

SPONSORS STATEMENT (S2087): (Begins on page 3 of original bill) Yes

SPONSORS STATEMENT (S2233): (Begins on page 4 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL NOTE (S2233): Yes

Identical to fiscal note for A3201

FINAL VERSION (Senate Committee Substitute): Yes

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Law stiffened for killers," 6/30/2001 The Record, pA3.

"Murder now covered by new sentence rules," 6-30-2001 Home News, p.A3

ASSEMBLY, No. 3201

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED FEBRUARY 5, 2001

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman TOM SMITH

District 11 (Monmouth)

Co-Sponsored by:

Assemblymen Cottrell and Malone

SYNOPSIS

Specifies the crimes encompassed by the provisions of the "No Early Release Act," including murder.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/23/2001)

A3201 HOLZAPFEL, T. SMITH

2

1 AN ACT concerning parole eligibility under the "No Early Release
2 Act" and amending P.L.1997, c.117 and N.J.S.2C:11-3.

3

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

6

7 1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read
8 as follows:

9 2. a. A court imposing a sentence of incarceration for a crime of
10 the first or second degree shall fix a minimum term of 85% of the
11 sentence during which the defendant shall not be eligible for parole if
12 the crime is a violent crime as defined in subsection d. of this section.

13 b. The provisions of subsection a. of this section shall not be
14 construed or applied to reduce the time that must be served before
15 eligibility for parole by an inmate sentenced to a mandatory minimum
16 period of incarceration.

17 c. Notwithstanding any other provision of law to the contrary and
18 in addition to any other sentence imposed, a court imposing a
19 minimum period of parole ineligibility of 85 percent of the sentence
20 pursuant to this section shall also[, unless the court imposes a
21 sentence of lifetime parole supervision pursuant to P.L. , c.
22 (C.)(now pending before the Legislature as Senate Bill No. 524
23 SCS),] impose a five-year term of parole supervision if the defendant
24 is being sentenced for a crime of the first degree, or a three-year term
25 of parole supervision if the defendant is being sentenced for a crime of
26 the second degree. The term of parole supervision shall commence
27 upon the completion of the sentence of incarceration imposed by the
28 court pursuant to subsection a. of this section unless the defendant is
29 serving a sentence of incarceration for another crime at the time he
30 completes the sentence of incarceration imposed pursuant to
31 subsection a., in which case the term of parole supervision shall
32 commence immediately upon the defendant's release from
33 incarceration. During the term of parole supervision the defendant
34 shall remain in release status in the community in the legal custody of
35 the Commissioner of the Department of Corrections and shall be
36 supervised by the Bureau of Parole of the Department of Corrections
37 as if on parole and shall be subject to the provisions and conditions of
38 section 3 of P.L.1997, c.117 (C.30:4-123.51b).

39 d. For the purposes of this section, "violent crime" means [any
40 crime in which the actor causes death, causes serious bodily injury as
41 defined in subsection b. of N.J.S.2C:11-1, or uses or threatens the
42 immediate use of a deadly weapon. "Violent crime" also includes any
43 aggravated sexual assault or sexual assault in which the actor uses, or

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 threatens the immediate use of, physical force. For the purposes of
2 this section, "deadly weapon" means any firearm or other weapon,
3 device, instrument, material or substance, whether animate or
4 inanimate, which in the manner it is used or is intended to be used, is
5 known to be capable of producing death or serious bodily injury] any
6 of the following:

- 7 (1) N.J.S.2C:11-3, murder;
- 8 (2) N.J.S.2C:11-4, manslaughter;
- 9 (3) a crime of the second degree under subsection b. of
10 N.J.S.2C:12-1, aggravated assault;
- 11 (4) N.J.S.2C:13-1, kidnapping;
- 12 (5) paragraph (1) and paragraphs (3) through (7) of subsection a.
13 of N.J.S.2C:14-2, aggravated sexual assault;
- 14 (6) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection
15 c. of N.J.S.2C:14-2, sexual assault;
- 16 (7) N.J.S.2C:15-1, robbery;
- 17 (8) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
- 18 (9) a crime of the second degree under N.J.S.2C:18-2, burglary; or
- 19 (10) a crime of the second degree under N.J.S.2C:39-4, possession
20 of a weapon with the purpose of using it unlawfully against the person
21 of another.

22 e. [A court shall not impose sentence pursuant to this section
23 unless the ground therefor has been established at a hearing after the
24 conviction of the defendant and on written notice to him of the ground
25 proposed. The defendant shall have the right to hear and controvert
26 the evidence against him and to offer evidence upon the issue.]
27 (Deleted by amendment, P.L. , c. (C.)) (now pending before the
28 Legislature as this bill.)
29 (cf: P.L.1997, c.117, s.2)

30

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

32 2C:11-3. Murder.

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

35 (1) The actor purposely causes death or serious bodily injury
36 resulting in death; or

37 (2) The actor knowingly causes death or serious bodily injury
38 resulting in death; or

39 (3) It is committed when the actor, acting either alone or with one
40 or more other persons, is engaged in the commission of, or an attempt
41 to commit, or flight after committing or attempting to commit robbery,
42 sexual assault, arson, burglary, kidnapping, carjacking or criminal
43 escape, and in the course of such crime or of immediate flight
44 therefrom, any person causes the death of a person other than one of
45 the participants; except that in any prosecution under this subsection,
46 in which the defendant was not the only participant in the underlying

1 crime, it is an affirmative defense that the defendant:

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

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

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

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

13 b. (1) Murder is a crime of the first degree but a person convicted
14 of murder shall be sentenced, except as provided in subsection c. of
15 this section, by the court to a term of 30 years, during which the
16 person shall not be eligible for parole, or be sentenced to a specific
17 term of years which shall be between 30 years and life imprisonment
18 of which the person shall serve 30 years or 85% of the sentence,
19 whichever is greater, before being eligible for parole.

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

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

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

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

34 (4) If the defendant was subject to sentencing pursuant to
35 subsection c. and the jury or court found the existence of one or more
36 aggravating factors, but that such factors did not outweigh the
37 mitigating factors found to exist by the jury or court or the jury was
38 unable to reach a unanimous verdict as to the weight of the factors, the
39 defendant shall be sentenced by the court to a term of life
40 imprisonment during which the defendant shall not be eligible for
41 parole.

42 With respect to a sentence imposed pursuant to this subsection, the
43 defendant shall not be entitled to a deduction of commutation and
44 work credits from that sentence.

45 c. Any person convicted under subsection a.(1) or (2) who
46 committed the homicidal act by his own conduct; or who as an

1 accomplice procured the commission of the offense by payment or
2 promise of payment of anything of pecuniary value; or who, as a leader
3 of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in
4 furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded
5 or by threat or promise solicited the commission of the offense, shall
6 be sentenced as provided hereinafter:

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

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

25 (2) (a) At the proceeding, the State shall have the burden of
26 establishing beyond a reasonable doubt the existence of any
27 aggravating factors set forth in paragraph (4) of this subsection. The
28 defendant shall have the burden of producing evidence of the existence
29 of any mitigating factors set forth in paragraph (5) of this subsection
30 but shall not have a burden with regard to the establishment of a
31 mitigating factor.

32 (b) The admissibility of evidence offered by the State to establish
33 any of the aggravating factors shall be governed by the rules governing
34 the admission of evidence at criminal trials. The defendant may offer,
35 without regard to the rules governing the admission of evidence at
36 criminal trials, reliable evidence relevant to any of the mitigating
37 factors. If the defendant produces evidence in mitigation which would
38 not be admissible under the rules governing the admission of evidence
39 at criminal trials, the State may rebut that evidence without regard to
40 the rules governing the admission of evidence at criminal trials.

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

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

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

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

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

19 (a) If the jury or the court finds that any aggravating factors exist
20 and that all of the aggravating factors outweigh beyond a reasonable
21 doubt all of the mitigating factors, the court shall sentence the
22 defendant to death.

23 (b) If the jury or the court finds that no aggravating factors exist,
24 or that all of the aggravating factors which exist do not outweigh all
25 of the mitigating factors, the court shall sentence the defendant
26 pursuant to subsection b.

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

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

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

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

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

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

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

45 (f) The murder was committed for the purpose of escaping
46 detection, apprehension, trial, punishment or confinement for another

1 offense committed by the defendant or another;

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

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

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

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

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

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

22 (a) The defendant was under the influence of extreme mental or
23 emotional disturbance insufficient to constitute a defense to
24 prosecution;

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

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

28 (d) The defendant's capacity to appreciate the wrongfulness of his
29 conduct or to conform his conduct to the requirements of the law was
30 significantly impaired as the result of mental disease or defect or
31 intoxication, but not to a degree sufficient to constitute a defense to
32 prosecution;

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

35 (f) The defendant has no significant history of prior criminal
36 activity;

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

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

41 (6) When a defendant at a sentencing proceeding presents evidence
42 of the defendant's character or record pursuant to subparagraph (h) of
43 paragraph (5) of this subsection, the State may present evidence of the
44 murder victim's character and background and of the impact of the
45 murder on the victim's survivors. If the jury finds that the State has
46 proven at least one aggravating factor beyond a reasonable doubt and

1 the jury finds the existence of a mitigating factor pursuant to
2 subparagraph (h) of paragraph (5) of this subsection, the jury may
3 consider the victim and survivor evidence presented by the State
4 pursuant to this paragraph in determining the appropriate weight to
5 give mitigating evidence presented pursuant to subparagraph (h) of
6 paragraph (5) of this subsection. As used in this paragraph "victim
7 and survivor evidence" may include the display of a photograph of the
8 victim taken before the homicide.

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

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

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

28 g. A juvenile who has been tried as an adult and convicted of
29 murder shall not be sentenced pursuant to the provisions of subsection
30 c. but shall be sentenced pursuant to the provisions of subsection b. of
31 this section.

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

35 i. For purposes of this section the term "homicidal act" shall mean
36 conduct that causes death or serious bodily injury resulting in death.

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

40 (cf: P.L.2000, c.88)

41
42 3. This act shall take effect immediately.

43
44 STATEMENT

45
46 Under current law, known as the "No Early Release Act"
47 (N.J.S.A.2C:43-7.2), persons convicted of violent crimes of the first

1 or second degree must serve at least 85% of the sentence imposed by
2 the court before being eligible for parole. Currently, NERA defines
3 "violent crime" as "any crime in which the actor causes death, . . .
4 serious bodily injury . . . or uses or threatens the immediate use of a
5 deadly weapon. . . 'Violent crime' also includes any aggravated sexual
6 assault or sexual assault in which the actor uses, or threatens the
7 immediate use of, physical force." However, several recent Appellate
8 Division decisions have held that in its present form, NERA is
9 inapplicable to certain crimes, including murder.

10 In State v. Manzie, No. A-5310-98T3 (decided November 29,
11 2000), the Appellate Division held that NERA does not apply to
12 murder because this crime is not specifically referred to in NERA or
13 in the language of the murder statute, N.J.S.A.2C:11-3.

14 In State v. Mosley, 2000 WL 1716257 (decided Nov. 17, 2000)
15 and State v. Thomas, 322 N.J. Super. 512 (App. Div. 1999); *cert.*
16 *granted* 162 N.J. 489 (1999), the Appellate Division held that NERA
17 does not apply to cases where the defendant is guilty of sexual assault
18 under N.J.S.A.2C:14-2 on grounds that the victim is under the age of
19 13, since the current language of NERA requires the element of some
20 additional "physical force."

21 In order to overcome the issues raised by these cases and clarify the
22 provisions of the "No Early Release Act," this bill would amend NERA
23 to specifically list the crimes that are intended to be encompassed by
24 the statute.

25 Under the bill, NERA would be specifically applicable to the
26 following list of crimes:

- 27 (1) N.J.S.A.2C:11-3, murder;
- 28 (2) N.J.S.A.2C:11-4, manslaughter;
- 29 (3) a crime of the second degree under subsection b. of
30 N.J.S.A.2C:12-1, aggravated assault;
- 31 (4) N.J.S.A.2C:13-1, kidnapping;
- 32 (5) paragraph (1) and paragraphs (3) through (7) of subsection a.
33 of N.J.S.A.2C:14-2, aggravated sexual assault;
- 34 (6) subsection b. of N.J.S.A.2C:14-2 and paragraph (1) of
35 subsection c. of N.J.S.A.2C:14-2, sexual assault;
- 36 (7) N.J.S.A.2C:15-1, robbery;
- 37 (8) N.J.S.A.2C:15-2, carjacking;
- 38 (9) a crime of the second degree under N.J.S.A.2C:18-2, burglary;
- 39 or
- 40 (10) a crime of the second degree under N.J.S.A.2C:39-4,
41 possession of a weapon with the purpose of using it unlawfully against
42 the person of another.

43 In addition, the bill would amend the murder statute,
44 N.J.S.A.2C:11-3, to clarify that a defendant who is sentenced to a
45 term of imprisonment of between 30 years and life imprisonment
46 would be required to serve 30 years, or 85% of the sentence,
47 whichever is greater, before being eligible for parole.

1 Finally, the bill would eliminate the requirement set out in
2 subsection e. of the NERA statute for a separate hearing conducted by
3 the court prior to imposing sentence, because the specific references
4 to the crimes encompassed by the statute would make such a hearing
5 unnecessary.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 3201

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 26, 2001

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 3201.

Assembly Bill No. 3201 amends P.L.1997, c.117 (C.2C:43-7.1 et seq.), the No Early Release Act (NERA), to specifically enumerate those violent first and second degree crimes for which defendants must serve at least 85% of the sentence imposed by the court before being eligible for parole. Under the current provisions of NERA, defendants must serve at least 85% of the sentence imposed before parole eligibility if they are convicted of a "violent crime" of the first or second degree. A "violent crime" is defined as: 1) a crime in which the defendant causes death or serious bodily injury; 2) a crime in which the defendant uses or threatens the immediate use of a deadly weapon; or 3) aggravated sexual assault or sexual assault in which the defendant uses, or threatens the use of, physical force.

This bill is in response to several recent Appellate Division decisions that have held that in its present form, NERA is inapplicable to certain crimes, including murder. In State v. Manzie, 335 N.J.Super. 267 (App.Div. 2000), the Appellate Division held that NERA does not apply to murder because this crime is not specifically referred to in NERA or in the language of the murder statute, N.J.S.2C:11-3. In State v. Mosley, 335 N.J.Super. 267 (App.Div. 2000) and State v. Thomas, 322 N.J. Super. 512 (App.Div. 1999); *cert. granted* 162 N.J. 489 (1999), the Appellate Division held that NERA does not apply to cases in which the defendant is guilty of sexual assault under N.J.S.2C:14-2 on grounds that the victim is under the age of 13, since the current language of NERA requires the element of some additional "physical force."

In order to overcome the issues raised by these cases and clarify the provisions of NERA, this bill specifically lists the crimes that are intended to be encompassed by the statute.

The committee amended the bill based on recommendations of the Attorney General.

Under the bill as amended by the committee, NERA would be specifically applicable to the following list of crimes:

- (1) N.J.S.2C:11-3 (murder);
- (2) N.J.S.2C:11-4 (aggravated manslaughter and manslaughter);
- (3) N.J.S.2C:11-5 (vehicular homicide);
- (4) a crime of the second degree under subsection b. of N.J.S.2C:12-1 (aggravated assault);
- (5) subsection b. of N.J.S.2C:12-11 (disarming a law enforcement officer);
- (6) N.J.S.2C:13-1 (kidnapping);
- (7) subsection a. of N.J.S.2C:14-2 (aggravated sexual assault);
- (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection c. of N.J.S.2C:14-2 (sexual assault);
- (9) N.J.S.2C:15-1 (robbery);
- (10) section 1 of P.L.1993, c.221 (C.2C:15-2) (carjacking);
- (11) paragraph (1) of subsection a. of N.J.S.2C:17-1 (aggravated arson);
- (12) a crime of the second degree under N.J.S.2C:18-2 (burglary);
- (13) subsection a. of N.J.S.2C:20-5 (extortion);
- (14) subsection b. of Section 1 of P.L.1997, c.185 (C.2C:35-4.1) (booby traps in manufacturing or distribution facilities); or
- (15) N.J.S.2C:35-9 (strict liability for drug induced deaths).

The committee amended the bill to specify that, solely for the purpose of calculating the minimum term of parole eligibility, a sentence of life imprisonment shall be deemed to be 75 years. This is the current practice of the State Parole Board.

The committee also deleted section 2 of the bill. That section had reiterated in the murder statute, N.J.S.2C:11-3, that a defendant who is sentenced to a term of imprisonment of between 30 years and life imprisonment would be required to serve 30 years, or 85% of the sentence, whichever is greater, before being eligible for parole. It was felt this language was unnecessary as this requirement is clearly set forth in section 1 of the bill.

Finally, the amended bill eliminates the requirement set out in subsection e. of the NERA statute for a separate hearing conducted by the court prior to imposing sentence. This hearing is no longer necessary in light of the specific references to the crimes encompassed by the statute.

