

HOUSE BILL 1663

By Lamberth

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 40 and Chapter 1062 of the Public Acts of
2022, relative to sentencing for criminal offenses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-13-522(b), is amended by deleting the subsection and substituting:

(b) Rape of a child is a Class A felony and shall be punished as follows:

(1) If the defendant was a juvenile at the time of the offense, then the sentence must be from within Range III, as set forth in title 40, chapter 35; and

(2) If the defendant was an adult at the time of the offense, then the sentence must be:

(A) Death;

(B) Imprisonment for life without possibility of parole; or

(C) Imprisonment for life.

SECTION 2. Tennessee Code Annotated, Section 39-13-531(b), is amended by deleting the subsection and substituting:

(b) Aggravated rape of a child is a Class A felony and shall be punished as follows:

(1) If the defendant was a juvenile at the time of the offense, then the sentence must be from within Range III, as set forth in title 40, chapter 35; and

(2) If the defendant was an adult at the time of the offense, then the sentence must be:

(A) Death; or

(B) Imprisonment for life without possibility of parole.

SECTION 3. Tennessee Code Annotated, Section 39-13-535(a), is amended by deleting the language "less than eighteen (18) years of age" and substituting "more than twelve (12) years or age but less than eighteen (18) years of age".

SECTION 4. Tennessee Code Annotated, Section 39-13-203(b), is amended by deleting the subsection and substituting:

(b) Notwithstanding another law to the contrary, a defendant with intellectual disability at the time of committing an offense shall not be sentenced to death for the offense.

SECTION 5. Tennessee Code Annotated, Section 39-13-203(c), is amended by deleting the language "the offense of first degree murder" and substituting "the offense".

SECTION 6. Tennessee Code Annotated, Section 39-13-203(d), is amended by deleting the language "first degree murder" and substituting "an offense punishable by death".

SECTION 7. Tennessee Code Annotated, Section 39-13-204(a), is amended by deleting the language "first degree murder" wherever it appears and substituting "an offense punishable by death".

SECTION 8. Chapter 1062 of the Public Acts of 2022 is amended by deleting the language "first degree murder or grave torture" wherever it appears in Section 4 and substituting "an offense punishable by death".

SECTION 9. Tennessee Code Annotated, Section 39-13-204(c), is amended by deleting the language "murder" and substituting "offense".

SECTION 10. Tennessee Code Annotated, Section 39-13-204, is amended by deleting the language "first degree murder as described in § 39-13-202(c)(1)" in subdivisions (e)(2) and (f)(1) and substituting "first degree murder as described in § 39-13-202(c)(1) or rape of a child".

SECTION 11. Tennessee Code Annotated, Section 39-13-204(f)(2)(B)(i), is amended by deleting the language "first degree murder as described in § 39-13-202(c)(2)" and substituting "first degree murder as described in § 39-13-202(c)(2) or aggravated rape of a child".

SECTION 12. Chapter 1062 of the Public Acts of 2022 is amended by deleting the language "first degree murder as described in § 39-13- 202(c)(2) or grave torture as described in Section 3" in Section 5 and substituting "first degree murder as described in § 39-13-202(c)(2), aggravated rape of a child, or grave torture".

SECTION 13. Tennessee Code Annotated, Section 39-13-204(h)(2), is amended by deleting the language "first degree murder as described in § 39-13-202(c)(2)" and substituting "first degree murder as described in § 39-13-202(c)(2) or aggravated rape of a child".

SECTION 14. Chapter 1062 of the Public Acts of 2022 is amended by deleting the language "first degree murder as described in § 39-13-202(c)(2) or grave torture as described in Section 3" in Section 6 and substituting "first degree murder as described in § 39-13-202(c)(2), aggravated rape of a child, or grave torture".

SECTION 15. Tennessee Code Annotated, Section 39-13-204(i), is amended by deleting subdivisions (i)(1)–(19) and substituting:

(1) The defendant committed murder against a person less than twelve (12) years of age and the defendant was eighteen (18) years of age or older;

(2) The defendant was previously convicted of one (1) or more felonies, other than the present charge, whose statutory elements involve the use of violence to the person;

(3) The defendant knowingly created a great risk of death to two (2) or more persons, other than the victim of the offense, during the offense;

(4) The defendant committed the offense for remuneration or the promise of remuneration, or employed another to commit the offense for remuneration or the promise of remuneration;

(5) The offense was especially heinous, atrocious, or cruel, in that it involved torture or serious physical abuse beyond that necessary to produce death;

(6) The offense was committed for the purpose of avoiding, interfering with, or preventing a lawful arrest or prosecution of the defendant or another;

