

LEGISLATIVE HISTORY CHECKLIST
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(Capital punishment--
 legislative intent)

NJSA: 2C:11-3

LAWS OF: 1993 **CHAPTER:** 111

BILL NO: A2113

SPONSOR(S) Mikulak

DATE INTRODUCED: December 17, 1992

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** February 1, 1993
SENATE: March 22, 1993

DATE OF APPROVAL: May 5, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: ~~No~~ YES

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes

974.90 New Jersey. Legislature. Senate Judiciary Committee.
 C244 Public hearing on SCR 48, SJR 18 and ACR 20, held 5-26-82,
 1992 Paterson NJ, 1992.

(over)

097.90 New Jersey. Legislature. Assembly. Judiciary Committee.
C922 Public hearing, held 3-16-92.
1992a Trenton, 1992.

See also newspaper clippings--attached:

"Florio inks law to simplify death penalty rules," 5-6-93 Home News.

"NJ broadens death penalty," 5-6-92 Bergen Record.

"Law lifts roadblock to the death penalty," 5-6-93 Star Ledger.

KBG:pp

P.L.1993, CHAPTER 111, *approved May 5, 1993*
1992 Assembly No. 2113

1 AN ACT concerning the death penalty and amending
2 N.J.S.2C:11-3.

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

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

7 2C:11-3. Murder. a. Except as provided in N.J.S.2C:11-4
8 criminal homicide constitutes murder when:

9 (1) The actor purposely causes death or serious bodily injury
10 resulting in death; or

11 (2) The actor knowingly causes death or serious bodily injury
12 resulting in death; or

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

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

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

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

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

36 b. Murder is a crime of the first degree but a person convicted
37 of murder shall be sentenced, except as provided in subsection c.
38 of this section, by the court to a term of 30 years, during which
39 the person shall not be eligible for parole or to a specific term of
40 years which shall be between 30 years and life imprisonment of
41 which the person shall serve 30 years before being eligible for
42 parole.

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 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
4 or promise of payment of anything of pecuniary value shall be
5 sentenced as provided hereafter:

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

9 Where the defendant has been tried by a jury, the proceeding
10 shall be conducted by the judge who presided at the trial and
11 before the jury which determined the defendant's guilt except
12 that, for good cause, the court may discharge that jury and
13 conduct the proceeding before a jury empaneled for the purpose
14 of the proceeding. Where the defendant has entered a plea of
15 guilty or has been tried without a jury, the proceeding shall be
16 conducted by the judge who accepted the defendant's plea or who
17 determined the defendant's guilt and before a jury empaneled for
18 the purpose of the proceeding. On motion of the defendant and
19 with consent of the prosecuting attorney the court may conduct a
20 proceeding without a jury. Nothing in this subsection shall be
21 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
24 during 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.
28 The defendant shall have the burden of producing evidence of the
29 existence of any mitigating factors set forth in paragraph (5) of
30 this subsection but shall not have a burden with regard to the
31 establishment of a mitigating factor.

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

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

48 (d) The State and the defendant shall be permitted to rebut
49 any evidence presented by the other party at the sentencing
50 proceeding and to present argument as to the adequacy of the
51 evidence to establish the existence of any aggravating or
52 mitigating factor.

53 (e) Prior to the commencement of the sentencing proceeding,
54 or at such time as he has knowledge of the existence of an

1 aggravating factor, the prosecuting attorney shall give notice to
2 the defendant of the aggravating factors which he intends to
3 prove in the proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (5) The mitigating factors which may be found by the jury or

1 the court are:

2 (a) The defendant was under the influence of extreme mental
3 or emotional disturbance insufficient to constitute a defense to
4 prosecution;

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

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

8 (d) The defendant's capacity to appreciate the wrongfulness of
9 his conduct or to conform his conduct to the requirements of the
10 law was significantly impaired as the result of mental disease or
11 defect or intoxication, but not to a degree sufficient to
12 constitute a defense to prosecution;

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

15 (f) The defendant has no significant history of prior criminal
16 activity;

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

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

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
25 of Court, to the Supreme Court. Upon the request of the
26 defendant, the Supreme Court shall also determine whether the
27 sentence is disproportionate to the penalty imposed in similar
28 cases, considering both the crime and the defendant. Proportionality
29 review under this section shall be limited to a
30 comparison of similar cases in which a sentence of death has been
31 imposed under subsection c. of this section. In any instance in
32 which the defendant fails, or refuses to appeal, the appeal shall
33 be taken by the Office of the Public Defender or other counsel
34 appointed by the Supreme Court for that purpose.

