

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 848 Session of 2019

INTRODUCED BY LEACH, SEPTEMBER 5, 2019

REFERRED TO JUDICIARY, SEPTEMBER 5, 2019

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)(1) of Title 18 of
 7 the 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.--

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

20 * * *

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

22 § 9711. Sentencing procedure for murder of the first degree.

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

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

29 [(2) In the sentencing hearing, evidence concerning the
30 victim and the impact that the death of the victim has had on

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

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

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

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

25 (c) Instructions to jury.--

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

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

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

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

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

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

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

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

29 (1) The victim was a firefighter, peace officer, public
30 servant concerned in official detention, as defined in 18

1 Pa.C.S. § 5121 (relating to escape), judge of any court in
2 the unified judicial system, the Attorney General of
3 Pennsylvania, a deputy attorney general, district attorney,
4 assistant district attorney, member of the General Assembly,
5 Governor, Lieutenant Governor, Auditor General, State
6 Treasurer, State law enforcement official, local law
7 enforcement official, Federal law enforcement official or
8 person employed to assist or assisting any law enforcement
9 official in the performance of his duties, who was killed in
10 the performance of his duties or as a result of his official
11 position.

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

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

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

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

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

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

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

1 (9) The defendant has a significant history of felony
2 convictions involving the use or threat of violence to the
3 person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (g) Recording sentencing verdict.--Whenever the jury shall

1 agree upon a sentencing verdict, it shall be received and
2 recorded by the court. The court shall thereafter impose upon
3 the defendant the sentence fixed by the jury.

4 (h) Review of death sentence.--

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

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

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

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

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

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

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

1 opinion and order by the Supreme Court within 30 days of one of
2 the following, whichever occurs first:

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

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

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

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

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

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