

No. 46

AN ACT

HB 1060

Amending the act of November 25, 1970 (P.L.707, No.230), entitled "An act codifying and compiling a part of the law of the Commonwealth," changing provisions in the Crimes Code relating to murder; providing for three degrees of murder and sentences therefor; mandating the death sentence for certain first degree murder, life imprisonment for certain first degree murder and life imprisonment for second degree murder; providing for the manner of imposition of sentence and for judicial review; and conforming existing provisions.

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

Section 1. Paragraph (1) of subsection (a) and paragraph (1) of subsection (b) of section 106, subsection (a) of section 108 and subsection (a) of section 905 of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the "Consolidated Pennsylvania Statutes," added December 6, 1972 (P.L.1482, No.334), are amended to read:

§ 106. Classes of offenses.

(a) General rule.—An offense defined by this title for which a sentence of death or of imprisonment is authorized constitutes a crime. The classes of crime are:

(1) Murder of the first degree *or of the second degree*.

* * *

(b) Classification of crimes.—

(1) A crime is a murder of the first degree *or of the second degree* if it is so designated in this title or if a person convicted of criminal homicide may be sentenced in accordance with the provisions of section 1102 of this title (relating to sentence for murder of the first degree *or of the second degree*).

* * *

§ 108. Time limitations.

(a) Murder.—A prosecution for murder of the first degree, [or] of the second degree *or of the third degree* may be commenced at any time.

* * *

§ 905. Grading of criminal attempt, solicitation and conspiracy.

(a) Grading.—Except as otherwise provided in this section, attempt, solicitation and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or solicited or is an object of the conspiracy. An attempt, solicitation or conspiracy to commit murder [of the first degree] or a felony of the first degree is a felony of the second degree.

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Section 2. As much as relates to section 1102 of the chapter analysis of Chapter 11 and section 1102 of Title 18 of the act, added December 6, 1972 (P.L.1482, No.334), are amended to read:

CHAPTER 11
AUTHORIZED DISPOSITION OF OFFENDERS

Sec.

* * *

1102. Sentence for murder. **[of the first degree]**

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§ 1102. Sentence for murder. **[of the first degree]**

(a) Murder of the first degree.—A person who has been convicted of a murder of the first degree shall be sentenced to death or to a term of life imprisonment in accordance with section 1311(d) of this title.

(b) Murder of the second degree.—A person who has been convicted of murder of the second degree shall be sentenced to a term of life imprisonment.

Section 3. Title 18 of the act, amended December 6, 1972 (P.L.1482, No.334), is amended by adding a chapter analysis for Chapter 13 and by adding a section to read:

CHAPTER 13
AUTHORITY OF COURT IN SENTENCING

[(Reserved)]

Sec.

1311. Sentencing for murder.

§ 1311. Sentencing for murder.

(a) Findings by jury.—The jury before whom any person shall be tried for murder, shall, if they find such person guilty thereof, ascertain in their verdict whether the person is guilty of murder of the first degree, murder of the second degree or murder of the third degree.

(b) Instructions to jury and recording verdict.—In a trial for murder, the court shall inform the jury prior to their deliberations, as to the penalties for murder of the first degree, murder of the second degree and murder of the third degree. The court shall also inform the jury that if they find the defendant guilty of murder of the first degree, it will be their further duty to determine whether the killing was accompanied by any aggravating or mitigating circumstances as set forth in subsection (d) of this section after hearing such additional evidence as may be submitted upon that question. Whenever the jury shall agree upon a verdict of murder of the first degree they shall immediately return and render the same, which shall be recorded, and shall not thereafter be subject to reconsideration by the jury, or any member thereof.

(c) Procedure at sentencing hearing.—After such verdict is recorded and before the jury is permitted to separate, the court shall proceed to receive such additional evidence not previously received from the trial as may be relevant and admissible upon the question of aggravating and mitigating circumstances and shall permit such argument by counsel, and deliver such charge thereon as may be just and proper in the circumstances. Aggravating circumstances must be proved beyond a reasonable doubt. Mitigating circumstances must be proved by a preponderance of the evidence. The jury shall then retire and consider the aggravating and mitigating circumstances and render such verdict respecting them as they shall agree upon. A failure of the jury to agree upon the aggravating and mitigating circumstances shall not be held to impeach or in any way affect the validity of the verdict already recorded, and whenever the court shall be of the opinion that further deliberation by the jury will not result in an agreement upon the aggravating and mitigating circumstances, it may, in its discretion, discharge the jury from further consideration thereof, in which event if no retrial is directed, the court shall sentence the defendant to life imprisonment upon the verdict theretofore rendered by the jury and recorded as aforesaid and the jury shall be so informed prior to their deliberations. The court shall impose the sentence so fixed as in other cases.

