

[First Reprint]
ASSEMBLY, No. 468

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman ROMA, Assemblywoman HECK,
Assemblymen Azzolina, Blee, LeFevre and Felice

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

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 Assembly AJU committee amendments adopted November 7, 1996.

1 was armed with such a weapon, instrument, article or substance; and
2 (d) Had no reasonable ground to believe that any other participant
3 intended to engage in conduct likely to result in death or serious
4 physical injury.

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

12 (2) ¹If the victim was a law enforcement officer and was murdered
13 while performing his official duties or was murdered because of his
14 status as a law enforcement officer, the person convicted of that
15 murder shall be sentenced, except as otherwise provided in subsection
16 c. of this section, by the court to a term of life imprisonment, during
17 which the person shall not be eligible for parole.

18 (3)¹ A person convicted of murder and who is not sentenced to
19 death under this section shall be sentenced to a term of life
20 imprisonment without eligibility for parole if the murder was
21 committed under all of the following circumstances:

22 (a) The victim is less than ¹[13] ¹14¹ years old; and

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 doubt any one or more mitigating factors.
- 2 (a) If the jury or the court finds that any aggravating factors exist
3 and that all of the aggravating factors outweigh beyond a reasonable
4 doubt all of the mitigating factors, the court shall sentence the
5 defendant to death.
- 6 (b) If the jury or the court finds that no aggravating factors exist,
7 or that all of the aggravating factors which exist do not outweigh all
8 of the mitigating factors, the court shall sentence the defendant
9 pursuant to subsection b.
- 10 (c) If the jury is unable to reach a unanimous verdict, the court
11 shall sentence the defendant pursuant to subsection b.
- 12 (4) The aggravating factors which may be found by the jury or the
13 court are:
- 14 (a) The defendant has been convicted, at any time, of another
15 murder. For purposes of this section, a conviction shall be deemed
16 final when sentence is imposed and may be used as an aggravating
17 factor regardless of whether it is on appeal;
- 18 (b) In the commission of the murder, the defendant purposely or
19 knowingly created a grave risk of death to another person in addition
20 to the victim;
- 21 (c) The murder was outrageously or wantonly vile, horrible or
22 inhuman in that it involved torture, depravity of mind, or an
23 aggravated assault to the victim;
- 24 (d) The defendant committed the murder as consideration for the
25 receipt, or in expectation of the receipt of anything of pecuniary
26 value;
- 27 (e) The defendant procured the commission of the offense by
28 payment or promise of payment of anything of pecuniary value;
- 29 (f) The murder was committed for the purpose of escaping
30 detection, apprehension, trial, punishment or confinement for another
31 offense committed by the defendant or another;
- 32 (g) The offense was committed while the defendant was engaged
33 in the commission of, or an attempt to commit, or flight after
34 committing or attempting to commit murder, robbery, sexual assault,
35 arson, burglary or kidnapping;
- 36 (h) The defendant murdered a public servant, as defined in
37 N.J.S.2C:27-1, while the victim was engaged in the performance of his
38 official duties, or because of the victim's status as a public servant;
- 39 (i) The defendant: (i) as a leader of a narcotics trafficking network
40 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
41 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
42 promise solicited the commission of the offense or (ii) committed the
43 offense at the direction of a leader of a narcotics trafficking network
44 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
45 in N.J.S.2C:35-3;
- 46 (j) The homicidal act that the defendant committed or procured

1 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or

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

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

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

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

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

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

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

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

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

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

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

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

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

1 appeal shall be taken by the Office of the Public Defender or other
2 counsel appointed by the Supreme Court for that purpose.

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

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

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

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

19

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

21 2C:47-5. Parole.

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

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

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

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

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

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

46 (3) Without regard to classification as confidential pursuant to

1 regulations of the State Parole Board or the Department of
2 Corrections, provide the Attorney General and county prosecutor with
3 all reports, records and assessments relevant to determining whether
4 the person is "in need of involuntary commitment." All information
5 received shall be deemed confidential and shall be disclosed only as
6 provided in section 4 of P.L.1994, c.134 (C.30:4-82.4).

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

11 f. Notwithstanding any provisions of this section to the contrary,
12 a person confined for life at the Adult Diagnostic and Treatment
13 Center, for a crime whose circumstances conform to those enumerated
14 in paragraph ¹[(2)] (3)¹ of subsection b. of N.J.S.2C:11-3, shall not be
15 eligible for parole or a deduction for commutation or work credits.
16 (cf: P.L.1994, c.134, s.3)

17

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

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

34 b. Each adult inmate sentenced to a term of life imprisonment shall
35 become primarily eligible for parole after having served any judicial or
36 statutory mandatory minimum term, or 25 years where no mandatory
37 minimum term has been imposed less commutation time for good
38 behavior and credits for diligent application to work and other
39 institutional assignments. If an inmate sentenced to a specific term or
40 terms of years is eligible for parole on a date later than the date upon
41 which he would be eligible if a life sentence had been imposed, then in
42 such case the inmate shall be eligible for parole after having served 25
43 years, less commutation time for good behavior and credits for diligent
44 application to work and other institutional assignments. Consistent
45 with the provisions of the New Jersey Code of Criminal Justice
46 (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7), commutation and work

1 credits shall not in any way reduce any judicial or statutory mandatory
2 minimum term and such credits accrued shall only be awarded
3 subsequent to the expiration of the term.

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

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

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

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

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

44 h. When an inmate is sentenced to more than one term of
45 imprisonment, the primary parole eligibility terms calculated pursuant
46 to this section shall be aggregated by the board for the purpose of

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

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

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

43 k. Notwithstanding any provisions of this section or N.J.S.2C:47-5
44 to the contrary, a person sentenced to imprisonment pursuant to
45 paragraph (2) ¹ or 3¹ of subsection b. of N.J.S.2C:11-3 shall not be

1 eligible for parole.

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

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

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