(7) The offense was knowingly committed, solicited, directed, or aided by the defendant, while the defendant had a substantial role in committing or attempting to commit, or was fleeing after having a substantial role in committing or attempting to commit, any first degree murder, arson, rape, robbery, burglary, theft, kidnapping, aggravated child abuse, aggravated child neglect, rape of a child, aggravated rape of a child, aircraft piracy, or unlawful throwing, placing, or discharging of a destructive device or bomb;

(8) The offense was committed by the defendant while the defendant was in lawful custody or in a place of lawful confinement or during the defendant's escape from lawful custody or from a place of lawful confinement;

(9) The offense was committed against any law enforcement officer, corrections official, corrections employee, probation and parole officer, emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter, who was engaged in the performance of official duties, and the defendant knew or reasonably should have known that the victim was a law enforcement officer, corrections official, corrections employee, probation and parole officer, emergency medical or rescue worker, emergency medical technician, paramedic, or firefighter engaged in the performance of official duties;

(10) The offense was committed against any present or former judge, district attorney general or state attorney general, assistant district attorney general or assistant state attorney general, due to or because of the exercise of the victim's official duty or status and the defendant knew that the victim occupied such office;

(11) The offense was committed against a national, state, or local popularly elected official, due to or because of the official's lawful duties or status, and the defendant knew that the victim was such an official;

(12) The defendant committed "mass murder," which is defined as the murder of three (3) or more persons, whether committed during a single criminal episode or at different times within a forty-eight-month period;

(13) The defendant knowingly mutilated the body of the victim;

(14) The victim of the offense was seventy (70) years of age or older; or the victim was particularly vulnerable due to a significant disability, whether mental or physical, and at the time of the offense, the defendant knew or reasonably should have known of such disability;

(15) The offense was committed in the course of an act of terrorism;

(16) The offense was committed against a pregnant woman, and the defendant intentionally committed the offense against the victim, knowing that she was pregnant;

(17) The offense was committed at random and the reasons for the offense are not obvious or easily understood;

(18) The defendant knowingly sold or distributed a substance containing fentanyl, carfentanil, or any other opiate listed in § 39-17-408(c) with the intent and premeditation to commit murder; or

(19) The victim of the offense was acting as a Good Samaritan at the time of the offense and the defendant knew that the person was acting as a Good Samaritan. For

purposes of this subdivision (i)(19), "Good Samaritan" means a person who helps, defends, protects, or renders emergency care to a person in need without compensation.

SECTION 16. Tennessee Code Annotated, Section 39-13-204, is amended by deleting subdivisions (j)(2)–(5) and substituting:

(2) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance;

(3) The victim was a participant in the defendant's conduct or consented to the act;

(4) The offense was committed under circumstances that the defendant reasonably believed to provide a moral justification for the defendant's conduct;

(5) The defendant was an accomplice in the offense committed by another person and the defendant's participation was relatively minor;

SECTION 17. Tennessee Code Annotated, Section 39-13-204(k), is amended by deleting the subsection and substituting:

(k) Upon motion for a new trial, after a conviction for an offense that is punishable by death, if the court finds error in the trial determining guilt, a new trial on both guilt and sentencing shall be held; but if the court finds error alone in the trial determining punishment, a new trial on the issue of punishment alone shall be held by a new jury empaneled for that purpose. If the trial court, or any other court with jurisdiction to do so, orders that a defendant convicted of an offense that is punishable by death, whether the sentence is death, imprisonment for life without possibility of parole, or imprisonment for life, be granted a new trial, either as to guilt or punishment, or both, the new trial shall include the possible punishments of death, imprisonment for life without

possibility of parole, or, unless the defendant is convicted of first degree murder as described in § 39-13-202(c)(2), or aggravated rape of a child, imprisonment for life.

SECTION 18. Chapter 1062 of the Public Acts of 2022 is amended by deleting the amendatory language in Section 7 and substituting:

(k) Upon motion for a new trial, after a conviction for an offense that is punishable by death, if the court finds error in the trial determining guilt, then a new trial on both guilt and sentencing must be held; but if the court finds error alone in the trial determining punishment, then a new trial on the issue of punishment alone must be held by a new jury empaneled for that purpose. If the trial court, or another court with jurisdiction to do so, orders that a defendant convicted of an offense that is punishable by death, whether the sentence is death, imprisonment for life without possibility of parole, or, if applicable, imprisonment for life, be granted a new trial, either as to guilt or punishment, or both, then the new trial must include the possible punishments of death, imprisonment for life without possibility of parole, or, unless the defendant is convicted of first degree murder as described in § 39-13-202(c)(2), aggravated rape of a child, or grave torture, imprisonment for life.

SECTION 19. Tennessee Code Annotated, Section 39-13-205, is amended by deleting subsections (a) and (b) and substituting:

(a) In a trial for an offense that is punishable by death, the defendant, with the advice of the defendant's attorney and the consent of the court and district attorney general, may waive the right to a jury to determine guilt, in which case the trial judge shall determine guilt; provided, that such waiver will not affect the defendant's right to a jury to determine punishment, if the defendant is found guilty of the offense.

