

P.L. 1997, CHAPTER 60, *approved April 3, 1997*
Senate, No. 250 (*Second Reprint*)

1 **ANACT** concerning eligibility for parole in certain cases and amending
2 N.J.S.2C:11-3, N.J.S.2C:47-5 and P.L.1979, c.441.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. N.J.S.2C:11-3 is amended to read as follows:
8 2C:11-3. Murder.

9 a. Except as provided in N.J.S.2C:11-4 criminal homicide
10 constitutes murder when:

11 (1) The actor purposely causes death or serious bodily injury
12 resulting in death; or

13 (2) The actor knowingly causes death or serious bodily injury
14 resulting in death; or

15 (3) It is committed when the actor, acting either alone or with one
16 or more other persons, is engaged in the commission of, or an attempt
17 to commit, or flight after committing or attempting to commit robbery,
18 sexual assault, arson, burglary, kidnapping or criminal escape, and in
19 the course of such crime or of immediate flight therefrom, any person
20 causes the death of a person other than one of the participants; except
21 that in any prosecution under this subsection, in which the defendant
22 was not the only participant in the underlying crime, it is an affirmative
23 defense that the defendant:

24 (a) Did not commit the homicidal act or in any way solicit, request,
25 command, importune, cause or aid the commission thereof; and

26 (b) Was not armed with a deadly weapon, or any instrument, article
27 or substance readily capable of causing death or serious physical injury
28 and of a sort not ordinarily carried in public places by law-abiding
29 persons; and

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted June 3, 1996.

² Assembly AJU committee amendments adopted November 7, 1996.

1 (c) Had no reasonable ground to believe that any other participant
2 was armed with such a weapon, instrument, article or substance; and

3 (d) Had no reasonable ground to believe that any other participant
4 intended to engage in conduct likely to result in death or serious
5 physical injury.

6 b. (1) Murder is a crime of the first degree but a person convicted
7 of murder shall be sentenced, except as provided in subsection c. of
8 this section, by the court to a term of 30 years, during which the
9 person shall not be eligible for parole, or be sentenced to a specific
10 term of years which shall be between 30 years and life imprisonment
11 of which the person shall serve 30 years before being eligible for
12 parole.

13 (2) ²If the victim was a law enforcement officer and was murdered
14 while performing his official duties or was murdered because of his
15 status as a law enforcement officer, the person convicted of that
16 murder shall be sentenced, except as otherwise provided in subsection
17 c. of this section, by the court to a term of life imprisonment, during
18 which the person shall not be eligible for parole.

19 (3) ²A person convicted of murder and who is not sentenced to
20 death under this section shall be sentenced to a term of life
21 imprisonment without eligibility for parole if the murder was
22 committed under all of the following circumstances:

23 (a) The victim is less than ¹[13]14¹ years old; and

24 (b) The act is committed in the course of the commission, whether
25 alone or with one or more persons, of a violation of ¹[subsection a. or
26 b. of]¹ N.J.S.2C:14-2 ¹or N.J.S.2C:14-3¹.

27 The defendant shall not be entitled to a deduction of commutation
28 and work credits from that sentence.

29 c. Any person convicted under subsection a.(1) or (2) who
30 committed the homicidal act by his own conduct; or who as an
31 accomplice procured the commission of the offense by payment or
32 promise of payment of anything of pecuniary value; or who, as a leader
33 of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in
34 furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded
35 or by threat or promise solicited the commission of the offense, shall
36 be sentenced as provided hereinafter:

37 (1) The court shall conduct a separate sentencing proceeding to
38 determine whether the defendant should be sentenced to death or
39 pursuant to the provisions of subsection b. of this section.

40 Where the defendant has been tried by a jury, the proceeding shall
41 be conducted by the judge who presided at the trial and before the jury
42 which determined the defendant's guilt, except that, for good cause,
43 the court may discharge that jury and conduct the proceeding before
44 a jury empaneled for the purpose of the proceeding. Where the
45 defendant has entered a plea of guilty or has been tried without a jury,
46 the proceeding shall be conducted by the judge who accepted the

1 defendant's plea or who determined the defendant's guilt and before a
2 jury empaneled for the purpose of the proceeding. On motion of the
3 defendant and with consent of the prosecuting attorney the court may
4 conduct a proceeding without a jury. Nothing in this subsection shall
5 be construed to prevent the participation of an alternate juror in the
6 sentencing proceeding if one of the jurors who rendered the guilty
7 verdict becomes ill or is otherwise unable to proceed before or during
8 the sentencing proceeding.

