

CRIMES CODE (18 PA.C.S.), JUDICIAL CODE (42 PA.C.S.) AND PRISONS
AND PAROLE CODE (61 PA.C.S.) - OMNIBUS AMENDMENTS

Act of Oct. 25, 2012, P.L. 1655, No. 204

Cl. 18

Session of 2012

No. 2012-204

SB 850

AN ACT

Amending Titles 18 (Crimes and Offenses), 42 (Judiciary and Judicial Procedure) and 61 (Prisons and Parole), of the Pennsylvania Consolidated Statutes, in authorized disposition of offenders, further providing for sentence for murder, murder of unborn child and murder of law enforcement officer and providing for sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer; in criminal history record information, further providing for expungement and for juvenile records; and providing for crime victims; in juvenile matters, further providing for short title and purposes of chapter, for definitions, for scope, for inspection of court files and records and for conduct of hearings; in sentencing, providing for sentencing for certain murders of infant persons and for sentences for second and subsequent offenses; in Pennsylvania Board of Probation and Parole, further providing for parole procedure.

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

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

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

(a) First degree.--

(1) [A] **Except as provided under section 1102.1 (relating to sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer),** a person who has been convicted of a murder of the first degree or of murder of a law enforcement officer of the first degree shall be sentenced to death or to a term of life imprisonment in accordance with 42 Pa.C.S. § 9711 (relating to sentencing procedure for murder of the first degree).

* * *

(b) Second degree.--[A] **Except as provided under section 1102.1,** a person who has been convicted of murder of the second degree, of second degree murder of an unborn child or of second degree murder of a law enforcement officer shall be sentenced to a term of life imprisonment.

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Section 2. Title 18 is amended by adding a section to read:

§ 1102.1. **Sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer.**

(a) **First degree murder.--**A person who has been convicted after June 24, 2012, of a murder of the first degree, first degree murder of an unborn child or murder of a law enforcement officer of the first degree and who was under the age of 18 at

the time of the commission of the offense shall be sentenced as follows:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 25 years to life.

(b) Notice.--Reasonable notice to the defendant of the Commonwealth's intention to seek a sentence of life imprisonment without parole under subsection (a) shall be provided after conviction and before sentencing.

(c) Second degree murder.--A person who has been convicted after June 24, 2012, of a murder of the second degree, second degree murder of an unborn child or murder of a law enforcement officer of the second degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:

(1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of imprisonment the minimum of which shall be at least 30 years to life.

(2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of imprisonment the minimum of which shall be at least 20 years to life.

(d) Findings.--In determining whether to impose a sentence of life without parole under subsection (a), the court shall consider and make findings on the record regarding the following:

(1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.

(2) The impact of the offense on the community.

(3) The threat to the safety of the public or any individual posed by the defendant.

(4) The nature and circumstances of the offense committed by the defendant.

(5) The degree of the defendant's culpability.

(6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.

(7) Age-related characteristics of the defendant, including:

(i) Age.

(ii) Mental capacity.

(iii) Maturity.

(iv) The degree of criminal sophistication exhibited by the defendant.

(v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.

(vi) Probation or institutional reports.

(vii) Other relevant factors.

(e) Minimum sentence.--Nothing under this section shall prevent the sentencing court from imposing a minimum sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing may not supersede the mandatory minimum sentences provided under this section.

(f) Appeal by Commonwealth.--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Section 3. Section 9122(a)(3) and (d) of Title 18 are amended to read:

§ 9122. Expungement.

(a) Specific proceedings.--Criminal history record information shall be expunged in a specific criminal proceeding when:

* * *

(3) a person 21 years of age or older who has been convicted of a violation of section 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages), **which occurred on or after the day the person attained 18 years of age**, petitions the court of common pleas in the county where the conviction occurred seeking expungement and the person has satisfied all terms and conditions of the sentence imposed for the violation, including any suspension of operating privileges imposed pursuant to section 6310.4 (relating to restriction of operating privileges). Upon review of the petition, the court shall order the expungement of all criminal history record information and all administrative records of the Department of Transportation relating to said conviction.

* * *

(d) Notice of expungement.--Notice of expungement shall promptly be submitted to the central [repository] **repository** which shall notify all criminal justice agencies which have received the criminal history record information to be expunged.

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Section 4. Section 9123(a) of Title 18, amended July 5, 2012 (P.L.880, No.91), is amended to read:

§ 9123. Juvenile records.

