

ASSEMBLY, No. 3716

STATE OF NEW JERSEY 212th LEGISLATURE

INTRODUCED NOVEMBER 20, 2006

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

Assemblyman Cryan, Assemblywomen Jasey and Evans

SYNOPSIS

Repeals the death penalty and replaces it with life imprisonment without eligibility for parole in certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/7/2007)

1 AN ACT to allow for life imprisonment without eligibility for parole
2 when certain aggravators exist and to repeal the death penalty,
3 amending N.J.S.2C:11-3 and N.J.S.2B:23-10, repealing
4 P.L.1983, c.245, and supplementing Title 2C of the New Jersey
5 Statutes.

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. N.J.S.2C:11-3 is amended to read as follows:

11 2C:11-3 Murder.

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

14 (1) The actor purposely causes death or serious bodily injury
15 resulting in death; or

16 (2) The actor knowingly causes death or serious bodily injury
17 resulting in death; or

18 (3) It is committed when the actor, acting either alone or with
19 one or more other persons, is engaged in the commission of, or an
20 attempt to commit, or flight after committing or attempting to
21 commit robbery, sexual assault, arson, burglary, kidnapping,
22 carjacking, criminal escape or terrorism pursuant to section 2 of
23 P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of
24 immediate flight therefrom, any person causes the death of a person
25 other than one of the participants; except that in any prosecution
26 under this subsection, in which the defendant was not the only
27 participant in the underlying crime, it is an affirmative defense that
28 the defendant:

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

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

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

39 (d) Had no reasonable ground to believe that any other
40 participant intended to engage in conduct likely to result in death or
41 serious physical injury.

42 b. (1) Murder is a crime of the first degree but a person
43 convicted of murder shall be sentenced, except as provided in
44 **[subsection c.] paragraphs (2), (3) and (4) of this [section]**
45 subsection, by the court to a term of 30 years, during which the

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 person shall not be eligible for parole, or be sentenced to a specific
2 term of years which shall be between 30 years and life
3 imprisonment of which the person shall serve 30 years before being
4 eligible for parole.

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

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

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

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

20 (4) [If the defendant was subject to sentencing pursuant to
21 subsection c. and the jury or court found the existence of one or
22 more aggravating factors, but that such factors did not outweigh the
23 mitigating factors found to exist by the jury or court or the jury was
24 unable to reach a unanimous verdict as to the weight of the factors,
25 the defendant shall be sentenced by the court to a term of life
26 imprisonment during which the defendant shall not be eligible for
27 parole.

28 With respect to a sentence imposed pursuant to this subsection,
29 the defendant shall not be entitled to a deduction of commutation
30 and work credits from that sentence.】 Except as provided in
31 paragraphs (2) and (3), a person convicted of murder may be
32 sentenced by the court to life imprisonment without eligibility for
33 parole if a jury finds that any of the following aggravating factors
34 exist:

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

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

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

45 (d) The defendant committed the murder as consideration for the
46 receipt, or in expectation of the receipt of anything of pecuniary
47 value;

48 (e) The defendant procured the commission of the murder by

1 payment or promise of payment of anything of pecuniary value;

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

5 (g) The murder was committed while the defendant was engaged
6 in the commission of, or an attempt to commit, or flight after
7 committing or attempting to commit murder, robbery, sexual
8 assault, arson, burglary, kidnapping, carjacking or the crime of
9 contempt in violation of subsection b. of N.J.S.2C:29-9;

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

14 (i) The defendant: (i) as a leader of a narcotics trafficking
15 network as defined in N.J.S.2C:35-3 and in furtherance of a
16 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
17 or by threat or promise solicited the commission of the murder or
18 (ii) committed the murder at the direction of a leader of a narcotics
19 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a
20 conspiracy enumerated in N.J.S.2C:35-3;

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

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

24 (l) The murder was committed during the commission of, or an
25 attempt to commit, or flight after committing or attempting to
26 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
27 2).

28 (5) A juvenile who has been tried as an adult and convicted of
29 murder shall be sentenced pursuant to paragraph (1) of this
30 subsection.

