

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 999 Session of 2023

INTRODUCED BY RABB, SMITH-WADE-EL, BURGOS, HANBIDGE, WAXMAN, ZABEL, CEPEDA-FREYTIZ, MADDEN, SANCHEZ, KINKEAD, FRANKEL, HOWARD, KRAJEWSKI, SOLOMON AND OTTEN, APRIL 17, 2023

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 17, 2023

AN ACT

1 Amending Titles 18 (Crimes and Offenses), 42 (Judiciary and
 2 Judicial Procedure) and 61 (Prisons and Parole) of the
 3 Pennsylvania Consolidated Statutes, in authorized disposition
 4 of offenders, further providing for sentence for murder,
 5 murder of unborn child and murder of law enforcement officer;
 6 in arson, criminal mischief and other property destruction,
 7 further providing for the offense of arson and related
 8 offenses; in jurisdiction of appellate courts, further
 9 providing for direct appeals from courts of common pleas; in
 10 post-trial matters, further providing for postconviction DNA
 11 testing and for disposition and appeal; in sentencing,
 12 further providing for sentencing procedure for murder of the
 13 first degree; and, in execution procedure and method,
 14 repealing provisions relating to issuance of warrant.

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

17 Section 1. Sections 1102(a) and 3301(b)(1) of Title 18 of
 18 the Pennsylvania Consolidated Statutes are amended to read:

19 § 1102. Sentence for murder, murder of unborn child and murder
 20 of law enforcement officer.

21 (a) First degree.--

22 (1) Except as provided under section 1102.1 (relating to
 23 sentence of persons under the age of 18 for murder, murder of

1 an unborn child and murder of a law enforcement officer), a
2 person who has been convicted of a murder of the first degree
3 or of murder of a law enforcement officer of the first degree
4 shall be sentenced to [death or to] a term of life
5 imprisonment in accordance with 42 Pa.C.S. § 9711 (relating
6 to sentencing procedure for murder of the first degree).

7 (2) The sentence for a person who has been convicted of
8 first degree murder of an unborn child shall be the same as
9 the sentence for murder of the first degree. [, except that
10 the death penalty shall not be imposed. This paragraph shall
11 not affect the determination of an aggravating circumstance
12 under 42 Pa.C.S. § 9711(d) (17) for the killing of a pregnant
13 woman.]

14 * * *

15 § 3301. Arson and related offenses.

16 * * *

17 (b) Sentence.--

18 (1) A person convicted of violating the provisions of
19 subsection (a) (2), murder of the first degree [,] or second
20 degree shall be sentenced to [death or] life imprisonment
21 without right to parole [; a person convicted of murder of the
22 second degree, pursuant to subsection (a) (2), shall be
23 sentenced to life imprisonment without right to parole].

24 Notwithstanding provisions to the contrary, no language
25 herein shall infringe upon the inherent powers of the
26 Governor to commute said sentence.

27 * * *

28 Section 2. Sections 722(4), 9543.1(a)(6), (c)(2) and (3) and
29 (d)(2), 9577(a) and 9711 of Title 42 are amended to read:

30 § 722. Direct appeals from courts of common pleas.

1 The Supreme Court shall have exclusive jurisdiction of
2 appeals from final orders of the courts of common pleas in the
3 following classes of cases:

4 * * *

5 (4) Automatic review of sentences as provided by 42
6 Pa.C.S. [§§ 9546(d) (relating to relief and order) and
7 9711(h) (relating to review of death sentence)] § 9546(d)
8 (relating to relief and order).

9 * * *

10 § 9543.1. Postconviction DNA testing.

11 (a) Motion.--

12 * * *

13 (6) The motion shall explain how, after review of the
14 record of the applicant's trial, there is a reasonable
15 possibility if the applicant is under State supervision, or
16 there is a reasonable probability if the applicant is not
17 under State supervision, or after review of the record of the
18 applicant's guilty plea there is a reasonable probability,
19 that the testing would produce exculpatory evidence that
20 would establish:

21 (i) the applicant's actual innocence of the offense
22 for which the applicant was convicted;

23 [(ii) in a capital case, the applicant's actual
24 innocence of the charged or uncharged conduct
25 constituting an aggravating circumstance under section
26 9711(d) (relating to sentencing procedure for murder of
27 the first degree) if the applicant's exoneration of the
28 conduct would result in vacating a sentence of death; or

29 (iii) in a capital case, a mitigating circumstance
30 under section 9711(e) (7) under the circumstances set

1 forth in section 9711(c)(1)(iv)].

