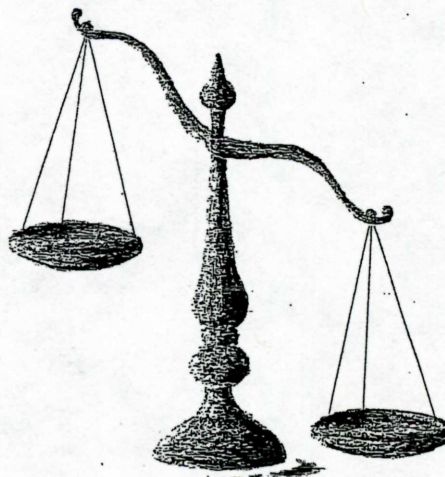


Skeletons
in our
Closets

by

A Skeleton in a Closet



Preface

"Injustice anywhere is a threat to justice everywhere."
---Martin Luther King, Jr.

Since an average of 15 years imprisonment for a non-capital first degree murder was considered ample punishment to satisfy justice here in Pennsylvania since the founding of our nation over 200 years ago, would you say it is justice or injustice for Pennsylvanians convicted of non-capital first degree murder to serve twice that much time, 30 years imprisonment, today?

Would three times that much time, 45 years imprisonment, be justice or injustice?

How about 60 years? Justice or injustice?

It gets worse. Much worse. This isn't a miscarriage of justice. It's an abortion.

Life Imprisonment
With or Without the Right to Parole?
An Exposé of Injustice

In accordance with the universally accepted tenets of justice and mercy, it is praiseworthy some Pennsylvania lawmakers have proposed Bills to provide mere parole eligibility for lifers after decades of grueling retributive imprisonment.

Whether you are for or against parole eligibility for lifers, if you are a true patriot who believes in truth, justice, and the egalitarianism of our American Dream, what I'm about to share with you will shock you, appall you, and fill you with righteous indignation. Our General Assembly already provided for life with parole sentences back in 1974. However, like cruel tyrants who consider themselves above the law, our courts have been violating their sworn duty and obstructing justice by arbitrarily refusing to abide by the unambiguous requirements of our duly enacted statutory laws in accordance with constitutional mandates.

The Furman Decision

Unlike many other states, our United States Supreme Court rebuked Pennsylvania almost 50 years ago for imposing cruel and unusual punishments forbidden by our United States Constitution. Our High Court's 1972 decision in Furman revealed our death penalty statutes to be unconstitutional because we imposed this extreme and ultimate sentence without the equal protection and due process of an individualized sentencing safeguard hearing.

Our General Assembly promptly revised Pennsylvania's death penalty statutes with 42 Pa.C.S. §9711 and enacted remarkably firm but fair new laws providing for the sentences to be imposed for non-capital first and second degree murder. These new laws were so outstanding they even encompassed the constitutional mandates yet to be covered in our High Court's 2012 Miller decision declaring mandatory life imprisonment without the possibility of parole sentences to be unconstitutional for juveniles. With these new individualized sentencing statutes enacted in 1974 providing for proportional punishment, sentences to death, sentences to life imprisonment without the right to parole, and sentences to life imprisonment with the right to parole were put on the table for first degree murder. Life imprisonment with the right to parole was mandated for second degree murder. It's just that simple.

However, these firm but fair new laws providing for sentences of life imprisonment with the right to parole and therefore with a minimum sentence imposed came out of our 1974 General Assembly, entered our courts, and emerged arbitrarily transformed into the one-size-fits-all sentence of mandatory life imprisonment without the right to parole. This isn't a miscarriage of justice. It's an abortion.

Life means Life?

Unlike the vague prophecies of Nostradamus which are open to various interpretations, our new sentencing statutes back in 1974 for non-capital first and second degree murder are not at all ambiguous. They say what they say, intend what they intend, mean what they mean, specify what they specify, and mandate what they mandate in plain English for everyone to easily understand. It's just that simple.