[First Reprint]

ASSEMBLY, No. 3201

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED FEBRUARY 5, 2001

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman TOM SMITH

District 11 (Monmouth)

Co-Sponsored by:

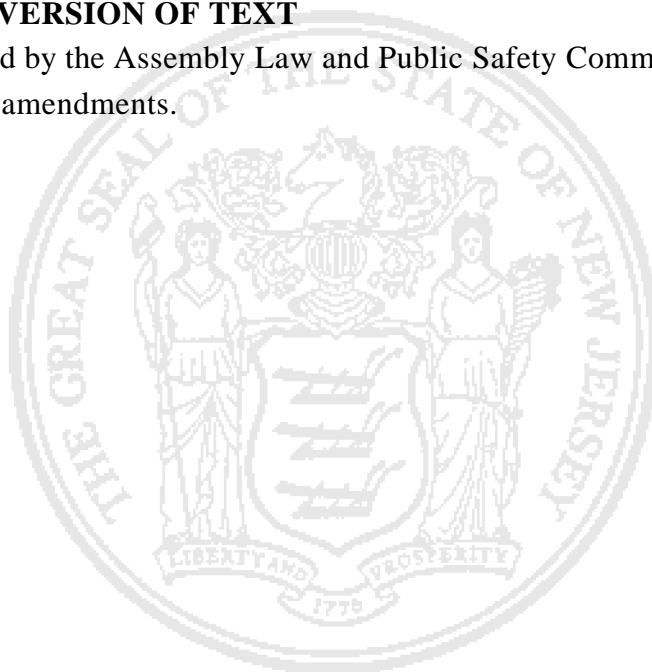
Assemblymen Cottrell, Malone, Gibson and Merkt

SYNOPSIS

Specifies the crimes encompassed by the provisions of the "No Early Release Act," including murder.

CURRENT VERSION OF TEXT

As reported by the Assembly Law and Public Safety Committee on March 1, 2001 with amendments.



(Sponsorship Updated As Of: 6/5/2001)

1 AN ACT concerning parole eligibility under the "No Early Release
2 Act" and amending P.L.1997, c.117 ¹[and N.J.S.2C:11-3]¹.

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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. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read
8 as follows:

9 2. a. A court imposing a sentence of incarceration for a crime of
10 the first or second degree ¹enumerated in subsection d. of this section¹
11 shall fix a minimum term of 85% of the sentence during which the
12 defendant shall not be eligible for parole ¹[if the crime is a violent
13 crime as defined in subsection d. of this section]¹.

14 b. The provisions of subsection a. of this section shall not be
15 construed or applied to reduce the time that must be served before
16 eligibility for parole by an inmate sentenced to a mandatory minimum
17 period of incarceration. ¹Solely for the purpose of calculating the
18 minimum term of parole ineligibility pursuant to subsection a. of this
19 section, a sentence of life imprisonment shall be deemed to be 75
20 years.¹

21 c. Notwithstanding any other provision of law to the contrary and
22 in addition to any other sentence imposed, a court imposing a
23 minimum period of parole ineligibility of 85 percent of the sentence
24 pursuant to this section shall also[, unless the court imposes a
25 sentence of lifetime parole supervision pursuant to P.L. , c.
26 (C.)(now pending before the Legislature as Senate Bill No. 524
27 SCS),] impose a five-year term of parole supervision if the defendant
28 is being sentenced for a crime of the first degree, or a three-year term
29 of parole supervision if the defendant is being sentenced for a crime of
30 the second degree. The term of parole supervision shall commence
31 upon the completion of the sentence of incarceration imposed by the
32 court pursuant to subsection a. of this section unless the defendant is
33 serving a sentence of incarceration for another crime at the time he
34 completes the sentence of incarceration imposed pursuant to
35 subsection a., in which case the term of parole supervision shall
36 commence immediately upon the defendant's release from
37 incarceration. During the term of parole supervision the defendant
38 shall remain in release status in the community in the legal custody of
39 the Commissioner of the Department of Corrections and shall be
40 supervised by the Bureau of Parole of the Department of Corrections
41 as if on parole and shall be subject to the provisions and conditions of

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted March 1, 2001.

1 section 3 of P.L.1997, c.117 (C.30:4-123.51b).

2 d. ¹[For the purposes of this section, "violent crime" means [any
3 crime in which the actor causes death, causes serious bodily injury as
4 defined in subsection b. of N.J.S.2C:11-1, or uses or threatens the
5 immediate use of a deadly weapon. "Violent crime" also includes any
6 aggravated sexual assault or sexual assault in which the actor uses, or
7 threatens the immediate use of, physical force. For the purposes of
8 this section, "deadly weapon" means any firearm or other weapon,
9 device, instrument, material or substance, whether animate or
10 inanimate, which in the manner it is used or is intended to be used, is
11 known to be capable of producing death or serious bodily injury] any
12 of the following] The court shall impose sentence pursuant to
13 subsection a. of this section upon conviction of the following violent
14 crimes or an attempt or conspiracy to commit any of these crimes¹ :

15 (1) N.J.S.2C:11-3, murder;

16 (2) N.J.S.2C:11-4, ¹aggravated manslaughter or¹ manslaughter;

17 (3) ¹N.J.S.2C:11-5, vehicular homicide;

18 (4)¹ a crime of the second degree under subsection b. of
19 N.J.S.2C:12-1, aggravated assault;

20 ¹[(4)](5) subsection b. of N.J.S.2C:12-11, disarming a law
21 enforcement officer;

22 (6)¹ N.J.S.2C:13-1, kidnapping;

23 ¹[(5) paragraph (1) and paragraphs (3) through (7) of]

24 (7)¹ subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

25 ¹[(6)] (8)¹ subsection b. of N.J.S.2C:14-2 and paragraph (1) of
26 subsection c. of N.J.S.2C:14-2, sexual assault;

27 ¹[(7)] (9)¹ N.J.S.2C:15-1, robbery;

28 ¹[(8)] (10)¹ section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

29 ¹[(9)] (11) paragraph (1) of subsection a. of N.J.S.2C:17-1,
30 aggravated arson;

31 (12)¹ a crime of the second degree under N.J.S.2C:18-2, burglary;

32 ¹[or (10) a crime of the second degree under N.J.S.2C:39-4,
33 possession of a weapon with the purpose of using it unlawfully against
34 the person of another]

35 (13) subsection a. of N.J.S.2C:20-5, extortion;

36 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
37 booby traps in manufacturing or distribution facilities; or

38 (15) N.J.S.2C:35-9, strict liability for drug induced deaths¹.

39 e. [A court shall not impose sentence pursuant to this section
40 unless the ground therefor has been established at a hearing after the
41 conviction of the defendant and on written notice to him of the ground
42 proposed. The defendant shall have the right to hear and controvert
43 the evidence against him and to offer evidence upon the issue.]
44 (Deleted by amendment, P.L. , c. ¹[(C.)]¹) (now pending before
45 the Legislature as this bill.)

46 (cf: P.L.1997, c.117, s.2)

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

2 2C:11-3. Murder.

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

5 (1) The actor purposely causes death or serious bodily injury
6 resulting in death; or

7 (2) The actor knowingly causes death or serious bodily injury
8 resulting in death; or

9 (3) It is committed when the actor, acting either alone or with one
10 or more other persons, is engaged in the commission of, or an attempt
11 to commit, or flight after committing or attempting to commit robbery,
12 sexual assault, arson, burglary, kidnapping, carjacking or criminal
13 escape, and in the course of such crime or of immediate flight
14 therefrom, any person causes the death of a person other than one of
15 the participants; except that in any prosecution under this subsection,
16 in which the defendant was not the only participant in the underlying
17 crime, it is an affirmative defense that the defendant:

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

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

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

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

29 b. (1) Murder is a crime of the first degree but a person convicted
30 of murder shall be sentenced, except as provided in subsection c. of
31 this section, by the court to a term of 30 years, during which the
32 person shall not be eligible for parole, or be sentenced to a specific
33 term of years which shall be between 30 years and life imprisonment
34 of which the person shall serve 30 years or 85% of the sentence,
35 whichever is greater, before being eligible for parole.

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

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

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

47 (b) The act is committed in the course of the commission, whether

1 alone or with one or more persons, of a violation of N.J.S.2C:14-2 or
2 N.J.S.2C:14-3.

3 (4) If the defendant was subject to sentencing pursuant to
4 subsection c. and the jury or court found the existence of one or more
5 aggravating factors, but that such factors did not outweigh the
6 mitigating factors found to exist by the jury or court or the jury was
7 unable to reach a unanimous verdict as to the weight of the factors, the
8 defendant shall be sentenced by the court to a term of life
9 imprisonment during which the defendant shall not be eligible for
10 parole.

11 With respect to a sentence imposed pursuant to this subsection, the
12 defendant shall not be entitled to a deduction of commutation and
13 work credits from that sentence.

14 c. Any person convicted under subsection a.(1) or (2) who
15 committed the homicidal act by his own conduct; or who as an
16 accomplice procured the commission of the offense by payment or
17 promise of payment of anything of pecuniary value; or who, as a leader
18 of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in
19 furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded
20 or by threat or promise solicited the commission of the offense, shall
21 be sentenced as provided hereinafter:

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

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

40 (2) (a) At the proceeding, the State shall have the burden of
41 establishing beyond a reasonable doubt the existence of any
42 aggravating factors set forth in paragraph (4) of this subsection. The
43 defendant shall have the burden of producing evidence of the existence
44 of any mitigating factors set forth in paragraph (5) of this subsection
45 but shall not have a burden with regard to the establishment of a
46 mitigating factor.

47 (b) The admissibility of evidence offered by the State to establish

1 any of the aggravating factors shall be governed by the rules governing
2 the admission of evidence at criminal trials. The defendant may offer,
3 without regard to the rules governing the admission of evidence at
4 criminal trials, reliable evidence relevant to any of the mitigating
5 factors. If the defendant produces evidence in mitigation which would
6 not be admissible under the rules governing the admission of evidence
7 at criminal trials, the State may rebut that evidence without regard to
8 the rules governing the admission of evidence at criminal trials.

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

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

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

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

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

33 (a) If the jury or the court finds that any aggravating factors exist
34 and that all of the aggravating factors outweigh beyond a reasonable
35 doubt all of the mitigating factors, the court shall sentence the
36 defendant to death.

37 (b) If the jury or the court finds that no aggravating factors exist,
38 or that all of the aggravating factors which exist do not outweigh all
39 of the mitigating factors, the court shall sentence the defendant
40 pursuant to subsection b.

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

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

45 (a) The defendant has been convicted, at any time, of another
46 murder. For purposes of this section, a conviction shall be deemed
47 final when sentence is imposed and may be used as an aggravating

- 1 factor regardless of whether it is on appeal;
- 2 (b) In the commission of the murder, the defendant purposely or
3 knowingly created a grave risk of death to another person in addition
4 to the victim;
- 5 (c) The murder was outrageously or wantonly vile, horrible or
6 inhuman in that it involved torture, depravity of mind, or an
7 aggravated assault to the victim;
- 8 (d) The defendant committed the murder as consideration for the
9 receipt, or in expectation of the receipt of anything of pecuniary value;
- 10 (e) The defendant procured the commission of the offense by
11 payment or promise of payment of anything of pecuniary value;
- 12 (f) The murder was committed for the purpose of escaping
13 detection, apprehension, trial, punishment or confinement for another
14 offense committed by the defendant or another;
- 15 (g) The offense was committed while the defendant was engaged
16 in the commission of, or an attempt to commit, or flight after
17 committing or attempting to commit murder, robbery, sexual assault,
18 arson, burglary or kidnapping or the crime of contempt in violation of
19 N.J.S.2C:29-9b.;
- 20 (h) The defendant murdered a public servant, as defined in
21 N.J.S.2C:27-1, while the victim was engaged in the performance of his
22 official duties, or because of the victim's status as a public servant;
- 23 (i) The defendant: (i) as a leader of a narcotics trafficking network
24 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
25 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
26 promise solicited the commission of the offense or (ii) committed the
27 offense at the direction of a leader of a narcotics trafficking network
28 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
29 in N.J.S.2C:35-3;
- 30 (j) The homicidal act that the defendant committed or procured
31 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or
- 32 (k) The victim was less than 14 years old.
- 33 (5) The mitigating factors which may be found by the jury or the
34 court are:
- 35 (a) The defendant was under the influence of extreme mental or
36 emotional disturbance insufficient to constitute a defense to
37 prosecution;
- 38 (b) The victim solicited, participated in or consented to the
39 conduct which resulted in his death;
- 40 (c) The age of the defendant at the time of the murder;
- 41 (d) The defendant's capacity to appreciate the wrongfulness of his
42 conduct or to conform his conduct to the requirements of the law was
43 significantly impaired as the result of mental disease or defect or
44 intoxication, but not to a degree sufficient to constitute a defense to
45 prosecution;
- 46 (e) The defendant was under unusual and substantial duress
47 insufficient to constitute a defense to prosecution;

- 1 (f) The defendant has no significant history of prior criminal
2 activity;
- 3 (g) The defendant rendered substantial assistance to the State in
4 the prosecution of another person for the crime of murder; or
- 5 (h) Any other factor which is relevant to the defendant's character
6 or record or to the circumstances of the offense.
- 7 (6) When a defendant at a sentencing proceeding presents evidence
8 of the defendant's character or record pursuant to subparagraph (h) of
9 paragraph (5) of this subsection, the State may present evidence of the
10 murder victim's character and background and of the impact of the
11 murder on the victim's survivors. If the jury finds that the State has
12 proven at least one aggravating factor beyond a reasonable doubt and
13 the jury finds the existence of a mitigating factor pursuant to
14 subparagraph (h) of paragraph (5) of this subsection, the jury may
15 consider the victim and survivor evidence presented by the State
16 pursuant to this paragraph in determining the appropriate weight to
17 give mitigating evidence presented pursuant to subparagraph (h) of
18 paragraph (5) of this subsection. As used in this paragraph "victim
19 and survivor evidence" may include the display of a photograph of the
20 victim taken before the homicide.
- 21 d. The sentencing proceeding set forth in subsection c. of this
22 section shall not be waived by the prosecuting attorney.
- 23 e. Every judgment of conviction which results in a sentence of
24 death under this section shall be appealed, pursuant to the Rules of
25 Court, to the Supreme Court. Upon the request of the defendant, the
26 Supreme Court shall also determine whether the sentence is
27 disproportionate to the penalty imposed in similar cases, considering
28 both the crime and the defendant. Proportionality review under this
29 section shall be limited to a comparison of similar cases in which a
30 sentence of death has been imposed under subsection c. of this section.
31 In any instance in which the defendant fails, or refuses to appeal, the
32 appeal shall be taken by the Office of the Public Defender or other
33 counsel appointed by the Supreme Court for that purpose.
- 34 f. Prior to the jury's sentencing deliberations, the trial court shall
35 inform the jury of the sentences which may be imposed pursuant to
36 subsection b. of this section on the defendant if the defendant is not
37 sentenced to death. The jury shall also be informed that a failure to
38 reach a unanimous verdict shall result in sentencing by the court
39 pursuant to subsection b.
- 40 g. A juvenile who has been tried as an adult and convicted of
41 murder shall not be sentenced pursuant to the provisions of subsection
42 c. but shall be sentenced pursuant to the provisions of subsection b. of
43 this section.
- 44 h. In a sentencing proceeding conducted pursuant to this section,
45 no evidence shall be admissible concerning the method or manner of
46 execution which would be imposed on a defendant sentenced to death.
- 47 i. For purposes of this section the term "homicidal act" shall mean

1 conduct that causes death or serious bodily injury resulting in death.

2 j. In a sentencing proceeding conducted pursuant to this section,
3 the display of a photograph of the victim taken before the homicide
4 shall be permitted.

5 (cf: P.L.2000, c.88)]¹

6

7 ¹[3.] 2¹ This act shall take effect immediately.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 3201

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JUNE 4, 2001

The Assembly Appropriations Committee reports favorably Assembly Bill No. 3201 (1R) with committee amendments.

Assembly Bill No. 3201, as amended, amends P.L.1997, c.117 (C.2C:43-7.1 et seq.), the No Early Release Act (NERA), to specifically enumerate those violent first and second degree crimes for which defendants must serve at least 85% of the sentence imposed by the court before being eligible for parole.

Under the current provisions of NERA, defendants must serve at least 85% of the sentence imposed before parole eligibility if they are convicted of a "violent crime" of the first or second degree. A "violent crime" is defined as: 1) a crime in which the defendant causes death or serious bodily injury; 2) a crime in which the defendant uses or threatens the immediate use of a deadly weapon; or 3) aggravated sexual assault or sexual assault in which the defendant uses, or threatens the use of, physical force.

This bill is in response to several recent Appellate Division decisions that have held that in its present form, NERA is inapplicable to certain crimes, including murder. In State v. Manzie, 335 N.J.Super. 267 (App.Div. 2000), the Appellate Division held that NERA does not apply to murder because this crime is not specifically referred to in NERA or in the language of the murder statute, N.J.S.2C:11-3. In State v. Mosley, 335 N.J.Super. 267 (App.Div. 2000) and State v. Thomas, 322 N.J. Super. 512 (App.Div. 1999); *cert. granted* 162 N.J. 489 (1999), the Appellate Division held that NERA does not apply to cases in which the defendant is guilty of sexual assault under N.J.S.2C:14-2 on grounds that the victim is under the age of 13, as the current language of NERA requires the element of some additional "physical force."

In order to clarify the provisions of NERA, this bill specifically lists the crimes that are intended to be encompassed by the statute.