(a) Expungement of juvenile records.--Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and except as provided under subsection (a.1), expungement of records of juvenile delinquency cases **and cases involving summary offenses committed while the individual was under 18 years of age**, wherever kept or retained, shall occur after 30 days' notice to the district attorney[,] whenever the court upon its **own** motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court;

(1.1) a written allegation is filed which was not approved for prosecution;

(1.2) **s ix months have elapsed since the individual successfully completed an informal adjustment and no proceeding seeking adjudication or conviction is pending;**

(2) **s ix months have elapsed since the final discharge of the person from supervision under a consent decree or**

diversion program , including a program under 42 Pa.C.S. § 1520 (relating to adjudication alternative program) and no proceeding seeking adjudication or conviction is pending;

(2.1) the individual is 18 years of age or older and six months have elapsed since the individual has satisfied all terms and conditions of the sentence imposed following a conviction for a summary offense, with the exception of a violation of section 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages), committed while the individual was under 18 years of age and the individual has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending to seek such conviction and adjudication;

(2.2) the individual is 18 years of age or older and has been convicted of a violation of section 6308 which occurred while the individual was under 18 years of age and six months have elapsed since the individual has satisfied all terms and conditions of the sentence imposed for the violation, including any suspension of operating privileges imposed under section 6310.4 (relating to restriction of operating privileges). Expungement shall include all criminal history record information and all administrative records of the Department of Transportation relating to the conviction;

(3) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(4) [the individual is 18 years of age or older,] the attorney for the Commonwealth consents to the expungement and a court orders the expungement after giving consideration to the following factors:

- (i) the type of offense;
- (ii) the individual's age, history of employment, criminal activity and drug or alcohol problems;
- (iii) adverse consequences that the individual may suffer if the records are not expunged; and
- (iv) whether retention of the record is required for purposes of protection of the public safety.

* * *

Section 4.1. Title 18 is amended by adding a chapter to read:

CHAPTER 94 CRIME VICTIMS

Sec.

9401. Definitions.

9402. Office of Victim Advocate.

§ 9401. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Crime Victims Act." The act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

"Office of Victim Advocate." The Office of Victim Advocate established under section 302 of the act of November 24, 1998 (P.L.882, No.111), known as the Crimes Victims Act.

§ 9402. Office of Victim Advocate.

The Office of Victim Advocate has the power and duty to represent and advocate for the interests of individual crime victims in accordance with section 302 of the Crime Victims Act, and advocate for the interests of crime victims generally, including the victims of crimes committed by juveniles.

Section 5. Section 6301(b) of Title 42 is amended to read: § 6301. Short title and purposes of chapter.

* * *

(b) Purposes.--This chapter shall be interpreted and construed as to effectuate the following purposes:

(1) To preserve the unity of the family whenever possible or to provide another alternative permanent family when the unity of the family cannot be maintained.

(1.1) To provide for the care, protection, safety and wholesome mental and physical development of children coming within the provisions of this chapter.

(2) Consistent with the protection of the public interest, to provide for children committing delinquent acts programs of supervision, care and rehabilitation which provide balanced attention to the protection of the community, the imposition of accountability for offenses committed and the development of competencies to enable children to become responsible and productive members of the community.

(3) To achieve the foregoing purposes in a family environment whenever possible, separating the child from parents only when necessary for his welfare, safety or health or in the interests of public safety[.], **by doing all of the following:**

(i) **employing evidence-based practices whenever possible and, in the case of a delinquent child, by using the least restrictive intervention that is consistent with the protection of the community, the imposition of accountability for offenses committed and the rehabilitation, supervision and treatment needs of the child; and**

(ii) **imposing confinement only if necessary and for the minimum amount of time that is consistent with the purposes under paragraphs (1), (1.1) and (2).**

(4) To provide means through which the provisions of this chapter are executed and enforced and in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced.

Section 6. Paragraph (7) of the definition of "dependent child" in section 6302 of Title 42 is amended to read:

§ 6302. Definitions.

The following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Dependent child." A child who:

* * *

(7) [is under the age of ten years and] has committed a delinquent act **or crime, other than a summary offense, while under the age of ten years;**

* * *

Section 7. Sections 6303, 6307 and 6336 of Title 42 are amended by adding subsections to read:

§ 6303. Scope of chapter.

* * *

(c) **Summary offenses generally.--In addition to the provisions of subsection (a)(5) and notwithstanding the**

exclusion of summary offenses generally from the definition of "delinquent act" under section 6302, the provisions of sections 6307 (relating to inspection of court files and records) and 6336(d) (relating to conduct of hearings), insofar as section 6336(d) relates to the exclusion of the general public from the proceedings, shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary.

§ 6307. Inspection of court files and records.

* * *

(c) Summary offenses.--The provisions of this section shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary.

§ 6336. Conduct of hearings.

