

SENATE, No. 71

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator CASEY

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

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

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

7 2C:11-3. Murder.

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

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

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

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

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

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

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

31 (d) Had no reasonable ground to believe that any other participant
32 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. Murder is a crime of the first degree but a person convicted of
3 murder shall be sentenced, except as provided in subsection c. of this
4 section, by the court to a term of 30 years, during which the person
5 shall not be eligible for parole or to a specific term of years which shall
6 be between 30 years and life imprisonment of which the person shall
7 serve 30 years before being eligible for parole.

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

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

19 Where the defendant has been tried by a jury, the proceeding shall
20 be conducted by the judge who presided at the trial and before the jury
21 which determined the defendant's guilt, except that, for good cause,
22 the court may discharge that jury and conduct the proceeding before
23 a jury empaneled for the purpose of the proceeding. Where the
24 defendant has entered a plea of guilty or has been tried without a jury,
25 the proceeding shall be conducted by the judge who accepted the
26 defendant's plea or who determined the defendant's guilt and before a
27 jury empaneled for the purpose of the proceeding. On motion of the
28 defendant and with consent of the prosecuting attorney the court may
29 conduct a proceeding without a jury. Nothing in this subsection shall
30 be construed to prevent the participation of an alternate juror in the
31 sentencing proceeding if one of the jurors who rendered the guilty
32 verdict becomes ill or is otherwise unable to proceed before or during
33 the sentencing proceeding.

34 (2) (a) At the proceeding, the State shall have the burden of
35 establishing beyond a reasonable doubt the existence of any
36 aggravating factors set forth in paragraph (4) of this subsection. The
37 defendant shall have the burden of producing evidence of the existence
38 of any mitigating factors set forth in paragraph (5) of this subsection
39 but shall not have a burden with regard to the establishment of a
40 mitigating factor.

41 (b) The admissibility of evidence offered by the State to establish
42 any of the aggravating factors shall be governed by the rules governing
43 the admission of evidence at criminal trials. The defendant may offer,
44 without regard to the rules governing the admission of evidence at
45 criminal trials, reliable evidence relevant to any of the mitigating
46 factors. If the defendant produces evidence in mitigation which would

1 not be admissible under the rules governing the admission of evidence
2 at criminal trials, the State may rebut that evidence without regard to
3 the rules governing the admission of evidence at criminal trials.

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

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

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

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

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

28 (a) If the jury or the court finds that any aggravating factors exist
29 and that all of the aggravating factors outweigh beyond a reasonable
30 doubt all of the mitigating factors, the court shall sentence the
31 defendant to death.

32 (b) If the jury or the court finds that no aggravating factors exist,
33 or that all of the aggravating factors which exist do not outweigh all
34 of the mitigating factors, the court shall sentence the defendant
35 pursuant to subsection b.

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

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

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

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

- 1 (c) The murder was outrageously or wantonly vile, horrible or
2 inhuman in that it involved torture, depravity of mind, or an
3 aggravated assault to the victim;
- 4 (d) The defendant committed the murder as consideration for the
5 receipt, or in expectation of the receipt of anything of pecuniary value;
- 6 (e) The defendant procured the commission of the offense by
7 payment or promise of payment of anything of pecuniary value;
- 8 (f) The murder was committed for the purpose of escaping
9 detection, apprehension, trial, punishment or confinement for another
10 offense committed by the defendant or another;
- 11 (g) The offense was committed while the defendant was engaged
12 in the commission of, or an attempt to commit, or flight after
13 committing or attempting to commit murder, robbery, sexual assault,
14 arson, burglary or kidnapping;
- 15 (h) The defendant murdered a public servant, as defined in
16 N.J.S.2C:27-1, while the victim was engaged in the performance of his
17 official duties, or because of the victim's status as a public servant;
- 18 (i) The defendant: (i) as a leader of a narcotics trafficking
19 network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
20 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
21 promise solicited the commission of the offense or (ii) committed the
22 offense at the direction of a leader of a narcotics trafficking network
23 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
24 in N.J.S.2C:35-3;
- 25 (j) The homicidal act that the defendant committed or procured
26 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;
27 [or]
- 28 (k) The victim was less than 14 years old; or
- 29 (l) The homicidal act that the defendant committed was in violation
30 of a restraining order entered under the "Prevention of Domestic
31 Violence Act of 1990," P.L.1991, c.261 (C.2C:25-17 et al.).
- 32 (5) The mitigating factors which may be found by the jury or the
33 court are:
- 34 (a) The defendant was under the influence of extreme mental or
35 emotional disturbance insufficient to constitute a defense to
36 prosecution;
- 37 (b) The victim solicited, participated in or consented to the
38 conduct which resulted in his death;
- 39 (c) The age of the defendant at the time of the murder;
- 40 (d) The defendant's capacity to appreciate the wrongfulness of his
41 conduct or to conform his conduct to the requirements of the law was
42 significantly impaired as the result of mental disease or defect or
43 intoxication, but not to a degree sufficient to constitute a defense to
44 prosecution;
- 45 (e) The defendant was under unusual and substantial duress
46 insufficient to constitute a defense to prosecution;