Under the bill, NERA would specifically apply to the following list of crimes:

- (1) N.J.S.2C:11-3 (murder);
- (2) N.J.S.2C:11-4 (aggravated manslaughter or manslaughter);
- (3) N.J.S.2C:11-5 (vehicular homicide);
- (4) a crime under subsection b. of N.J.S.2C:12-1 (aggravated assault);
- (5) subsection b. of N.J.S.2C:12-11 (disarming a law enforcement officer);
- (6) N.J.S.2C:13-1 (kidnapping);
- (7) subsection a. of N.J.S.2C:14-2 (aggravated sexual assault);
- (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection c. of N.J.S.2C:14-2 (sexual assault);
- (9) N.J.S.2C:15-1 (robbery);
- (10) section 1 of P.L.1993, c.221 (C.2C:15-2) (carjacking);
- (11) paragraph (1) of subsection a. of N.J.S.2C:17-1 (aggravated arson);
- (12) a crime under N.J.S.2C:18-2 (burglary);
- (13) subsection a. of N.J.S.2C:20-5 (extortion);
- (14) subsection b. of Section 1 of P.L.1997, c.185 (C.2C:35-4.1) (booby traps in manufacturing or distribution facilities); or
- (15) N.J.S.2C:35-9 (strict liability for drug induced deaths).

The bill specifies that, solely for the purpose of calculating the minimum term of parole eligibility, a sentence of life imprisonment shall be deemed to be 75 years. This is the current practice of the State Parole Board.

The bill eliminates the requirement set out in subsection e. of the NERA statute for a separate hearing conducted by the court prior to imposing sentence. This hearing is no longer necessary in light of the specific references to the crimes encompassed by the statute.

FISCAL IMPACT:

The Department of Corrections states that there would not be any measurable impact on the department in terms of increased admissions, increased length-of-stay or increased population, because the statutes currently impose these requirements on most of the defendants referred to in the bill. Therefore, there will be no fiscal impact due to increased costs.

The elimination of the requirement for a separate hearing prior to imposing sentence under NERA should conserve Judicial resources.

COMMITTEE AMENDMENTS:

The amendments clarify that the minimum term required by the "No Early Release Act" will be fixed as a part of every sentence of incarceration imposed upon every conviction of a crime enumerated in the bill, and that the term would be calculated based upon the sentence of incarceration actually imposed.

The amendments also eliminate the word "violent" from the phrase "violent crimes" in the bill, in order to more accurately reflect the bill's enumerated crimes.

In addition, the committee amendments amend N.J.S.A.2C:35-14, concerning rehabilitation programs for drug or alcohol dependent persons, to clarify that such a person is not eligible for special probation under that statute if the person is convicted of a crime of the first or second degree under NERA. Prior to the committee amendments, N.J.S.A.2C:35-14 had provided that a person is ineligible for special probation if convicted of "a crime of violence as defined" in NERA.

FISCAL NOTE
[First Reprint]
ASSEMBLY, No. 3201
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JUNE 14, 2001

SUMMARY

Synopsis: Specifies the crimes encompassed by the provisions of the "No Early Release Act"

Type of Impact: General Fund expenditure

Agencies Affected: Department of Corrections (DOC).

Executive Estimate

Fiscal Impact	Year 1	Year 2	Year 3
State Cost	\$0	\$0	\$0

- ! The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- ! Assembly Bill No. 3201 (1R) of 2001 amends P.L.1997, c.117 (C.2C:43-7.1 et seq.), the No Early Release Act (NERA), to specifically enumerate those violent first and second degree crimes for which defendants must serve at least 85 percent of the sentence imposed by the court before being eligible for parole.
- ! The Department of Corrections (DOC) states there would not be any measurable impact on the department in terms of increased admissions, increased length-of-stay or increased population because the statutes currently impose these requirements on most of the defendants referred to in the bill. Therefore there will be no fiscal impact.

BILL DESCRIPTION

Assembly Bill No. 3201(1R) of 2001 amends P.L.1997, c.117 (C.2C:43-7.1 et seq.), the No Early Release Act (NERA), to specifically enumerate those violent first and second degree crimes for which defendants must serve at least 85 percent of the sentence imposed by the court before being eligible for parole. Under the current provisions of NERA, defendants must serve at least 85 percent of the sentence imposed before parole eligibility if they are convicted of a "violent crime" of the first or second degree. A "violent crime" is defined as: 1) a crime in which the defendant causes death or serious bodily injury; 2) a crime in which the defendant uses or threatens the immediate use of a deadly weapon; or 3) aggravated sexual assault or sexual assault in which the defendant uses, or threatens the use of, physical

force.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of Corrections states there would not be any measurable impact on the department in terms of increased admissions, increased length-of-stay or increased population because the statutes currently impose these requirements on most of the defendants referred to in the bill. Therefore there will be no fiscal impact.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Executive estimate.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Lead Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67.

[Second Reprint]

ASSEMBLY, No. 3201

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED FEBRUARY 5, 2001

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman TOM SMITH

District 11 (Monmouth)

Co-Sponsored by:

Assemblymen Cottrell, Malone, Gibson, Merkt, Asselta, Azzolina, Blee, Corodemus, Assemblywoman Crecco, Assemblymen DiGaetano, Felice, Geist, Assemblywomen Greenstein, Heck, Assemblymen Kelly, LeFevre, Thompson, Zecker, Senators Kosco, Bennett, Allen, Singer, Cafiero, Inverso, Matheussen, Palaia, Sinagra, Zane, Robertson and Kavanaugh

SYNOPSIS

Specifies the crimes encompassed by the provisions of the "No Early Release Act," including murder.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on June 4, 2001, with amendments.

(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning parole eligibility under the "No Early Release
2 Act" and amending P.L.1997, c.117 ¹[and N.J.S.2C:11-3]¹ ²and
3 N.J.S.2C:35-14².

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

7
8 1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read
9 as follows:

10 2. a. A court imposing a sentence of incarceration for a crime of
11 the first or second degree ¹enumerated in subsection d. of this section¹
12 shall fix a minimum term of 85% of the sentence ²imposed,² during
13 which the defendant shall not be eligible for parole ¹[if the crime is a
14 violent crime as defined in subsection d. of this section]¹.

15 b. ²The minimum term required by subsection a. of this section
16 shall be fixed as a part of every sentence of incarceration imposed
17 upon every conviction of a crime enumerated in subsection d. of this
18 section, whether the sentence of incarceration is determined pursuant
19 to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any other
20 provision of law, and shall be calculated based upon the sentence of
21 incarceration actually imposed.² The provisions of subsection a. of
22 this section shall not be construed or applied to reduce the time that
23 must be served before eligibility for parole by an inmate sentenced to
24 a mandatory minimum period of incarceration. ¹Solely for the purpose
25 of calculating the minimum term of parole ineligibility pursuant to
26 subsection a. of this section, a sentence of life imprisonment shall be
27 deemed to be 75 years.¹

28 c. Notwithstanding any other provision of law to the contrary and
29 in addition to any other sentence imposed, a court imposing a
30 minimum period of parole ineligibility of 85 percent of the sentence
31 pursuant to this section shall also[, unless the court imposes a
32 sentence of lifetime parole supervision pursuant to P.L. , c.
33 (C.)(now pending before the Legislature as Senate Bill No. 524
34 SCS),] impose a five-year term of parole supervision if the defendant
35 is being sentenced for a crime of the first degree, or a three-year term
36 of parole supervision if the defendant is being sentenced for a crime of
37 the second degree. The term of parole supervision shall commence
38 upon the completion of the sentence of incarceration imposed by the
39 court pursuant to subsection a. of this section unless the defendant is
40 serving a sentence of incarceration for another crime at the time he
41 completes the sentence of incarceration imposed pursuant to

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted March 1, 2001.

² Assembly AAP committee amendments adopted June 4, 2001.

1 subsection a., in which case the term of parole supervision shall
2 commence immediately upon the defendant's release from
3 incarceration. During the term of parole supervision the defendant
4 shall remain in release status in the community in the legal custody of
5 the Commissioner of the Department of Corrections and shall be
6 supervised by the Bureau of Parole of the Department of Corrections
7 as if on parole and shall be subject to the provisions and conditions of
8 section 3 of P.L.1997, c.117 (C.30:4-123.51b).

9 d. ¹[For the purposes of this section, "violent crime" means [any
10 crime in which the actor causes death, causes serious bodily injury as
11 defined in subsection b. of N.J.S.2C:11-1, or uses or threatens the
12 immediate use of a deadly weapon. "Violent crime" also includes any
13 aggravated sexual assault or sexual assault in which the actor uses, or
14 threatens the immediate use of, physical force. For the purposes of
15 this section, "deadly weapon" means any firearm or other weapon,
16 device, instrument, material or substance, whether animate or
17 inanimate, which in the manner it is used or is intended to be used, is
18 known to be capable of producing death or serious bodily injury] any
19 of the following] The court shall impose sentence pursuant to
20 subsection a. of this section upon conviction of the following
21 ²[violent]² crimes or an attempt or conspiracy to commit any of these
22 crimes¹:

23 (1) N.J.S.2C:11-3, murder;

24 (2) N.J.S.2C:11-4, ¹aggravated manslaughter or¹ manslaughter;

25 (3) ¹N.J.S.2C:11-5, vehicular homicide;

26 (4)¹ ²[a crime of the second degree under]² subsection b. of
27 N.J.S.2C:12-1, aggravated assault;

28 ¹[(4)](5) subsection b. of N.J.S.2C:12-11, disarming a law
29 enforcement officer;

30 (6)¹ N.J.S.2C:13-1, kidnapping;

31 ¹[(5) paragraph (1) and paragraphs (3) through (7) of]

32 (7)¹ subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

33 ¹[(6)] (8)¹ subsection b. of N.J.S.2C:14-2 and paragraph (1) of
34 subsection c. of N.J.S.2C:14-2, sexual assault;

35 ¹[(7)] (9)¹ N.J.S.2C:15-1, robbery;

36 ¹[(8)] (10)¹ section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

37 ¹[(9)] (11) paragraph (1) of subsection a. of N.J.S.2C:17-1,
38 aggravated arson;

39 (12)¹ ²[a crime of the second degree under]² N.J.S.2C:18-2,
40 burglary; ¹[or (10) a crime of the second degree under N.J.S.2C:39-4,
41 possession of a weapon with the purpose of using it unlawfully against
42 the person of another]

43 (13) subsection a. of N.J.S.2C:20-5, extortion;

44 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
45 booby traps in manufacturing or distribution facilities; or

1 (15) N.J.S.2C:35-9, strict liability for drug induced deaths¹.

2 e. [A court shall not impose sentence pursuant to this section
3 unless the ground therefor has been established at a hearing after the
4 conviction of the defendant and on written notice to him of the ground
5 proposed. The defendant shall have the right to hear and controvert
6 the evidence against him and to offer evidence upon the issue.]

7 (Deleted by amendment, P.L. , c. ¹[(C.)]¹) (now pending before
8 the Legislature as this bill.)

9 (cf: P.L.1997, c.117, s.2)

10

11 ²2. N.J.S.2C:35-14 is amended to read as follows:

12 2C:35-14. Rehabilitation Program for Drug and Alcohol
13 Dependent Persons; Criteria for Imposing Special Probation; Ineligible
14 Offenders; Prosecutorial Objections; Mandatory Commitment to
15 Residential Treatment Facilities; Presumption of Revocation; Brief
16 Incarceration in Lieu of Permanent Revocation.

17 a. Notwithstanding the presumption of incarceration pursuant to
18 the provisions of subsection d. of N.J.S.2C:44-1, and except as
19 provided in subsection c. of this section, whenever a drug or alcohol
20 dependent person is convicted of or adjudicated delinquent for an
21 offense, other than one described in subsection b. of this section, the
22 court, upon notice to the prosecutor, may, on motion of the person, or
23 on the court's own motion, place the person on special probation,
24 which shall be for a term of five years, provided that the court finds on
25 the record that:

26 (1) the person has undergone a professional diagnostic assessment
27 to determine whether and to what extent the person is drug or alcohol
28 dependent and would benefit from treatment; and

29 (2) the person is a drug or alcohol dependent person within the
30 meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the
31 time of the commission of the present offense; and

32 (3) the present offense was committed while the person was under
33 the influence of a controlled dangerous substance, controlled
34 substance analog or alcohol or was committed to acquire property or
35 monies in order to support the person's drug or alcohol dependency;
36 and

37 (4) substance abuse treatment and monitoring will serve to benefit
38 the person by addressing his drug or alcohol dependency and will
39 thereby reduce the likelihood that the person will thereafter commit
40 another offense; and

41 (5) the person did not possess a firearm at the time of the present
42 offense and did not possess a firearm at the time of any pending
43 criminal charge; and

44 (6) the person has not been previously convicted on two or more
45 separate occasions of crimes of the first, second or third degree, other
46 than crimes defined in N.J.S.2C:35-10; and

1 (7) the person has not been previously convicted or adjudicated
2 delinquent for, and does not have a pending charge of murder,
3 aggravated manslaughter, manslaughter, robbery, kidnapping,
4 aggravated assault, aggravated sexual assault or sexual assault, or a
5 similar crime under the laws of any other state or the United States;
6 and

7 (8) a suitable treatment facility licensed and approved by the
8 Department of Health and Senior Services is able and has agreed to
9 provide appropriate treatment services in accordance with the
10 requirements of this section; and

11 (9) no danger to the community will result from the person being
12 placed on special probation pursuant to this section.

13 In determining whether to sentence the person pursuant to this
14 section, the court shall consider all relevant circumstances, and shall
15 take judicial notice of any evidence, testimony or information adduced
16 at the trial, plea hearing or other court proceedings, and shall also
17 consider the presentence report and the results of the professional
18 diagnostic assessment to determine whether and to what extent the
19 person is drug or alcohol dependent and would benefit from treatment.

20 As a condition of special probation, the court shall order the person
21 to enter a treatment program at a facility licensed and approved by the
22 Department of Health and Senior Services, to comply with program
23 rules and the requirements of the course of treatment, to cooperate
24 fully with the treatment provider, and to comply with such other
25 reasonable terms and conditions as may be required by the court or by
26 law, pursuant to N.J.S.2C:45-1, and which shall include periodic urine
27 testing for drug or alcohol usage throughout the period of special
28 probation. Subject to the requirements of subsection d. of this section,
29 the conditions of special probation may include different methods and
30 levels of community-based or residential supervision.

31 b. A person shall not be eligible for special probation pursuant to
32 this section if the person is convicted of or adjudicated delinquent for:

33 (1) a crime of the first degree;

34 (2) a crime [of violence as defined] of the first or second degree
35 enumerated in subsection d. of N.J.S.2C:43-7.2;

36 (3) a crime, other than that defined in N.J.S.2C:35-7, for which a
37 mandatory minimum period of incarceration is prescribed under
38 chapter 35 of this Title or any other law; or

39 (4) an offense that involved the distribution or the conspiracy or
40 attempt to distribute a controlled dangerous substance or controlled
41 substance analog to a juvenile near or on school property.

42 c. A person convicted of or adjudicated delinquent for an offense
43 under section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of
44 section 1 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which
45 there exists a presumption of imprisonment pursuant to subsection d.
46 of N.J.S.2C:44-1 or any other statute, or who has been previously

1 convicted of an offense under subsection a. of N.J.S.2C:35-5 or a
2 similar offense under any other law of this State, any other state or the
3 United States, shall not be eligible for sentence in accordance with this
4 section if the prosecutor objects to the person being placed on special
5 probation. The court shall not place a person on special probation
6 over the prosecutor's objection except upon a finding by the court of
7 a gross and patent abuse of prosecutorial discretion. If the court
8 makes a finding of a gross and patent abuse of prosecutorial discretion
9 and imposes a sentence of special probation notwithstanding the
10 objection of the prosecutor, the sentence of special probation imposed
11 pursuant to this section shall not become final for 10 days in order to
12 permit the appeal of such sentence by the prosecution.

13 d. A person convicted of or adjudicated delinquent for a crime of
14 the second degree or of a violation of section 1 of P.L.1987, c.101
15 (C.2C:35-7), or who previously has been convicted of or adjudicated
16 delinquent for an offense under subsection a. of N.J.S.2C:35-5 or a
17 similar offense under any other law of this State, any other state or the
18 United States, who is placed on special probation under this section
19 shall be committed to the custody of a residential treatment facility
20 licensed and approved by the Department of Health and Senior
21 Services, whether or not residential treatment was recommended by
22 the person conducting the diagnostic assessment. The person shall be
23 committed to the residential treatment facility immediately, unless the
24 facility cannot accommodate the person, in which case the person shall
25 be incarcerated to await commitment to the residential treatment
26 facility. The term of such commitment shall be for a minimum of six
27 months, or until the court, upon recommendation of the treatment
28 provider, determines that the person has successfully completed the
29 residential treatment program, whichever is later, except that no
30 person shall remain in the custody of a residential treatment facility
31 pursuant to this section for a period in excess of five years. Upon
32 successful completion of the required residential treatment program,
33 the person shall complete the period of special probation, as
34 authorized by subsection a. of this section, with credit for time served
35 for any imprisonment served as a condition of probation and credit for
36 each day during which the person satisfactorily complied with the
37 terms and conditions of special probation while committed pursuant to
38 this section to a residential treatment facility. The person shall not be
39 eligible for early discharge of special probation pursuant to
40 N.J.S.2C:45-2, or any other provision of the law. The court, in
41 determining the number of credits for time spent in residential
42 treatment, shall consider the recommendations of the treatment
43 provider. A person placed into a residential treatment facility pursuant
44 to this section shall be deemed to be subject to official detention for
45 the purposes of N.J.S.2C:29-5 (escape).

