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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 999 Session of  
2021

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INTRODUCED BY RABB, RYAN AND PENNYCUICK, APRIL 1, 2021

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REFERRED TO COMMITTEE ON JUDICIARY, APRIL 1, 2021

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AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and  
2 Judicial Procedure) of the Pennsylvania Consolidated  
3 Statutes, in authorized disposition of offenders, further  
4 providing for sentence for murder, murder of unborn child and  
5 murder of law enforcement officer; in arson, criminal  
6 mischief and other property destruction, further providing  
7 for the offense of arson and related offenses; and, in  
8 sentencing, further providing for sentencing procedure for  
9 murder of the first degree.

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

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

14 § 1102. Sentence for murder, murder of unborn child and murder  
15 of law enforcement officer.

16 (a) First degree.--

17 (1) Except as provided under section 1102.1 (relating to  
18 sentence of persons under the age of 18 for murder, murder of  
19 an unborn child and murder of a law enforcement officer), a  
20 person who has been convicted of a murder of the first degree  
21 or of murder of a law enforcement officer of the first degree  
22 shall be sentenced to [death or to] a term of life

1 imprisonment in accordance with 42 Pa.C.S. § 9711 (relating  
2 to sentencing procedure for murder of the first degree).

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

10 \* \* \*

11 § 3301. Arson and related offenses.

12 \* \* \*

13 (b) Sentence.--

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

23 \* \* \*

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

25 § 9711. Sentencing procedure for murder of the first degree.

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

27 (1)] After a verdict of murder of the first degree is  
28 recorded [and before the jury is discharged], the court shall  
29 [conduct a separate sentencing hearing in which the jury  
30 shall determine whether the defendant shall be sentenced to

1 death or] sentence the defendant to life imprisonment.

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

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

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

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

28 (c) Instructions to jury.--

29 (1) Before the jury retires to consider the sentencing  
30 verdict, the court shall instruct the jury on the following

1 matters:

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

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

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

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

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

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

30 (d) Aggravating circumstances.--Aggravating circumstances

1 shall be limited to the following:

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

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

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

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

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

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

30 (7) In the commission of the offense the defendant

1 knowingly created a grave risk of death to another person in  
2 addition to the victim of the offense.

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

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

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

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

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

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

29 (14) At the time of the killing, the victim was or had  
30 been involved, associated or in competition with the

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

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

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

23 (17) At the time of the killing, the victim was in her  
24 third trimester of pregnancy or the defendant had knowledge  
25 of the victim's pregnancy.

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

1 in whole or in part to protect the victim from the defendant.

2 (e) Mitigating circumstances.--Mitigating circumstances  
3 shall include the following:

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

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

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

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

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

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

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

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

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

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

30 (2) Based upon these findings, the jury shall set forth



1 in writing whether the sentence is death or life  
2 imprisonment.

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

7 (h) Review of death sentence.--

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

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

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

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

19 (ii) the evidence fails to support the finding of at  
20 least one aggravating circumstance specified in  
21 subsection (d).

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

30 (i) Record of death sentence to Governor.--Where a sentence

1 of death is upheld by the Supreme Court, the prothonotary of the  
2 Supreme Court shall transmit to the Governor a full and complete  
3 record of the trial, sentencing hearing, imposition of sentence,  
4 opinion and order by the Supreme Court within 30 days of one of  
5 the following, whichever occurs first:

6 (1) the expiration of the time period for filing a  
7 petition for writ of certiorari or extension thereof where  
8 neither has been filed;

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

10 (3) the disposition of the appeal by the United States  
11 Supreme Court, if that court grants the petition for writ of  
12 certiorari.

13 Notice of this transmission shall contemporaneously be provided  
14 to the Secretary of Corrections.]

15 Section 3. This act shall apply to defendants and  
16 individuals who have not been sentenced as of the effective date  
17 of this section.

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