During the civil rights movement in the 1960's when black folks were finally afforded their right to vote and on through the 1970's when lifers were working outside the walls and fences driving trucks and tractors on our prison farms, Governors Shafer and Shapp were routinely granting clemency and parole to hundreds of amply punished and sufficiently remorseful and rehabilitated lifers who had aged out of crime after serving around 15 years of imprisonment while they rejected the commutation applications filed by some lifers they deemed to be irretrievably corrupt, depraved, and incorrigible killers.

Then, cruelly excessive and arbitrary get-tough-on-crime waves began sweeping across America resulting in black people being locked up at a rate unparalleled in human history. Millions of them were stripped of their only recently received right to vote. Amid this backdrop, injustice was heaped upon injustice as get-tough-on-crime catchphrases like "life means life", "truth in sentencing", and "just deserts" were spun into a tangled web of deceit creating the biggest, cruelest, and most arbitrary injustice in Pennsylvania's criminal justice system over the past half century.

When sentencing statutes provide for death, death means death. That's truth in sentencing. That's just deserts.

When sentencing statutes provide for life imprisonment without the right to parole, life imprisonment without the right to parole means life imprisonment without the right to parole. That's truth in sentencing. That's just deserts.

By the same token, when sentencing statutes provide for life imprisonment with the right to parole, life imprisonment with the right to parole means life imprisonment with the right to parole. That's truth in sentencing. That's just deserts. That's fundamental fairness. It's just that simple.

However, when our sentencing statutes provide for life imprisonment with the right to parole, life imprisonment **with** the right to parole **does not mean** life imprisonment **without** the right to parole. That is not truth in sentencing. Truth in sentencing requires truth. That is not just deserts. Just deserts must be just. That is not fundamental fairness. Fundamental fairness must be fair. It's just this simple.

The 2012 Miller and 2016 Montgomery Decisions

Our U.S. Supreme Court's decisions in Miller and Montgomery once again rebuked us for unconstitutional cruelty. These two decisions exposed us as the cruelest of the cruel since we had imposed the constitutionally forbidden sentence of mandatory life imprisonment without the right to parole upon more juveniles than any other state in our country and more than every other country in the world put together. Now, I'm going to expose Pennsylvania to be even crueler by showing the proof of our courts arbitrarily imposing life without parole sentences upon over 5,000 juveniles and adults in direct violation of the requirements of our U.S. Constitution and the unambiguous mandates of our own statutory laws enacted in 1974. It's all so plain and simple to see. We should be ashamed of our unrivaled cruelty and injustice.

With only one exception, if our courts had been obeying our own statutory laws enacted in response to Furman, we would have been in full compliance with our High Court's decisions in Miller and Montgomery. However, the plain truth is our courts have been arbitrarily disobeying our own mandatory statutory laws since 1974 by always imposing the one-size-fits-all sentence of life imprisonment without the right to parole upon both juveniles and adults as if such cruel sentences were mandatory when, in fact, the one and only statute authorizing a mandatory sentence to life imprisonment without the right to parole is for cases of arson murder at 18 Pa.C.S. §3301. This statute wasn't enacted until 1982, and it still remains the only statute mandating a sentence of life imprisonment without the right to parole.

Either we have the rule of law, or we don't. We will either obey our laws, or we won't. Since 1974, our courts have said we don't and we won't by arbitrarily disobeying our own statutory mandates and constitutional guarantees for equal protection and the due process of fair notice¹ and individualized sentencing.

Our forefathers did not revolt against the King of England to replace one tyrant sitting on a throne in a purple robe thousands of miles away with thousands of tyrants sitting on benches in black robes right here at home. Unfortunately, this has been the cruel reality for well over 5,000 Pennsylvania lifers along with their family members and friends since 1974.

It's incredible, but our repeatedly-rebuked-for-cruelty courts have arbitrarily chosen not to obey the remarkably firm but fair new sentencing laws enacted by our General Assembly back in 1974. Instead, our courts have presumptuously overstepped their statutory and constitutional bounds by arbitrarily legislating their own result-oriented brand of justice from the bench in the form of the one-size-fits-all sentence to life imprisonment without the right to parole. This is an outright violation of our separation of powers doctrine and the sworn duty of our courts to fairly apply the unambiguous requirements of our own statutory laws in accordance with constitutional mandates. Now, to our laws!

