SHALL
17 NOT BE CONSIDERED IN COMPUTING THE RELEVANT SEVEN-YEAR
18 PERIOD.]

19 (3) CONVICTIONS FOR OTHER OFFENSES ARISING FROM THE SAME
20 CRIMINAL EPISODE AS THE INSTANT OFFENSE SHALL NOT BE
21 CONSIDERED PREVIOUS CONVICTIONS FOR THE PURPOSE OF THIS
22 SECTION.

23 (4) FOR PURPOSES OF THIS SECTION PREVIOUS CONVICTION
24 SHALL INCLUDE ANY CONVICTION, WHETHER OR NOT JUDGMENT OF
25 SENTENCE HAS BEEN IMPOSED OR LITIGATION IS PENDING CONCERNING
26 THAT CONVICTION.

27 (C) PROOF AT SENTENCING.--PROVISIONS OF THIS SECTION SHALL
28 NOT BE AN ELEMENT OF THE CRIME AND NOTICE THEREOF TO THE
29 DEFENDANT SHALL NOT BE REQUIRED PRIOR TO CONVICTION, BUT
30 REASONABLE NOTICE OF THE COMMONWEALTH'S INTENTION TO PROCEED

1 UNDER THIS SECTION SHALL BE PROVIDED AFTER CONVICTION AND BEFORE
2 SENTENCING. THE APPLICABILITY OF THIS SECTION SHALL BE
3 DETERMINED AT SENTENCING. THE SENTENCING COURT, PRIOR TO
4 IMPOSING SENTENCE ON AN OFFENDER UNDER SUBSECTION (A), SHALL
5 HAVE A COMPLETE RECORD OF THE PREVIOUS CONVICTIONS OF THE
6 OFFENDER, COPIES OF WHICH SHALL BE FURNISHED TO THE OFFENDER. IF
7 THE OFFENDER OR THE ATTORNEY FOR THE COMMONWEALTH CONTESTS THE
8 ACCURACY OF THE RECORD, THE COURT SHALL SCHEDULE A HEARING AND
9 DIRECT THE OFFENDER AND THE ATTORNEY FOR THE COMMONWEALTH TO
10 SUBMIT EVIDENCE REGARDING THE PREVIOUS CONVICTIONS OF THE
11 OFFENDER. THE COURT SHALL THEN DETERMINE, BY A PREPONDERANCE OF
12 THE EVIDENCE, THE PREVIOUS CONVICTIONS OF THE OFFENDER AND, IF
13 THIS SECTION IS APPLICABLE, SHALL IMPOSE SENTENCE IN ACCORDANCE
14 WITH THIS SECTION. SHOULD A PREVIOUS CONVICTION BE VACATED AND
15 AN ACQUITTAL OR FINAL DISCHARGE ENTERED SUBSEQUENT TO IMPOSITION
16 OF SENTENCE UNDER THIS SECTION, THE OFFENDER SHALL HAVE THE
17 RIGHT TO PETITION THE SENTENCING COURT FOR RECONSIDERATION OF
18 SENTENCE IF THIS SECTION WOULD NOT HAVE BEEN APPLICABLE EXCEPT
19 FOR THE CONVICTION WHICH WAS VACATED.

20 (D) AUTHORITY OF COURT IN SENTENCING.--THERE SHALL BE NO
21 AUTHORITY IN ANY COURT TO IMPOSE ON AN OFFENDER TO WHICH THIS
22 SECTION IS APPLICABLE ANY LESSER SENTENCE THAN PROVIDED FOR IN
23 SUBSECTION (A) OR TO PLACE SUCH OFFENDER ON PROBATION OR TO
24 SUSPEND SENTENCE. NOTHING IN THIS SECTION SHALL PREVENT THE
25 SENTENCING COURT FROM IMPOSING A SENTENCE GREATER THAN THAT
26 PROVIDED IN THIS SECTION. SENTENCING GUIDELINES PROMULGATED BY
27 THE PENNSYLVANIA COMMISSION ON SENTENCING SHALL NOT SUPERSEDE
28 THE MANDATORY SENTENCES PROVIDED IN THIS SECTION.

29 (E) APPEAL BY COMMONWEALTH.--IF A SENTENCING COURT SHALL
30 REFUSE TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH

1 SHALL HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE
2 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE
3 AND REMAND THE CASE TO THE SENTENCING COURT FOR THE IMPOSITION
4 OF A SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT
5 THE SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.

6 (F) APPLICABILITY.--THE PROVISIONS OF 18 PA.C.S. § 1103
7 (RELATING TO SENTENCE OF IMPRISONMENT FOR FELONY) SHALL NOT
8 APPLY IN CASES WHERE THIS SECTION IS APPLICABLE.

9 Section 2 3. This act shall take effect immediately.

<—