

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 423 Session of 2011

INTRODUCED BY LEACH AND FERLO, FEBRUARY 7, 2011

REFERRED TO JUDICIARY, FEBRUARY 7, 2011

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, prohibiting use of the death penalty.

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

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

8 § 1102. Sentence for murder, murder of unborn child and murder
9 of law enforcement officer.

10 (a) First degree.--

11 (1) A person who has been convicted of a murder of the
12 first degree or of murder of a law enforcement officer of the
13 first degree shall be sentenced to [death or to] a term of
14 life imprisonment in accordance with 42 Pa.C.S. § 9711
15 (relating to sentencing procedure for murder of the first
16 degree).

17 (2) The sentence for a person who has been convicted of
18 first degree murder of an unborn child shall be the same as
19 the sentence for murder of the first degree[, except that the

1 death penalty shall not be imposed. This paragraph shall not
2 affect the determination of an aggravating circumstance under
3 42 Pa.C.S. § 9711(d)(17) for the killing of a pregnant
4 woman].

5 * * *

6 § 3301. Arson and related offenses.

7 * * *

8 (b) Sentence.--A person convicted of violating the
9 provisions of subsection (a)(2), murder of the first degree or
10 second degree[,] shall be sentenced to [death or] life
11 imprisonment without right to parole[; a person convicted of
12 murder of the second degree, pursuant to subsection (a)(2),
13 shall be sentenced to life imprisonment without right to
14 parole]. Notwithstanding provisions to the contrary, no language
15 herein shall infringe upon the inherent powers of the Governor
16 to commute said sentence.

17 * * *

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

19 § 9711. Sentencing procedure for murder of the first degree.

20 [(a) Procedure in jury trials.--]

21 [(1)] After a verdict of murder of the first degree is
22 recorded [and before the jury is discharged], the court shall
23 [conduct a separate sentencing hearing in which the jury
24 shall determine whether the defendant shall be sentenced to
25 death or] sentence the defendant to life imprisonment.

26 [(2) In the sentencing hearing, evidence concerning the
27 victim and the impact that the death of the victim has had on
28 the family of the victim is admissible. Additionally,
29 evidence may be presented as to any other matter that the
30 court deems relevant and admissible on the question of the

1 sentence to be imposed. Evidence shall include matters
2 relating to any of the aggravating or mitigating
3 circumstances specified in subsections (d) and (e), and
4 information concerning the victim and the impact that the
5 death of the victim has had on the family of the victim.
6 Evidence of aggravating circumstances shall be limited to
7 those circumstances specified in subsection (d).

8 (3) After the presentation of evidence, the court shall
9 permit counsel to present argument for or against the
10 sentence of death. The court shall then instruct the jury in
11 accordance with subsection (c).

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

15 (b) Procedure in nonjury trials and guilty pleas.--If the
16 defendant has waived a jury trial or pleaded guilty, the
17 sentencing proceeding shall be conducted before a jury impaneled
18 for that purpose unless waived by the defendant with the consent
19 of the Commonwealth, in which case the trial judge shall hear
20 the evidence and determine the penalty in the same manner as
21 would a jury as provided in subsection (a).

22 (c) Instructions to jury.--

23 (1) Before the jury retires to consider the sentencing
24 verdict, the court shall instruct the jury on the following
25 matters:

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

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

30 (iii) Aggravating circumstances must be proved by

1 the Commonwealth beyond a reasonable doubt; mitigating
2 circumstances must be proved by the defendant by a
3 preponderance of the evidence.

4 (iv) The verdict must be a sentence of death if the
5 jury unanimously finds at least one aggravating
6 circumstance specified in subsection (d) and no
7 mitigating circumstance or if the jury unanimously finds
8 one or more aggravating circumstances which outweigh any
9 mitigating circumstances. The verdict must be a sentence
10 of life imprisonment in all other cases.

11 (v) The court may, in its discretion, discharge the
12 jury if it is of the opinion that further deliberation
13 will not result in a unanimous agreement as to the
14 sentence, in which case the court shall sentence the
15 defendant to life imprisonment.

16 (2) The court shall instruct the jury that if it finds
17 at least one aggravating circumstance and at least one
18 mitigating circumstance, it shall consider, in weighing the
19 aggravating and mitigating circumstances, any evidence
20 presented about the victim and about the impact of the murder
21 on the victim's family. The court shall also instruct the
22 jury on any other matter that may be just and proper under
23 the circumstances.