31 c. **【Any person convicted under subsection a.(1) or (2) who**
32 **committed the homicidal act by his own conduct; or who as an**
33 **accomplice procured the commission of the offense by payment or**
34 **promise of payment of anything of pecuniary value; or who, as a**
35 **leader of a narcotics trafficking network as defined in N.J.S.2C:35-**
36 **3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,**
37 **commanded or by threat or promise solicited the commission of the**
38 **offense, or, if the murder occurred during the commission of the**
39 **crime of terrorism, any person who committed the crime of**
40 **terrorism, shall be sentenced as provided hereinafter:】**

41 **【(1) The court shall conduct a separate sentencing proceeding to**
42 **determine whether the defendant should be sentenced to death or**
43 **pursuant to the provisions of subsection b. of this section.**

44 **Where the defendant has been tried by a jury, the proceeding**
45 **shall be conducted by the judge who presided at the trial and before**
46 **the jury which determined the defendant's guilt, except that, for**
47 **good cause, the court may discharge that jury and conduct the**
48 **proceeding before a jury empaneled for the purpose of the**

1 proceeding. Where the defendant has entered a plea of guilty or has
2 been tried without a jury, the proceeding shall be conducted by the
3 judge who accepted the defendant's plea or who determined the
4 defendant's guilt and before a jury empaneled for the purpose of the
5 proceeding. On motion of the defendant and with consent of the
6 prosecuting attorney the court may conduct a proceeding without a
7 jury. Nothing in this subsection shall be construed to prevent the
8 participation of an alternate juror in the sentencing proceeding if
9 one of the jurors who rendered the guilty verdict becomes ill or is
10 otherwise unable to proceed before or during the sentencing
11 proceeding.】

12 【(2) (a) At the proceeding, the State shall have the burden of
13 establishing beyond a reasonable doubt the existence of any
14 aggravating factors set forth in paragraph (4) of this subsection.
15 The defendant shall have the burden of producing evidence of the
16 existence of any mitigating factors set forth in paragraph (5) of this
17 subsection but shall not have a burden with regard to the
18 establishment of a mitigating factor.

19 (b) The admissibility of evidence offered by the State to establish
20 any of the aggravating factors shall be governed by the rules
21 governing the admission of evidence at criminal trials. The
22 defendant may offer, without regard to the rules governing the
23 admission of evidence at criminal trials, reliable evidence relevant
24 to any of the mitigating factors. If the defendant produces evidence
25 in mitigation which would not be admissible under the rules
26 governing the admission of evidence at criminal trials, the State
27 may rebut that evidence without regard to the rules governing the
28 admission of evidence at criminal trials.

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

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

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

43 (f) Evidence offered by the State with regard to the establishment
44 of a prior homicide conviction pursuant to paragraph (4)(a) of this
45 subsection may include the identity and age of the victim, the
46 manner of death and the relationship, if any, of the victim to the
47 defendant.】

48 【(3) The jury or, if there is no jury, the court shall return a

1 special verdict setting forth in writing the existence or nonexistence
2 of each of the aggravating and mitigating factors set forth in
3 paragraphs (4) and (5) of this subsection. If any aggravating factor
4 is found to exist, the verdict shall also state whether it outweighs
5 beyond a reasonable doubt any one or more mitigating factors.

6 (a) If the jury or the court finds that any aggravating factors exist
7 and that all of the aggravating factors outweigh beyond a reasonable
8 doubt all of the mitigating factors, the court shall sentence the
9 defendant to death.

10 (b) If the jury or the court finds that no aggravating factors exist,
11 or that all of the aggravating factors which exist do not outweigh all
12 of the mitigating factors, the court shall sentence the defendant
13 pursuant to subsection b.