46 e. The probation department or other appropriate agency

1 designated by the court to monitor or supervise the person's special
2 probation shall report periodically to the court as to the person's
3 progress in treatment and compliance with court-imposed terms and
4 conditions. The treatment provider shall promptly report to the
5 probation department or other appropriate agency all significant
6 failures by the person to comply with any court imposed term or
7 condition of special probation or any requirements of the course of
8 treatment, including but not limited to a positive drug or alcohol test
9 or the unexcused failure to attend any session or activity, and shall
10 immediately report any act that would constitute an escape. The
11 probation department or other appropriate agency shall immediately
12 notify the court and the prosecutor in the event that the person refuses
13 to submit to a periodic drug or alcohol test or for any reason
14 terminates his participation in the course of treatment, or commits any
15 act that would constitute an escape.

16 f. (1) Upon a first violation of any term or condition of the special
17 probation authorized by this section or of any requirements of the
18 course of treatment, the court in its discretion may permanently revoke
19 the person's special probation.

20 (2) Upon a second or subsequent violation of any term or condition
21 of the special probation authorized by this section or of any
22 requirements of the course of treatment, the court shall, subject only
23 to the provisions of subsection g. of this section, permanently revoke
24 the person's special probation unless the court finds on the record that
25 there is a substantial likelihood that the person will successfully
26 complete the treatment program if permitted to continue on special
27 probation, and the court is clearly convinced, considering the nature
28 and seriousness of the violations, that no danger to the community will
29 result from permitting the person to continue on special probation
30 pursuant to this section. The court's determination to permit the
31 person to continue on special probation following a second or
32 subsequent violation pursuant to this paragraph may be appealed by
33 the prosecution.

34 (3) In making its determination whether to revoke special
35 probation, and whether to overcome the presumption of revocation
36 established in paragraph (2) of this subsection, the court shall consider
37 the nature and seriousness of the present infraction and any past
38 infractions in relation to the person's overall progress in the course of
39 treatment, and shall also consider the recommendations of the
40 treatment provider. The court shall give added weight to the
41 treatment provider's recommendation that the person's special
42 probation be permanently revoked, or to the treatment provider's
43 opinion that the person is not amenable to treatment or is not likely to
44 complete the treatment program successfully.

45 (4) If the court permanently revokes the person's special probation
46 pursuant to this subsection, the court shall impose any sentence that

1 might have been imposed, or that would have been required to be
2 imposed, originally for the offense for which the person was convicted
3 or adjudicated delinquent. The court shall conduct a de novo review
4 of any aggravating and mitigating factors present at the time of both
5 original sentencing and resentencing. If the court determines or is
6 required pursuant to any other provision of this chapter or any other
7 law to impose a term of imprisonment, the person shall receive credit
8 for any time served in custody pursuant to N.J.S.2C:45-1 or while
9 awaiting placement in a treatment facility pursuant to this section, and
10 for each day during which the person satisfactorily complied with the
11 terms and conditions of special probation while committed pursuant to
12 this section to a residential treatment facility. The court, in
13 determining the number of credits for time spent in a residential
14 treatment facility, shall consider the recommendations of the treatment
15 provider.

16 (5) Following a violation, if the court permits the person to
17 continue on special probation pursuant to this section, the court shall
18 order the person to comply with such additional terms and conditions,
19 including but not limited to more frequent drug or alcohol testing, as
20 are necessary to deter and promptly detect any further violation.

21 (6) Notwithstanding any other provision of this subsection, if the
22 person at any time refuses to undergo urine testing for drug or alcohol
23 usage as provided in subsection a. of this section, the court shall,
24 subject only to the provisions of subsection g. of this section,
25 permanently revoke the person's special probation. Notwithstanding
26 any other provision of this section, if the person at any time while
27 committed to the custody of a residential treatment facility pursuant
28 to this section commits an act that would constitute an escape, the
29 court shall forthwith permanently revoke the person's special
30 probation.

31 (7) An action for a violation under this section may be brought by
32 a probation officer or prosecutor or on the court's own motion.
33 Failure to complete successfully the required treatment program shall
34 constitute a violation of the person's special probation. A person who
35 fails to comply with the terms of his special probation pursuant to this
36 section and is thereafter sentenced to imprisonment in accordance with
37 this subsection shall thereafter be ineligible for entry into the Intensive
38 Supervision Program.

39 g. When a person on special probation is subject to a presumption
40 of revocation on a second or subsequent violation pursuant to
41 paragraph (2) of subsection f. of this section, or when the person
42 refuses to undergo drug or alcohol testing pursuant to paragraph (6)
43 of subsection f. of this section, the court may, in lieu of permanently
44 revoking the person's special probation, impose a term of incarceration
45 for a period of not less than 30 days nor more than six months, after
46 which the person's term of special probation pursuant to this section

1 may be reinstated. In determining whether to order a period of
2 incarceration in lieu of permanent revocation pursuant to this
3 subsection, the court shall consider the recommendations of the
4 treatment provider with respect to the likelihood that such
5 confinement would serve to motivate the person to make satisfactory
6 progress in treatment once special probation is reinstated. This
7 disposition may occur only once with respect to any person unless the
8 court is clearly convinced that there are compelling and extraordinary
9 reasons to justify reimposing this disposition with respect to the
10 person. Any such determination by the court to reimpose this
11 disposition may be appealed by the prosecution. Nothing in this
12 subsection shall be construed to limit the authority of the court at any
13 time during the period of special probation to order a person on
14 special probation who is not subject to a presumption of revocation
15 pursuant to paragraph (2) of subsection f. of this section to be
16 incarcerated over the course of a weekend, or for any other reasonable
17 period of time, when the court in its discretion determines that such
18 incarceration would help to motivate the person to make satisfactory
19 progress in treatment.

20 h. The court, as a condition of its order, and after considering the
21 person's financial resources, shall require the person to pay that
22 portion of the costs associated with his participation in any
23 rehabilitation program or period of residential treatment imposed
24 pursuant to this section which, in the opinion of the court, is consistent
25 with the person's ability to pay, taking into account the court's
26 authority to order payment or reimbursement to be made over time
27 and in installments.

28 i. The court shall impose, as a condition of the special probation,
29 any fine, penalty, fee or restitution applicable to the offense for which
30 the person was convicted or adjudicated delinquent.²

31 (cf: P.L.1999, c.376, s.2)

32

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

34 2C:11-3. Murder.

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

37 (1) The actor purposely causes death or serious bodily injury
38 resulting in death; or

39 (2) The actor knowingly causes death or serious bodily injury
40 resulting in death; or

41 (3) It is committed when the actor, acting either alone or with one
42 or more other persons, is engaged in the commission of, or an attempt
43 to commit, or flight after committing or attempting to commit robbery,
44 sexual assault, arson, burglary, kidnapping, carjacking or criminal
45 escape, and in the course of such crime or of immediate flight
46 therefrom, any person causes the death of a person other than one of

1 the participants; except that in any prosecution under this subsection,
2 in which the defendant was not the only participant in the underlying
3 crime, it is an affirmative defense that the defendant:

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

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

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

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

15 b. (1) Murder is a crime of the first degree but a person convicted
16 of murder shall be sentenced, except as provided in subsection c. of
17 this section, by the court to a term of 30 years, during which the
18 person shall not be eligible for parole, or be sentenced to a specific
19 term of years which shall be between 30 years and life imprisonment
20 of which the person shall serve 30 years or 85% of the sentence,
21 whichever is greater. before being eligible for parole.

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

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

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

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

36 (4) If the defendant was subject to sentencing pursuant to
37 subsection c. and the jury or court found the existence of one or more
38 aggravating factors, but that such factors did not outweigh the
39 mitigating factors found to exist by the jury or court or the jury was
40 unable to reach a unanimous verdict as to the weight of the factors, the
41 defendant shall be sentenced by the court to a term of life
42 imprisonment during which the defendant shall not be eligible for
43 parole.

44 With respect to a sentence imposed pursuant to this subsection, the
45 defendant shall not be entitled to a deduction of commutation and
46 work credits from that sentence.

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

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

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

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

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

43 (c) Evidence admitted at the trial, which is relevant to the
44 aggravating and mitigating factors set forth in paragraphs (4) and (5)
45 of this subsection, shall be considered without the necessity of
46 reintroducing that evidence at the sentencing proceeding; provided

1 that the fact finder at the sentencing proceeding was present as either
2 the fact finder or the judge at the trial.

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

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

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

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

21 (a) If the jury or the court finds that any aggravating factors exist
22 and that all of the aggravating factors outweigh beyond a reasonable
23 doubt all of the mitigating factors, the court shall sentence the
24 defendant to death.

25 (b) If the jury or the court finds that no aggravating factors exist,
26 or that all of the aggravating factors which exist do not outweigh all
27 of the mitigating factors, the court shall sentence the defendant
28 pursuant to subsection b.

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

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

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

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

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

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

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

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

1 murder on the victim's survivors. If the jury finds that the State has
2 proven at least one aggravating factor beyond a reasonable doubt and
3 the jury finds the existence of a mitigating factor pursuant to
4 subparagraph (h) of paragraph (5) of this subsection, the jury may
5 consider the victim and survivor evidence presented by the State
6 pursuant to this paragraph in determining the appropriate weight to
7 give mitigating evidence presented pursuant to subparagraph (h) of
8 paragraph (5) of this subsection. As used in this paragraph "victim
9 and survivor evidence" may include the display of a photograph of the
10 victim taken before the homicide.

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

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

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

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

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

37 i. For purposes of this section the term "homicidal act" shall mean
38 conduct that causes death or serious bodily injury resulting in death.

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

42 (cf: P.L.2000, c.88)]¹

43

44 ¹[3.] ²[2.1] ^{3.2} This act shall take effect immediately.

SENATE, No. 2087

STATE OF NEW JERSEY
209th LEGISLATURE

INTRODUCED FEBRUARY 8, 2001

Sponsored by:

Senator LOUIS F. KOSCO

District 38 (Bergen)

Senator JOHN O. BENNETT

District 12 (Monmouth)

Co-Sponsored by:

**Senators Singer, Allen, Cafiero, Inverso, Matheussen, Palaia, Robertson,
Sinagra and Zane**

SYNOPSIS

Clarifies that defendants convicted of certain sexual assaults are subject to the provisions of the "No Early Release Act."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 3/27/2001)

1 AN ACT concerning parole eligibility under the "No Early Release
2 Act" and amending P.L.1997, c.117.

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

6
7 1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read
8 as follows:

9 2. a. A court imposing a sentence of incarceration for a crime of
10 the first or second degree shall fix a minimum term of 85% of the
11 sentence during which the defendant shall not be eligible for parole if
12 the crime is a violent crime as defined in subsection d. of this section.

13 b. The provisions of subsection a. of this section shall not be
14 construed or applied to reduce the time that must be served before
15 eligibility for parole by an inmate sentenced to a mandatory minimum
16 period of incarceration.

17 c. Notwithstanding any other provision of law to the contrary and
18 in addition to any other sentence imposed, a court imposing a
19 minimum period of parole ineligibility of 85 percent of the sentence
20 pursuant to this section shall also[, unless the court imposes a
21 sentence of lifetime parole supervision pursuant
22 to P.L. , c. (C.)(now pending before the Legislature as
23 Senate Bill No. 524 SCS),] impose a five-year term of parole
24 supervision if the defendant is being sentenced for a crime of the first
25 degree, or a three-year term of parole supervision if the defendant is
26 being sentenced for a crime of the second degree. The term of parole
27 supervision shall commence upon the completion of the sentence of
28 incarceration imposed by the court pursuant to subsection a. of this
29 section unless the defendant is serving a sentence of incarceration for
30 another crime at the time he completes the sentence of incarceration
31 imposed pursuant to subsection a., in which case the term of parole
32 supervision shall commence immediately upon the defendant's release
33 from incarceration. During the term of parole supervision the
34 defendant shall remain in release status in the community in the legal
35 custody of the Commissioner of the Department of Corrections and
36 shall be supervised by the Bureau of Parole of the Department of
37 Corrections as if on parole and shall be subject to the provisions and
38 conditions of section 3 of P.L.1997, c.117 (C.30:4-123.51b).

39 d. For the purposes of this section, "violent crime" means any
40 crime in which the actor causes death, causes serious bodily injury as
41 defined in subsection b. of N.J.S.2C:11-1, or uses or threatens the
42 immediate use of a deadly weapon. "Violent crime" also includes any
43 aggravated sexual assault or sexual assault [in which the actor uses,

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 or threatens the immediate use of, physical force] pursuant to
2 paragraph (1) or paragraphs (3) through (7) of subsection a. of
3 N.J.S.2C:14-2; subsection b. of N.J.S.2C:14-2; or paragraph (1) of
4 subsection c. of N.J.S.2C:14-2. For the purposes of this section,
5 "deadly weapon" means any firearm or other weapon, device,
6 instrument, material or substance, whether animate or inanimate,
7 which in the manner it is used or is intended to be used, is known to
8 be capable of producing death or serious bodily injury.

9 A court shall not impose sentence pursuant to this section unless
10 the ground therefor has been established at a hearing after the
11 conviction of the defendant and on written notice to him of the ground
12 proposed. The defendant shall have the right to hear and controvert
13 the evidence against him and to offer evidence upon the issue.

14 (cf: P.L.1997,c.117,s.1)

15
16 2. This act shall take effect immediately.

17 18 19 STATEMENT

20
21 Under current law, known as the "No Early Release Act"
22 (N.J.S.A.2C:43-7.2), persons convicted of crimes of the first or
23 second degree involving violence must serve at least 85% of the
24 sentence imposed by the court before being eligible for parole. The
25 statute defines "violent crime" as "any crime in which the actor causes
26 death, . . . serious bodily injury . . . or uses or threatens the immediate
27 use of a deadly weapon. . . 'Violent crime' also includes any aggravated
28 sexual assault or sexual assault in which the actor uses, or threatens
29 the immediate use of, physical force."

30 This bill would amend the provisions of the No Early Release Act
31 concerning sexual assaults in light of recent cases holding the act
32 inapplicable to defendants who commit sexual assaults against certain
33 young victims. The Appellate Division has held that NERA does not
34 apply to cases where the defendant is guilty of sexual assault under
35 N.J.S.A.2C:14-2 on grounds that the victim is under the age of 13,
36 since the language of NERA requires the element of some additional
37 "physical force." [State v. Mosley, 2000 WL 1716257 (decided Nov.
38 17, 2000); State v. Thomas, 322 N.J. Super. 512 (App. Div. 1999);
39 *cert. granted* 162 N.J. 489 (1999)].

40 Under the new language which would be added by this bill, the No
41 Early Release Act would no longer refer to "any aggravated sexual
42 assault or sexual assault in which the actor uses, or threatens the
43 immediate use of, physical force." Instead, the bill would add specific
44 statutory citations to sexual assault crimes, providing that NERA
45 would apply to "any aggravated sexual assault or sexual assault
46 pursuant to paragraph (1) or paragraphs (3) through (7) of subsection

S2087 KOSCO, BENNETT

4

1 a. of N.J.S.2C:14-2; subsection b. of N.J.S.2C:14-2; or paragraph (1)
2 of subsection c. of N.J.S.2C:14-2. The cited statutory sections
3 include a specific reference to sexual assaults committed against
4 victims under the age of 13.

SENATE, No. 2233

STATE OF NEW JERSEY 209th LEGISLATURE

INTRODUCED MARCH 26, 2001

Sponsored by:

Senator LOUIS F. KOSCO

District 38 (Bergen)

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Co-Sponsored by:

Senators Palaia, Kavanaugh and O'Toole

SYNOPSIS

Specifies the crimes encompassed by the provisions of the "No Early Release Act," including murder.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/29/2001)

1 AN ACT concerning parole eligibility under the "No Early Release
2 Act" and amending P.L.1997, c.117.

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

6
7 1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read
8 as follows:

9 2. a. A court imposing a sentence of incarceration for a crime of
10 the first or second degree enumerated in subsection d. of this section
11 shall fix a minimum term of 85% of the sentence during which the
12 defendant shall not be eligible for parole [if the crime is a violent
13 crime as defined in subsection d. of this section].

14 b. The provisions of subsection a. of this section shall not be
15 construed or applied to reduce the time that must be served before
16 eligibility for parole by an inmate sentenced to a mandatory minimum
17 period of incarceration. Solely for the purpose of calculating the
18 minimum term of parole ineligibility pursuant to subsection a. of this
19 section, a sentence of life imprisonment shall be deemed to be 75
20 years.