(Footnote for page 3, paragraph 3, "fair notice¹")

1. Of course, due process also requires fair notice. Nobody can honestly say 18 Pa.C.S. §1102(b), 42 Pa.C.S. §9721(a)(4)(b)(e), and 42 Pa.C.S. §9756(a)(b) shown herein gives fair notice to persons charged with second degree murder that they are facing a mandatory sentence of life imprisonment without the possibility of parole.

Only by ignoring our General Assembly's use of the word "may" at 42 Pa.C.S. §9756(c) could anybody attempt to say 18 Pa.C.S. §1102(a), 42 Pa.C.S. §9721(a)(4)(b)(e), and 42 Pa.C.S. §9756(a)(b)(c) shown herein gives fair notice to persons charged with first degree murder that they are facing a mandatory sentence of life imprisonment without the possibility of parole.

In stark contrast, being the one and only statute in Pennsylvania law mandating the extreme sentence of life imprisonment without the right to parole, 18 Pa.C.S. §3301 shown herein actually gives people charged with first or second degree arson murder fair notice that they are facing a mandatory sentence of life imprisonment without the possibility of parole.

So, hypothetically, if 18 Pa.C.S. §1102 taken together with 42 Pa.C.S. §9721 and 42 Pa.C.S. §9756 was meant to establish a sentence of mandatory life imprisonment without the right to parole for non-capital first and second degree murder as 18 Pa.C.S. §3301 does for non-capital first and second degree arson murder, then it would be a colossal understatement to simply say 18 Pa.C.S. §1102, 42 Pa.C.S. §9721, and 42 Pa.C.S. §9756 are "void for vagueness" since they are clearly meant to establish the exact opposite, namely, discretionary life imprisonment with the right to parole for certain cases of non-capital first degree murder and mandatory life imprisonment with the right to parole for cases of second degree murder.

Prior to Furman, felony murder in Pennsylvania was a case of first degree murder.---18 Pa.C.S. §2502.

§ 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.

(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.

1972, Dec. 6, P.L. —, No. 334, § 1, eff. June 6, 1973.

Prior to Furman, the maximum penalties authorized by law in Pennsylvania for murder of the first degree were death or life imprisonment.---18 Pa.C.S. §1102.

§ 1102. Sentence for 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.

1972, Dec. 6, P.L. —, No. 334, § 1, eff. June 6, 1973.

From the Pennsylvania Bar Association Quarterly
on Pennsylvania's New Crimes Code
March, 1973, Page 296

CLASSIFICATION OF CRIMES

Grading	Maximum Imprisonment	Maximum Fine ^a
Murder	Death-life	
Felony, 1st degree	20 years	\$25,000
Felony, 2d degree	10 years	\$25,000
Felony, 3d degree	7 years	\$15,000
Misdemeanor, 1st degree	5 years	\$10,000
Misdemeanor, 2d degree	2 years	\$ 5,000
Misdemeanor, 3d degree	1 year	\$ 2,500
Summary Offense	90 days	\$ 300

In response to Furman, felony murder was separated from the greater offence of first degree murder and relegated to the lesser offence of second degree murder with 18 Pa.C.S. §2502(b).

§ 2502. Murder.

(a) *Murder of the first degree.* — A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing.

(b) *Murder of the second degree.* — A criminal homicide constitutes murder of the second degree when it is committed 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.

HISTORY:

Act 1972-334 (S.B. 455), P.L. 1482, § 1, approved Dec. 6, 1972, eff. in 6 months; Act 1974-46 (H.B. 1060), P.L. 213, § 4, approved Mar. 26, 1974, eff. immediately; Act 1978-39 (S.B. 1118), P.L. 84, § 1, approved Apr. 28, 1978, eff. in 60 days.

In response to Furman, life imprisonment was set as the maximum period of total confinement authorized by law for second degree murder with 18 Pa.C.S. §1102(b) while death or life imprisonment remained maximum penalties for first degree murder.

§ 1102. Sentence for murder

(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)¹ of this title (relating to sentencing procedure for murder of the first degree).