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

16 【(4) The aggravating factors which may be found by the jury or
17 the court are:

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

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

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

28 (d) The defendant committed the murder as consideration for the
29 receipt, or in expectation of the receipt of anything of pecuniary
30 value;

31 (e) The defendant procured the commission of the murder by
32 payment or promise of payment of anything of pecuniary value;

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

36 (g) The murder was committed while the defendant was engaged
37 in the commission of, or an attempt to commit, or flight after
38 committing or attempting to commit murder, robbery, sexual
39 assault, arson, burglary, kidnapping, carjacking or the crime of
40 contempt in violation of N.J.S.2C:29-9b.;

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

45 (i) The defendant: (i) as a leader of a narcotics trafficking
46 network as defined in N.J.S.2C:35-3 and in furtherance of a
47 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
48 or by threat or promise solicited the commission of the murder or

1 (ii) committed the murder at the direction of a leader of a narcotics
2 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a
3 conspiracy enumerated in N.J.S.2C:35-3;

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

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

7 (l) The murder was committed during the commission of, or an
8 attempt to commit, or flight after committing or attempting to
9 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
10 2).]

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

13 (a) The defendant was under the influence of extreme mental or
14 emotional disturbance insufficient to constitute a defense to
15 prosecution;

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

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

19 (d) The defendant's capacity to appreciate the wrongfulness of
20 his conduct or to conform his conduct to the requirements of the
21 law was significantly impaired as the result of mental disease or
22 defect or intoxication, but not to a degree sufficient to constitute a
23 defense to prosecution;

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

26 (f) The defendant has no significant history of prior criminal
27 activity;

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

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

32 [(6) When a defendant at a sentencing proceeding presents
33 evidence of the defendant's character or record pursuant to
34 subparagraph (h) of paragraph (5) of this subsection, the State may
35 present evidence of the murder victim's character and background
36 and of the impact of the murder on the victim's survivors. If the
37 jury finds that the State has proven at least one aggravating factor
38 beyond a reasonable doubt and the jury finds the existence of a
39 mitigating factor pursuant to subparagraph (h) of paragraph (5) of
40 this subsection, the jury may consider the victim and survivor
41 evidence presented by the State pursuant to this paragraph in
42 determining the appropriate weight to give mitigating evidence
43 presented pursuant to subparagraph (h) of paragraph (5) of this
44 subsection. As used in this paragraph "victim and survivor
45 evidence" may include the display of a photograph of the victim
46 taken before the homicide.] (Deleted by amendment, P.L. __, c. __)
47 (pending before the Legislature as this bill).

48 d. [The sentencing proceeding set forth in subsection c. of this

1 section shall not be waived by the prosecuting attorney.】 (Deleted
2 by amendment, P.L. , c.) (pending before the Legislature as this
3 bill).

4 e. 【Every judgment of conviction which results in a sentence of
5 death under this section shall be appealed, pursuant to the Rules of
6 Court, to the Supreme Court. Upon the request of the defendant,
7 the Supreme Court shall also determine whether the sentence is
8 disproportionate to the penalty imposed in similar cases,
9 considering both the crime and the defendant. Proportionality
10 review under this section shall be limited to a comparison of similar
11 cases in which a sentence of death has been imposed under
12 subsection c. of this section. In any instance in which the defendant
13 fails, or refuses to appeal, the appeal shall be taken by the Office of
14 the Public Defender or other counsel appointed by the Supreme
15 Court for that purpose.】 (Deleted by amendment, P.L. , c.)
16 (pending before the Legislature as this bill).

17 f. 【Prior to the jury's sentencing deliberations, the trial court
18 shall inform the jury of the sentences which may be imposed
19 pursuant to subsection b. of this section on the defendant if the
20 defendant is not sentenced to death. The jury shall also be informed
21 that a failure to reach a unanimous verdict shall result in sentencing
22 by the court pursuant to subsection b.】 (Deleted by amendment,
23 P.L. , c.) (pending before the Legislature as this bill).

24 g. 【A juvenile who has been tried as an adult and convicted of
25 murder shall not be sentenced pursuant to the provisions of
26 subsection c. but shall be sentenced pursuant to the provisions of
27 subsection b. of this section.】 (Deleted by amendment, P.L. , c.)
28 (pending before the Legislature as this bill).

29 h. 【In a sentencing proceeding conducted pursuant to this
30 section, no evidence shall be admissible concerning the method or
31 manner of execution which would be imposed on a defendant
32 sentenced to death.】 (Deleted by amendment, P.L. , c.)
33 (pending before the Legislature as this bill).

