
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1087 Session of
2013

INTRODUCED BY LEACH, FERLO, BLAKE AND FARNESE, AUGUST 29, 2013

REFERRED TO JUDICIARY, AUGUST 29, 2013

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

19 (2) The sentence for a person who has been convicted of

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

7 * * *

8 § 3301. Arson and related offenses.

9 * * *

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

19 * * *

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

21 § 9711. Sentencing procedure for murder of the first degree.

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

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

28 [(2) In the sentencing hearing, evidence concerning the
29 victim and the impact that the death of the victim has had on
30 the family of the victim is admissible. Additionally,

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

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

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

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

24 (c) Instructions to jury.--

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

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

30 (ii) The mitigating circumstances specified in

1 subsection (e) as to which there is some evidence.

2 (iii) Aggravating circumstances must be proved by
3 the Commonwealth beyond a reasonable doubt; mitigating
4 circumstances must be proved by the defendant by a
5 preponderance of the evidence.

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

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

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

26 (d) Aggravating circumstances.--Aggravating circumstances
27 shall be limited to the following:

28 (1) The victim was a firefighter, peace officer, public
29 servant concerned in official detention, as defined in 18
30 Pa.C.S. § 5121 (relating to escape), judge of any court in

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

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

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

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

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

24 (6) The defendant committed a killing while in the
25 perpetration of a felony.

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

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

30 (9) The defendant has a significant history of felony

1 convictions involving the use or threat of violence to the
2 person.

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

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

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

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

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

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

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

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

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

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

28 (e) Mitigating circumstances.--Mitigating circumstances
29 shall include the following:

30 (1) The defendant has no significant history of prior

1 criminal convictions.

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

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

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

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

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

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

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

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

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

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

29 (g) Recording sentencing verdict.--Whenever the jury shall
30 agree upon a sentencing verdict, it shall be received and

1 recorded by the court. The court shall thereafter impose upon
2 the defendant the sentence fixed by the jury.

3 (h) Review of death sentence.--

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

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

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

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

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

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

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

1 the following, whichever occurs first:

2 (1) the expiration of the time period for filing a
3 petition for writ of certiorari or extension thereof where
4 neither has been filed;

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

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

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

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

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