

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2211 Session of 2020

INTRODUCED BY RABB, RYAN, SCHLOSSBERG, KINSEY, HOHENSTEIN,  
 YOUNGBLOOD, KENYATTA, ZABEL, FRANKEL, JOHNSON-HARRELL,  
 HARRIS, MADDEN, HILL-EVANS, GALLOWAY, COMITTA, SCHWEYER,  
 DALEY, McCARTER, HERSHEY, WILLIAMS AND DAWKINS,  
 JANUARY 14, 2020

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 14, 2020

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

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

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

12 \* \* \*

13 § 3301. Arson and related offenses.

14 \* \* \*

15 (b) Sentence.--

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

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

25 \* \* \*

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

27 § 9711. Sentencing procedure for murder of the first degree.

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

29 (1)] After a verdict of murder of the first degree is  
30 recorded [and before the jury is discharged], the court shall

1 [conduct a separate sentencing hearing in which the jury  
2 shall determine whether the defendant shall be sentenced to  
3 death or] sentence the defendant to life imprisonment.

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

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

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

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

30 (c) Instructions to jury.--

1 (1) Before the jury retires to consider the sentencing  
2 verdict, the court shall instruct the jury on the following  
3 matters:

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

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

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

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

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

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

1 the circumstances.

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

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

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

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

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

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

30 (6) The defendant committed a killing while in the

1 perpetration of a felony.

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

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

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

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

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

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

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

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

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

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

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

28 (18) At the time of the killing the defendant was  
29 subject to a court order restricting in any way the  
30 defendant's behavior toward the victim pursuant to 23 Pa.C.S.

1 Ch. 61 (relating to protection from abuse) or any other order  
2 of a court of common pleas or of the minor judiciary designed  
3 in whole or in part to protect the victim from the defendant.

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

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

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

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

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

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

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

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

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

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

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



1 is based.

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

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

9 (h) Review of death sentence.--

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

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

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

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

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

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

1 through (g).

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

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

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

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

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

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

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