34 i. 【For purposes of this section the term "homicidal act" shall
35 mean conduct that causes death or serious bodily injury resulting in
36 death.】 (Deleted by amendment, P.L. , c.) (pending before the
37 Legislature as this bill).

38 j. In a sentencing proceeding conducted pursuant to this section,
39 the display of a photograph of the victim taken before the homicide
40 shall be permitted.

41 (cf: P.L.2002, c.26, s.10)

42

43 2. (New section) An inmate sentenced to death prior to the date
44 of the passage of this bill, upon motion to the sentencing court and
45 waiver of any further appeals related to sentencing, shall be
46 resentenced to a term of life imprisonment during which the
47 defendant shall not be eligible for parole.

1 3. (New section) A person convicted of murder under
2 paragraphs (2), (3), or (4) of subsection b. of N.J.S.2C:11-3 shall be
3 required to pay restitution to the nearest surviving relative of the
4 victim. The court shall determine the amount and duration of the
5 restitution pursuant to N.J.S.2C:43-3 and the provisions of chapter
6 46 of Title 2C of the New Jersey Statutes.

7
8 4. N.J.S.2B:23-10 is amended to read as follows:

9 2B:23-10. Examination of jurors. a. In the discretion of the
10 court, parties to any trial may question any person summoned as a
11 juror after the name is drawn and before the swearing, and without
12 the interposition of any challenge, to determine whether or not to
13 interpose a peremptory challenge or a challenge for cause. Such
14 examination shall be permitted in order to disclose whether or not
15 the juror is qualified, impartial and without interest in the result of
16 the action. The questioning shall be conducted in open court under
17 the trial judge's supervision.

18 b. ~~【The examination of jurors shall be under oath only in cases in~~
19 ~~which a death penalty may be imposed.】~~ (Deleted by amendment,
20 P.L. , c.) (pending before the Legislature as this bill).
21 (cf: N.J.S. 2B:23-10)

22
23 5. P.L.1983, c.245 (C.2C:49-1 through 2C:49-12, inclusive) is
24 repealed.

25
26 6. This act shall take effect immediately.

27
28
29 STATEMENT

30
31 This bill repeals the death penalty in New Jersey and replaces it
32 with life imprisonment without eligibility for parole in certain
33 circumstances.

34 The bill amends N.J.S.2C:11-3 to remove the references to
35 current subsection c. concerning the death penalty. Under the bill,
36 murder generally would be punishable by a court to a term of 30
37 years, during which the person shall not be eligible for parole, or to
38 a specific term of years which shall be between 30 years and life
39 imprisonment of which the person shall serve 30 years before being
40 eligible for parole. There are certain provisions for sentencing by a
41 court to a term of life imprisonment during which the defendant
42 shall not be eligible for parole.

43 These circumstances are:

44 (1) If the victim was a law enforcement officer and was
45 murdered while performing his official duties or was murdered
46 because of his status as a law enforcement officer;

47 (2) If the murder victim is less than 14 years old and the act is
48 committed in the course of the commission, whether alone or with

1 one or more persons, of a violation of N.J.S.2C:14-2 (sexual
2 assault) or N.J.S.2C:14-3 (criminal sexual contact); and

3 (3) If certain aggravators exist.

4 An inmate sentenced to death prior to the date of the passage of
5 this bill, upon motion to the sentencing court and waiver of any
6 further appeals related to sentencing, will be resentenced to a term
7 of life imprisonment during which the defendant shall not be
8 eligible for parole.

9 A person convicted of murder under certain circumstances would
10 be required to pay restitution to the nearest surviving relative of the
11 victim when certain aggravators exist. The court will determine the
12 amount and duration of the restitution.

13 The bill would also remove the reference to death penalty cases
14 in N.J.S.A.2B:23-10 concerning examination of jurors.

15 The bill repeals chapter 49 of the criminal code which pertains to
16 capital punishment and provides for procedures for the execution of
17 death sentences.

18 It is the desire of the sponsor that a significant portion of any
19 projected savings to be realized through this change in the statute be
20 allocated to benefits and services for victims of violent crime.