9 (2) (a) At the proceeding, the State shall have the burden of
10 establishing beyond a reasonable doubt the existence of any
11 aggravating factors set forth in paragraph (4) of this subsection. The
12 defendant shall have the burden of producing evidence of the existence
13 of any mitigating factors set forth in paragraph (5) of this subsection
14 but shall not have a burden with regard to the establishment of a
15 mitigating factor.

16 (b) The admissibility of evidence offered by the State to establish
17 any of the aggravating factors shall be governed by the rules governing
18 the admission of evidence at criminal trials. The defendant may offer,
19 without regard to the rules governing the admission of evidence at
20 criminal trials, reliable evidence relevant to any of the mitigating
21 factors. If the defendant produces evidence in mitigation which would
22 not be admissible under the rules governing the admission of evidence
23 at criminal trials, the State may rebut that evidence without regard to
24 the rules governing the admission of evidence at criminal trials.

25 (c) Evidence admitted at the trial, which is relevant to the
26 aggravating and mitigating factors set forth in paragraphs (4) and (5)
27 of this subsection, shall be considered without the necessity of
28 reintroducing that evidence at the sentencing proceeding; provided
29 that the fact finder at the sentencing proceeding was present as either
30 the fact finder or the judge at the trial.

31 (d) The State and the defendant shall be permitted to rebut any
32 evidence presented by the other party at the sentencing proceeding and
33 to present argument as to the adequacy of the evidence to establish the
34 existence of any aggravating or mitigating factor.

35 (e) Prior to the commencement of the sentencing proceeding, or at
36 such time as he has knowledge of the existence of an aggravating
37 factor, the prosecuting attorney shall give notice to the defendant of
38 the aggravating factors which he intends to prove in the proceeding.

39 (f) Evidence offered by the State with regard to the establishment
40 of a prior homicide conviction pursuant to paragraph (4)(a) of this
41 subsection may include the identity and age of the victim, the manner
42 of death and the relationship, if any, of the victim to the defendant.

43 (3) The jury or, if there is no jury, the court shall return a special
44 verdict setting forth in writing the existence or nonexistence of each
45 of the aggravating and mitigating factors set forth in paragraphs (4)
46 and (5) of this subsection. If any aggravating factor is found to exist,

1 the verdict shall also state whether it outweighs beyond a reasonable
2 doubt any one or more mitigating factors.

3 (a) If the jury or the court finds that any aggravating factors exist
4 and that all of the aggravating factors outweigh beyond a reasonable
5 doubt all of the mitigating factors, the court shall sentence the
6 defendant to death.

7 (b) If the jury or the court finds that no aggravating factors exist,
8 or that all of the aggravating factors which exist do not outweigh all
9 of the mitigating factors, the court shall sentence the defendant
10 pursuant to subsection b.

11 (c) If the jury is unable to reach a unanimous verdict, the court
12 shall sentence the defendant pursuant to subsection b.

13 (4) The aggravating factors which may be found by the jury or the
14 court are:

15 (a) The defendant has been convicted, at any time, of another
16 murder. For purposes of this section, a conviction shall be deemed
17 final when sentence is imposed and may be used as an aggravating
18 factor regardless of whether it is on appeal;

19 (b) In the commission of the murder, the defendant purposely or
20 knowingly created a grave risk of death to another person in addition
21 to the victim;

22 (c) The murder was outrageously or wantonly vile, horrible or
23 inhuman in that it involved torture, depravity of mind, or an
24 aggravated assault to the victim;

25 (d) The defendant committed the murder as consideration for the
26 receipt, or in expectation of the receipt of anything of pecuniary
27 value;

28 (e) The defendant procured the commission of the offense by
29 payment or promise of payment of anything of pecuniary value;

30 (f) The murder was committed for the purpose of escaping
31 detection, apprehension, trial, punishment or confinement for another
32 offense committed by the defendant or another;

33 (g) The offense was committed while the defendant was engaged
34 in the commission of, or an attempt to commit, or flight after
35 committing or attempting to commit murder, robbery, sexual assault,
36 arson, burglary or kidnapping;

37 (h) The defendant murdered a public servant, as defined in
38 N.J.S.2C:27-1, while the victim was engaged in the performance of his
39 official duties, or because of the victim's status as a public servant;

40 (i) The defendant: (i) as a leader of a narcotics trafficking network
41 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
42 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
43 promise solicited the commission of the offense or (ii) committed the
44 offense at the direction of a leader of a narcotics trafficking network
45 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
46 in N.J.S.2C:35-3;

1 (j) The homicidal act that the defendant committed or procured
2 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or

3 (k) The victim was less than 14 years old.