2 * * *

3 (c) Requirements.--In any motion under subsection (a), under
4 penalty of perjury, the applicant shall:

5 * * *

6 (2) (i) in a sworn statement subject to the penalties
7 under 18 Pa.C.S. §§ 4902 (relating to perjury) and 4903
8 (relating to false swearing), assert the applicant's
9 actual innocence of the offense for which the applicant
10 was convicted and that the applicant seeks DNA testing
11 for the purpose of demonstrating the applicant's actual
12 innocence; and

13 [(ii) in a capital case:

14 (A) assert the applicant's actual innocence of
15 the charged or uncharged conduct constituting an
16 aggravating circumstance under section 9711(d) if the
17 applicant's exoneration of the conduct would result
18 in vacating a sentence of death; or

19 (B) assert that the outcome of the DNA testing
20 would establish a mitigating circumstance under
21 section 9711(e)(7) if that mitigating circumstance
22 was presented to the sentencing judge or jury and
23 facts as to that issue were in dispute at the
24 sentencing hearing.]

25 (3) present a prima facie case demonstrating that the:

26 (i) identity of or the participation in the crime by
27 the perpetrator was at issue in the proceedings that
28 resulted in the applicant's conviction and sentencing;
29 and

30 (ii) DNA testing of the specific evidence, assuming

1 exculpatory results, would establish:

2 (A) the applicant's actual innocence of the
3 offense for which the applicant was convicted;

4 [(B) in a capital case, the applicant's actual
5 innocence of the charged or uncharged conduct
6 constituting an aggravating circumstance under
7 section 9711(d) if the applicant's exoneration of the
8 conduct would result in vacating a sentence of death;
9 or

10 (C) in a capital case, a mitigating circumstance
11 under section 9711(e) (7) under the circumstances set
12 forth in section 9711(c) (1) (iv).]

13 (d) Order.--

14 * * *

15 (2) The court shall not order the testing requested in a
16 motion under subsection (a) if, after review of the record of
17 the applicant's trial, the court determines that there is no
18 reasonable possibility for an applicant under State
19 supervision, or there is no reasonable probability for an
20 applicant not under State supervision, or after review of the
21 record of the applicant's guilty plea, the court determines
22 that there is no reasonable probability, that the testing
23 would produce exculpatory evidence that:

24 (i) would establish the applicant's actual innocence
25 of the offense for which the applicant was convicted;

26 [(ii) in a capital case, would establish the
27 applicant's actual innocence of the charged or uncharged
28 conduct constituting an aggravating circumstance under
29 section 9711(d) if the applicant's exoneration of the
30 conduct would result in vacating a sentence of death; or

1 (iii) in a capital case, would establish a
2 mitigating circumstance under section 9711(e) (7) under
3 the circumstances set forth in section 9711(c) (1) (iv).]

4 * * *

5 § 9577. Disposition and appeal.

6 [(a) Capital unitary review.--Review by the Supreme Court
7 under section 9711(h) (relating to review of death sentence)
8 shall comprise direct appeal and collateral appeal. The common
9 pleas court order disposing of the petition under this
10 subchapter shall constitute the final judgment for purposes of
11 this review.]

12 * * *

13 § 9711. Sentencing procedure for murder of the first degree.

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

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

20 [(2) In the sentencing hearing, evidence concerning the
21 victim and the impact that the death of the victim has had on
22 the family of the victim is admissible. Additionally,
23 evidence may be presented as to any other matter that the
24 court deems relevant and admissible on the question of the
25 sentence to be imposed. Evidence shall include matters
26 relating to any of the aggravating or mitigating
27 circumstances specified in subsections (d) and (e), and
28 information concerning the victim and the impact that the
29 death of the victim has had on the family of the victim.
30 Evidence of aggravating circumstances shall be limited to

1 those circumstances specified in subsection (d).

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

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

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

16 (c) Instructions to jury.--

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

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

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

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

28 (iv) The verdict must be a sentence of death if the
29 jury unanimously finds at least one aggravating
30 circumstance specified in subsection (d) and no

1 mitigating circumstance or if the jury unanimously finds
2 one or more aggravating circumstances which outweigh any
3 mitigating circumstances. The verdict must be a sentence
4 of life imprisonment in all other cases.

