

No. 1995-4 (SS1)

## AN ACT

## HB 1

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for sentencing procedure for murder of the first degree; and making a repeal.

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

Section 1. Section 9711(d) and (i) of Title 42 of the Pennsylvania Consolidated Statutes are amended and the section is amended by adding subsections to read:

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

\* \* \*

(d) Aggravating circumstances.—Aggravating circumstances shall be limited to the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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(i) Record of death sentence to Governor.—[Where] *Within 90 days of the date* a sentence of death is upheld by the Supreme Court, the

prothonotary of the Supreme Court shall transmit to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence and review by the Supreme Court. *Notice of this transmission shall contemporaneously be provided to the Secretary of Corrections.*

*(j) Issuance of warrant.—*

*(1) After the receipt of the record, unless a pardon or commutation has been issued, the Governor shall, within 90 days, issue a warrant specifying a week for execution which shall be no later than 30 days after the date the warrant is signed. If because of a reprieve or a judicial stay of the execution the date of execution passes without imposition of the death penalty, unless a pardon or commutation has been issued, the Governor shall, within 30 days of the termination of the reprieve or the judicial stay, reissue a warrant specifying a week for execution which shall be no later than 30 days after the date of reissuance of the warrant.*

*(2) The warrant shall be directed to the Secretary of Corrections commanding that the subject of the warrant be executed within the week named in the warrant and in the manner prescribed by law.*

*(3) If the Governor fails to timely comply with the provisions of this subsection and a pardon or commutation has not been issued, the Secretary of Corrections shall, within 30 days following the Governor's failure to comply, schedule and carry out the execution no later than 60 days from the date by which the Governor was required to sign the warrant under paragraph (1).*

*(k) Terms of confinement.—Upon receipt of the warrant, the Secretary of Corrections shall, until infliction of the death penalty or until lawful discharge from custody, keep the inmate in solitary confinement. During the confinement, no person except the staff of the Department of Corrections, the counsel of the inmate and a spiritual adviser selected by the inmate or the members of the immediate family of the inmate shall be allowed access to the inmate without an order of the sentencing court.*

*(l) Witnesses to execution.—No person except the following shall witness any execution under the provisions of this section:*

*(1) The superintendent of the institution where the execution takes place.*

*(2) A qualified physician.*

*(3) Six reputable adult citizens selected by the superintendent.*

*(4) One spiritual adviser, when requested and selected by the inmate.*

*(5) Not more than six duly accredited representatives of the news media.*

*(6) Such staff of the institution as may be selected by the superintendent.*

*(m) Certification of superintendent.—After the execution, the superintendent of the institution shall certify in writing, under oath or affirmation, to the court of the county where the inmate was sentenced to*

*death that the inmate was duly executed at the place and in the manner prescribed in this section and at the time designated under subsection (j). The certificate shall be filed in the office of the clerk of such court.*

*(n) Postmortem examination.—Immediately after execution, a postmortem examination of the body of the inmate shall be made by the physician present at the execution. The superintendent shall report in writing stating the nature of the examination so made. This report shall be annexed to and filed with the certificate required under subsection (m). After the postmortem examination, unless claimed by a relative or relatives, the Department of Corrections shall be responsible for disposition of the body.*

*(o) Costs of execution and examination.—The costs of the execution and the postmortem examination shall be paid by the Department of Corrections.*

Section 2. The act of June 19, 1913 (P.L.528, No.338), entitled "An act fixing the penalty for murder of the first degree; regulating the procedure incident to the infliction thereof; prescribing and providing for a place and manner of inflicting said penalty on the grounds of the new Western Penitentiary of this Commonwealth, in Centre County; making an appropriation therefor; repealing inconsistent legislation; and providing that neither this act nor said repeal shall apply to any case in which it shall appear that said crime was committed prior to the date of the approval of this act," is repealed.

Section 3. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 4. This act shall apply to cases in which the Governor has, as of the effective date of this act, not yet received the transcript of the record.

Section 5. This act shall take effect immediately.

APPROVED—The 15th day of March, A.D. 1995.

THOMAS J. RIDGE