

ASSEMBLY, No. 468

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROMA and Assemblywoman HECK

1 AN ACT 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

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

32 (d) Had no reasonable ground to believe that any other participant

**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.**

1 intended to engage in conduct likely to result in death or serious  
2 physical injury.

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

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

14 (a) The victim is less than 13 years old; and

15 (b) The act is committed in the course of the commission, whether  
16 alone or with one or more persons, of a violation of subsection a. or  
17 b. of N.J.S.2C:14-2.

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

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

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

31 Where the defendant has been tried by a jury, the proceeding shall  
32 be conducted by the judge who presided at the trial and before the jury  
33 which determined the defendant's guilt, except that, for good cause,  
34 the court may discharge that jury and conduct the proceeding before  
35 a jury empaneled for the purpose of the proceeding. Where the  
36 defendant has entered a plea of guilty or has been tried without a jury,  
37 the proceeding shall be conducted by the judge who accepted the  
38 defendant's plea or who determined the defendant's guilt and before a  
39 jury empaneled for the purpose of the proceeding. On motion of the  
40 defendant and with consent of the prosecuting attorney the court may  
41 conduct a proceeding without a jury. Nothing in this subsection shall  
42 be construed to prevent the participation of an alternate juror in the  
43 sentencing proceeding if one of the jurors who rendered the guilty  
44 verdict becomes ill or is otherwise unable to proceed before or during  
45 the sentencing proceeding.

46 (2) (a) At the proceeding, the State shall have the burden of

1 establishing beyond a reasonable doubt the existence of any  
2 aggravating factors set forth in paragraph (4) of this subsection. The  
3 defendant shall have the burden of producing evidence of the existence  
4 of any mitigating factors set forth in paragraph (5) of this subsection  
5 but shall not have a burden with regard to the establishment of a  
6 mitigating factor.

7 (b) The admissibility of evidence offered by the State to establish  
8 any of the aggravating factors shall be governed by the rules governing  
9 the admission of evidence at criminal trials. The defendant may offer,  
10 without regard to the rules governing the admission of evidence at  
11 criminal trials, reliable evidence relevant to any of the mitigating  
12 factors. If the defendant produces evidence in mitigation which would  
13 not be admissible under the rules governing the admission of evidence  
14 at criminal trials, the State may rebut that evidence without regard to  
15 the rules governing the admission of evidence at criminal trials.

16 (c) Evidence admitted at the trial, which is relevant to the  
17 aggravating and mitigating factors set forth in paragraphs (4) and (5)  
18 of this subsection, shall be considered without the necessity of  
19 reintroducing that evidence at the sentencing proceeding; provided  
20 that the fact finder at the sentencing proceeding was present as either  
21 the fact finder or the judge at the trial.

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

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

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

34 (3) The jury or, if there is no jury, the court shall return a special  
35 verdict setting forth in writing the existence or nonexistence of each  
36 of the aggravating and mitigating factors set forth in paragraphs (4)  
37 and (5) of this subsection. If any aggravating factor is found to exist,  
38 the verdict shall also state whether it outweighs beyond a reasonable  
39 doubt any one or more mitigating factors.

40 (a) If the jury or the court finds that any aggravating factors exist  
41 and that all of the aggravating factors outweigh beyond a reasonable  
42 doubt all of the mitigating factors, the court shall sentence the  
43 defendant to death.

44 (b) If the jury or the court finds that no aggravating factors exist,  
45 or that all of the aggravating factors which exist do not outweigh all  
46 of the mitigating factors, the court shall sentence the defendant

- 1 pursuant to subsection b.
- 2 (c) If the jury is unable to reach a unanimous verdict, the court  
3 shall sentence the defendant pursuant to subsection b.
- 4 (4) The aggravating factors which may be found by the jury or the  
5 court are:
- 6 (a) The defendant has been convicted, at any time, of another  
7 murder. For purposes of this section, a conviction shall be deemed  
8 final when sentence is imposed and may be used as an aggravating  
9 factor regardless of whether it is on appeal;
- 10 (b) In the commission of the murder, the defendant purposely or  
11 knowingly created a grave risk of death to another person in addition  
12 to the victim;
- 13 (c) The murder was outrageously or wantonly vile, horrible or  
14 inhuman in that it involved torture, depravity of mind, or an  
15 aggravated assault to the victim;
- 16 (d) The defendant committed the murder as consideration for the  
17 receipt, or in expectation of the receipt of anything of pecuniary  
18 value;
- 19 (e) The defendant procured the commission of the offense by  
20 payment or promise of payment of anything of pecuniary value;
- 21 (f) The murder was committed for the purpose of escaping  
22 detection, apprehension, trial, punishment or confinement for another  
23 offense committed by the defendant or another;
- 24 (g) The offense was committed while the defendant was engaged  
25 in the commission of, or an attempt to commit, or flight after  
26 committing or attempting to commit murder, robbery, sexual assault,  
27 arson, burglary or kidnapping;
- 28 (h) The defendant murdered a public servant, as defined in  
29 N.J.S.2C:27-1, while the victim was engaged in the performance of his  
30 official duties, or because of the victim's status as a public servant;
- 31 (i) The defendant: (i) as a leader of a narcotics trafficking network  
32 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy  
33 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or  
34 promise solicited the commission of the offense or (ii) committed the  
35 offense at the direction of a leader of a narcotics trafficking network  
36 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated  
37 in N.J.S.2C:35-3;
- 38 (j) The homicidal act that the defendant committed or procured  
39 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or
- 40 (k) The victim was less than 14 years old.
- 41 (5) The mitigating factors which may be found by the jury or the  
42 court are:
- 43 (a) The defendant was under the influence of extreme mental or  
44 emotional disturbance insufficient to constitute a defense to  
45 prosecution;
- 46 (b) The victim solicited, participated in or consented to the

