

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 499 Session of
2021

INTRODUCED BY MUTH, STREET, KEARNEY, CAPPELLETTI, KANE AND
SAVAL, JULY 26, 2021

REFERRED TO JUDICIARY, JULY 26, 2021

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in authorized disposition of offenders, further
4 providing for sentence for murder, murder of unborn child and
5 murder of law enforcement officer; in arson, criminal
6 mischief and other property destruction, further providing
7 for the offense of arson and related offenses; and, in
8 sentencing, further providing for sentencing procedure for
9 murder of the first degree.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Sections 1102(a) and 3301(b)(1) of Title 18 of
13 the Pennsylvania Consolidated Statutes are amended to read:

14 § 1102. Sentence for murder, murder of unborn child and murder
15 of law enforcement officer.

16 (a) First degree.--

17 (1) Except as provided under section 1102.1 (relating to
18 sentence of persons under the age of 18 for murder, murder of
19 an unborn child and murder of a law enforcement officer), a
20 person who has been convicted of a murder of the first degree
21 or of murder of a law enforcement officer of the first degree

1 shall be sentenced to [death or to] a term of life
2 imprisonment in accordance with 42 Pa.C.S. § 9711 (relating
3 to sentencing procedure for murder of the first degree).

4 (2) The sentence for a person who has been convicted of
5 first degree murder of an unborn child shall be the same as
6 the sentence for murder of the first degree.[, except that
7 the death penalty shall not be imposed. This paragraph shall
8 not affect the determination of an aggravating circumstance
9 under 42 Pa.C.S. § 9711(d) (17) for the killing of a pregnant
10 woman.]

11 * * *

12 § 3301. Arson and related offenses.

13 * * *

14 (b) Sentence.--

15 (1) A person convicted of violating the provisions of
16 subsection (a) (2), murder of the first degree[,] or second
17 degree shall be sentenced to [death or] life imprisonment
18 without right to parole[; a person convicted of murder of the
19 second degree, pursuant to subsection (a) (2), shall be
20 sentenced to life imprisonment without right to parole].

21 Notwithstanding provisions to the contrary, no language
22 herein shall infringe upon the inherent powers of the
23 Governor to commute said sentence.

24 * * *

25 Section 2. Section 9711 of Title 42 is amended to read:

26 § 9711. Sentencing procedure for murder of the first degree.

27 [(a) Procedure in jury trials.--

28 (1)] After a verdict of murder of the first degree is
29 recorded [and before the jury is discharged], the court shall
30 [conduct a separate sentencing hearing in which the jury

1 shall determine whether the defendant shall be sentenced to
2 death or] sentence the defendant to life imprisonment.

3 [(2) In the sentencing hearing, evidence concerning the
4 victim and the impact that the death of the victim has had on
5 the family of the victim is admissible. Additionally,
6 evidence may be presented as to any other matter that the
7 court deems relevant and admissible on the question of the
8 sentence to be imposed. Evidence shall include matters
9 relating to any of the aggravating or mitigating
10 circumstances specified in subsections (d) and (e), and
11 information concerning the victim and the impact that the
12 death of the victim has had on the family of the victim.
13 Evidence of aggravating circumstances shall be limited to
14 those circumstances specified in subsection (d).

15 (3) After the presentation of evidence, the court shall
16 permit counsel to present argument for or against the
17 sentence of death. The court shall then instruct the jury in
18 accordance with subsection (c).

19 (4) Failure of the jury to unanimously agree upon a
20 sentence shall not impeach or in any way affect the guilty
21 verdict previously recorded.

22 (b) Procedure in nonjury trials and guilty pleas.--If the
23 defendant has waived a jury trial or pleaded guilty, the
24 sentencing proceeding shall be conducted before a jury impaneled
25 for that purpose unless waived by the defendant with the consent
26 of the Commonwealth, in which case the trial judge shall hear
27 the evidence and determine the penalty in the same manner as
28 would a jury as provided in subsection (a).

29 (c) Instructions to jury.--

30 (1) Before the jury retires to consider the sentencing

1 verdict, the court shall instruct the jury on the following
2 matters:

3 (i) The aggravating circumstances specified in
4 subsection (d) as to which there is some evidence.

5 (ii) The mitigating circumstances specified in
6 subsection (e) as to which there is some evidence.

7 (iii) Aggravating circumstances must be proved by
8 the Commonwealth beyond a reasonable doubt; mitigating
9 circumstances must be proved by the defendant by a
10 preponderance of the evidence.