(d) Aggravating and mitigating circumstances.—If a murder of the first degree is accompanied by at least one of the following aggravating circumstances and none of the following mitigating circumstances, the person convicted shall be sentenced to death. If a murder of the first degree is not accompanied by any of the following aggravating circumstances or is accompanied by at least one of the following mitigating circumstances the person convicted shall be sentenced to life imprisonment:

(1) Aggravating circumstances:

(i) The victim was a fireman, peace officer or public servant concerned in official detention as defined in section 5121 of this title (relating to escape), who was killed in the performance of his duties.

(ii) 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.

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

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

(v) The victim was a 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.

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

(vii) *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.*

(viii) *The offense was committed by means of torture.*

(ix) *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.*

(2) *Mitigating circumstances:*

(i) *The age, lack of maturity, or youth of the defendant at the time of the killing.*

(ii) *The victim was a participant in or consented to the defendant's conduct as set forth in section 1311(d) of this title or was a participant in or consented to the killing.*

(iii) *The defendant was under duress although not such duress as to constitute a defense to prosecution under section 309 of this title (relating to duress).*

(e) *Guilty pleas and non-jury trials.—In cases of pleas of guilty, or trial by court, the court shall impose sentence in accordance with Rules of Criminal Procedure as promulgated by the Supreme Court of Pennsylvania.*

(f) *Record of death sentence to Governor.—Where a sentence of death is imposed, the clerk of the court wherein conviction takes place, shall within ten days after such sentence of death, transmit a full and complete record of the trial and conviction to the Governor.*

(g) *Review of death sentence.—A sentence of death shall be subject to automatic review by the Supreme Court of Pennsylvania within sixty days after certification by the sentencing court of the entire record. In the event that the sentence of death shall for any reason be invalidated then the convicted defendant shall undergo the sentence of life imprisonment.*

Section 4. Sections 2502 and 2704 of Title 18 of the act, added December 6, 1972 (P.L.1482, No.334), are amended to read:
§ 2502. Murder.

(a) *Murder of the first degree.—A criminal homicide constitutes murder of the first degree when [it is committed by means of poison, or by lying in wait, or by any other kind of willful, deliberate, and premeditated killing. A criminal homicide constitutes murder of the first degree if the actor is engaged in or is an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary, or kidnapping.] it is committed by an intentional killing.*

(b) Murder of the second degree.—[All other kinds of murder shall be murder of the second degree. Murder of the second degree is a felony of the first degree.] *A criminal homicide constitutes murder of the second degree when the death of the victim occurred while defendant was engaged as a principal or an accomplice in the perpetration of a felony.*

(c) *Murder of the third degree.—All other kinds of murder shall be murder of the third degree. Murder of the third degree is a felony of the first degree.*

(d) *Definitions.—As used in this section the following words and phrases shall have the meanings given to them in this subsection:*

“Fireman.” Includes any employe or member of a municipal fire department or volunteer fire company.

“Hijacking.” Any unlawful or unauthorized seizure or exercise of control, by force or violence or threat of force or violence.

“Intentional killing.” Killing by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing.

“Perpetration of a felony.” The act of the defendant in engaging in or being an accomplice in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, or deviate sexual intercourse by force or threat of force, arson, burglary or kidnapping.

“Principal.” A person who is the actor or perpetrator of the crime.
§ 2704. Assault by life prisoner.

Every person who has been sentenced to death or life imprisonment in any penal institution located in this Commonwealth, and whose sentence has not been commuted, who commits an aggravated assault with a deadly weapon or instrument upon another, or by any means of force likely to produce serious bodily injury, is guilty of a crime, the penalty for which shall be the same as the penalty for murder of the [first] *second* degree.

Section 5. If any subparagraph, paragraph, or subsection of section 2502 of the “Crimes Code,” as amended by this act, or any other provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other subparagraphs, paragraphs, subsections, provisions or applications of the act which can be given effect without the invalid subparagraph, paragraph, subsection, provision or application, and to this end the provisions of this act are declared to be severable.

Section 6. This act shall take effect immediately.

We certify that this bill, House Bill No. 1060, Printer's No. 2578, having passed both Houses, vetoed by the Governor, was returned to the House of Representatives where the House proceeded to reconsider and again pass the bill by more than a two-thirds majority of the members elected to the House, the objections of the Governor to the contrary notwithstanding. Upon notification by the House of Representatives as to their action the Senate proceeded to reconsider and again pass the bill by more than a two-thirds majority of the members elected to the Senate, the objections of the Governor to the contrary notwithstanding.

Given under our hand and seal this twenty-sixth day of March, one thousand nine hundred and seventy-four.

Ernest P. Kline
President, Senate

Kenneth B. Lee
Speaker, House of Representatives

Thomas J. Kalman
Chief Clerk, Senate

Robert M. Scheipe
Chief Clerk, House of Representatives