- 1 conduct which resulted in his death;
- 2 (c) The age of the defendant at the time of the murder;
- 3 (d) The defendant's capacity to appreciate the wrongfulness of his  
4 conduct or to conform his conduct to the requirements of the law was  
5 significantly impaired as the result of mental disease or defect or  
6 intoxication, but not to a degree sufficient to constitute a defense to  
7 prosecution;
- 8 (e) The defendant was under unusual and substantial duress  
9 insufficient to constitute a defense to prosecution;
- 10 (f) The defendant has no significant history of prior criminal  
11 activity;
- 12 (g) The defendant rendered substantial assistance to the State in  
13 the prosecution of another person for the crime of murder; or
- 14 (h) Any other factor which is relevant to the defendant's character  
15 or record or to the circumstances of the offense.
- 16 d. The sentencing proceeding set forth in subsection c. of this  
17 section shall not be waived by the prosecuting attorney.
- 18 e. Every judgment of conviction which results in a sentence of  
19 death under this section shall be appealed, pursuant to the Rules of  
20 Court, to the Supreme Court. Upon the request of the defendant, the  
21 Supreme Court shall also determine whether the sentence is  
22 disproportionate to the penalty imposed in similar cases, considering  
23 both the crime and the defendant. Proportionality review under this  
24 section shall be limited to a comparison of similar cases in which a  
25 sentence of death has been imposed under subsection c. of this section.  
26 In any instance in which the defendant fails, or refuses to appeal, the  
27 appeal shall be taken by the Office of the Public Defender or other  
28 counsel appointed by the Supreme Court for that purpose.
- 29 f. Prior to the jury's sentencing deliberations, the trial court shall  
30 inform the jury of the sentences which may be imposed pursuant to  
31 subsection b. of this section on the defendant if the defendant is not  
32 sentenced to death. The jury shall also be informed that a failure to  
33 reach a unanimous verdict shall result in sentencing by the court  
34 pursuant to subsection b.
- 35 g. A juvenile who has been tried as an adult and convicted of  
36 murder shall not be sentenced pursuant to the provisions of subsection  
37 c. but shall be sentenced pursuant to the provisions of subsection b. of  
38 this section.
- 39 h. In a sentencing proceeding conducted pursuant to this section,  
40 no evidence shall be admissible concerning the method or manner of  
41 execution which would be imposed on a defendant sentenced to death.
- 42 i. For purposes of this section the term "homicidal act" shall mean  
43 conduct that causes death or serious bodily injury resulting in death.  
44 (cf: P.L.1994, c.132, s.1)
- 45
- 46 2. N.J.S.2C:47-5 is amended to read as follows:

1 2C:47-5. Parole.

2 a. Any person committed to confinement under the terms of this  
3 chapter shall be released under parole supervision when it shall appear  
4 to the satisfaction of the State Parole Board, after recommendation by  
5 a special classification review board appointed by the commissioner  
6 that such person is capable of making an acceptable social adjustment  
7 in the community.

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

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

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

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

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

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

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

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

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

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

46 7. a. Each adult inmate sentenced to a term of incarceration in a

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

14 b. Each adult inmate sentenced to a term of life imprisonment shall  
15 become primarily eligible for parole after having served any judicial or  
16 statutory mandatory minimum term, or 25 years where no mandatory  
17 minimum term has been imposed less commutation time for good  
18 behavior and credits for diligent application to work and other  
19 institutional assignments. If an inmate sentenced to a specific term or  
20 terms of years is eligible for parole on a date later than the date upon  
21 which he would be eligible if a life sentence had been imposed, then in  
22 such case the inmate shall be eligible for parole after having served 25  
23 years, less commutation time for good behavior and credits for diligent  
24 application to work and other institutional assignments. Consistent  
25 with the provisions of the New Jersey Code of Criminal Justice  
26 (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and work  
27 credits shall not in any way reduce any judicial or statutory mandatory  
28 minimum term and such credits accrued shall only be awarded  
29 subsequent to the expiration of the term.