4 (5) The mitigating factors which may be found by the jury or the
5 court are:

6 (a) The defendant was under the influence of extreme mental or
7 emotional disturbance insufficient to constitute a defense to
8 prosecution;

9 (b) The victim solicited, participated in or consented to the
10 conduct which resulted in his death;

11 (c) The age of the defendant at the time of the murder;

12 (d) The defendant's capacity to appreciate the wrongfulness of his
13 conduct or to conform his conduct to the requirements of the law was
14 significantly impaired as the result of mental disease or defect or
15 intoxication, but not to a degree sufficient to constitute a defense to
16 prosecution;

17 (e) The defendant was under unusual and substantial duress
18 insufficient to constitute a defense to prosecution;

19 (f) The defendant has no significant history of prior criminal
20 activity;

21 (g) The defendant rendered substantial assistance to the State in
22 the prosecution of another person for the crime of murder; or

23 (h) Any other factor which is relevant to the defendant's character
24 or record or to the circumstances of the offense.

25 ²(6)² ¹When a defendant at a sentencing proceeding presents
26 evidence of defendant's character or record pursuant to subparagraph
27 (h) of paragraph (5) of this subsection, the State may present evidence
28 of the murder victim's character and background and of the impact of
29 the murder on the victim's survivors. If the jury finds that the State
30 has proven at least one aggravating factor beyond a reasonable doubt
31 and the jury finds the existence of a mitigating factor pursuant to
32 subparagraph (h) of paragraph (5) of this subsection, the jury may
33 consider the victim and survivor evidence presented by the State
34 pursuant to this paragraph in determining the appropriate weight to
35 give mitigating evidence presented pursuant to subparagraph (h) of
36 paragraph (5) of this subsection.¹

37 d. The sentencing proceeding set forth in subsection c. of this
38 section shall not be waived by the prosecuting attorney.

39 e. Every judgment of conviction which results in a sentence of
40 death under this section shall be appealed, pursuant to the Rules of
41 Court, to the Supreme Court. Upon the request of the defendant, the
42 Supreme Court shall also determine whether the sentence is
43 disproportionate to the penalty imposed in similar cases, considering
44 both the crime and the defendant. Proportionality review under this
45 section shall be limited to a comparison of similar cases in which a
46 sentence of death has been imposed under subsection c. of this section.

1 In any instance in which the defendant fails, or refuses to appeal, the
2 appeal shall be taken by the Office of the Public Defender or other
3 counsel appointed by the Supreme Court for that purpose.

4 f. Prior to the jury's sentencing deliberations, the trial court shall
5 inform the jury of the sentences which may be imposed pursuant to
6 subsection b. of this section on the defendant if the defendant is not
7 sentenced to death. The jury shall also be informed that a failure to
8 reach a unanimous verdict shall result in sentencing by the court
9 pursuant to subsection b.

10 g. A juvenile who has been tried as an adult and convicted of
11 murder shall not be sentenced pursuant to the provisions of subsection
12 c. but shall be sentenced pursuant to the provisions of subsection b. of
13 this section.

14 h. In a sentencing proceeding conducted pursuant to this section, no
15 evidence shall be admissible concerning the method or manner of
16 execution which would be imposed on a defendant sentenced to death.

17 i. For purposes of this section the term "homicidal act" shall mean
18 conduct that causes death or serious bodily injury resulting in death.
19 (cf: P.L.1996, c.115, s.1)

20

21 2. N.J.S.2C:47-5 is amended to read as follows:

22 2C:47-5. Parole.

23 a. Any person committed to confinement under the terms of this
24 chapter shall be released under parole supervision when it shall appear
25 to the satisfaction of the State Parole Board, after recommendation by
26 a special classification review board appointed by the commissioner
27 that such person is capable of making an acceptable social adjustment
28 in the community.

29 b. The Chief Executive Officer of the Adult Diagnostic and
30 Treatment Center shall report in writing at least semiannually to the
31 special classification review board concerning the physical and
32 psychological condition of such person with a recommendation as to
33 his continued confinement or consideration for release on parole.