11 (iv) The verdict must be a sentence of death if the
12 jury unanimously finds at least one aggravating
13 circumstance specified in subsection (d) and no
14 mitigating circumstance or if the jury unanimously finds
15 one or more aggravating circumstances which outweigh any
16 mitigating circumstances. The verdict must be a sentence
17 of life imprisonment in all other cases.

18 (v) The court may, in its discretion, discharge the
19 jury if it is of the opinion that further deliberation
20 will not result in a unanimous agreement as to the
21 sentence, in which case the court shall sentence the
22 defendant to life imprisonment.

23 (2) The court shall instruct the jury that if it finds
24 at least one aggravating circumstance and at least one
25 mitigating circumstance, it shall consider, in weighing the
26 aggravating and mitigating circumstances, any evidence
27 presented about the victim and about the impact of the murder
28 on the victim's family. The court shall also instruct the
29 jury on any other matter that may be just and proper under
30 the circumstances.

1 (d) Aggravating circumstances.--Aggravating circumstances
2 shall be limited to the following:

3 (1) The victim was a firefighter, peace officer, public
4 servant concerned in official detention, as defined in 18
5 Pa.C.S. § 5121 (relating to escape), judge of any court in
6 the unified judicial system, the Attorney General of
7 Pennsylvania, a deputy attorney general, district attorney,
8 assistant district attorney, member of the General Assembly,
9 Governor, Lieutenant Governor, Auditor General, State
10 Treasurer, State law enforcement official, local law
11 enforcement official, Federal law enforcement official or
12 person employed to assist or assisting any law enforcement
13 official in the performance of his duties, who was killed in
14 the performance of his duties or as a result of his official
15 position.

16 (2) The defendant paid or was paid by another person or
17 had contracted to pay or be paid by another person or had
18 conspired to pay or be paid by another person for the killing
19 of the victim.

20 (3) The victim was being held by the defendant for
21 ransom or reward, or as a shield or hostage.

22 (4) The death of the victim occurred while defendant was
23 engaged in the hijacking of an aircraft.

24 (5) The victim was a prosecution witness to a murder or
25 other felony committed by the defendant and was killed for
26 the purpose of preventing his testimony against the defendant
27 in any grand jury or criminal proceeding involving such
28 offenses.

29 (6) The defendant committed a killing while in the
30 perpetration of a felony.

1 (7) In the commission of the offense the defendant
2 knowingly created a grave risk of death to another person in
3 addition to the victim of the offense.

4 (8) The offense was committed by means of torture.

5 (9) The defendant has a significant history of felony
6 convictions involving the use or threat of violence to the
7 person.

8 (10) The defendant has been convicted of another Federal
9 or State offense, committed either before or at the time of
10 the offense at issue, for which a sentence of life
11 imprisonment or death was imposable or the defendant was
12 undergoing a sentence of life imprisonment for any reason at
13 the time of the commission of the offense.

14 (11) The defendant has been convicted of another murder
15 committed in any jurisdiction and committed either before or
16 at the time of the offense at issue.

17 (12) The defendant has been convicted of voluntary
18 manslaughter, as defined in 18 Pa.C.S. § 2503 (relating to
19 voluntary manslaughter), or a substantially equivalent crime
20 in any other jurisdiction, committed either before or at the
21 time of the offense at issue.

22 (13) The defendant committed the killing or was an
23 accomplice in the killing, as defined in 18 Pa.C.S. § 306(c)
24 (relating to liability for conduct of another; complicity),
25 while in the perpetration of a felony under the provisions of
26 the act of April 14, 1972 (P.L.233, No.64), known as The
27 Controlled Substance, Drug, Device and Cosmetic Act, and
28 punishable under the provisions of 18 Pa.C.S. § 7508
29 (relating to drug trafficking sentencing and penalties).

30 (14) At the time of the killing, the victim was or had

1 been involved, associated or in competition with the
2 defendant in the sale, manufacture, distribution or delivery
3 of any controlled substance or counterfeit controlled
4 substance in violation of The Controlled Substance, Drug,
5 Device and Cosmetic Act or similar law of any other state,
6 the District of Columbia or the United States, and the
7 defendant committed the killing or was an accomplice to the
8 killing as defined in 18 Pa.C.S. § 306(c), and the killing
9 resulted from or was related to that association, involvement
10 or competition to promote the defendant's activities in
11 selling, manufacturing, distributing or delivering controlled
12 substances or counterfeit controlled substances.