21 c. Notwithstanding any other provision of law to the contrary and
22 in addition to any other sentence imposed, a court imposing a
23 minimum period of parole ineligibility of 85 percent of the sentence
24 pursuant to this section shall also[, unless the court imposes a
25 sentence of lifetime parole supervision pursuant to P.L. , c.
26 (C.)(now pending before the Legislature as Senate Bill No. 524
27 SCS),] impose a five-year term of parole supervision if the defendant
28 is being sentenced for a crime of the first degree, or a three-year term
29 of parole supervision if the defendant is being sentenced for a crime of
30 the second degree. The term of parole supervision shall commence
31 upon the completion of the sentence of incarceration imposed by the
32 court pursuant to subsection a. of this section unless the defendant is
33 serving a sentence of incarceration for another crime at the time he
34 completes the sentence of incarceration imposed pursuant to
35 subsection a., in which case the term of parole supervision shall
36 commence immediately upon the defendant's release from
37 incarceration. During the term of parole supervision the defendant
38 shall remain in release status in the community in the legal custody of
39 the Commissioner of the Department of Corrections and shall be
40 supervised by the Bureau of Parole of the Department of Corrections
41 as if on parole and shall be subject to the provisions and conditions of
42 section 3 of P.L.1997, c.117 (C.30:4-123.51b).

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 d. [For the purposes of this section, "violent crime" means any
2 crime in which the actor causes death, causes serious bodily injury as
3 defined in subsection b. of N.J.S.2C:11-1, or uses or threatens the
4 immediate use of a deadly weapon. "Violent crime" also includes any
5 aggravated sexual assault or sexual assault in which the actor uses, or
6 threatens the immediate use of, physical force. For the purposes of
7 this section, "deadly weapon" means any firearm or other weapon,
8 device, instrument, material or substance, whether animate or
9 inanimate, which in the manner it is used or is intended to be used, is
10 known to be capable of producing death or serious bodily injury] The
11 court shall impose sentence pursuant to subsection a. of this section
12 upon conviction of the following violent crimes or an attempt or
13 conspiracy to commit any of these crimes:

14 (1) N.J.S.2C:11-3, murder;

15 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;

16 (3) N.J.S.2C:11-5, vehicular homicide;

17 (4) a crime of the second degree under subsection b. of
18 N.J.S.2C:12-1, aggravated assault;

19 (5) subsection b. of N.J.S.2C:12-11, disarming a law enforcement
20 officer;

21 (6) N.J.S.2C:13-1, kidnapping;

22 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

23 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection
24 c. of N.J.S.2C:14-2, sexual assault;

25 (9) N.J.S.2C:15-1, robbery;

26 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

27 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
28 arson;

29 (12) a crime of the second degree under N.J.S.2C:18-2, burglary;

30 (13) subsection a. of N.J.S.2C:20-5, extortion;

31 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
32 booby traps in manufacturing or distribution facilities; or

33 (15) N.J.S.2C:35-9, strict liability for drug induced deaths.

34 e. [A court shall not impose sentence pursuant to this section
35 unless the ground therefor has been established at a hearing after the
36 conviction of the defendant and on written notice to him of the ground
37 proposed. The defendant shall have the right to hear and controvert
38 the evidence against him and to offer evidence upon the issue.]

39 (Deleted by amendment, P.L. , c.) (now pending before the
40 Legislature as this bill.)

41 (cf: P.L.1997, c.117, s.2)

42

43 2. This act shall take effect immediately.

STATEMENT

1

2

3 Under current law, known as the "No Early Release Act"
4 (N.J.S.A.2C:43-7.2), persons convicted of violent crimes of the first
5 or second degree must serve at least 85% of the sentence imposed by
6 the court before being eligible for parole. Currently, NERA defines
7 "violent crime" as "any crime in which the actor causes death, . . .
8 serious bodily injury . . . or uses or threatens the immediate use of a
9 deadly weapon. . . 'Violent crime' also includes any aggravated sexual
10 assault or sexual assault in which the actor uses, or threatens the
11 immediate use of, physical force." However, several recent Appellate
12 Division decisions have held that in its present form, NERA is
13 inapplicable to certain crimes, including murder.

14 In State v. Manzie, No. A-5310-98T3 (decided November 29,
15 2000), the Appellate Division held that NERA does not apply to
16 murder because this crime is not specifically referred to in NERA or
17 in the language of the murder statute, N.J.S.A.2C:11-3.

18 In State v. Mosley, 2000 WL 1716257 (decided Nov. 17, 2000)
19 and State v. Thomas, 322 N.J. Super. 512 (App. Div. 1999); *cert.*
20 *granted* 162 N.J. 489 (1999), the Appellate Division held that NERA
21 does not apply to cases where the defendant is guilty of sexual assault
22 under N.J.S.A.2C:14-2 on grounds that the victim is under the age of
23 13, since the current language of NERA requires the element of some
24 additional "physical force."

25 In order to overcome the issues raised by these cases and clarify the
26 provisions of the "No Early Release Act," this bill would amend NERA
27 to specifically list the crimes that are intended to be encompassed by
28 the statute.

29 Under the bill, NERA would be specifically applicable to the
30 following list of crimes:

- 31 (1) N.J.S.A.2C:11-3, murder;
- 32 (2) N.J.S.A.2C:11-4, aggravated manslaughter and manslaughter;
- 33 (3) N.J.S.2C:11-5, vehicular homicide;
- 34 (4) a crime of the second degree under subsection b. of
35 N.J.S.A.2C:12-1, aggravated assault;
- 36 (5) subsection b. of N.J.S.A.2C:12-11, disarming a law
37 enforcement officer;
- 38 (6) N.J.S.A.2C:13-1, kidnapping;
- 39 (7) subsection a. of N.J.S.A.2C:14-2, aggravated sexual assault;
- 40 (8) subsection b. of N.J.S.A.2C:14-2 and paragraph (1) of
41 subsection c. of N.J.S.A.2C:14-2, sexual assault;
- 42 (9) N.J.S.A.2C:15-1, robbery;
- 43 (10) N.J.S.A.2C:15-2, carjacking;
- 44 (11) paragraph (1) of subsection a. of N.J.S.A.2C:17-1, aggravated
45 arson;

1 (12) a crime of the second degree under N.J.S.A.2C:18-2,
2 burglary;

3 (13) subsection a. of N.J.S.A.2C:20-5, extortion;

4 (14) subsection b. of 2C:35-4.1., booby traps in CDS manufacturing
5 or distribution facilities; or

6 (15) N.J.S.A.2C:35-9, strict liability for drug induced deaths.

7 In addition, the bill provides that, solely for the purpose of
8 calculating the minimum term of parole eligibility, a sentence of life
9 imprisonment shall be deemed to be 75 years. This is the current
10 practice of the State Parole Board.

11 Finally, the bill would eliminate the requirement set out in
12 subsection e. of the NERA statute for a separate hearing conducted by
13 the court prior to imposing sentence, because the specific references
14 to the crimes encompassed by the statute would make such a hearing
15 unnecessary.

FISCAL NOTE
SENATE, No. 2233
STATE OF NEW JERSEY
209th LEGISLATURE

DATED: JUNE 14, 2001

SUMMARY

Synopsis: Specifies the crimes encompassed by the provisions of the "No Early Release Act"

Type of Impact: General Fund expenditure

Agencies Affected: Department of Corrections (DOC).

Executive Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	\$0	\$0	\$0

- ! The Office of Legislative Services (OLS) **concurs** with the Executive estimate.
- ! Senate Bill No. 2233 of 2001 amends P.L.1997, c.117 (C.2C:43-7.1 et seq.), the No Early Release Act (NERA), to specifically enumerate those violent first and second degree crimes for which defendants must serve at least 85 percent of the sentence imposed by the court before being eligible for parole.
- ! The Department of Corrections (DOC) states there would not be any measurable impact on the department in terms of increased admissions, increased length-of-stay or increased population because the statutes currently impose these requirements on most of the defendants referred to in the bill. Therefore there will be no fiscal impact.

BILL DESCRIPTION

Senate Bill No. 2233 of 2001 amends P.L.1997, c.117 (C.2C:43-7.1 et seq.), the No Early Release Act (NERA), to specifically enumerate those violent first and second degree crimes for which defendants must serve at least 85 percent of the sentence imposed by the court before being eligible for parole. Under the current provisions of NERA, defendants must serve at least 85 percent of the sentence imposed before parole eligibility if they are convicted of a "violent crime" of the first or second degree. A "violent crime" is defined as: 1) a crime in which the defendant causes death or serious bodily injury; 2) a crime in which the defendant uses or threatens the immediate use of a deadly weapon; or 3) aggravated sexual assault or sexual assault in which the defendant uses, or threatens the use of, physical

force.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The Department of Corrections states there would not be any measurable impact on the department in terms of increased admissions, increased length-of-stay or increased population because the statutes currently impose these requirements on most of the defendants referred to in the bill. Therefore there will be no fiscal impact.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) concurs with the Executive estimate.

Section: *Judiciary*

Analyst: *Anne C. Raughley*
Lead Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

This fiscal note has been prepared pursuant to P.L.1980, c.67.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2087 and 2233

STATE OF NEW JERSEY
209th LEGISLATURE

ADOPTED JUNE 11, 2001

Sponsored by:

Senator LOUIS F. KOSCO

District 38 (Bergen)

Senator JOHN O. BENNETT

District 12 (Monmouth)

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Co-Sponsored by:

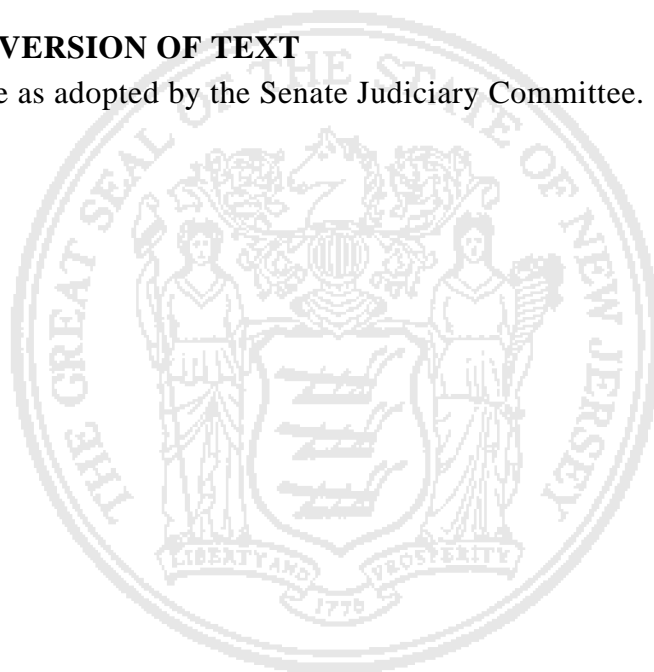
**Senators Singer, Cafiero, Inverso, Matheussen, Palaia, Sinagra, Zane,
Robertson and Kavanaugh**

SYNOPSIS

Specifies the crimes encompassed by the provisions of the "No Early Release Act," including murder.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Judiciary Committee.



1 AN ACT concerning parole eligibility under the "No Early Release
2 Act" and amending P.L.1997, c.117 and N.J.S.2C:35-14.

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

6
7 1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read
8 as follows:

9 2. a. A court imposing a sentence of incarceration for a crime of
10 the first or second degree enumerated in subsection d. of this section
11 shall fix a minimum term of 85% of the sentence imposed during which
12 the defendant shall not be eligible for parole [if the crime is a violent
13 crime as defined in subsection d. of this section].

14 b. The minimum term required by subsection a. of this section
15 shall be fixed as a part of every sentence of incarceration imposed
16 upon every conviction of a crime enumerated in subsection d. of this
17 section, whether the sentence of incarceration is determined pursuant
18 to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any other
19 provision of law, and shall be calculated based upon the sentence of
20 incarceration actually imposed. The provisions of subsection a. of this
21 section shall not be construed or applied to reduce the time that must
22 be served before eligibility for parole by an inmate sentenced to a
23 mandatory minimum period of incarceration. Solely for the purpose
24 of calculating the minimum term of parole ineligibility pursuant to
25 subsection a. of this section, a sentence of life imprisonment shall be
26 deemed to be 75 years.

27 c. Notwithstanding any other provision of law to the contrary and
28 in addition to any other sentence imposed, a court imposing a
29 minimum period of parole ineligibility of 85 percent of the sentence
30 pursuant to this section shall also[, unless the court imposes a
31 sentence of lifetime parole supervision pursuant to P.L. , c.
32 (C.)(now pending before the Legislature as Senate Bill No. 524
33 SCS),] impose a five-year term of parole supervision if the defendant
34 is being sentenced for a crime of the first degree, or a three-year term
35 of parole supervision if the defendant is being sentenced for a crime of
36 the second degree. The term of parole supervision shall commence
37 upon the completion of the sentence of incarceration imposed by the
38 court pursuant to subsection a. of this section unless the defendant is
39 serving a sentence of incarceration for another crime at the time he
40 completes the sentence of incarceration imposed pursuant to
41 subsection a., in which case the term of parole supervision shall
42 commence immediately upon the defendant's release from
43 incarceration. During the term of parole supervision the defendant

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 shall remain in release status in the community in the legal custody of
2 the Commissioner of the Department of Corrections and shall be
3 supervised by the Bureau of Parole of the Department of Corrections
4 as if on parole and shall be subject to the provisions and conditions of
5 section 3 of P.L.1997, c.117 (C.30:4-123.51b).

6 d. [For the purposes of this section, "violent crime" means any
7 crime in which the actor causes death, causes serious bodily injury as
8 defined in subsection b. of N.J.S.2C:11-1, or uses or threatens the
9 immediate use of a deadly weapon. "Violent crime" also includes any
10 aggravated sexual assault or sexual assault in which the actor uses, or
11 threatens the immediate use of, physical force. For the purposes of
12 this section, "deadly weapon" means any firearm or other weapon,
13 device, instrument, material or substance, whether animate or
14 inanimate, which in the manner it is used or is intended to be used, is
15 known to be capable of producing death or serious bodily injury] The
16 court shall impose sentence pursuant to subsection a. of this section
17 upon conviction of the following crimes or an attempt or conspiracy
18 to commit any of these crimes:

- 19 (1) N.J.S.2C:11-3, murder;
20 (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
21 (3) N.J.S.2C:11-5, vehicular homicide;
22 (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
23 (5) subsection b. of N.J.S.2C:12-11, disarming a law enforcement
24 officer;
25 (6) N.J.S.2C:13-1, kidnapping;
26 (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
27 (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of
28 subsection c. of N.J.S.2C:14-2, sexual assault;
29 (9) N.J.S.2C:15-1, robbery;
30 (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
31 (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated
32 arson;
33 (12) N.J.S.2C:18-2, burglary;
34 (13) subsection a. of N.J.S.2C:20-5, extortion;
35 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
36 booby traps in manufacturing or distribution facilities; or
37 (15) N.J.S.2C:35-9, strict liability for drug induced deaths.

38 e. [A court shall not impose sentence pursuant to this section
39 unless the ground therefor has been established at a hearing after the
40 conviction of the defendant and on written notice to him of the ground
41 proposed. The defendant shall have the right to hear and controvert
42 the evidence against him and to offer evidence upon the issue.]
43 (Deleted by amendment, P.L. , c.) (now pending before the
44 Legislature as this bill.)

45 (cf: P.L.1997, c.117, s.2)

1 2. N.J.S.2C:35-14 is amended to read as follows:

2 2C:35-14. Rehabilitation Program for Drug and Alcohol
3 Dependent Persons; Criteria for Imposing Special Probation; Ineligible
4 Offenders; Prosecutorial Objections; Mandatory Commitment to
5 Residential Treatment Facilities; Presumption of Revocation; Brief
6 Incarceration in Lieu of Permanent Revocation.

7 a. Notwithstanding the presumption of incarceration pursuant to
8 the provisions of subsection d. of N.J.S.2C:44-1, and except as
9 provided in subsection c. of this section, whenever a drug or alcohol
10 dependent person is convicted of or adjudicated delinquent for an
11 offense, other than one described in subsection b. of this section, the
12 court, upon notice to the prosecutor, may, on motion of the person, or
13 on the court's own motion, place the person on special probation,
14 which shall be for a term of five years, provided that the court finds on
15 the record that:

16 (1) the person has undergone a professional diagnostic assessment
17 to determine whether and to what extent the person is drug or alcohol
18 dependent and would benefit from treatment; and

19 (2) the person is a drug or alcohol dependent person within the
20 meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the
21 time of the commission of the present offense; and

22 (3) the present offense was committed while the person was under
23 the influence of a controlled dangerous substance, controlled
24 substance analog or alcohol or was committed to acquire property or
25 monies in order to support the person's drug or alcohol dependency;
26 and

27 (4) substance abuse treatment and monitoring will serve to benefit
28 the person by addressing his drug or alcohol dependency and will
29 thereby reduce the likelihood that the person will thereafter commit
30 another offense; and

31 (5) the person did not possess a firearm at the time of the present
32 offense and did not possess a firearm at the time of any pending
33 criminal charge; and

34 (6) the person has not been previously convicted on two or more
35 separate occasions of crimes of the first, second or third degree, other
36 than crimes defined in N.J.S.2C:35-10; and

37 (7) the person has not been previously convicted or adjudicated
38 delinquent for, and does not have a pending charge of murder,
39 aggravated manslaughter, manslaughter, robbery, kidnapping,
40 aggravated assault, aggravated sexual assault or sexual assault, or a
41 similar crime under the laws of any other state or the United States;
42 and

43 (8) a suitable treatment facility licensed and approved by the
44 Department of Health and Senior Services is able and has agreed to
45 provide appropriate treatment services in accordance with the
46 requirements of this section; and

1 (9) no danger to the community will result from the person being
2 placed on special probation pursuant to this section.

