

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1909 Session of
2023

INTRODUCED BY WARNER, CABELL, R. MACKENZIE, BERNSTINE,
M. MACKENZIE, DAVANZO AND HEFFLEY, DECEMBER 12, 2023

REFERRED TO COMMITTEE ON JUDICIARY, DECEMBER 12, 2023

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in sexual offenses, further providing for the
4 offense of rape and for the offense of involuntary deviate
5 sexual intercourse; and, in sentencing, providing for
6 sentencing procedure for rape of a child and involuntary
7 deviate sexual intercourse with a child and further providing
8 for sentences for offenses against infant persons.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Sections 3121(e) and 3123(d) of Title 18 of the
12 Pennsylvania Consolidated Statutes are amended to read:

13 § 3121. Rape.

14 * * *

15 [(e) Sentences.--Notwithstanding the provisions of section
16 1103 (relating to sentence of imprisonment for felony), a person
17 convicted of an offense under:

18 (1) Subsection (c) shall be sentenced to a term of
19 imprisonment which shall be fixed by the court at not more
20 than 40 years.

21 (2) Subsection (d) shall be sentenced up to a maximum

1 term of life imprisonment.]

2 § 3123. Involuntary deviate sexual intercourse.

3 * * *

4 [(d) Sentences.--Notwithstanding the provisions of section
5 1103 (relating to sentence of imprisonment for felony), a person
6 convicted of an offense under:

7 (1) Subsection (b) shall be sentenced to a term of
8 imprisonment which shall be fixed by the court at not more
9 than 40 years.

10 (2) Subsection (c) shall be sentenced up to a maximum
11 term of life imprisonment.]

12 * * *

13 Section 2. Title 42 is amended by adding a section to read:

14 § 9711.2. Sentencing procedure for rape of a child and

15 involuntary deviate sexual intercourse with a child.

16 (a) Procedure in jury trials.--

17 (1) After a verdict of an offense under 18 Pa.C.S. §
18 3121(c) (relating to rape) or 3123(b) (relating to
19 involuntary deviate sexual intercourse) is recorded and
20 before the jury is discharged, the court shall conduct a
21 separate sentencing hearing in which the jury shall determine
22 whether the defendant shall be sentenced to death or life
23 imprisonment.

24 (2) In the sentencing hearing, evidence concerning the
25 victim and the impact that the crime has had on the victim
26 and the family of the victim is admissible. Additionally,
27 evidence may be presented as to any other matter that the
28 court deems relevant and admissible on the question of the
29 sentence to be imposed. Evidence shall include matters
30 relating to any of the aggravating or mitigating

1 circumstances specified in subsections (d) and (e) and
2 information concerning the victim and the impact that the
3 crime has had on the victim and the victim's family. Evidence
4 of aggravating circumstances shall be limited to those
5 circumstances specified in subsection (c).

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

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

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

20 (c) Instructions to jury.--

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

24 (i) The aggravating circumstances specified in
25 subsection (d) as to which there is evidence.

26 (ii) The mitigating circumstances specified in
27 subsection (e) as to which there is evidence.

28 (iii) Aggravating circumstances must be proved by
29 the Commonwealth beyond a reasonable doubt and mitigating
30 circumstances must be proved by the defendant by a

1 preponderance of the evidence.

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

9 (2) The court shall instruct the jury that if it finds
10 at least one aggravating circumstance and at least one
11 mitigating circumstance, the jury shall consider, in weighing
12 the aggravating and mitigating circumstances, any evidence
13 presented about the victim and about the impact of the crime
14 on the victim and the victim's family. The court shall also
15 instruct the jury on any other matter that may be just and
16 proper under the circumstances.

17 (d) Aggravating circumstances.--Aggravating circumstances
18 shall be limited to the following:

19 (1) The defendant was previously convicted of an offense
20 specified in section 9799.14 (relating to sexual offenses and
21 tier system) or an equivalent crime under the laws of this
22 Commonwealth in effect at the time of the commission of that
23 offense or an equivalent crime in another jurisdiction.

24 (2) The defendant was previously convicted of a crime of
25 violence as defined in section 9714(g) (relating to sentences
26 for second and subsequent offenses).

27 (3) The defendant was designated as a sexually violent
28 predator as defined in section 9799.12 (relating to
29 definitions) or 9799.53 (relating to definitions).

30 (4) The defendant was required to register as a sex

1 offender under Chapter 97 (relating to sentencing).

2 (5) The defendant created a great risk of death to one
3 or more persons such that participation in the offense
4 constituted reckless indifference or disregard for human
5 life.

