

SENATE, No. 1271

STATE OF NEW JERSEY

INTRODUCED JUNE 3, 1996

By Senators LaROSSA and MATHEUSSEN

1 AN ACT concerning the penalties for murder in certain circumstances
2 and 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:

8 2C:11-3. Murder. a. Except as provided in N.J.S.2C:11-4 criminal
9 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; or a
13 person convicted under subsection a. (3), shall be sentenced as
14 provided hereinafter:

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

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

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

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

1 at criminal trials, the State may rebut that evidence without regard to
2 the rules governing the admission of evidence at criminal trials.

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

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

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

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

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

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

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

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

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

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

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

46 (c) The murder was outrageously or wantonly vile, horrible or

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

1 or record or to the circumstances of the offense.

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

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

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

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

33 g. A juvenile who has been tried as an adult and convicted of
34 murder shall not be sentenced pursuant to the provisions of subsection
35 c. but shall be sentenced pursuant to the provisions of subsection b. of
36 this section.

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

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

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44 2. This act shall take effect immediately.

STATEMENT

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At common law, one whose conduct brought about an unintended death in commission or attempted commission of a felony was guilty of murder. This concept is commonly referred to as the "felony-murder" doctrine. In New Jersey, the "felony-murder" doctrine is codified in subsection c. of N.J.S.2C:11-3 which provides that an unintended homicide which occurs during the commission of certain enumerated felonies such as sexual assault, arson, robbery, burglary or kidnapping is punishable as murder. Under present law, persons convicted of murder under the "felony-murder" doctrine are not eligible for the death penalty. This bill would permit the prosecution to seek the death penalty in felony-murder cases.

Makes person convicted of murder under "felony-murder" doctrine eligible for the death penalty.