3 In determining whether to sentence the person pursuant to this
4 section, the court shall consider all relevant circumstances, and shall
5 take judicial notice of any evidence, testimony or information adduced
6 at the trial, plea hearing or other court proceedings, and shall also
7 consider the presentence report and the results of the professional
8 diagnostic assessment to determine whether and to what extent the
9 person is drug or alcohol dependent and would benefit from treatment.

10 As a condition of special probation, the court shall order the
11 person to enter a treatment program at a facility licensed and approved
12 by the Department of Health and Senior Services, to comply with
13 program rules and the requirements of the course of treatment, to
14 cooperate fully with the treatment provider, and to comply with such
15 other reasonable terms and conditions as may be required by the court
16 or by law, pursuant to N.J.S.2C:45-1, and which shall include periodic
17 urine testing for drug or alcohol usage throughout the period of
18 special probation. Subject to the requirements of subsection d. of this
19 section, the conditions of special probation may include different
20 methods and levels of community-based or residential supervision.

21 b. A person shall not be eligible for special probation pursuant to
22 this section if the person is convicted of or adjudicated delinquent for:

23 (1) a crime of the first degree;

24 (2) a crime [of violence as defined] of the first or second degree
25 enumerated in subsection d. of N.J.S.2C:43-7.2;

26 (3) a crime, other than that defined in N.J.S.2C:35-7, for which a
27 mandatory minimum period of incarceration is prescribed under
28 chapter 35 of this Title or any other law; or

29 (4) an offense that involved the distribution or the conspiracy or
30 attempt to distribute a controlled dangerous substance or controlled
31 substance analog to a juvenile near or on school property.

32 c. A person convicted of or adjudicated delinquent for an offense
33 under section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of
34 section 1 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which
35 there exists a presumption of imprisonment pursuant to subsection d.
36 of N.J.S.2C:44-1 or any other statute, or who has been previously
37 convicted of an offense under subsection a. of N.J.S.2C:35-5 or a
38 similar offense under any other law of this State, any other state or the
39 United States, shall not be eligible for sentence in accordance with this
40 section if the prosecutor objects to the person being placed on special
41 probation. The court shall not place a person on special probation
42 over the prosecutor's objection except upon a finding by the court of
43 a gross and patent abuse of prosecutorial discretion. If the court
44 makes a finding of a gross and patent abuse of prosecutorial discretion
45 and imposes a sentence of special probation notwithstanding the
46 objection of the prosecutor, the sentence of special probation imposed

1 pursuant to this section shall not become final for 10 days in order to
2 permit the appeal of such sentence by the prosecution.

3 d. A person convicted of or adjudicated delinquent for a crime of
4 the second degree or of a violation of section 1 of P.L.1987, c.101
5 (C.2C:35-7), or who previously has been convicted of or adjudicated
6 delinquent for an offense under subsection a. of N.J.S.2C:35-5 or a
7 similar offense under any other law of this State, any other state or the
8 United States, who is placed on special probation under this section
9 shall be committed to the custody of a residential treatment facility
10 licensed and approved by the Department of Health and Senior
11 Services, whether or not residential treatment was recommended by
12 the person conducting the diagnostic assessment. The person shall be
13 committed to the residential treatment facility immediately, unless the
14 facility cannot accommodate the person, in which case the person shall
15 be incarcerated to await commitment to the residential treatment
16 facility. The term of such commitment shall be for a minimum of six
17 months, or until the court, upon recommendation of the treatment
18 provider, determines that the person has successfully completed the
19 residential treatment program, whichever is later, except that no
20 person shall remain in the custody of a residential treatment facility
21 pursuant to this section for a period in excess of five years. Upon
22 successful completion of the required residential treatment program,
23 the person shall complete the period of special probation, as
24 authorized by subsection a. of this section, with credit for time served
25 for any imprisonment served as a condition of probation and credit for
26 each day during which the person satisfactorily complied with the
27 terms and conditions of special probation while committed pursuant to
28 this section to a residential treatment facility. The person shall not be
29 eligible for early discharge of special probation pursuant to
30 N.J.S.2C:45-2, or any other provision of the law. The court, in
31 determining the number of credits for time spent in residential
32 treatment, shall consider the recommendations of the treatment
33 provider. A person placed into a residential treatment facility pursuant
34 to this section shall be deemed to be subject to official detention for
35 the purposes of N.J.S.2C:29-5 (escape).

36 e. The probation department or other appropriate agency
37 designated by the court to monitor or supervise the person's special
38 probation shall report periodically to the court as to the person's
39 progress in treatment and compliance with court-imposed terms and
40 conditions. The treatment provider shall promptly report to the
41 probation department or other appropriate agency all significant
42 failures by the person to comply with any court imposed term or
43 condition of special probation or any requirements of the course of
44 treatment, including but not limited to a positive drug or alcohol test
45 or the unexcused failure to attend any session or activity, and shall
46 immediately report any act that would constitute an escape. The

1 probation department or other appropriate agency shall immediately
2 notify the court and the prosecutor in the event that the person refuses
3 to submit to a periodic drug or alcohol test or for any reason
4 terminates his participation in the course of treatment, or commits any
5 act that would constitute an escape.

6 f. (1) Upon a first violation of any term or condition of the special
7 probation authorized by this section or of any requirements of the
8 course of treatment, the court in its discretion may permanently revoke
9 the person's special probation.

10 (2) Upon a second or subsequent violation of any term or
11 condition of the special probation authorized by this section or of any
12 requirements of the course of treatment, the court shall, subject only
13 to the provisions of subsection g. of this section, permanently revoke
14 the person's special probation unless the court finds on the record that
15 there is a substantial likelihood that the person will successfully
16 complete the treatment program if permitted to continue on special
17 probation, and the court is clearly convinced, considering the nature
18 and seriousness of the violations, that no danger to the community will
19 result from permitting the person to continue on special probation
20 pursuant to this section. The court's determination to permit the
21 person to continue on special probation following a second or
22 subsequent violation pursuant to this paragraph may be appealed by
23 the prosecution.

24 (3) In making its determination whether to revoke special
25 probation, and whether to overcome the presumption of revocation
26 established in paragraph (2) of this subsection, the court shall consider
27 the nature and seriousness of the present infraction and any past
28 infractions in relation to the person's overall progress in the course of
29 treatment, and shall also consider the recommendations of the
30 treatment provider. The court shall give added weight to the
31 treatment provider's recommendation that the person's special
32 probation be permanently revoked, or to the treatment provider's
33 opinion that the person is not amenable to treatment or is not likely to
34 complete the treatment program successfully.

35 (4) If the court permanently revokes the person's special probation
36 pursuant to this subsection, the court shall impose any sentence that
37 might have been imposed, or that would have been required to be
38 imposed, originally for the offense for which the person was convicted
39 or adjudicated delinquent. The court shall conduct a de novo review
40 of any aggravating and mitigating factors present at the time of both
41 original sentencing and resentencing. If the court determines or is
42 required pursuant to any other provision of this chapter or any other
43 law to impose a term of imprisonment, the person shall receive credit
44 for any time served in custody pursuant to N.J.S.2C:45-1 or while
45 awaiting placement in a treatment facility pursuant to this section, and
46 for each day during which the person satisfactorily complied with the

1 terms and conditions of special probation while committed pursuant to
2 this section to a residential treatment facility. The court, in
3 determining the number of credits for time spent in a residential
4 treatment facility, shall consider the recommendations of the treatment
5 provider.

6 (5) Following a violation, if the court permits the person to
7 continue on special probation pursuant to this section, the court shall
8 order the person to comply with such additional terms and conditions,
9 including but not limited to more frequent drug or alcohol testing, as
10 are necessary to deter and promptly detect any further violation.

11 (6) Notwithstanding any other provision of this subsection, if the
12 person at any time refuses to undergo urine testing for drug or alcohol
13 usage as provided in subsection a. of this section, the court shall,
14 subject only to the provisions of subsection g. of this section,
15 permanently revoke the person's special probation. Notwithstanding
16 any other provision of this section, if the person at any time while
17 committed to the custody of a residential treatment facility pursuant
18 to this section commits an act that would constitute an escape, the
19 court shall forthwith permanently revoke the person's special
20 probation.

21 (7) An action for a violation under this section may be brought by
22 a probation officer or prosecutor or on the court's own motion.
23 Failure to complete successfully the required treatment program shall
24 constitute a violation of the person's special probation. A person who
25 fails to comply with the terms of his special probation pursuant to this
26 section and is thereafter sentenced to imprisonment in accordance with
27 this subsection shall thereafter be ineligible for entry into the Intensive
28 Supervision Program.

29 g. When a person on special probation is subject to a presumption
30 of revocation on a second or subsequent violation pursuant to
31 paragraph (2) of subsection f. of this section, or when the person
32 refuses to undergo drug or alcohol testing pursuant to paragraph (6)
33 of subsection f. of this section, the court may, in lieu of permanently
34 revoking the person's special probation, impose a term of incarceration
35 for a period of not less than 30 days nor more than six months, after
36 which the person's term of special probation pursuant to this section
37 may be reinstated. In determining whether to order a period of
38 incarceration in lieu of permanent revocation pursuant to this
39 subsection, the court shall consider the recommendations of the
40 treatment provider with respect to the likelihood that such
41 confinement would serve to motivate the person to make satisfactory
42 progress in treatment once special probation is reinstated. This
43 disposition may occur only once with respect to any person unless the
44 court is clearly convinced that there are compelling and extraordinary
45 reasons to justify reimposing this disposition with respect to the
46 person. Any such determination by the court to reimpose this

1 disposition may be appealed by the prosecution. Nothing in this
2 subsection shall be construed to limit the authority of the court at any
3 time during the period of special probation to order a person on
4 special probation who is not subject to a presumption of revocation
5 pursuant to paragraph (2) of subsection f. of this section to be
6 incarcerated over the course of a weekend, or for any other reasonable
7 period of time, when the court in its discretion determines that such
8 incarceration would help to motivate the person to make satisfactory
9 progress in treatment.

10 h. The court, as a condition of its order, and after considering the
11 person's financial resources, shall require the person to pay that
12 portion of the costs associated with his participation in any
13 rehabilitation program or period of residential treatment imposed
14 pursuant to this section which, in the opinion of the court, is consistent
15 with the person's ability to pay, taking into account the court's
16 authority to order payment or reimbursement to be made over time
17 and in installments.

18 i. The court shall impose, as a condition of the special probation,
19 any fine, penalty, fee or restitution applicable to the offense for which
20 the person was convicted or adjudicated delinquent.

21 (cf: P.L.1999, c.376, s.2)

22

23 3. This act shall take effect immediately.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 2087 and 2233**

STATE OF NEW JERSEY

DATED: JUNE 11, 2001

The Senate Judiciary Committee reports favorably a committee substitute for Senate Bill Nos. 2087 and 2233.

Under the "No Early Release Act" (N.J.S.A.2C:43-7.2), persons convicted of violent crimes of the first or second degree must serve at least 85% of the sentence imposed by the court before being eligible for parole. Currently, NERA defines "violent crime" as "any crime in which the actor causes death, . . . serious bodily injury . . . or uses or threatens the immediate use of a deadly weapon. . . 'Violent crime' also includes any aggravated sexual assault or sexual assault in which the actor uses, or threatens the immediate use of, physical force." However, several recent Appellate Division decisions have held that in its present form NERA is inapplicable to certain crimes, including murder.

In State v. Manzie, 335 N.J. Super. 267 (App. Div. 2000), decided November 29, 2000, the Appellate Division held that NERA does not apply to murder because this crime is not specifically referred to in NERA or in the language of the murder statute, N.J.S.A.2C:11-3.

In State v. Mosley, 335 N.J. Super. 144 (App. Div. 2000) decided Nov. 17, 2000 and State v. Thomas, 322 N.J. Super. 512 (App. Div. 1999); *cert. granted* 162 N.J. 489 (1999), the Appellate Division held that NERA does not apply to cases where the defendant is guilty of sexual assault under N.J.S.A.2C:14-2 on grounds that the victim is under the age of 13, since the current language of NERA requires the element of some additional "physical force."

In order to overcome the issues raised by these cases and clarify the provisions of the "No Early Release Act," this bill would amend NERA to specifically list the crimes that are intended to be encompassed by the statute. Under this bill, NERA would be specifically applicable to the following list of crimes:

- (1) N.J.S.A.2C:11-3, murder;
- (2) N.J.S.A.2C:11-4, aggravated manslaughter and manslaughter;
- (3) N.J.S.A.2C:11-5, vehicular homicide;
- (4) subsection b. of N.J.S.A.2C:12-1, aggravated assault;
- (5) subsection b. of N.J.S.A.2C:12-11, disarming a law enforcement officer;

- (6) N.J.S.A.2C:13-1, kidnapping;
- (7) subsection a. of N.J.S.A.2C:14-2, aggravated sexual assault;
- (8) subsection b. of N.J.S.A.2C:14-2 and paragraph (1) of subsection c. N.J.S.A.2C:14-2, sexual assault;
- (9) N.J.S.A.2C:15-1 robbery;
- (10) N.J.S.A.2C:15-2, carjacking;
- (11) paragraph (1) of subsection a. of N.J.S.A.2C:17-1, aggravated arson;
- (12) N.J.S.A.2C:18-2, burglary;
- (13) subsection a. of N.J.S.A.2C:20-5, extortion;
- (14) subsection b. of 2C:35-4.1, booby traps in CDS manufacturing or distribution facilities; or
- (15) N.J.S.A.2C:35-9 strict liability for drug induced deaths.

This bill further provides that, solely for the purpose of calculating the minimum term of parole eligibility, a sentence of life imprisonment shall be deemed to be 75 years. This is the current practice of the State Parole Board. In addition, this bill would eliminate the requirement set out in subsection e. of the NERA statute for a separate hearing conducted by the court prior to imposing sentence, as the addition of the references to specific crimes would make such a hearing unnecessary. This bill would also clarify that the provisions of the "NERA" apply to persons sentenced to extended terms of imprisonment as well as those sentenced to ordinary terms of imprisonment.

P.L. 2001, CHAPTER 129, *approved June 29, 2001*
Assembly, No. 3201 (*Second Reprint*)

1 AN ACT concerning parole eligibility under the "No Early Release
2 Act" and amending P.L.1997, c.117 ¹[and N.J.S.2C:11-3]¹ ²and
3 N.J.S.2C:35-14².

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

7
8 1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read
9 as follows:

10 2. a. A court imposing a sentence of incarceration for a crime of
11 the first or second degree ¹enumerated in subsection d. of this section¹
12 shall fix a minimum term of 85% of the sentence ²imposed² during
13 which the defendant shall not be eligible for parole ¹[if the crime is a
14 violent crime as defined in subsection d. of this section]¹.

15 b. ²The minimum term required by subsection a. of this section
16 shall be fixed as a part of every sentence of incarceration imposed
17 upon every conviction of a crime enumerated in subsection d. of this
18 section, whether the sentence of incarceration is determined pursuant
19 to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any other
20 provision of law, and shall be calculated based upon the sentence of
21 incarceration actually imposed² The provisions of subsection a. of
22 this section shall not be construed or applied to reduce the time that
23 must be served before eligibility for parole by an inmate sentenced to
24 a mandatory minimum period of incarceration. ¹Solely for the purpose
25 of calculating the minimum term of parole ineligibility pursuant to
26 subsection a. of this section, a sentence of life imprisonment shall be
27 deemed to be 75 years¹.

28 c. Notwithstanding any other provision of law to the contrary and
29 in addition to any other sentence imposed, a court imposing a
30 minimum period of parole ineligibility of 85 percent of the sentence
31 pursuant to this section shall also[, unless the court imposes a
32 sentence of lifetime parole supervision pursuant to P.L. , c.
33 (C.)(now pending before the Legislature as Senate Bill No. 524
34 SCS),] impose a five-year term of parole supervision if the defendant
35 is being sentenced for a crime of the first degree, or a three-year term
36 of parole supervision if the defendant is being sentenced for a crime of
37 the second degree. The term of parole supervision shall commence
38 upon the completion of the sentence of incarceration imposed by the
39 court pursuant to subsection a. of this section unless the defendant is

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly ALP committee amendments adopted March 1, 2001.

² Assembly AAP committee amendments adopted June 4, 2001.

1 serving a sentence of incarceration for another crime at the time he
 2 completes the sentence of incarceration imposed pursuant to
 3 subsection a., in which case the term of parole supervision shall
 4 commence immediately upon the defendant's release from
 5 incarceration. During the term of parole supervision the defendant
 6 shall remain in release status in the community in the legal custody of
 7 the Commissioner of the Department of Corrections and shall be
 8 supervised by the Bureau of Parole of the Department of Corrections
 9 as if on parole and shall be subject to the provisions and conditions of
 10 section 3 of P.L.1997, c.117 (C.30:4-123.51b).

