

ASSEMBLY, No. 2925

STATE OF NEW JERSEY

INTRODUCED MAY 5, 1997

By Assemblymen TALARICO, GREGG, Blee, Kavanaugh,  
Lance, Assemblywoman Murphy and Assemblyman O'Toole

1 AN ACT concerning juveniles and eligibility for the death penalty and  
2 amending N.J.S.2C:11-3.

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

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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  
33 intended to engage in conduct likely to result in death or serious

**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 physical injury.

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

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

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

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

20 (b) The act is committed in the course of the commission, whether  
21 alone or with one or more persons, of a violation of N.J.S.2C:14-2 or  
22 N.J.S.2C:14-3.

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

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

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

36 Where the defendant has been tried by a jury, the proceeding shall  
37 be conducted by the judge who presided at the trial and before the jury  
38 which determined the defendant's guilt, except that, for good cause,  
39 the court may discharge that jury and conduct the proceeding before  
40 a jury empaneled for the purpose of the proceeding. Where the  
41 defendant has entered a plea of guilty or has been tried without a jury,  
42 the proceeding shall be conducted by the judge who accepted the  
43 defendant's plea or who determined the defendant's guilt and before a  
44 jury empaneled for the purpose of the proceeding. On motion of the  
45 defendant and with consent of the prosecuting attorney the court may  
46 conduct a proceeding without a jury. Nothing in this subsection shall

1 be construed to prevent the participation of an alternate juror in the  
2 sentencing proceeding if one of the jurors who rendered the guilty  
3 verdict becomes ill or is otherwise unable to proceed before or during  
4 the sentencing proceeding.

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

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

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

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

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

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

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

45 (a) If the jury or the court finds that any aggravating factors exist  
46 and that all of the aggravating factors outweigh beyond a reasonable

1 doubt all of the mitigating factors, the court shall sentence the  
2 defendant to death.

3 (b) If the jury or the court finds that no aggravating factors exist,  
4 or that all of the aggravating factors which exist do not outweigh all  
5 of the mitigating factors, the court shall sentence the defendant  
6 pursuant to subsection b.

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

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

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

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

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

21 (d) The defendant committed the murder as consideration for the  
22 receipt, or in expectation of the receipt of anything of pecuniary  
23 value;

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

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

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

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

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

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

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

46 (5) The mitigating factors which may be found by the jury or the

1 court are:

2 (a) The defendant was under the influence of extreme mental or  
3 emotional disturbance insufficient to constitute a defense to  
4 prosecution;

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

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

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

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

15 (f) The defendant has no significant history of prior criminal  
16 activity;

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

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

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

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

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

46 f. Prior to the jury's sentencing deliberations, the trial court shall

1 inform the jury of the sentences which may be imposed pursuant to  
2 subsection b. of this section on the defendant if the defendant is not  
3 sentenced to death. The jury shall also be informed that a failure to  
4 reach a unanimous verdict shall result in sentencing by the court  
5 pursuant to subsection b.

6 g. (1) A juvenile who has been tried as an adult and convicted of  
7 murder [shall not] and who was 16 years of age or older at the time of  
8 the murder may be sentenced pursuant to the provisions of subsection  
9 c. [but shall be sentenced pursuant to the provisions of subsection b.]  
10 of this section.

11 (2) A juvenile who has been tried as an adult and convicted of  
12 murder and who was younger than 16 years of age at the time of the  
13 murder shall be sentenced pursuant to the provisions of subsection b.  
14 of this section.

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

18 i. For purposes of this section the term "homicidal act" shall mean  
19 conduct that causes death or serious bodily injury resulting in death.  
20 (cf: P.L.1997, c.60, s.1)

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22 2. This act shall take effect immediately .

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#### STATEMENT

26 Currently, New Jersey's death penalty statute precludes the  
27 imposition of the death penalty upon a juvenile who has been tried and  
28 convicted as an adult.

29 This bill would permit a juvenile who has been tried as an adult and  
30 convicted of murder and who was 16 years of age or older at the time  
31 of the murder to be sentenced to death by permitting these juveniles  
32 to be sentenced pursuant to subsection c. of N.J.S.2C:11-3. If the  
33 jury in that separate sentencing proceeding does not return a sentence  
34 of death those juveniles would be sentenced pursuant to subsection b.  
35 of N.J.S.2C:11-3. Subsection b. provides that a person who is  
36 convicted of murder and is not sentenced to death will be sentenced to  
37 a term of imprisonment of 30 years without parole eligibility or to a  
38 term between 30 years and life imprisonment, of which the person  
39 must serve 30 years before becoming eligible for parole.

40 Juveniles who are tried and convicted as adults and who are  
41 younger than 16 years of age could not be sentenced to death under  
42 this bill.

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Permits certain juveniles to be eligible for the death penalty.