

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**  
**No. 2311** Session of  
1978

INTRODUCED BY TRELLO, ABRAHAM AND MISCEVICH, APRIL 5, 1978

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 5, 1978

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for the imposition  
3 of the penalty of death; and establishing aggravating and  
4 mitigating circumstances.

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

7 Section 1. Subsections (c) and (d) of section 1311 of Title  
8 18, act of November 25, 1970 (P.L.707, No.230), known as the  
9 Pennsylvania Consolidated Statutes, are amended to read:

10 § 1311. Sentencing for murder.

11 \* \* \*

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

1 reasonable doubt. Mitigating circumstances must be proved by a  
2 preponderance of the evidence. The jury shall then retire and  
3 consider the aggravating and mitigating circumstances and render  
4 such verdict respecting them as they shall agree upon. A failure  
5 of the jury to agree upon the aggravating and mitigating  
6 circumstances shall not be held to impeach or in any way affect  
7 the validity of the verdict already recorded, and whenever the  
8 court shall be of the opinion that further deliberation by the  
9 jury will not result in an agreement upon the aggravating and  
10 mitigating circumstances, it may, in its discretion, discharge  
11 the jury from further consideration thereof, in which event if  
12 no retrial is directed, the court shall sentence the defendant  
13 to life imprisonment upon the verdict theretofore rendered by  
14 the jury and recorded as aforesaid and the jury shall be so  
15 informed prior to their deliberations. The court shall impose  
16 the sentence so fixed as in other cases], subject to the laws of  
17 evidence, such additional evidence in extenuation, mitigation,  
18 and aggravation of punishment, including the record of any prior  
19 criminal convictions and pleas of guilty or pleas of nolo  
20 contendere of the defendant, or the absence of any such prior  
21 criminal convictions and pleas. Only such evidence in  
22 aggravation as the Commonwealth has made known to the defendant  
23 prior to his trial shall be admissible. The jury or judge shall  
24 also hear argument by the defendant or his counsel and the  
25 prosecuting attorney, as provided by law, regarding the  
26 punishment to be imposed. The prosecuting attorney shall open  
27 and the defendant shall conclude the argument to the jury or  
28 judge. Upon the conclusion of the evidence and arguments, the  
29 judge shall give the jury appropriate instructions and the jury  
30 shall retire to determine the punishment to be imposed. The

1 jury, or the judge in cases tried by a judge, shall fix a  
2 sentence within the limits prescribed by law. The judge shall  
3 impose the sentence fixed by the jury or judge, as provided by  
4 law. If the jury cannot, within a reasonable time, agree to the  
5 punishment, the judge shall impose sentence within the limits of  
6 the law. Under no circumstances shall a judge impose the death  
7 penalty when, in cases tried by a jury, the jury cannot agree  
8 upon the punishment. If the trial court is reversed on appeal  
9 because of error only in the presentence hearing, the new trial  
10 which may be ordered shall apply only to the issue of  
11 punishment.

12 (d) Aggravating and mitigating circumstances.--If a murder  
13 of the first degree is accompanied by at least one of the  
14 following aggravating circumstances [and none of the following  
15 mitigating circumstances], the person convicted shall be  
16 sentenced to death. If a murder of the first degree is not  
17 accompanied by any of the following aggravating circumstances or  
18 is accompanied by at least one [of the following] mitigating  
19 [circumstances] circumstance the person convicted shall be  
20 sentenced to life imprisonment. In all cases for which the death  
21 penalty may be authorized, the judge shall consider, or he shall  
22 include in his instructions to the jury for it to consider, any  
23 mitigating circumstances or aggravating circumstances any of the  
24 following statutory aggravating circumstances which may be  
25 supported by the evidence:

26 (1) Aggravating circumstances.--

27 [(i) The victim was a fireman, peace officer or  
28 public servant concerned in official detention as defined  
29 in section 5121 of this title (relating to escape), who  
30 was killed in the performance of his duties.

