

[First Reprint]
SENATE, No. 71

STATE OF NEW JERSEY

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.

2

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

5

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, implore, 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

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 23, 1997.

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

3 b. ¹(1)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 parole¹,¹ or ¹be sentenced¹ 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 ¹(2) If the victim was a law enforcement officer and was murdered
11 while performing his official duties or was murdered because of his
12 status as a law enforcement officer, the person convicted of that
13 murder shall be sentenced, except as otherwise provided in subsection
14 c. of this section, by the court to a term of life imprisonment, during
15 which the person shall not be eligible for parole.

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

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

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

24 The defendant shall not be entitled to a deduction of commutation
25 and work credits from that sentence.¹

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

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

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

1 conduct a proceeding without a jury. Nothing in this subsection shall
2 be construed to prevent the participation of an alternate juror in the
3 sentencing proceeding if one of the jurors who rendered the guilty
4 verdict becomes ill or is otherwise unable to proceed before or during
5 the sentencing proceeding.

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

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

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

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

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

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

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

46 (a) If the jury or the court finds that any aggravating factors exist

1 and that all of the aggravating factors outweigh beyond a reasonable
2 doubt all of the mitigating factors, the court shall sentence the
3 defendant to death.

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

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

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

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

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

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

22 (d) The defendant committed the murder as consideration for the
23 receipt, or in expectation of the receipt of anything of pecuniary 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
37 network 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;
45 [or]

46 (k) The victim was less than 14 years old; or

1 (1) The homicidal act that the defendant committed was in violation
2 of a restraining order entered under the "Prevention of Domestic
3 Violence Act of 1990," P.L.1991, c.261 (C.2C:25-17 et al.).

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

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

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

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

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

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

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

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

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

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

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

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

1 In any instance in which the defendant fails, or refuses to appeal, the
2 appeal shall be taken by the Office of the Public Defender or other
3 counsel appointed by the Supreme Court for that purpose.

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

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

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

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

20

21 2. This act shall take effect immediately.

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25

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