

No. 1978-141

AN ACT

SB 1233

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for the imposition of sentences for murder.

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

Section 1. Section 1311 of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended to read:

[§ 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 impossible 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 60 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.]

§ 1311. *Sentencing procedure for murder of the first degree.*

(a) *Procedure in jury trials.*—

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

(2) *In the sentencing hearing, evidence may be presented as to any matter that the court deems relevant and admissible on the question of the sentence to be imposed and shall include matters relating to any of the aggravating or mitigating circumstances specified in subsections (d) and (e). Evidence of aggravating circumstances shall be limited to those circumstances specified in subsection (d).*

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

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

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

(c) *Instructions to jury.*—

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

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

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

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

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

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

(2) *The court shall instruct the jury on any other matter that may be just and proper under the circumstances.*

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

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

(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.*

(e) *Mitigating circumstances.—Mitigating circumstances shall include the following:*

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

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

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

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

(5) The defendant acted under extreme duress, although not such duress as to constitute a defense to prosecution under section 309 (relating to duress), or acted under the substantial domination of another person.

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

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

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

(f) Sentencing verdict by the jury.—

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

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

(g) Recording sentencing verdict.—Whenever the jury shall agree upon a sentencing verdict, it shall be received and recorded by the court. The court shall thereafter impose upon the defendant the sentence fixed by the jury.

(h) Review of death sentence.—

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

(2) In addition to its authority to correct errors at trial, the Supreme Court shall either affirm the sentence of death or vacate the sentence of death and remand for the imposition of a life imprisonment sentence.

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

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

(ii) the evidence fails to support the finding of an aggravating circumstance specified in subsection (d); or

(iii) the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character and record of the defendant.

(i) Record of death sentence to Governor.—Where 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.

Section 2. This act shall take effect immediately.

We certify that this bill, Senate Bill No. 1233, Printer's No. 2034, having passed both Houses, vetoed by the Governor, official notification of which was returned to the Senate where the Senate reconsidered and passed the bill by a two-thirds majority of the members elected to the Senate September 12, 1978, the objections of the Governor to the contrary notwithstanding. Upon notification by the Senate as to their action, the House of Representatives reconsidered and passed the bill on September 13, 1978 by a two-thirds majority of the members elected to the House of Representatives, the objections of the Governor to the contrary notwithstanding.

Given under our hand and seal this thirteenth day of September, one thousand nine hundred and seventy-eight.

MARTIN L. MURRAY

President Pro Tempore, Senate

K. LEROY IRVIS

Speaker, House of Representatives

MARK GRUELL, JR.

Secretary, Senate

VINCENT F. SCARCELLI

Chief Clerk, House of Representatives

Note. The date of final enactment of Act No. 1978-141 is Sept. 13, 1978.