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

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

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

20 (1) The victim was a firefighter, peace officer, public
21 servant concerned in official detention, as defined in 18
22 Pa.C.S. § 5121 (relating to escape), judge of any court in
23 the unified judicial system, the Attorney General of
24 Pennsylvania, a deputy attorney general, district attorney,
25 assistant district attorney, member of the General Assembly,
26 Governor, Lieutenant Governor, Auditor General, State
27 Treasurer, State law enforcement official, local law
28 enforcement official, Federal law enforcement official or
29 person employed to assist or assisting any law enforcement
30 official in the performance of his duties, who was killed in

1 the performance of his duties or as a result of his official
2 position.

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (15) At the time of the killing, the victim was or had

1 been a nongovernmental informant or had otherwise provided
2 any investigative, law enforcement or police agency with
3 information concerning criminal activity and the defendant
4 committed the killing or was an accomplice to the killing as
5 defined in 18 Pa.C.S. § 306(c), and the killing was in
6 retaliation for the victim's activities as a nongovernmental
7 informant or in providing information concerning criminal
8 activity to an investigative, law enforcement or police
9 agency.

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

11 (17) At the time of the killing, the victim was in her
12 third trimester of pregnancy or the defendant had knowledge
13 of the victim's pregnancy.

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

20 (e) Mitigating circumstances.--Mitigating circumstances
21 shall include the following:

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

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

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

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

30 (5) The defendant acted under extreme duress, although

1 not such duress as to constitute a defense to prosecution
2 under 18 Pa.C.S. § 309 (relating to duress), or acted under
3 the substantial domination of another person.

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

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

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

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

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

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

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

25 (h) Review of death sentence.--

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

29 (2) In addition to its authority to correct errors at
30 trial, the Supreme Court shall either affirm the sentence of

1 death or vacate the sentence of death and remand for further
2 proceedings as provided in paragraph (4).

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

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

7 (ii) the evidence fails to support the finding of at
8 least one aggravating circumstance specified in
9 subsection (d).

10 (4) If the Supreme Court determines that the death
11 penalty must be vacated because none of the aggravating
12 circumstances are supported by sufficient evidence, then it
13 shall remand for the imposition of a life imprisonment
14 sentence. If the Supreme Court determines that the death
15 penalty must be vacated for any other reason, it shall remand
16 for a new sentencing hearing pursuant to subsections (a)
17 through (g).

18 (i) Record of death sentence to Governor.--Where a sentence
19 of death is upheld by the Supreme Court, the prothonotary of the
20 Supreme Court shall transmit to the Governor a full and complete
21 record of the trial, sentencing hearing, imposition of sentence,
22 opinion and order by the Supreme Court within 30 days of one of
23 the following, whichever occurs first:

24 (1) the expiration of the time period for filing a
25 petition for writ of certiorari or extension thereof where
26 neither has been filed;

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

28 (3) the disposition of the appeal by the United States
29 Supreme Court, if that court grants the petition for writ of
30 certiorari.

1 Notice of this transmission shall contemporaneously be provided
2 to the Secretary of Corrections.]

3 Section 3. Section 4302 of Title 61 is repealed:

4 [§ 4302. Issuance of warrant.

5 (a) Time.--

6 (1) After the receipt of the record pursuant to 42
7 Pa.C.S. § 9711(i) (relating to sentencing procedure for
8 murder of the first degree), unless a pardon or commutation
9 has been issued, the Governor shall, within 90 days, issue a
10 warrant specifying a day for execution which shall be no
11 later than 60 days after the date the warrant is signed.

12 (2) If, because of a reprieve or a judicial stay of the
13 execution, the date of execution passes without imposition of
14 the death penalty, unless a pardon or commutation has been
15 issued, the Governor shall, within 30 days after receiving
16 notice of the termination of the reprieve or the judicial
17 stay, reissue a warrant specifying a day for execution which
18 shall be no later than 60 days after the date of reissuance
19 of the warrant.

20 (b) Secretary.--The warrant shall be directed to the
21 secretary commanding that the subject of the warrant be executed
22 on the day named in the warrant and in the manner prescribed by
23 law.

24 (c) Failure to timely comply.--If the Governor fails to
25 timely comply with the provisions of this section and a pardon
26 or commutation has not been issued, the secretary shall, within
27 30 days following the Governor's failure to comply, schedule and
28 carry out the execution no later than 60 days from the date by
29 which the Governor was required to sign the warrant under
30 subsection (a).]

1 Section 4. This act shall apply to defendants and
2 individuals who have not been sentenced as of the effective date
3 of this section.

4 Section 5. This act shall take effect in 60 days.