13 (15) At the time of the killing, the victim was or had
14 been a nongovernmental informant or had otherwise provided
15 any investigative, law enforcement or police agency with
16 information concerning criminal activity and the defendant
17 committed the killing or was an accomplice to the killing as
18 defined in 18 Pa.C.S. § 306(c), and the killing was in
19 retaliation for the victim's activities as a nongovernmental
20 informant or in providing information concerning criminal
21 activity to an investigative, law enforcement or police
22 agency.

23 (16) The victim was a child under 12 years of age.

24 (17) At the time of the killing, the victim was in her
25 third trimester of pregnancy or the defendant had knowledge
26 of the victim's pregnancy.

27 (18) At the time of the killing the defendant was
28 subject to a court order restricting in any way the
29 defendant's behavior toward the victim pursuant to 23 Pa.C.S.
30 Ch. 61 (relating to protection from abuse) or any other order

1 of a court of common pleas or of the minor judiciary designed
2 in whole or in part to protect the victim from the defendant.

3 (e) Mitigating circumstances.--Mitigating circumstances
4 shall include the following:

5 (1) The defendant has no significant history of prior
6 criminal convictions.

7 (2) The defendant was under the influence of extreme
8 mental or emotional disturbance.

9 (3) The capacity of the defendant to appreciate the
10 criminality of his conduct or to conform his conduct to the
11 requirements of law was substantially impaired.

12 (4) The age of the defendant at the time of the crime.

13 (5) The defendant acted under extreme duress, although
14 not such duress as to constitute a defense to prosecution
15 under 18 Pa.C.S. § 309 (relating to duress), or acted under
16 the substantial domination of another person.

17 (6) The victim was a participant in the defendant's
18 homicidal conduct or consented to the homicidal acts.

19 (7) The defendant's participation in the homicidal act
20 was relatively minor.

21 (8) Any other evidence of mitigation concerning the
22 character and record of the defendant and the circumstances
23 of his offense.

24 (f) Sentencing verdict by the jury.--

25 (1) After hearing all the evidence and receiving the
26 instructions from the court, the jury shall deliberate and
27 render a sentencing verdict. In rendering the verdict, if the
28 sentence is death, the jury shall set forth in such form as
29 designated by the court the findings upon which the sentence
30 is based.

1 (2) Based upon these findings, the jury shall set forth
2 in writing whether the sentence is death or life
3 imprisonment.

4 (g) Recording sentencing verdict.--Whenever the jury shall
5 agree upon a sentencing verdict, it shall be received and
6 recorded by the court. The court shall thereafter impose upon
7 the defendant the sentence fixed by the jury.

8 (h) Review of death sentence.--

9 (1) A sentence of death shall be subject to automatic
10 review by the Supreme Court of Pennsylvania pursuant to its
11 rules.

12 (2) In addition to its authority to correct errors at
13 trial, the Supreme Court shall either affirm the sentence of
14 death or vacate the sentence of death and remand for further
15 proceedings as provided in paragraph (4).

16 (3) The Supreme Court shall affirm the sentence of death
17 unless it determines that:

18 (i) the sentence of death was the product of
19 passion, prejudice or any other arbitrary factor; or

20 (ii) the evidence fails to support the finding of at
21 least one aggravating circumstance specified in
22 subsection (d).

23 (4) If the Supreme Court determines that the death
24 penalty must be vacated because none of the aggravating
25 circumstances are supported by sufficient evidence, then it
26 shall remand for the imposition of a life imprisonment
27 sentence. If the Supreme Court determines that the death
28 penalty must be vacated for any other reason, it shall remand
29 for a new sentencing hearing pursuant to subsections (a)
30 through (g).

1 (i) Record of death sentence to Governor.--Where a sentence
2 of death is upheld by the Supreme Court, the prothonotary of the
3 Supreme Court shall transmit to the Governor a full and complete
4 record of the trial, sentencing hearing, imposition of sentence,
5 opinion and order by the Supreme Court within 30 days of one of
6 the following, whichever occurs first:

7 (1) the expiration of the time period for filing a
8 petition for writ of certiorari or extension thereof where
9 neither has been filed;

10 (2) the denial of a petition for writ of certiorari; or

11 (3) the disposition of the appeal by the United States
12 Supreme Court, if that court grants the petition for writ of
13 certiorari.

14 Notice of this transmission shall contemporaneously be provided
15 to the Secretary of Corrections.]

16 Section 3. This act shall apply to defendants and
17 individuals who have not been sentenced as of the effective date
18 of this section.

19 Section 4. This act shall take effect in 60 days.