(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.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. As amended 1974, March 26, P.L. 213, No. 46, § 2, imd. effective.

¹ Transferred; see, now, 42 Pa.C.S.A. § 9711.

From the Pennsylvania Commission on Sentencing since the 1973/1974 changes to 18 Pa.C.S. §2502 and §1102 in response to our U.S. Supreme Court's 1972 decision in Furman v. Georgia.

LENGTH OF CONFINEMENT:

Except where the statute relating to an offense specifically provides otherwise, the following maximum lengths of confinement are permitted by 18 Pa. C. S. §§1102-1105:

- 1) for murder of the first degree, life imprisonment or death;
- 2) for murder of the second degree, life imprisonment;
- 3) for a felony 1, not more than 20 years;
- 4) for a felony 2, not more than 10 years;
- 5) for a felony 3, not more than 7 years;
- 6) for a misdemeanor 1, not more than 5 years;
- 7) for a misdemeanor 2, not more than 2 years;
- 8) for a misdemeanor 3, not more than 1 year; and
- 9) for a summary offense, not more than 90 days.

In response to Furman, our Pennsylvania General Assembly enacted 42 Pa.C.S. §9756 in 1974 reiterating the long-standing requirement established over a century ago at 19 P.S. §1057 (1911) for individualized indefinite sentences consisting of both an authorized maximum period of imprisonment and a required minimum term of confinement not exceeding one-half of the maximum sentence imposed with the right to parole.

§ 9756. Sentence of total confinement

(a) General rule.—In imposing a sentence of total confinement the court shall at the time of sentencing specify any maximum period up to the limit authorized by law and whether the sentence shall commence in a correctional or other appropriate institution.

(b) Minimum sentence.—The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed.

(c) Prohibition of parole.—Except in the case of murder of the first degree, the court may impose a sentence to imprisonment without the right to parole only when:

- (1) a summary offense is charged;
- (2) sentence is imposed for nonpayment of fines or costs, or both, in which case the sentence shall specify the number of days to be served; and
- (3) the maximum term or terms of imprisonment imposed on one or more indictments to run consecutively or concurrently total less than 30 days.

The only exception to this well-established individualized sentencing requirement at 42 Pa.C.S. §9756(b) is when a without parole provision exists in a statute prohibiting the imposition of a minimum sentence.

For example, an optional without parole provision exists at 42 Pa.C.S. §9756(c) for cases of first degree murder, summary offences, and other minor cases. Another optional without parole provision exists at 42 Pa.C.S. §9714 for second and subsequent offences, and a mandatory without parole provision exists at 18 Pa.C.S. §3301 for cases of arson murder prohibiting the imposition of a minimum sentence with the right to parole.

Although life imprisonment without the right to parole was an authorized option after Furman for first degree murder with the enactment of 18 Pa.C.S. §1102(a) and 42 Pa.C.S. §9756(a)(c) in 1974, and while life imprisonment without the right to parole was an authorized option for second and subsequent offences with the enactment of 42 Pa.C.S. §9714 in 1982, life imprisonment without the right to parole was not mandated for any offence until the enactment of 18 Pa.C.S. §3301 in 1982 mandating life imprisonment without the right to parole for cases of first and second degree arson murder.

§ 9714. Sentences for second and subsequent offenses

(a) Mandatory sentence.—

(1) Any person who is convicted in any court of this Commonwealth of a crime of violence shall, if at the time of the commission of the current offense the person had previously been convicted of a crime of violence and has not rebutted the presumption of high risk dangerous offender as provided in subsection (c), be sentenced to a minimum sentence of at least ten years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. If at the time of the commission of the current offense the person has previously been convicted of a crime of violence and has rebutted the presumption of high risk dangerous offender as provided in subsection (c), the person shall be sentenced to a minimum sentence of at least five years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).

(2) Where the person had at the time of the commission of the current offense previously been convicted of two or more such crimes of violence arising from separate criminal transactions, the person shall be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Proof that the offender received notice of or otherwise knew or should have known of the penalties under this paragraph shall not be required. Upon conviction for a third or subsequent crime of violence the court may, if it determines that 25 years of total confinement is insufficient to protect the public safety, sentence the offender to life imprisonment without parole.