11 d. ¹[For the purposes of this section, "violent crime" means [any
 12 crime in which the actor causes death, causes serious bodily injury as
 13 defined in subsection b. of N.J.S.2C:11-1, or uses or threatens the
 14 immediate use of a deadly weapon. "Violent crime" also includes any
 15 aggravated sexual assault or sexual assault in which the actor uses, or
 16 threatens the immediate use of, physical force. For the purposes of
 17 this section, "deadly weapon" means any firearm or other weapon,
 18 device, instrument, material or substance, whether animate or
 19 inanimate, which in the manner it is used or is intended to be used, is
 20 known to be capable of producing death or serious bodily injury] any
 21 of the following] The court shall impose sentence pursuant to
 22 subsection a. of this section upon conviction of the following
 23 ²[violent]² crimes or an attempt or conspiracy to commit any of these
 24 crimes¹:

25 (1) N.J.S.2C:11-3, murder;

26 (2) N.J.S.2C:11-4, ¹aggravated manslaughter or¹ manslaughter;

27 (3) ¹N.J.S.2C:11-5, vehicular homicide;

28 (4)¹ ²[a crime of the second degree under] ²subsection b. of
 29 N.J.S.2C:12-1, aggravated assault;

30 ¹[(4)](5) subsection b. of N.J.S.2C:12-11, disarming a law
 31 enforcement officer;

32 (6)¹ N.J.S.2C:13-1, kidnapping;

33 ¹[(5) paragraph (1) and paragraphs (3) through (7) of]

34 (7)¹ subsection a. of N.J.S.2C:14-2, aggravated sexual assault;

35 ¹[(6)] (8)¹ subsection b. of N.J.S.2C:14-2 and paragraph (1) of
 36 subsection c. of N.J.S.2C:14-2, sexual assault;

37 ¹[(7)] (9)¹ N.J.S.2C:15-1, robbery;

38 ¹[(8)] (10)¹ section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;

39 ¹[(9)] (11) paragraph (1) of subsection a. of N.J.S.2C:17-1,
 40 aggravated arson;

41 (12)¹ ²[a crime of the second degree under]² N.J.S.2C:18-2,
 42 burglary; ¹[or (10) a crime of the second degree under N.J.S.2C:39-4,
 43 possession of a weapon with the purpose of using it unlawfully against
 44 the person of another]

45 (13) subsection a. of N.J.S.2C:20-5, extortion;

1 (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1),
2 booby traps in manufacturing or distribution facilities; or
3 (15) N.J.S.2C:35-9, strict liability for drug induced deaths¹.
4 e. [A court shall not impose sentence pursuant to this section
5 unless the ground therefor has been established at a hearing after the
6 conviction of the defendant and on written notice to him of the ground
7 proposed. The defendant shall have the right to hear and controvert
8 the evidence against him and to offer evidence upon the issue.]
9 (Deleted by amendment, P.L. , c. ¹[(C.)]¹) (now pending before
10 the Legislature as this bill.)
11 (cf: P.L.1997, c.117, s.2)

12
13 ²2. N.J.S.2C:35-14 is amended to read as follows:

14 2C:35-14. Rehabilitation Program for Drug and Alcohol
15 Dependent Persons; Criteria for Imposing Special Probation; Ineligible
16 Offenders; Prosecutorial Objections; Mandatory Commitment to
17 Residential Treatment Facilities; Presumption of Revocation; Brief
18 Incarceration in Lieu of Permanent Revocation.

19 a. Notwithstanding the presumption of incarceration pursuant to
20 the provisions of subsection d. of N.J.S.2C:44-1, and except as
21 provided in subsection c. of this section, whenever a drug or alcohol
22 dependent person is convicted of or adjudicated delinquent for an
23 offense, other than one described in subsection b. of this section, the
24 court, upon notice to the prosecutor, may, on motion of the person, or
25 on the court's own motion, place the person on special probation,
26 which shall be for a term of five years, provided that the court finds on
27 the record that:

28 (1) the person has undergone a professional diagnostic assessment
29 to determine whether and to what extent the person is drug or alcohol
30 dependent and would benefit from treatment; and

31 (2) the person is a drug or alcohol dependent person within the
32 meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the
33 time of the commission of the present offense; and

34 (3) the present offense was committed while the person was under
35 the influence of a controlled dangerous substance, controlled
36 substance analog or alcohol or was committed to acquire property or
37 monies in order to support the person's drug or alcohol dependency;
38 and

39 (4) substance abuse treatment and monitoring will serve to benefit
40 the person by addressing his drug or alcohol dependency and will
41 thereby reduce the likelihood that the person will thereafter commit
42 another offense; and

43 (5) the person did not possess a firearm at the time of the present
44 offense and did not possess a firearm at the time of any pending
45 criminal charge; and

46 (6) the person has not been previously convicted on two or more

1 separate occasions of crimes of the first, second or third degree, other
2 than crimes defined in N.J.S.2C:35-10; and

3 (7) the person has not been previously convicted or adjudicated
4 delinquent for, and does not have a pending charge of murder,
5 aggravated manslaughter, manslaughter, robbery, kidnapping,
6 aggravated assault, aggravated sexual assault or sexual assault, or a
7 similar crime under the laws of any other state or the United States;
8 and

9 (8) a suitable treatment facility licensed and approved by the
10 Department of Health and Senior Services is able and has agreed to
11 provide appropriate treatment services in accordance with the
12 requirements of this section; and

13 (9) no danger to the community will result from the person being
14 placed on special probation pursuant to this section.

15 In determining whether to sentence the person pursuant to this
16 section, the court shall consider all relevant circumstances, and shall
17 take judicial notice of any evidence, testimony or information adduced
18 at the trial, plea hearing or other court proceedings, and shall also
19 consider the presentence report and the results of the professional
20 diagnostic assessment to determine whether and to what extent the
21 person is drug or alcohol dependent and would benefit from treatment.

22 As a condition of special probation, the court shall order the person
23 to enter a treatment program at a facility licensed and approved by the
24 Department of Health and Senior Services, to comply with program
25 rules and the requirements of the course of treatment, to cooperate
26 fully with the treatment provider, and to comply with such other
27 reasonable terms and conditions as may be required by the court or by
28 law, pursuant to N.J.S.2C:45-1, and which shall include periodic urine
29 testing for drug or alcohol usage throughout the period of special
30 probation. Subject to the requirements of subsection d. of this section,
31 the conditions of special probation may include different methods and
32 levels of community-based or residential supervision.

33 b. A person shall not be eligible for special probation pursuant to
34 this section if the person is convicted of or adjudicated delinquent for:

35 (1) a crime of the first degree;

36 (2) a crime [of violence as defined] of the first or second degree
37 enumerated in subsection d. of N.J.S.2C:43-7.2;

38 (3) a crime, other than that defined in N.J.S.2C:35-7, for which a
39 mandatory minimum period of incarceration is prescribed under
40 chapter 35 of this Title or any other law; or

41 (4) an offense that involved the distribution or the conspiracy or
42 attempt to distribute a controlled dangerous substance or controlled
43 substance analog to a juvenile near or on school property.

44 c. A person convicted of or adjudicated delinquent for an offense
45 under section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of
46 section 1 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which

1 there exists a presumption of imprisonment pursuant to subsection d.
2 of N.J.S.2C:44-1 or any other statute, or who has been previously
3 convicted of an offense under subsection a. of N.J.S.2C:35-5 or a
4 similar offense under any other law of this State, any other state or the
5 United States, shall not be eligible for sentence in accordance with this
6 section if the prosecutor objects to the person being placed on special
7 probation. The court shall not place a person on special probation
8 over the prosecutor's objection except upon a finding by the court of
9 a gross and patent abuse of prosecutorial discretion. If the court
10 makes a finding of a gross and patent abuse of prosecutorial discretion
11 and imposes a sentence of special probation notwithstanding the
12 objection of the prosecutor, the sentence of special probation imposed
13 pursuant to this section shall not become final for 10 days in order to
14 permit the appeal of such sentence by the prosecution.

15 d. A person convicted of or adjudicated delinquent for a crime of
16 the second degree or of a violation of section 1 of P.L.1987, c.101
17 (C.2C:35-7), or who previously has been convicted of or adjudicated
18 delinquent for an offense under subsection a. of N.J.S.2C:35-5 or a
19 similar offense under any other law of this State, any other state or the
20 United States, who is placed on special probation under this section
21 shall be committed to the custody of a residential treatment facility
22 licensed and approved by the Department of Health and Senior
23 Services, whether or not residential treatment was recommended by
24 the person conducting the diagnostic assessment. The person shall be
25 committed to the residential treatment facility immediately, unless the
26 facility cannot accommodate the person, in which case the person shall
27 be incarcerated to await commitment to the residential treatment
28 facility. The term of such commitment shall be for a minimum of six
29 months, or until the court, upon recommendation of the treatment
30 provider, determines that the person has successfully completed the
31 residential treatment program, whichever is later, except that no
32 person shall remain in the custody of a residential treatment facility
33 pursuant to this section for a period in excess of five years. Upon
34 successful completion of the required residential treatment program,
35 the person shall complete the period of special probation, as
36 authorized by subsection a. of this section, with credit for time served
37 for any imprisonment served as a condition of probation and credit for
38 each day during which the person satisfactorily complied with the
39 terms and conditions of special probation while committed pursuant to
40 this section to a residential treatment facility. The person shall not be
41 eligible for early discharge of special probation pursuant to
42 N.J.S.2C:45-2, or any other provision of the law. The court, in
43 determining the number of credits for time spent in residential
44 treatment, shall consider the recommendations of the treatment
45 provider. A person placed into a residential treatment facility pursuant
46 to this section shall be deemed to be subject to official detention for

1 the purposes of N.J.S.2C:29-5 (escape).

2 e. The probation department or other appropriate agency
3 designated by the court to monitor or supervise the person's special
4 probation shall report periodically to the court as to the person's
5 progress in treatment and compliance with court-imposed terms and
6 conditions. The treatment provider shall promptly report to the
7 probation department or other appropriate agency all significant
8 failures by the person to comply with any court imposed term or
9 condition of special probation or any requirements of the course of
10 treatment, including but not limited to a positive drug or alcohol test
11 or the unexcused failure to attend any session or activity, and shall
12 immediately report any act that would constitute an escape. The
13 probation department or other appropriate agency shall immediately
14 notify the court and the prosecutor in the event that the person refuses
15 to submit to a periodic drug or alcohol test or for any reason
16 terminates his participation in the course of treatment, or commits any
17 act that would constitute an escape.

18 f. (1) Upon a first violation of any term or condition of the special
19 probation authorized by this section or of any requirements of the
20 course of treatment, the court in its discretion may permanently revoke
21 the person's special probation.

22 (2) Upon a second or subsequent violation of any term or condition
23 of the special probation authorized by this section or of any
24 requirements of the course of treatment, the court shall, subject only
25 to the provisions of subsection g. of this section, permanently revoke
26 the person's special probation unless the court finds on the record that
27 there is a substantial likelihood that the person will successfully
28 complete the treatment program if permitted to continue on special
29 probation, and the court is clearly convinced, considering the nature
30 and seriousness of the violations, that no danger to the community will
31 result from permitting the person to continue on special probation
32 pursuant to this section. The court's determination to permit the
33 person to continue on special probation following a second or
34 subsequent violation pursuant to this paragraph may be appealed by
35 the prosecution.

36 (3) In making its determination whether to revoke special
37 probation, and whether to overcome the presumption of revocation
38 established in paragraph (2) of this subsection, the court shall consider
39 the nature and seriousness of the present infraction and any past
40 infractions in relation to the person's overall progress in the course of
41 treatment, and shall also consider the recommendations of the
42 treatment provider. The court shall give added weight to the
43 treatment provider's recommendation that the person's special
44 probation be permanently revoked, or to the treatment provider's
45 opinion that the person is not amenable to treatment or is not likely to
46 complete the treatment program successfully.

1 (4) If the court permanently revokes the person's special probation
2 pursuant to this subsection, the court shall impose any sentence that
3 might have been imposed, or that would have been required to be
4 imposed, originally for the offense for which the person was convicted
5 or adjudicated delinquent. The court shall conduct a de novo review
6 of any aggravating and mitigating factors present at the time of both
7 original sentencing and resentencing. If the court determines or is
8 required pursuant to any other provision of this chapter or any other
9 law to impose a term of imprisonment, the person shall receive credit
10 for any time served in custody pursuant to N.J.S.2C:45-1 or while
11 awaiting placement in a treatment facility pursuant to this section, and
12 for each day during which the person satisfactorily complied with the
13 terms and conditions of special probation while committed pursuant to
14 this section to a residential treatment facility. The court, in
15 determining the number of credits for time spent in a residential
16 treatment facility, shall consider the recommendations of the treatment
17 provider.

18 (5) Following a violation, if the court permits the person to
19 continue on special probation pursuant to this section, the court shall
20 order the person to comply with such additional terms and conditions,
21 including but not limited to more frequent drug or alcohol testing, as
22 are necessary to deter and promptly detect any further violation.

23 (6) Notwithstanding any other provision of this subsection, if the
24 person at any time refuses to undergo urine testing for drug or alcohol
25 usage as provided in subsection a. of this section, the court shall,
26 subject only to the provisions of subsection g. of this section,
27 permanently revoke the person's special probation. Notwithstanding
28 any other provision of this section, if the person at any time while
29 committed to the custody of a residential treatment facility pursuant
30 to this section commits an act that would constitute an escape, the
31 court shall forthwith permanently revoke the person's special
32 probation.

33 (7) An action for a violation under this section may be brought by
34 a probation officer or prosecutor or on the court's own motion.
35 Failure to complete successfully the required treatment program shall
36 constitute a violation of the person's special probation. A person who
37 fails to comply with the terms of his special probation pursuant to this
38 section and is thereafter sentenced to imprisonment in accordance with
39 this subsection shall thereafter be ineligible for entry into the Intensive
40 Supervision Program.

41 g. When a person on special probation is subject to a presumption
42 of revocation on a second or subsequent violation pursuant to
43 paragraph (2) of subsection f. of this section, or when the person
44 refuses to undergo drug or alcohol testing pursuant to paragraph (6)
45 of subsection f. of this section, the court may, in lieu of permanently
46 revoking the person's special probation, impose a term of incarceration

1 for a period of not less than 30 days nor more than six months, after
2 which the person's term of special probation pursuant to this section
3 may be reinstated. In determining whether to order a period of
4 incarceration in lieu of permanent revocation pursuant to this
5 subsection, the court shall consider the recommendations of the
6 treatment provider with respect to the likelihood that such
7 confinement would serve to motivate the person to make satisfactory
8 progress in treatment once special probation is reinstated. This
9 disposition may occur only once with respect to any person unless the
10 court is clearly convinced that there are compelling and extraordinary
11 reasons to justify reimposing this disposition with respect to the
12 person. Any such determination by the court to reimpose this
13 disposition may be appealed by the prosecution. Nothing in this
14 subsection shall be construed to limit the authority of the court at any
15 time during the period of special probation to order a person on
16 special probation who is not subject to a presumption of revocation
17 pursuant to paragraph (2) of subsection f. of this section to be
18 incarcerated over the course of a weekend, or for any other reasonable
19 period of time, when the court in its discretion determines that such
20 incarceration would help to motivate the person to make satisfactory
21 progress in treatment.

22 h. The court, as a condition of its order, and after considering the
23 person's financial resources, shall require the person to pay that
24 portion of the costs associated with his participation in any
25 rehabilitation program or period of residential treatment imposed
26 pursuant to this section which, in the opinion of the court, is consistent
27 with the person's ability to pay, taking into account the court's
28 authority to order payment or reimbursement to be made over time
29 and in installments.

30 i. The court shall impose, as a condition of the special probation,
31 any fine, penalty, fee or restitution applicable to the offense for which
32 the person was convicted or adjudicated delinquent.²

33 (cf: P.L.1999, c.376, s.2)

34

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

36 2C:11-3. Murder.

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

39 (1) The actor purposely causes death or serious bodily injury
40 resulting in death; or

41 (2) The actor knowingly causes death or serious bodily injury
42 resulting in death; or

43 (3) It is committed when the actor, acting either alone or with one
44 or more other persons, is engaged in the commission of, or an attempt
45 to commit, or flight after committing or attempting to commit robbery,
46 sexual assault, arson, burglary, kidnapping, carjacking or criminal

1 escape, and in the course of such crime or of immediate flight
2 therefrom, any person causes the death of a person other than one of
3 the participants; except that in any prosecution under this subsection,
4 in which the defendant was not the only participant in the underlying
5 crime, it is an affirmative defense that the defendant:

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

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

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

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

17 b. (1) Murder is a crime of the first degree but a person convicted
18 of murder shall be sentenced, except as provided in subsection c. of
19 this section, by the court to a term of 30 years, during which the
20 person shall not be eligible for parole, or be sentenced to a specific
21 term of years which shall be between 30 years and life imprisonment
22 of which the person shall serve 30 years or 85% of the sentence,
23 whichever is greater, before being eligible for parole.

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

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

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

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

38 (4) If the defendant was subject to sentencing pursuant to
39 subsection c. and the jury or court found the existence of one or more
40 aggravating factors, but that such factors did not outweigh the
41 mitigating factors found to exist by the jury or court or the jury was
42 unable to reach a unanimous verdict as to the weight of the factors, the
43 defendant shall be sentenced by the court to a term of life
44 imprisonment during which the defendant shall not be eligible for
45 parole.

46 With respect to a sentence imposed pursuant to this subsection, the

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

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

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

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

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

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

45 (c) Evidence admitted at the trial, which is relevant to the
46 aggravating and mitigating factors set forth in paragraphs (4) and (5)

1 of this subsection, shall be considered without the necessity of
2 reintroducing that evidence at the sentencing proceeding; provided
3 that the fact finder at the sentencing proceeding was present as either
4 the fact finder or the judge at the trial.