34 c. Any person paroled pursuant to this section shall be subject to
35 the provisions of Title 30 of the Revised Statutes governing parole and
36 the regulations promulgated pursuant thereto.

37 d. When a person confined under the terms of this chapter has not
38 been paroled in accordance with subsection a. of this section and is
39 scheduled for release, not less than 90 days prior to the date of the
40 person's scheduled release the Chief Executive Officer shall:

41 (1) Notify the Attorney General and the prosecutor of the county
42 from which the person was committed of the scheduled release:

43 (2) Provide the Attorney General and the county prosecutor with
44 the officer's opinion as to whether the person may be "in need of
45 involuntary commitment" within the meaning of section 2 of P.L.1987,
46 c.116 (C.30:4-27.2); and

1 (3) Without regard to classification as confidential pursuant to
2 regulations of the State Parole Board or the Department of
3 Corrections, provide the Attorney General and county prosecutor with
4 all reports, records and assessments relevant to determining whether
5 the person is "in need of involuntary commitment." All information
6 received shall be deemed confidential and shall be disclosed only as
7 provided in section 4 of P.L.1994, c.134 (C.30:4-82.4).

8 e. Upon receipt of the notice, advice and information required by
9 subsection d. of this section, the Attorney General or county
10 prosecutor shall proceed as provided in section 4 of P.L.1994, c.134
11 (C.30:4-82.4).

12 f. Notwithstanding any provisions of this section to the contrary,
13 a person confined for life at the Adult Diagnostic and Treatment
14 Center, for a crime whose circumstances conform to those enumerated
15 in paragraph ²[(2)] ³(3)² of subsection b. of N.J.S.2C:11-3, shall not be
16 eligible for parole or a deduction for commutation or work credits.

17 (cf: P.L.1994, c.134, s.3)

18
19 3. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to
20 read as follows:

21 7. a. Each adult inmate sentenced to a term of incarceration in a
22 county penal institution, or to a specific term of years at the State
23 Prison or the correctional institution for women shall become primarily
24 eligible for parole after having served any judicial or statutory
25 mandatory minimum term, or one-third of the sentence imposed where
26 no mandatory minimum term has been imposed less commutation time
27 for good behavior pursuant to N.J.S.2A:164-24 or R.S.30:4-140 and
28 credits for diligent application to work and other institutional
29 assignments pursuant to P.L.1972, c.115 (C.30:8-28.1 et seq.) or
30 R.S.30:4-92. Consistent with the provisions of the New Jersey Code
31 of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7),
32 commutation and work credits shall not in any way reduce any judicial
33 or statutory mandatory minimum term and such credits accrued shall
34 only be awarded subsequent to the expiration of the term.

35 b. Each adult inmate sentenced to a term of life imprisonment shall
36 become primarily eligible for parole after having served any judicial or
37 statutory mandatory minimum term, or 25 years where no mandatory
38 minimum term has been imposed less commutation time for good
39 behavior and credits for diligent application to work and other
40 institutional assignments. If an inmate sentenced to a specific term or
41 terms of years is eligible for parole on a date later than the date upon
42 which he would be eligible if a life sentence had been imposed, then in
43 such case the inmate shall be eligible for parole after having served
44 25 years, less commutation time for good behavior and credits for
45 diligent application to work and other institutional assignments.
46 Consistent with the provisions of the New Jersey Code of Criminal

1 Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and
2 work credits shall not in any way reduce any judicial or statutory
3 mandatory minimum term and such credits accrued shall only be
4 awarded subsequent to the expiration of the term.

5 c. Each inmate sentenced to a specific term of years pursuant to
6 the "Controlled Dangerous Substances Act," P.L.1970, c.226
7 (C.24:21-1 through 45) shall become primarily eligible for parole after
8 having served one-third of the sentence imposed less commutation
9 time for good behavior and credits for diligent application to work and
10 other institutional assignments.

11 d. Each adult inmate sentenced to an indeterminate term of years
12 as a young adult offender pursuant to N.J.S.2C:43-5 shall become
13 primarily eligible for parole consideration pursuant to a schedule of
14 primary eligibility dates developed by the board, less adjustment for
15 program participation. In no case shall the board schedule require that
16 the primary parole eligibility date for a young adult offender be greater
17 than the primary parole eligibility date required pursuant to this section
18 for the presumptive term for the crime authorized pursuant to
19 N.J.S.2C:44-1(f).