- 1 (f) The defendant has no significant history of prior criminal
2 activity;
- 3 (g) The defendant rendered substantial assistance to the State in
4 the prosecution of another person for the crime of murder; or
- 5 (h) Any other factor which is relevant to the defendant's character
6 or record or to the circumstances of the offense.
- 7 (6) When a defendant at a sentencing proceeding presents evidence
8 of the defendant's character or record pursuant to subparagraph (h) of
9 paragraph (5) of this subsection, the State may present evidence of the
10 murder victim's character and background and of the impact of the
11 murder on the victim's survivors. If the jury finds that the State has
12 proven at least one aggravating factor beyond a reasonable doubt and
13 the jury finds the existence of a mitigating factor pursuant to
14 subparagraph (h) of paragraph (5) of this subsection, the jury may
15 consider the victim and survivor evidence presented by the State
16 pursuant to this paragraph in determining the appropriate weight to
17 give mitigating evidence presented pursuant to subparagraph (h) of
18 paragraph (5) of this subsection.
- 19 d. The sentencing proceeding set forth in subsection c. of this
20 section shall not be waived by the prosecuting attorney.
- 21 e. Every judgment of conviction which results in a sentence of
22 death under this section shall be appealed, pursuant to the Rules of
23 Court, to the Supreme Court. Upon the request of the defendant, the
24 Supreme Court shall also determine whether the sentence is
25 disproportionate to the penalty imposed in similar cases, considering
26 both the crime and the defendant. Proportionality review under this
27 section shall be limited to a comparison of similar cases in which a
28 sentence of death has been imposed under subsection c. of this section.
29 In any instance in which the defendant fails, or refuses to appeal, the
30 appeal shall be taken by the Office of the Public Defender or other
31 counsel appointed by the Supreme Court for that purpose.
- 32 f. Prior to the jury's sentencing deliberations, the trial court shall
33 inform the jury of the sentences which may be imposed pursuant to
34 subsection b. of this section on the defendant if the defendant is not
35 sentenced to death. The jury shall also be informed that a failure to
36 reach a unanimous verdict shall result in sentencing by the court
37 pursuant to subsection b.
- 38 g. A juvenile who has been tried as an adult and convicted of
39 murder shall not be sentenced pursuant to the provisions of subsection
40 c. but shall be sentenced pursuant to the provisions of subsection b. of
41 this section.
- 42 h. In a sentencing proceeding conducted pursuant to this section,
43 no evidence shall be admissible concerning the method or manner of
44 execution which would be imposed on a defendant sentenced to death.
- 45 i. For purposes of this section the term "homicidal act" shall mean

1 conduct that causes death or serious bodily injury resulting in death.
2 (cf: P.L.1995, c.123, s.1)

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4 2. This act shall take effect immediately.

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STATEMENT

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9 This bill would amend the death penalty statute to provide that the
10 defendant's violation of an existing domestic violence restraining order
11 would constitute an "aggravating factor" to be considered by the jury
12 in making its determination whether to sentence the defendant to
13 death.

14 Under the provisions of N.J.S.A.2C:11-3, the jury must weigh the
15 "aggravating factors" of a particular case against the "mitigating
16 factors" to determine whether a defendant convicted of murder will be
17 sentenced to death.

18 The bill provides that, if the murder was committed in violation of
19 a domestic violence restraining order, the jury would be required to
20 weigh that fact as an additional "aggravating factor."

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25 Adds violation of domestic violence restraining order to list of
26 "aggravating factors" in death penalty statute.