§ 3301. Arson and related offenses

(a) Arson endangering persons.—

(1) A person commits a felony of the first degree if he intentionally starts a fire or causes an explosion, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, whether on his own property or on that of another, and if:

(i) he thereby recklessly places another person in danger of death or bodily injury, including but not limited to a firefighter, police officer or other person actively engaged in fighting the fire; or

(ii) he commits the act with the purpose of destroying or damaging an inhabited building or occupied structure of another.

(2) A person who commits arson endangering persons is guilty of murder of the second degree if the fire or explosion causes the death of any person, including but not limited to a firefighter, police officer or other person actively engaged in fighting the fire, and is guilty of murder of the first degree if the fire or explosion causes the death of any person and was set with the purpose of causing the death of another person.

(b) Sentence.—A person convicted of violating the provisions of subsection (a)(2), murder of the first degree, shall be sentenced to death or life imprisonment without right to parole; a person convicted of murder of the second degree, pursuant to subsection (a)(2), shall be sentenced to life imprisonment without right to parole. Notwithstanding provisions to the contrary, no language herein shall infringe upon the inherent powers of the Governor to commute said sentence.

Arson murder is still the one and only offence here in Pennsylvania for which life imprisonment without the right to parole is mandated.

For the lesser offence of second degree murder since 1974, §1102(b) establishes life imprisonment as the mandatory maximum period of total confinement authorized by law while §9721 and §9756 provide the necessary direction, authorization, and clear mandates for the imposition of this sentence with a minimum sentence not exceeding one-half of the maximum sentence of life imposed with the right to parole. It's so plain and simple.

§ 1102. Sentence for murder

(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)¹ of this title (relating to sentencing procedure for murder of the first degree).

(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.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. As amended 1974, March 26, P.L. 213, No. 46, § 2, imd. effective.

Transferred; see, now, 42 Pa.C.S.A. § 9711.

§ 9721

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following alternatives, and may impose them consecutively or concurrently:

- (1) An order of probation.
- (2) A determination of guilt without further penalty.
- (3) Partial confinement.
- (4) Total confinement.
- (5) A fine.

(b) **General standards.**—In selecting from the alternatives set forth in subsection (a) the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing and taking effect pursuant to section 2155 (relating to publication of guidelines for sentencing). In every case in which the court imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed. In every case where the court imposes a sentence outside the sentencing guidelines adopted by the Pennsylvania Commission on Sentencing pursuant to section 2154 (relating to adoption of guidelines for sentencing) and made effective pursuant to section 2155, the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines. Failure to comply shall be grounds for vacating the sentence and resentencing the defendant.

(c) **Restitution.**—In addition to the alternatives set forth in subsection (a) of this section the court may order the defendant to compensate the victim of his criminal conduct for the damage or injury that he sustained.

(d) **Detailed criteria.**—With respect to each alternative the criteria to be considered by the court are set forth in this subchapter.

(e) **Term of imprisonment.**—All sentences of imprisonment imposed under this chapter shall be for a definite term.

1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. As amended 1978, Nov. 25, P.L. 1316, No. 319, § 1, effective Jan. 1, 1979; 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

42 Pa.C.S.A.

SENTENCING

§ 9756

§ 9756. Sentence of total confinement

(a) **General rule.**—In imposing a sentence of total confinement the court shall at the time of sentencing specify any maximum period up to the limit authorized by law and whether the sentence shall commence in a correctional or other appropriate institution.

(b) **Minimum sentence.**—The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed.

(c) **Prohibition of parole.**—Except in the case of murder of the first degree, the court may impose a sentence to imprisonment without the right to parole only when:

- (1) a summary offense is charged;
- (2) sentence is imposed for nonpayment of fines or costs, or both, in which case the sentence shall specify the number of days to be served; and
- (3) the maximum term or terms of imprisonment imposed on one or more indictments to run consecutively or concurrently total less than 30 days.

