

SENATE, No. 2278

STATE OF NEW JERSEY

INTRODUCED DECEMBER 1, 1997

By Senators MATHEUSSEN and KOSCO

1 AN ACT concerning the punishment for murder in certain
2 circumstances 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 as follows:

8 2C:11-3. 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. (1) Murder is a crime of the first degree but a person convicted

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

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

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

17 (a) The victim is less than 14 years old or is mentally defective as
18 defined in N.J.S.2C:14-1; and

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

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

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

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

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

1 sentencing proceeding if one of the jurors who rendered the guilty
2 verdict becomes ill or is otherwise unable to proceed before or during
3 the sentencing proceeding.

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

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

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

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

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

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

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

44 (a) If the jury or the court finds that any aggravating factors exist
45 and that all of the aggravating factors outweigh beyond a reasonable
46 doubt all of the mitigating factors, the court shall sentence the

1 defendant to death.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 (a) The defendant was under the influence of extreme mental or
2 emotional disturbance insufficient to constitute a defense to
3 prosecution;
- 4 (b) The victim solicited, participated in or consented to the
5 conduct which resulted in his death;
- 6 (c) The age of the defendant at the time of the murder;
- 7 (d) The defendant's capacity to appreciate the wrongfulness of his
8 conduct or to conform his conduct to the requirements of the law was
9 significantly impaired as the result of mental disease or defect or
10 intoxication, but not to a degree sufficient to constitute a defense to
11 prosecution;
- 12 (e) The defendant was under unusual and substantial duress
13 insufficient to constitute a defense to prosecution;
- 14 (f) The defendant has no significant history of prior criminal
15 activity;
- 16 (g) The defendant rendered substantial assistance to the State in
17 the prosecution of another person for the crime of murder; or
- 18 (h) Any other factor which is relevant to the defendant's character
19 or record or to the circumstances of the offense.
- 20 (6) When a defendant at a sentencing proceeding presents evidence
21 of the defendant's character or record pursuant to subparagraph (h)
22 of paragraph (5) of this subsection, the State may present evidence of
23 the murder victim's character and background and of the impact of the
24 murder on the victim's survivors. If the jury finds that the State has
25 proven at least one aggravating factor beyond a reasonable doubt and
26 the jury finds the existence of a mitigating factor pursuant to
27 subparagraph (h) of paragraph (5) of this subsection, the jury may
28 consider the victim and survivor evidence presented by the State
29 pursuant to this paragraph in determining the appropriate weight to
30 give mitigating evidence presented pursuant to subparagraph (h) of
31 paragraph (5) of this subsection.
- 32 d. The sentencing proceeding set forth in subsection c. of this
33 section shall not be waived by the prosecuting attorney.
- 34 e. Every judgment of conviction which results in a sentence of
35 death under this section shall be appealed, pursuant to the Rules of
36 Court, to the Supreme Court. Upon the request of the defendant, the
37 Supreme Court shall also determine whether the sentence is
38 disproportionate to the penalty imposed in similar cases, considering
39 both the crime and the defendant. Proportionality review under this
40 section shall be limited to a comparison of similar cases in which a
41 sentence of death has been imposed under subsection c. of this section.
42 In any instance in which the defendant fails, or refuses to appeal, the
43 appeal shall be taken by the Office of the Public Defender or other
44 counsel appointed by the Supreme Court for that purpose.
- 45 f. Prior to the jury's sentencing deliberations, the trial court shall
46 inform the jury of the sentences which may be imposed pursuant to

1 subsection b. of this section on the defendant if the defendant is not
2 sentenced to death. The jury shall also be informed that a failure to
3 reach a unanimous verdict shall result in sentencing by the court
4 pursuant to subsection b.

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

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

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

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16 2. This act shall take effect immediately.

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STATEMENT

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21 Chapter 60 of the Laws of 1997, popularly known as "Joan's Law,"
22 was recently enacted. Chapter 60 provides that if a person convicted
23 of murder is not sentenced to death, a term of life imprisonment with
24 no eligibility for parole would be imposed when the victim of the
25 offense was less than 14 years old and the homicide was committed
26 either alone or with another person during the commission of a sexual
27 assault. This bill would extend the provisions of "Joan's Law" to cases
28 involving mentally defective victims.

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33 Provides for life imprisonment without eligibility for parole for persons
34 convicted of murder in conjunction with sexual assault against a
35 mentally defective person.