

SENATE, No. 1049

STATE OF NEW JERSEY

INTRODUCED MAY 2, 1996

By Senator CASEY

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. a. Except as provided in N.J.S.2C:11-4
9 criminal homicide 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
33 physical injury.

34 b. Murder is a crime of the first degree but a person convicted of

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 murder shall be sentenced, except as provided in subsection c. of this
2 section, by the court to a term of 30 years, during which the person
3 shall not be eligible for parole or to a specific term of years which shall
4 be between 30 years and life imprisonment of which the person shall
5 serve 30 years before being eligible for parole.

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

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

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

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

39 (b) The admissibility of evidence offered by the State to establish
40 any of the aggravating factors shall be governed by the rules governing
41 the admission of evidence at criminal trials. The defendant may offer,
42 without regard to the rules governing the admission of evidence at
43 criminal trials, reliable evidence relevant to any of the mitigating
44 factors. If the defendant produces evidence in mitigation which would
45 not be admissible under the rules governing the admission of evidence
46 at criminal trials, the State may rebut that evidence without regard to

1 the rules governing the admission of evidence at criminal trials.

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

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

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

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

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

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

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

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

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

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

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

45 (c) The murder was outrageously or wantonly vile, horrible or
46 inhuman in that it involved torture, depravity of mind, or an

- 1 aggravated assault to the victim;
- 2 (d) The defendant committed the murder as consideration for the
3 receipt, or in expectation of the receipt of anything of pecuniary value;
- 4 (e) The defendant procured the commission of the offense by
5 payment or promise of payment of anything of pecuniary value;
- 6 (f) The murder was committed for the purpose of escaping
7 detection, apprehension, trial, punishment or confinement for another
8 offense committed by the defendant or another;
- 9 (g) The offense was committed while the defendant was engaged
10 in the commission of, or an attempt to commit, or flight after
11 committing or attempting to commit murder, robbery, sexual assault,
12 arson, burglary or kidnapping;
- 13 (h) The defendant murdered a public servant, as defined in
14 N.J.S.2C:27-1, while the victim was engaged in the performance of his
15 official duties, or because of the victim's status as a public servant;
- 16 (i) The defendant: (i) as a leader of a narcotics trafficking network
17 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
18 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
19 promise solicited the commission of the offense or (ii) committed the
20 offense at the direction of a leader of a narcotics trafficking network
21 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
22 in N.J.S.2C:35-3;
- 23 (j) The homicidal act that the defendant committed or procured
24 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or
- 25 (k) The victim was less than 14 years old.
- 26 (5) The mitigating factors which may be found by the jury or the
27 court are:
- 28 (a) The defendant was under the influence of extreme mental or
29 emotional disturbance insufficient to constitute a defense to
30 prosecution;
- 31 (b) The victim solicited, participated in or consented to the
32 conduct which resulted in his death;
- 33 (c) The age of the defendant at the time of the murder;
- 34 (d) The defendant's capacity to appreciate the wrongfulness of his
35 conduct or to conform his conduct to the requirements of the law was
36 significantly impaired as the result of mental disease or defect or
37 intoxication, but not to a degree sufficient to constitute a defense to
38 prosecution;
- 39 (e) The defendant was under unusual and substantial duress
40 insufficient to constitute a defense to prosecution;
- 41 (f) The defendant has no significant history of prior criminal
42 activity;
- 43 (g) The defendant rendered substantial assistance to the State in
44 the prosecution of another person for the crime of murder; or
- 45 (h) Any other factor which is relevant to the defendant's character
46 or record or to the circumstances of the offense.

1 (6) When a defendant at a sentencing proceeding presents evidence
2 of the defendant's character or record pursuant to subparagraph (h) of
3 paragraph (5) of this subsection, the State may present evidence of the
4 murder victim's character and background and of the impact of the
5 murder on the victim's survivors. If the jury finds that the State has
6 proven at least one aggravating factor beyond a reasonable doubt and
7 the jury finds the existence of a mitigating factor pursuant to
8 subparagraph (h) of paragraph (5) of this subsection, the jury may
9 consider the victim and survivor evidence presented by the State
10 pursuant to this paragraph in determining the appropriate weight to
11 give mitigating evidence presented pursuant to subparagraph (h) of
12 paragraph (5) of this subsection.

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

15 e. Every judgment of conviction which results in a sentence of
16 death under this section shall be appealed, pursuant to the Rules of
17 Court, to the Supreme Court. Upon the request of the defendant, the
18 Supreme Court shall also determine whether the sentence is
19 disproportionate to the penalty imposed in similar cases, considering
20 both the crime and the defendant. Proportionality review under this
21 section shall be limited to a comparison of similar cases in which a
22 sentence of death has been imposed under subsection c. of this section.
23 In any instance in which the defendant fails, or refuses to appeal, the
24 appeal shall be taken by the Office of the Public Defender or other
25 counsel appointed by the Supreme Court for that purpose.

26 f. Prior to the jury's sentencing deliberations, the trial court shall
27 inform the jury of the sentences which may be imposed pursuant to
28 subsection b. of this section on the defendant if the defendant is not
29 sentenced to death. The jury shall also be informed that a failure to
30 reach a unanimous verdict shall result in sentencing by the court
31 pursuant to subsection b.

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

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

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

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

1 2. This act shall take effect immediately.

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STATEMENT

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

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

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

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Permits certain juveniles to be eligible for the death penalty.