(d) **Prisoner release plans.**—This section shall not be interpreted as in any way limiting the authority of the Department of Justice as set forth in the act of July 16, 1968 (P.L. 351, No. 173), as amended,¹ relating to prisoner pre-release centers and release plans, or the authority of the court as set forth in the act of August 13, 1963 (P.L. 774, No. 390), as amended,² relating to prisoner release for occupational and other purposes.

1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. As amended 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

The use of the word "definite" here means and requires a "definite minimum and a definite maximum term" of total confinement to be set with the "minimum being at most one-half of maximum" imposed like 42 Pa.C.S. §9756(a)(b) above also mandates. — Com. v. Stultz, 114 A.3d 865, (Pa. Super.), (2015).

For cases of non-capital first degree murder since 1974, §1102(a) establishes life imprisonment as the mandatory maximum period of total confinement authorized by law while §9721 and §9756 provide the necessary direction, authorization, and clear mandates for the imposition of this sentence with or without the right to parole. Like a poker player with the winning hand might say, "Read 'em and weep!", but only if you're opposed to parole eligibility for lifers. It really is just this plain and simple.

§ 1102. Sentence for murder

(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)¹ of this title (relating to sentencing procedure for murder of the first degree).

(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.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. As amended 1974, March 26, P.L. 213, No. 46, § 2, ind. effective.

¹ Transferred; see, now, 42 Pa.C.S.A. § 9711.

§ 9721

CRIMINAL PROCEEDINGS

42 Pa.C.S.A.

42 Pa.C.S.A.

SENTENCING

§ 9756

following alternatives, and may impose them consecutively or concurrently:

- (1) An order of probation.
- (2) A determination of guilt without further penalty.
- (3) Partial confinement.
- (4) **Total confinement.**
- (5) A fine.

(b) **General standards.**—In selecting from the alternatives set forth in subsection (a) the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing and taking effect pursuant to section 2155 (relating to publication of guidelines for sentencing). In every case in which the court imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed. In every case where the court imposes a sentence outside the sentencing guidelines adopted by the Pennsylvania Commission on Sentencing pursuant to section 2154 (relating to adoption of guidelines for sentencing) and made effective pursuant to section 2155, the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines. Failure to comply shall be grounds for vacating the sentence and resentencing the defendant.

(c) **Restitution.**—In addition to the alternatives set forth in subsection (a) of this section the court may order the defendant to compensate the victim of his criminal conduct for the damage or injury that he sustained.

(d) **Detailed criteria.**—With respect to each alternative the criteria to be considered by the court are set forth in this subchapter.

(e) **Term of imprisonment.**—All sentences of imprisonment imposed under this chapter shall be for a definite term.

1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. As amended 1978, Nov. 26, P.L. 1316, No. 319, § 1, effective Jan. 1, 1979; 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 9756. Sentence of total confinement

(a) **General rule.**—In imposing a sentence of total confinement the court shall at the time of sentencing specify any maximum period up to the limit authorized by law and whether the sentence shall commence in a correctional or other appropriate institution.

(b) **Minimum sentence.**—The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed.

(c) **Prohibition of parole.**—Except in the case of murder of the first degree, the court may impose a sentence to imprisonment without the right to parole only when:

- (1) a summary offense is charged;
- (2) sentence is imposed for nonpayment of fines or costs, or both, in which case the sentence shall specify the number of days to be served; and
- (3) the maximum term or terms of imprisonment imposed on one or more indictments to run consecutively or concurrently total less than 30 days.

(d) **Prisoner release plans.**—This section shall not be interpreted as in any way limiting the authority of the Department of Justice as set forth in the act of July 16, 1968 (P.L. 351, No. 173), as amended,¹ relating to prisoner pre-release centers and release plans, or the authority of the court as set forth in the act of August 13, 1963 (P.L. 774, No. 390), as amended,² relating to prisoner release for occupational and other purposes.

1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. As amended 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

The use of the word "definite" here means and requires a "definite minimum and a definite maximum term" of total confinement to be set with the "minimum being at most one-half of maximum" imposed like 42 Pa.C.S. §9756(a)(b) above also mandates.—Com. v. Stultz, 114 A.3d 865, (Pa. Super.), (2015).