* * *

(g) Summary offenses.--The provisions of subsection (d), insofar as subsection (d) relates to the exclusion of the general public from the proceedings, shall apply to proceedings involving a child charged with a summary offense when the proceedings are before a judge of the minor judiciary.

(h) Adjudication alternative.--The magisterial district judge may refer a child charged with a summary offense to an adjudication alternative program under section 1520 (relating to adjudication alternative program) and the Pennsylvania Rules of Criminal Procedure.

Section 8. Title 42 is amended by adding a section to read:
§ 9711.1. Sentencing for certain murders of infant persons.

(a) Sentence enhancement.--The Pennsylvania Commission on Sentencing, pursuant to section 2154 (relating to adoption of guidelines for sentencing), shall provide for a sentencing enhancement for an offense under 18 Pa.C.S. § 2502(c) (relating to murder) when the victim was less than 13 years of age at the time of the commission of the offense.

(b) Applicability.--The applicability of this section shall be determined at sentencing. The court shall consider any evidence presented at trial and shall determine, by preponderance of the evidence, if this section is applicable.

(c) Consecutive sentence.--A sentence imposed upon a person to whom this section applies shall be served consecutively to any other sentence the person is serving and to any other sentence being then imposed by the court.

Section 9. Section 9714(g) of Title 42, amended July 5, 2012 (P.L.1050, No.122), is amended to read:

§ 9714. Sentences for second and subsequent offenses.

* * *

(g) Definition.--As used in this section, the term "crime of violence" means murder of the third degree, voluntary manslaughter, manslaughter of a law enforcement officer as defined in 18 Pa.C.S. § 2507(c) or (d) (relating to criminal homicide of law enforcement officer), murder of the third degree involving an unborn child as defined in 18 Pa.C.S. § 2604(c) (relating to murder of unborn child), aggravated assault of an unborn child as defined in 18 Pa.C.S. § 2606 (relating to aggravated assault of unborn child), aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), assault of law enforcement officer as defined in 18 Pa.C.S. § 2702.1 (relating to assault of law enforcement officer), use of weapons of mass destruction as defined in 18 Pa.C.S. § 2716(b) (relating to weapons of mass destruction), terrorism as defined in 18 Pa.C.S. § 2717(b)(2) (relating to terrorism), trafficking of persons when the offense

is graded as a felony of the first degree as provided in 18 Pa.C.S. § 3002 (relating to trafficking of persons), rape, involuntary deviate sexual intercourse, aggravated indecent assault, incest, sexual assault, arson as defined in 18 Pa.C.S. § 3301(a) (relating to arson and related offenses), ecoterrorism as [defined] **classified** in 18 Pa.C.S. § [3311(b)(2)] **3311(b)(3)** (relating to ecoterrorism), kidnapping, burglary as defined in 18 Pa.C.S. § 3502(a)(1) (relating to burglary), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), or robbery of a motor vehicle, drug delivery resulting in death as defined in 18 Pa.C.S. § 2506(a) (relating to drug delivery resulting in death), or criminal attempt, criminal conspiracy or criminal solicitation to commit murder or any of the offenses listed above, or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction.

Section 10. Section 6139(a) of Title 61 is amended by adding paragraphs to read:

§ 6139. Parole procedure.

(a) Specific requirements.--

* * *

(3.1) Notwithstanding paragraphs (2) and (3), the board shall not be required to consider nor to dispose of an application by an inmate or an inmate's attorney in the case of an inmate sentenced under 18 Pa.C.S. § 1102.1 (relating to sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer) if a parole decision has been issued by the board within five years of the date of the current application.

(3.2) Nothing under this section shall be interpreted as granting a right to be paroled to any person, and a decision by the board and its designees relating to a person sentenced under 18 Pa.C.S. § 1102.1 may not be considered an adjudication under 2 Pa.C.S. Chs. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and 7 Subch. A (relating to judicial review of Commonwealth agency action).

* * *

Section 11. This act shall take effect as follows:

(1) The addition of 42 Pa.C.S. §§ 6303(c), 6307(c) and 6336(g) and (h) shall take effect in 90 days.

(2) The following provisions shall take effect immediately:

(i) The amendment of 18 Pa.C.S. § 1102(a)(1) and (b).

(ii) The addition of 18 Pa.C.S. § 1102.1.

(iii) The amendment of paragraph (7) of the definition of "dependent child" in 42 Pa.C.S. § 6302.

(iv) The addition of 61 Pa.C.S. § 6139(a)(3.1).

(v) This section.

(3) The remainder of this act shall take effect in 60 days.

APPROVED--The 25th day of October, A.D. 2012.

TOM CORBETT