20 e. Each adult inmate sentenced to the Adult Diagnostic and
21 Treatment Center, Avenel, shall become primarily eligible for parole
22 upon recommendation by the special classification review board
23 pursuant to N.J.S.2C:47-5, except that no such inmate shall become
24 primarily eligible prior to the expiration of any mandatory or fixed
25 minimum term imposed pursuant to N.J.S.2C:14-6.

26 f. Each juvenile inmate committed to an indeterminate term shall
27 be immediately eligible for parole.

28 g. Each adult inmate of a county jail, workhouse or penitentiary
29 shall become primarily eligible for parole upon service of 60 days of
30 his aggregate sentence or as provided for in subsection a. of this
31 section, whichever is greater. Whenever any such inmate's parole
32 eligibility is within six months of the date of such sentence, the judge
33 shall state such eligibility on the record which shall satisfy all public
34 and inmate notice requirements. The chief executive officer of the
35 institution in which county inmates are held shall generate all reports
36 pursuant to subsection d. of section 10 of P.L.1979, c.441
37 (C.30:4-123.54). The parole board shall have the authority to
38 promulgate time periods applicable to the parole processing of inmates
39 of county penal institutions, except that no inmate may be released
40 prior to the primary eligibility date established by this subsection,
41 unless consented to by the sentencing judge. No inmate sentenced to
42 a specific term of years at the State Prison or the correctional
43 institution for women shall become primarily eligible for parole until
44 service of a full nine months of his aggregate sentence.

45 h. When an inmate is sentenced to more than one term of
46 imprisonment, the primary parole eligibility terms calculated pursuant

1 to this section shall be aggregated by the board for the purpose of
2 determining the primary parole eligibility date, except that no juvenile
3 commitment shall be aggregated with any adult sentence. The board
4 shall promulgate rules and regulations to govern aggregation under
5 this subsection.

6 i. The primary eligibility date shall be computed by a designated
7 representative of the board and made known to the inmate in writing
8 not later than 90 days following the commencement of the sentence.
9 In the case of an inmate sentenced to a county penal institution such
10 notice shall be made pursuant to subsection g. of this section. Each
11 inmate shall be given the opportunity to acknowledge in writing the
12 receipt of such computation. Failure or refusal by the inmate to
13 acknowledge the receipt of such computation shall be recorded by the
14 board but shall not constitute a violation of this subsection.

15 j. Except as provided in this subsection, each inmate sentenced
16 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,
17 N.J.S.2A:164-17 for a fixed minimum and maximum term or
18 N.J.S.2C:1-1(b) shall not be primarily eligible for parole on a date
19 computed pursuant to this section, but shall be primarily eligible on a
20 date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.),
21 which is continued in effect for this purpose. Inmates classified as
22 second, third or fourth offenders pursuant to section 12 of P.L.1948,
23 c.84 (C.30:4-123.12) shall become primarily eligible for parole after
24 serving one-third, one-half or two-thirds of the maximum sentence
25 imposed, respectively, less in each instance commutation time for good
26 behavior and credits for diligent application to work and other
27 institutional assignments; provided, however, that if the prosecuting
28 attorney or the sentencing court advises the board that the punitive
29 aspects of the sentence imposed on such inmates will not have been
30 fulfilled by the time of parole eligibility calculated pursuant to this
31 subsection, then the inmate shall not become primarily eligible for
32 parole until serving an additional period which shall be one-half of the
33 difference between the primary parole eligibility date calculated
34 pursuant to this subsection and the parole eligibility date calculated
35 pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the
36 prosecuting attorney or the sentencing court advises the board that the
37 punitive aspects of the sentence have not been fulfilled, such advice
38 need not be supported by reasons and will be deemed conclusive and
39 final. Any such decision shall not be subject to judicial review except
40 to the extent mandated by the New Jersey and United States
41 Constitutions. The board shall, reasonably prior to considering any
42 such case, advise the prosecuting attorney and the sentencing court of
43 all information relevant to such inmate's parole eligibility.

44 k. Notwithstanding any provisions of this section or N.J.S.2C:47-5
45 to the contrary, a person sentenced to imprisonment pursuant to

1 paragraph (2) ²or (3)² of subsection b. of N.J.S.2C:11-3 shall not be
2 eligible for parole.

3 (cf: P.L.1982, c.71, s.2)

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5 4. This act shall take effect immediately, and shall be applicable to
6 any person sentenced on or after the effective date.

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11 Provides for life term of imprisonment without parole for persons
12 convicted of murder in conjunction with sexual offense against a child.