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

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

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

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

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

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

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

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

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 addition
41 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 value;

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

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

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

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

39 i. For purposes of this section the term "homicidal act" shall mean
40 conduct that causes death or serious bodily injury resulting in death.

41 j. In a sentencing proceeding conducted pursuant to this section,
42 the display of a photograph of the victim taken before the homicide
43 shall be permitted.

44 (cf: P.L.2000, c.88)]¹

45

46 ¹[3.] ²[2.1] 3.² This act shall take effect immediately.

1

2

3 Specifies the crimes encompassed by the provisions of the "No Early
4 Release Act," including murder.

CHAPTER 129

AN ACT concerning parole eligibility under the "No Early Release Act" and amending P.L.1997, c.117 and N.J.S.2C:35-14.

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

1. Section 2 of P.L.1997, c.117 (C.2C:43-7.2) is amended to read as follows:

C.2C:43-7.2 Mandatory service of 85% of sentence for certain offenders.

2. a. A court imposing a sentence of incarceration for a crime of the first or second degree enumerated in subsection d. of this section shall fix a minimum term of 85% of the sentence imposed, during which the defendant shall not be eligible for parole.

b. The minimum term required by subsection a. of this section shall be fixed as a part of every sentence of incarceration imposed upon every conviction of a crime enumerated in subsection d. of this section, whether the sentence of incarceration is determined pursuant to N.J.S.2C:43-6, N.J.S.2C:43-7, N.J.S.2C:11-3 or any other provision of law, and shall be calculated based upon the sentence of incarceration actually imposed. The provisions of subsection a. of this section shall not be construed or applied to reduce the time that must be served before eligibility for parole by an inmate sentenced to a mandatory minimum period of incarceration. Solely for the purpose of calculating the minimum term of parole ineligibility pursuant to subsection a. of this section, a sentence of life imprisonment shall be deemed to be 75 years.

c. Notwithstanding any other provision of law to the contrary and in addition to any other sentence imposed, a court imposing a minimum period of parole ineligibility of 85 percent of the sentence pursuant to this section shall also impose a five-year term of parole supervision if the defendant is being sentenced for a crime of the first degree, or a three-year term of parole supervision if the defendant is being sentenced for a crime of the second degree. The term of parole supervision shall commence upon the completion of the sentence of incarceration imposed by the court pursuant to subsection a. of this section unless the defendant is serving a sentence of incarceration for another crime at the time he completes the sentence of incarceration imposed pursuant to subsection a., in which case the term of parole supervision shall commence immediately upon the defendant's release from incarceration. During the term of parole supervision the defendant shall remain in release status in the community in the legal custody of the Commissioner of the Department of Corrections and shall be supervised by the State Parole Board as if on parole and shall be subject to the provisions and conditions of section 3 of P.L.1997, c.117 (C.30:4-123.51b).

d. The court shall impose sentence pursuant to subsection a. of this section upon conviction of the following crimes or an attempt or conspiracy to commit any of these crimes:

- (1) N.J.S.2C:11-3, murder;
 - (2) N.J.S.2C:11-4, aggravated manslaughter or manslaughter;
 - (3) N.J.S.2C:11-5, vehicular homicide;
 - (4) subsection b. of N.J.S.2C:12-1, aggravated assault;
 - (5) subsection b. of N.J.S.2C:12-11, disarming a law enforcement officer;
 - (6) N.J.S.2C:13-1, kidnapping;
 - (7) subsection a. of N.J.S.2C:14-2, aggravated sexual assault;
 - (8) subsection b. of N.J.S.2C:14-2 and paragraph (1) of subsection c. of N.J.S.2C:14-2, sexual assault;
 - (9) N.J.S.2C:15-1, robbery;
 - (10) section 1 of P.L.1993, c.221 (C.2C:15-2), carjacking;
 - (11) paragraph (1) of subsection a. of N.J.S.2C:17-1, aggravated arson;
 - (12) N.J.S.2C:18-2, burglary;
 - (13) subsection a. of N.J.S.2C:20-5, extortion;
 - (14) subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), booby traps in manufacturing or distribution facilities; or
 - (15) N.J.S.2C:35-9, strict liability for drug induced deaths.
- e. (Deleted by amendment, P.L.2001, c.129).

2. N.J.S.2C:35-14 is amended to read as follows:

Rehabilitation program for drug and alcohol dependent persons; criteria for imposing special probation; ineligible offenders; prosecutorial objections; mandatory commitment to residential treatment facilities; presumption of revocation; brief incarceration in lieu of permanent revocation.

2C:35-14. Rehabilitation Program for Drug and Alcohol Dependent Persons; Criteria for Imposing Special Probation; Ineligible Offenders; Prosecutorial Objections; Mandatory Commitment to Residential Treatment Facilities; Presumption of Revocation; Brief Incarceration in Lieu of Permanent Revocation.

a. Notwithstanding the presumption of incarceration pursuant to the provisions of subsection d. of N.J.S.2C:44-1, and except as provided in subsection c. of this section, whenever a drug or alcohol dependent person is convicted of or adjudicated delinquent for an offense, other than one described in subsection b. of this section, the court, upon notice to the prosecutor, may, on motion of the person, or on the court's own motion, place the person on special probation, which shall be for a term of five years, provided that the court finds on the record that:

(1) the person has undergone a professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment; and

(2) the person is a drug or alcohol dependent person within the meaning of N.J.S.2C:35-2 and was drug or alcohol dependent at the time of the commission of the present offense; and

(3) the present offense was committed while the person was under the influence of a controlled dangerous substance, controlled substance analog or alcohol or was committed to acquire property or monies in order to support the person's drug or alcohol dependency; and

(4) substance abuse treatment and monitoring will serve to benefit the person by addressing his drug or alcohol dependency and will thereby reduce the likelihood that the person will thereafter commit another offense; and

(5) the person did not possess a firearm at the time of the present offense and did not possess a firearm at the time of any pending criminal charge; and

(6) the person has not been previously convicted on two or more separate occasions of crimes of the first, second or third degree, other than crimes defined in N.J.S.2C:35-10; and

(7) the person has not been previously convicted or adjudicated delinquent for, and does not have a pending charge of murder, aggravated manslaughter, manslaughter, robbery, kidnapping, aggravated assault, aggravated sexual assault or sexual assault, or a similar crime under the laws of any other state or the United States; and

(8) a suitable treatment facility licensed and approved by the Department of Health and Senior Services is able and has agreed to provide appropriate treatment services in accordance with the requirements of this section; and

(9) no danger to the community will result from the person being placed on special probation pursuant to this section.

In determining whether to sentence the person pursuant to this section, the court shall consider all relevant circumstances, and shall take judicial notice of any evidence, testimony or information adduced at the trial, plea hearing or other court proceedings, and shall also consider the presentence report and the results of the professional diagnostic assessment to determine whether and to what extent the person is drug or alcohol dependent and would benefit from treatment.

As a condition of special probation, the court shall order the person to enter a treatment program at a facility licensed and approved by the Department of Health and Senior Services, to comply with program rules and the requirements of the course of treatment, to cooperate fully with the treatment provider, and to comply with such other reasonable terms and conditions as may be required by the court or by law, pursuant to N.J.S.2C:45-1, and which shall include periodic urine testing for drug or alcohol usage throughout the period of special probation. Subject to the requirements of subsection d. of this section, the conditions of special probation may include different methods and levels of community-based or residential supervision.

b. A person shall not be eligible for special probation pursuant to this section if the person is convicted of or adjudicated delinquent for:

(1) a crime of the first degree;

- (2) a crime of the first or second degree enumerated in subsection d. of N.J.S.2C:43-7.2;
- (3) a crime, other than that defined in N.J.S.2C:35-7, for which a mandatory minimum period of incarceration is prescribed under chapter 35 of this Title or any other law; or
- (4) an offense that involved the distribution or the conspiracy or attempt to distribute a controlled dangerous substance or controlled substance analog to a juvenile near or on school property.

c. A person convicted of or adjudicated delinquent for an offense under section 1 of P.L.1987, c.101 (C.2C:35-7), subsection b. of section 1 of P.L.1997, c.185 (C.2C:35-4.1), or any crime for which there exists a presumption of imprisonment pursuant to subsection d. of N.J.S.2C:44-1 or any other statute, or who has been previously convicted of an offense under subsection a. of N.J.S.2C:35-5 or a similar offense under any other law of this State, any other state or the United States, shall not be eligible for sentence in accordance with this section if the prosecutor objects to the person being placed on special probation. The court shall not place a person on special probation over the prosecutor's objection except upon a finding by the court of a gross and patent abuse of prosecutorial discretion. If the court makes a finding of a gross and patent abuse of prosecutorial discretion and imposes a sentence of special probation notwithstanding the objection of the prosecutor, the sentence of special probation imposed pursuant to this section shall not become final for 10 days in order to permit the appeal of such sentence by the prosecution.

d. A person convicted of or adjudicated delinquent for a crime of the second degree or of a violation of section 1 of P.L.1987, c.101 (C.2C:35-7), or who previously has been convicted of or adjudicated delinquent for an offense under subsection a. of N.J.S.2C:35-5 or a similar offense under any other law of this State, any other state or the United States, who is placed on special probation under this section shall be committed to the custody of a residential treatment facility licensed and approved by the Department of Health and Senior Services, whether or not residential treatment was recommended by the person conducting the diagnostic assessment. The person shall be committed to the residential treatment facility immediately, unless the facility cannot accommodate the person, in which case the person shall be incarcerated to await commitment to the residential treatment facility. The term of such commitment shall be for a minimum of six months, or until the court, upon recommendation of the treatment provider, determines that the person has successfully completed the residential treatment program, whichever is later, except that no person shall remain in the custody of a residential treatment facility pursuant to this section for a period in excess of five years. Upon successful completion of the required residential treatment program, the person shall complete the period of special probation, as authorized by subsection a. of this section, with credit for time served for any imprisonment served as a condition of probation and credit for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed pursuant to this section to a residential treatment facility. The person shall not be eligible for early discharge of special probation pursuant to N.J.S.2C:45-2, or any other provision of the law. The court, in determining the number of credits for time spent in residential treatment, shall consider the recommendations of the treatment provider. A person placed into a residential treatment facility pursuant to this section shall be deemed to be subject to official detention for the purposes of N.J.S.2C:29-5 (escape).

e. The probation department or other appropriate agency designated by the court to monitor or supervise the person's special probation shall report periodically to the court as to the person's progress in treatment and compliance with court-imposed terms and conditions. The treatment provider shall promptly report to the probation department or other appropriate agency all significant failures by the person to comply with any court imposed term or condition of special probation or any requirements of the course of treatment, including but not limited to a positive drug or alcohol test or the unexcused failure to attend any session or activity, and shall immediately report any act that would constitute an escape. The probation department or other appropriate agency shall immediately notify the court and the prosecutor in the event that the person refuses to submit to a periodic drug or alcohol test or for any reason terminates his participation in the course of treatment, or commits any act that would constitute an escape.

f. (1) Upon a first violation of any term or condition of the special probation authorized by

this section or of any requirements of the course of treatment, the court in its discretion may permanently revoke the person's special probation.

(2) Upon a second or subsequent violation of any term or condition of the special probation authorized by this section or of any requirements of the course of treatment, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation unless the court finds on the record that there is a substantial likelihood that the person will successfully complete the treatment program if permitted to continue on special probation, and the court is clearly convinced, considering the nature and seriousness of the violations, that no danger to the community will result from permitting the person to continue on special probation pursuant to this section. The court's determination to permit the person to continue on special probation following a second or subsequent violation pursuant to this paragraph may be appealed by the prosecution.

(3) In making its determination whether to revoke special probation, and whether to overcome the presumption of revocation established in paragraph (2) of this subsection, the court shall consider the nature and seriousness of the present infraction and any past infractions in relation to the person's overall progress in the course of treatment, and shall also consider the recommendations of the treatment provider. The court shall give added weight to the treatment provider's recommendation that the person's special probation be permanently revoked, or to the treatment provider's opinion that the person is not amenable to treatment or is not likely to complete the treatment program successfully.

(4) If the court permanently revokes the person's special probation pursuant to this subsection, the court shall impose any sentence that might have been imposed, or that would have been required to be imposed, originally for the offense for which the person was convicted or adjudicated delinquent. The court shall conduct a de novo review of any aggravating and mitigating factors present at the time of both original sentencing and resentencing. If the court determines or is required pursuant to any other provision of this chapter or any other law to impose a term of imprisonment, the person shall receive credit for any time served in custody pursuant to N.J.S.2C:45-1 or while awaiting placement in a treatment facility pursuant to this section, and for each day during which the person satisfactorily complied with the terms and conditions of special probation while committed pursuant to this section to a residential treatment facility. The court, in determining the number of credits for time spent in a residential treatment facility, shall consider the recommendations of the treatment provider.

(5) Following a violation, if the court permits the person to continue on special probation pursuant to this section, the court shall order the person to comply with such additional terms and conditions, including but not limited to more frequent drug or alcohol testing, as are necessary to deter and promptly detect any further violation.

(6) Notwithstanding any other provision of this subsection, if the person at any time refuses to undergo urine testing for drug or alcohol usage as provided in subsection a. of this section, the court shall, subject only to the provisions of subsection g. of this section, permanently revoke the person's special probation. Notwithstanding any other provision of this section, if the person at any time while committed to the custody of a residential treatment facility pursuant to this section commits an act that would constitute an escape, the court shall forthwith permanently revoke the person's special probation.

(7) An action for a violation under this section may be brought by a probation officer or prosecutor or on the court's own motion. Failure to complete successfully the required treatment program shall constitute a violation of the person's special probation. A person who fails to comply with the terms of his special probation pursuant to this section and is thereafter sentenced to imprisonment in accordance with this subsection shall thereafter be ineligible for entry into the Intensive Supervision Program.

g. When a person on special probation is subject to a presumption of revocation on a second or subsequent violation pursuant to paragraph (2) of subsection f. of this section, or when the person refuses to undergo drug or alcohol testing pursuant to paragraph (6) of subsection f. of this section, the court may, in lieu of permanently revoking the person's special probation, impose a term of incarceration for a period of not less than 30 days nor more than six months, after which the person's term of special probation pursuant to this section may be reinstated. In

determining whether to order a period of incarceration in lieu of permanent revocation pursuant to this subsection, the court shall consider the recommendations of the treatment provider with respect to the likelihood that such confinement would serve to motivate the person to make satisfactory progress in treatment once special probation is reinstated. This disposition may occur only once with respect to any person unless the court is clearly convinced that there are compelling and extraordinary reasons to justify reimposing this disposition with respect to the person. Any such determination by the court to reimpose this disposition may be appealed by the prosecution. Nothing in this subsection shall be construed to limit the authority of the court at any time during the period of special probation to order a person on special probation who is not subject to a presumption of revocation pursuant to paragraph (2) of subsection f. of this section to be incarcerated over the course of a weekend, or for any other reasonable period of time, when the court in its discretion determines that such incarceration would help to motivate the person to make satisfactory progress in treatment.

h. The court, as a condition of its order, and after considering the person's financial resources, shall require the person to pay that portion of the costs associated with his participation in any rehabilitation program or period of residential treatment imposed pursuant to this section which, in the opinion of the court, is consistent with the person's ability to pay, taking into account the court's authority to order payment or reimbursement to be made over time and in installments.

i. The court shall impose, as a condition of the special probation, any fine, penalty, fee or restitution applicable to the offense for which the person was convicted or adjudicated delinquent.

3. This act shall take effect immediately.

Approved June 29, 2001.

Office of the Governor
NEWS RELEASE

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**DiFRANCESCO SIGNS BILL ADDING MURDERERS TO NO EARLY
RELEASE ACT**

Acting Governor Donald T. DiFrancesco today signed A-3201/S-2233 which closes a loophole in the No Early Release Act (NERA) that left murderers off the list of criminals subject to the law.

"The goal of the NERA is to crack down on violent criminals and send a strong message about crime. The interpretation by the courts to exclude murderers from this law is an affront to our efforts to give victims of violent crimes and the survivors of murder victims some comfort," said the acting Governor.

The NERA was passed in 1997 and requires violent convicts to serve at least 85 percent of their terms before becoming eligible for parole. The loophole in the law was discovered when a Superior Court judge tried to apply it to the case of Sam Manzie who plead guilty in 1999 to the strangling of Eddie Werner. When challenged by Manzie's attorneys, an appeals court found murder to be exempt from the NERA.

To eliminate any misinterpretation, A-3201/S-2233 specifically names murder as a crime covered by the NERA. Robbery, vehicular homicide and aggravated assault are among other violent crimes specifically named in A-3021/S-2233 as being subject to NERA

"By fast tracking the bill through the legislative process, and signing it today, we can assure families of murder victims that no more killers will be allowed to slip through the loophole," said the acting Governor.

Senators Louis Kosco (R-Bergen) and Diane Allen (R-Burlington) and Assembly members James Holzapfel (R-Monmouth/Ocean) and Tom Smith (R-Monmouth) sponsored the bill.

"New Jersey took another step forward today toward protecting its citizens and securing the rights of victims," said DiFrancesco.