24 (d) Aggravating circumstances.--Aggravating circumstances
25 shall be limited to the following:

26 (1) The victim was a firefighter, peace officer, public
27 servant concerned in official detention, as defined in 18
28 Pa.C.S. § 5121 (relating to escape), judge of any court in
29 the unified judicial system, the Attorney General of
30 Pennsylvania, a deputy attorney general, district attorney,

1 assistant district attorney, member of the General Assembly,
2 Governor, Lieutenant Governor, Auditor General, State
3 Treasurer, State law enforcement official, local law
4 enforcement official, Federal law enforcement official or
5 person employed to assist or assisting any law enforcement
6 official in the performance of his duties, who was killed in
7 the performance of his duties or as a result of his official
8 position.

9 (2) The defendant paid or was paid by another person or
10 had contracted to pay or be paid by another person or had
11 conspired to pay or be paid by another person for the killing
12 of the victim.

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

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

17 (5) The victim was a prosecution witness to a murder or
18 other felony committed by the defendant and was killed for
19 the purpose of preventing his testimony against the defendant
20 in any grand jury or criminal proceeding involving such
21 offenses.

22 (6) The defendant committed a killing while in the
23 perpetration of a felony.

24 (7) In the commission of the offense the defendant
25 knowingly created a grave risk of death to another person in
26 addition to the victim of the offense.

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

28 (9) The defendant has a significant history of felony
29 convictions involving the use or threat of violence to the
30 person.

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

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

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

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

23 (14) At the time of the killing, the victim was or had
24 been involved, associated or in competition with the
25 defendant in the sale, manufacture, distribution or delivery
26 of any controlled substance or counterfeit controlled
27 substance in violation of The Controlled Substance, Drug,
28 Device and Cosmetic Act or similar law of any other state,
29 the District of Columbia or the United States, and the
30 defendant committed the killing or was an accomplice to the

1 killing as defined in 18 Pa.C.S. § 306(c), and the killing
2 resulted from or was related to that association, involvement
3 or competition to promote the defendant's activities in
4 selling, manufacturing, distributing or delivering controlled
5 substances or counterfeit controlled substances.

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

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

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

20 (18) At the time of the killing the defendant was
21 subject to a court order restricting in any way the
22 defendant's behavior toward the victim pursuant to 23 Pa.C.S.
23 Ch. 61 (relating to protection from abuse) or any other order
24 of a court of common pleas or of the minor judiciary designed
25 in whole or in part to protect the victim from the defendant.

26 (e) Mitigating circumstances.--Mitigating circumstances
27 shall include the following:

28 (1) The defendant has no significant history of prior
29 criminal convictions.

30 (2) The defendant was under the influence of extreme

1 mental or emotional disturbance.

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

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

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

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

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

14 (8) Any other evidence of mitigation concerning the
15 character and record of the defendant and the circumstances
16 of his offense.

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

18 (1) After hearing all the evidence and receiving the
19 instructions from the court, the jury shall deliberate and
20 render a sentencing verdict. In rendering the verdict, if the
21 sentence is death, the jury shall set forth in such form as
22 designated by the court the findings upon which the sentence
23 is based.

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

27 (g) Recording sentencing verdict.--Whenever the jury shall
28 agree upon a sentencing verdict, it shall be received and
29 recorded by the court. The court shall thereafter impose upon
30 the defendant the sentence fixed by the jury.

1 (h) Review of death sentence.--

2 (1) A sentence of death shall be subject to automatic
3 review by the Supreme Court of Pennsylvania pursuant to its
4 rules.

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

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

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

13 (ii) the evidence fails to support the finding of at
14 least one aggravating circumstance specified in
15 subsection (d).

16 (4) If the Supreme Court determines that the death
17 penalty must be vacated because none of the aggravating
18 circumstances are supported by sufficient evidence, then it
19 shall remand for the imposition of a life imprisonment
20 sentence. If the Supreme Court determines that the death
21 penalty must be vacated for any other reason, it shall remand
22 for a new sentencing hearing pursuant to subsections (a)
23 through (g).

24 (i) Record of death sentence to Governor.--Where a sentence
25 of death is upheld by the Supreme Court, the prothonotary of the
26 Supreme Court shall transmit to the Governor a full and complete
27 record of the trial, sentencing hearing, imposition of sentence,
28 opinion and order by the Supreme Court within 30 days of one of
29 the following, whichever occurs first:

30 (1) the expiration of the time period for filing a

petition for writ of certiorari or extension thereof where
neither has been filed;

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

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

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

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

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