

[First Reprint]
SENATE, No. 250

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senators KOSCO, MATHEUSSEN and Bennett

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 Senate SJU committee amendments adopted June 3, 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) A person convicted of murder and who is not sentenced to
13 death under this section shall be sentenced to a term of life
14 imprisonment without eligibility for parole if the murder was
15 committed under all of the following circumstances:

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

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

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

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

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

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

1 the sentencing proceeding.

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

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

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

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

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

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

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

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

46 (b) If the jury or the court finds that no aggravating factors exist,

1 or that all of the aggravating factors which exist do not outweigh all
2 of the mitigating factors, the court shall sentence the defendant
3 pursuant to subsection b.

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

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

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

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

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

18 (d) The defendant committed the murder as consideration for the
19 receipt, or in expectation of the receipt of anything of pecuniary
20 value;

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

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

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

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

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

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

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

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

45 (a) The defendant was under the influence of extreme mental or
46 emotional disturbance insufficient to constitute a defense to

1 prosecution;

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

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

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

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

12 (f) The defendant has no significant history of prior criminal
13 activity;

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

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

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

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

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

43 f. Prior to the jury's sentencing deliberations, the trial court shall
44 inform the jury of the sentences which may be imposed pursuant to
45 subsection b. of this section on the defendant if the defendant is not
46 sentenced to death. The jury shall also be informed that a failure to

1 reach a unanimous verdict shall result in sentencing by the court
2 pursuant to subsection b.

3 g. A juvenile who has been tried as an adult and convicted of
4 murder shall not be sentenced pursuant to the provisions of subsection
5 c. but shall be sentenced pursuant to the provisions of subsection b. of
6 this section.

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

10 i. For purposes of this section the term "homicidal act" shall mean
11 conduct that causes death or serious bodily injury resulting in death.
12 (cf: P.L.1995, c.123, s.1)

13

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

15 2C:47-5. Parole.

16 a. Any person committed to confinement under the terms of this
17 chapter shall be released under parole supervision when it shall appear
18 to the satisfaction of the State Parole Board, after recommendation by
19 a special classification review board appointed by the commissioner
20 that such person is capable of making an acceptable social adjustment
21 in the community.

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

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

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

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

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

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

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

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

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

11
12 3. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to
13 read as follows:

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

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

44 c. Each inmate sentenced to a specific term of years pursuant to
45 the "Controlled Dangerous Substances Act," P.L.1970, c.226
46 (C.24:21-1 through 45) shall become primarily eligible for parole after

1 having served one-third of the sentence imposed less commutation
2 time for good behavior and credits for diligent application to work and
3 other institutional assignments.

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

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

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

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

38 h. When an inmate is sentenced to more than one term of
39 imprisonment, the primary parole eligibility terms calculated pursuant
40 to this section shall be aggregated by the board for the purpose of
41 determining the primary parole eligibility date, except that no juvenile
42 commitment shall be aggregated with any adult sentence. The board
43 shall promulgate rules and regulations to govern aggregation under
44 this subsection.

45 i. The primary eligibility date shall be computed by a designated
46 representative of the board and made known to the inmate in writing

1 not later than 90 days following the commencement of the sentence.
2 In the case of an inmate sentenced to a county penal institution such
3 notice shall be made pursuant to subsection g. of this section. Each
4 inmate shall be given the opportunity to acknowledge in writing the
5 receipt of such computation. Failure or refusal by the inmate to
6 acknowledge the receipt of such computation shall be recorded by the
7 board but shall not constitute a violation of this subsection.

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

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

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

42

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

1

2

3 Provides for life term of imprisonment without parole for persons

4 convicted of murder in conjunction with sexual offense against a child.