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

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

45 e. Each adult inmate sentenced to the Adult Diagnostic and  
46 Treatment Center, Avenel, shall become primarily eligible for parole

1 upon recommendation by the special classification review board  
2 pursuant to N.J.S.2C:47-5, except that no such inmate shall become  
3 primarily eligible prior to the expiration of any mandatory or fixed  
4 minimum term imposed pursuant to N.J.S.2C:14-6.

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

7 g. Each adult inmate of a county jail, workhouse or penitentiary  
8 shall become primarily eligible for parole upon service of 60 days of  
9 his aggregate sentence or as provided for in subsection a. of this  
10 section, whichever is greater. Whenever any such inmate's parole  
11 eligibility is within six months of the date of such sentence, the judge  
12 shall state such eligibility on the record which shall satisfy all public  
13 and inmate notice requirements. The chief executive officer of the  
14 institution in which county inmates are held shall generate all reports  
15 pursuant to subsection d. of section 10 of P.L.1979, c.441  
16 (C.30:4-123.54). The parole board shall have the authority to  
17 promulgate time periods applicable to the parole processing of inmates  
18 of county penal institutions, except that no inmate may be released  
19 prior to the primary eligibility date established by this subsection,  
20 unless consented to by the sentencing judge. No inmate sentenced to  
21 a specific term of years at the State Prison or the correctional  
22 institution for women shall become primarily eligible for parole until  
23 service of a full nine months of his aggregate sentence.

24 h. When an inmate is sentenced to more than one term of  
25 imprisonment, the primary parole eligibility terms calculated pursuant  
26 to this section shall be aggregated by the board for the purpose of  
27 determining the primary parole eligibility date, except that no juvenile  
28 commitment shall be aggregated with any adult sentence. The board  
29 shall promulgate rules and regulations to govern aggregation under  
30 this subsection.

31 i. The primary eligibility date shall be computed by a designated  
32 representative of the board and made known to the inmate in writing  
33 not later than 90 days following the commencement of the sentence.  
34 In the case of an inmate sentenced to a county penal institution such  
35 notice shall be made pursuant to subsection g. of this section. Each  
36 inmate shall be given the opportunity to acknowledge in writing the  
37 receipt of such computation. Failure or refusal by the inmate to  
38 acknowledge the receipt of such computation shall be recorded by the  
39 board but shall not constitute a violation of this subsection.

40 j. Except as provided in this subsection, each inmate sentenced  
41 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,  
42 N.J.S.2A:164-17 for a fixed minimum and maximum term or  
43 N.J.S.2C:1-1(b) shall not be primarily eligible for parole on a date  
44 computed pursuant to this section, but shall be primarily eligible on a  
45 date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.),  
46 which is continued in effect for this purpose. Inmates classified as

1 second, third or fourth offenders pursuant to section 12 of P.L.1948,  
2 c.84 (C.30:4-123.12) shall become primarily eligible for parole after  
3 serving one-third, one-half or two-thirds of the maximum sentence  
4 imposed, respectively, less in each instance commutation time for good  
5 behavior and credits for diligent application to work and other  
6 institutional assignments; provided, however, that if the prosecuting  
7 attorney or the sentencing court advises the board that the punitive  
8 aspects of the sentence imposed on such inmates will not have been  
9 fulfilled by the time of parole eligibility calculated pursuant to this  
10 subsection, then the inmate shall not become primarily eligible for  
11 parole until serving an additional period which shall be one-half of the  
12 difference between the primary parole eligibility date calculated  
13 pursuant to this subsection and the parole eligibility date calculated  
14 pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the  
15 prosecuting attorney or the sentencing court advises the board that the  
16 punitive aspects of the sentence have not been fulfilled, such advice  
17 need not be supported by reasons and will be deemed conclusive and  
18 final. Any such decision shall not be subject to judicial review except  
19 to the extent mandated by the New Jersey and United States  
20 Constitutions. The board shall, reasonably prior to considering any  
21 such case, advise the prosecuting attorney and the sentencing court of  
22 all information relevant to such inmate's parole eligibility.

23 k. Notwithstanding any provisions of this section or N.J.S.2C:47-5  
24 to the contrary, a person sentenced to imprisonment pursuant to  
25 paragraph (2) of subsection b. of N.J.S.2C:11-3 shall not be eligible  
26 for parole.

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

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

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#### STATEMENT

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35 This bill provides that certain persons convicted of murder, who are  
36 not sentenced to death, must serve a life term in prison without any  
37 chance of parole. The life term is required when the following  
38 elements are satisfied: the victim must be less than 13 years old, and  
39 the act must be committed prior to or in the course of the commission  
40 of aggravated sexual assault and sexual assault, including sexual  
41 contact. Such crimes call for the use of this "throw away the key"  
42 punitive measure.

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