1           (ii) The defendant paid or was paid by another  
2 person or had contracted to pay or be paid by another  
3 person or had conspired to pay or be paid by another  
4 person for the killing of the victim.

5           (iii) The victim was being held by the defendant for  
6 ransom or reward, or as a shield or hostage.

7           (iv) The death of the victim occurred while  
8 defendant was engaged in the hijacking of an aircraft.

9           (v) The victim was a witness to a murder or other  
10 felony committed by the defendant and was killed for the  
11 purpose of preventing his testimony against the defendant  
12 in any grand jury or criminal proceeding involving such  
13 offenses.

14           (vi) The defendant committed a killing while in the  
15 perpetration of a felony.

16           (vii) In the commission of the offense the defendant  
17 knowingly created a grave risk of death to another person  
18 in addition to the victim of the offense.

19           (viii) The offense was committed by means of  
20 torture.

21           (ix) The defendant has been convicted of another  
22 Federal or State offense, committed either before or at  
23 the time of the offense at issue, for which a sentence of  
24 life imprisonment or death was imposable or the defendant  
25 was undergoing a sentence of life imprisonment for any  
26 reason at the time of the commission of the offense.

27           (2) Mitigating circumstances.--

28           (i) The age, lack of maturity, or youth of the  
29 defendant at the time of the killing.

30           (ii) The victim was a participant in or consented to

1 the defendant's conduct as set forth in section 1311(d)  
2 of this title or was a participant in or consented to the  
3 killing.

4 (iii) The defendant was under duress although not  
5 such duress as to constitute a defense to prosecution  
6 under section 309 of this title (relating to duress).]

7 (i) The offense was committed by a person with a  
8 prior record of conviction for a felony, or the offense  
9 of murder was committed by a person who has a substantial  
10 history of serious assaultive criminal convictions.

11 (ii) The offense was committed while the offender  
12 was engaged in the commission of another felony, or  
13 aggravated assault, or the offense of murder was  
14 committed while the offender was engaged in the  
15 commission of burglary or arson in the first degree.

16 (iii) The offender by his act of murder or  
17 kidnapping knowingly created a great risk of death to  
18 more than one person in a public place by means of a  
19 weapon or device which would normally be hazardous to the  
20 lives of more than one person.

21 (iv) The offender committed the offense of murder  
22 for himself or another, for the purpose of receiving  
23 money or any other thing of monetary value.

24 (v) The murder of a judicial officer, former  
25 judicial officer, district attorney or solicitor or  
26 former district attorney or solicitor during or because  
27 of the exercise of his official duty.

28 (vi) The offender caused or directed another to  
29 commit murder or committed murder as an agent or employee  
30 of another person.

1           (vii) The offense was outrageously or wantonly vile,  
2           horrible or inhuman in that it involved torture,  
3           depravity of mind, or an aggravated battery to the  
4           victim.

5           (viii) The offense of murder was committed against  
6           any peace officer, corrections employee or fireman while  
7           engaged in the performance of his official duties.

8           (ix) The offense of murder was committed by a person  
9           in, or who has escaped from, the lawful custody of a  
10           peace officer or place of lawful confinement.

11           (x) The murder was committed for the purpose of  
12           avoiding, interfering with, or preventing a lawful arrest  
13           or custody in a place of lawful confinement, of himself  
14           or another.

15           (2) Statutory instruction.--The statutory instructions  
16           as determined by the trial judge to be warranted by the  
17           evidence shall be given in charge and in writing to the jury  
18           for its deliberation. The jury, if its verdict be a  
19           recommendation of death, shall designate in writing, signed  
20           by the foreman of the jury, the aggravating circumstance or  
21           circumstances which it found beyond a reasonable doubt. In  
22           non-jury cases the judge shall make such designation. Unless  
23           at least one of the statutory aggravating circumstances is so  
24           found, the death penalty shall not be imposed.

25           \* \* \*

26           Section 2. Subsection (f) of section 1311 of Title 18 is  
27           repealed.

28           Section 3. This act shall take effect in 60 days.