(b) After a verdict of guilty is found for an offense that is punishable by death, the defendant, with the advice of the defendant's attorney and the consent of the court and

the district attorney general, may waive the right to have a jury determine punishment, in which case the trial judge shall determine punishment as provided by this part.

SECTION 20. Chapter 1062 of the Public Acts of 2022 is amended by deleting Section 11 in its entirety.

SECTION 21. Tennessee Code Annotated, Section 39-13-206, is amended by deleting subsections (a)–(d) and substituting:

(a)

(1) Whenever the death penalty is imposed for an offense and when the judgment has become final in the trial court, the Tennessee supreme court shall automatically review the conviction and the sentence of death. Upon the conviction becoming final in the trial court, the clerk shall docket the case in the supreme court and the case shall proceed in accordance with the Tennessee Rules of Appellate Procedure.

(2) If the defendant has been convicted of an offense and sentenced to death, the record as to guilt and sentence shall be expeditiously filed with the Tennessee supreme court within the time limit provision of Tennessee Rules of Appellate Procedure, Rules 24 and 25. If the defendant has been convicted of other offenses than the offense that is punishable by death at the same trial where a death sentence is imposed, the Tennessee supreme court has authority to review by direct appeal the other crimes, if appealed by the defendant with the conviction for an offense that is punishable by death and sentence of death.

(b) The appeal of the conviction for an offense that is punishable by death and the review of the sentence of death has priority over all other cases and shall be heard according to the rules promulgated by the Tennessee supreme court. The Tennessee

supreme court shall first consider any errors assigned and then the court shall review the sentence of death.

(c)

(1) In reviewing a sentence of death, the Tennessee supreme court shall determine whether:

(A) The sentence of death was imposed in any arbitrary fashion;

(B) The evidence supports the jury's finding of statutory aggravating circumstance or circumstances;

(C) The evidence supports the jury's finding that the aggravating circumstance or circumstances outweigh any mitigating circumstances; and

(D) The sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the nature of the crime and the defendant.

(2) The Tennessee supreme court may promulgate rules as it deems appropriate to establish such procedures as are necessary to enable it to properly review the death sentence.

(d) In addition to its other authority regarding correction of errors, the Tennessee supreme court, in reviewing a death sentence, is authorized to:

(1) Affirm the sentence of death; or

(2) Modify the punishment to imprisonment for life without possibility of parole or, if applicable, imprisonment for life.

SECTION 22. Chapter 1062 of the Public Acts of 2022 is amended by deleting Section 8 in its entirety.

SECTION 23. Tennessee Code Annotated, Section 39-13-207(a)(1), is amended by deleting the language "In any first degree murder case as described in § 39-13-202(c)(1)" and substituting "In a case of first degree murder as described in § 39-13-202(c)(1) or rape of a child".

SECTION 24. Tennessee Code Annotated, Section 39-13-207(a)(2), is amended by deleting the subdivision and substituting:

(2) In a case of first degree murder as described in § 39-13-202(c)(2) or aggravated rape of a child in which the state does not seek the death penalty, if the jury finds the defendant guilty, then a sentencing hearing shall not be conducted as required by § 39-13-204, and the judge shall sentence the defendant to imprisonment for life without the possibility of parole.

SECTION 25. Chapter 1062 of the Public Acts of 2022 is amended by deleting the amendatory language of Section 9 and substituting:

(2) In a case of first degree murder as described in § 39-13-202(c)(2), aggravated rape of a child, or grave torture, in which the state does not seek the death penalty, if the jury finds the defendant guilty, then a sentencing hearing must not be conducted as required by § 39-13-204, and the judge shall sentence the defendant to imprisonment for life without the possibility of parole.

SECTION 26. Tennessee Code Annotated, Section 39-13-207(b), is amended by deleting "first degree murder as described in § 39-13-202(c)(1)" and substituting "first degree murder as described in § 39-13-202(c)(1) or rape of a child".

SECTION 27. Tennessee Code Annotated, Section 39-13-208(b), is amended by deleting the language "a violation as described in § 39-13-202(c)(2)" and substituting "first degree murder as described in § 39-13-202(c)(2), or aggravated rape of a child".

SECTION 28. Chapter 1062 of the Public Acts of 2022 is amended by deleting the language " as described in § 39-13-202(c)(2) or Section 3" in Section 10 and substituting "of first degree murder as described in § 39-13-202(c)(2), aggravated rape of a child, or grave torture".

SECTION 29. This act takes effect July 1, 2024, the public welfare requiring it, and applies to acts committed on or after that date.