6 (6) The defendant knowingly used a firearm to threaten,
7 intimidate, assault or injure a person in committing the
8 offense or in furtherance of the offense.

9 (7) The offense was committed for a pecuniary gain.

10 (8) The offense was especially heinous, atrocious or
11 cruel.

12 (9) The victim of the offense was particularly
13 vulnerable due to age or disability, or because the defendant
14 stood in a position of familial or custodial authority over
15 the victim.

16 (10) At the time of the offense, the defendant was
17 subject to a court order restricting in any way the
18 defendant's behavior toward the victim or the sibling, parent
19 or guardian of the victim in accordance with 23 Pa.C.S. Ch.
20 61 (relating to protection from abuse) or any other order of
21 a court of common pleas or of the minor judiciary designed in
22 whole or in part to protect the victim or the sibling, parent
23 or guardian of the victim from the defendant.

24 (11) The victim of the offense sustained serious bodily
25 injury.

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 the defendant's conduct or to conform the
4 defendant's conduct to the requirements of the law was
5 substantially impaired.

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

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

11 (6) The defendant was an accomplice in the offense or
12 the defendant's participation in the offense was relatively
13 minor.

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

17 (f) Victim impact evidence.--Once the prosecution has
18 provided evidence of the existence of two or more aggravating
19 factors as described in subsection (d), the prosecution may
20 introduce, and subsequently argue, to the jury evidence of the
21 offense's impact on the victim. The victim impact evidence shall
22 be designed to demonstrate the victim's uniqueness as an
23 individual human being and the physical, emotional and
24 psychological harm to the victim. Characterizations and opinions
25 about the crime, the defendant and the appropriate sentence
26 shall not be permitted as part of victim impact evidence.

27 (g) Sentencing verdict by jury.--

28 (1) After hearing all of the evidence and receiving the
29 instructions from the court, the jury shall deliberate and
30 render a sentencing verdict. In rendering the verdict, if the

1 sentence is death, the jury shall specify in such form as
2 designated by the court the findings upon which the sentence
3 is based.

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

6 (h) Recording sentencing verdict.--When the jury agrees upon
7 a sentencing verdict, the verdict shall be received and recorded
8 by the court. The court shall thereafter impose upon the
9 defendant the sentence fixed by the jury.

10 (i) Review of death sentence.--

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

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

19 (3) The Pennsylvania Supreme Court shall affirm the
20 sentence of death unless it determines that:

21 (i) the sentence of death was the product of
22 passion, prejudice or any other arbitrary factors; or

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

26 (4) If the Pennsylvania Supreme Court determines that
27 the death penalty must be vacated because none of the
28 aggravating circumstances are supported by sufficient
29 evidence, the defendant shall be remanded for the imposition
30 of a life imprisonment sentence. If the Pennsylvania Supreme

1 Court determines that the death penalty must be vacated for
2 any other reason, the Pennsylvania Supreme Court shall remand
3 the defendant for a new sentencing hearing in accordance with
4 subsections (a), (b), (c), (d), (e), (f) and (g).

5 (j) Record of death sentence to Governor.--

6 (1) If a sentence of death is upheld by the Pennsylvania
7 Supreme Court, the prothonotary of the Pennsylvania Supreme
8 Court shall transmit to the Governor a full and complete
9 record of the trial, sentencing hearing, imposition of
10 sentence, opinion and order by the Pennsylvania Supreme Court
11 within 30 days of one of the following, whichever occurs
12 first:

13 (i) the expiration of the time period for filing a
14 petition for writ of certiorari or extension thereof
15 where neither has been filed;

16 (ii) the denial of a petition for writ of
17 certiorari; or

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

21 (2) Notice of the transmission under paragraph (1) shall
22 contemporaneously be provided to the Secretary of
23 Corrections.

24 (k) Applicability.--This section shall apply to an offense
25 committed on or after the effective date of this subsection.

26 Section 3. Section 9718(a)(3) of Title 42 is amended to
27 read:

28 § 9718. Sentences for offenses against infant persons.

29 (a) Mandatory sentence.--

30 * * *

1 (3) A person convicted of the following offenses shall
2 be sentenced to a mandatory term of imprisonment as follows:
3 [18 Pa.C.S. § 3121(c) and (d) - not less than ten years.]
4 18 Pa.C.S. § 3125(a)(7) - not less than five years.
5 18 Pa.C.S. § 3125(b) - not less than ten years.

6 * * *

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