35 f. Prior to the jury's sentencing deliberations, the trial court
36 shall inform the jury of the sentences which may be imposed
37 pursuant to subsection b. of this section on the defendant if the
38 defendant is not sentenced to death. The jury shall also be
39 informed that a failure to reach a unanimous verdict shall result
40 in sentencing by the court pursuant to subsection b.

41 g. A juvenile who has been tried as an adult and convicted of
42 murder shall not be sentenced pursuant to the provisions of
43 subsection c. but shall be sentenced pursuant to the provisions of
44 subsection b. of this section.

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

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

52 (cf: P.L.1992, c.76, s.1)

53 2. This act shall take effect innmediately.

STATEMENT

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2
3 As a result of a vote of the people of the State of New Jersey,
4 effective December 3, 1992, Article I, paragraph 12 of the New
5 Jersey Constitution is amended to provide, "It shall not be cruel
6 and unusual punishment to impose the death penalty on a person
7 convicted of purposely or knowingly injury resulting in death who
8 committed the homicidal act by his own conduct or who as an
9 accomplice procured the commission of the offense by payment
10 or promise of payment of anything of pecuniary value." The
11 amendment responds to the New Jersey Supreme Court's decision
12 in State v. Gerald, 113 N.J. 40 (1988). In Gerald the Court held
13 that Article I, paragraph 12, prohibited subjecting to the death
14 penalty persons convicted of purposely or knowingly causing
15 serious bodily injury resulting in death. Id. at 69.

16 This bill is designed to ensure that the amendment is given full
17 effect. Although the Supreme Court based its constitutional
18 decision in Gerald on its conclusion that the "death penalty
19 statute clearly exposes to the death penalty one who purposely or
20 knowingly causes serious bodily injury resulting in death." Id. at
21 71, the Court also described its decision to exclude such persons
22 from the reach of the statute as "comporting with the
23 Legislature's intent in restoring the death penalty." Id. at 89.

24 Therefore, in order to clarify legislature intent and thereby
25 avoid additional judicial construction that might narrow the scope
26 of the law to comport with the Court's view of the Legislature's
27 intent, this bill would amend New Jersey's death penalty statute
28 to clearly state that the term "homicidal act" means conduct
29 that causes "death or services bodily injury resulting in death."
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32
33
34 Clarifies legislative intent with regard to capital punishment.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2113

STATE OF NEW JERSEY

DATED: JANUARY 6, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably Assembly Bill No. 2113.

As a result of a vote of the people of the State of New Jersey, effective December 3, 1992, Article I, paragraph 12 of the New Jersey Constitution is amended to provide, "It shall not be cruel and unusual punishment to impose the death penalty on a person convicted of purposely or knowingly causing serious bodily injury resulting in death who committed the homicidal act by his own conduct or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value." The amendment responds to the New Jersey Supreme Court's decision in State v. Gerald, 113 N.J. 40 (1988). In Gerald the Court held that Article I, paragraph 12, prohibited subjecting to the death penalty persons convicted of purposely or knowingly causing serious bodily injury resulting in death. Id. at 69.

This bill is designed to ensure that the amendment is given full effect. Although the Supreme Court based its constitutional decision in Gerald on its conclusion that the "death penalty statute clearly exposes to the death penalty one who purposely or knowingly causes serious bodily injury resulting in death." Id. at 71, the court also described its decision to exclude such persons from the reach of the statute as "comporting with the Legislature's intent in restoring the death penalty." Id. at 89.

Therefore, in order to clarify legislative intent and thereby avoid additional judicial construction that might narrow the scope of the law to comport with the court's view of the legislative intent, this bill would amend New Jersey's death penalty statute to clearly state that the term "homicidal act" means conduct that causes "death or serious bodily injury resulting in death." This amendment clarifies that the Legislature's intent regarding the category of homicides eligible for the death penalty has remained consistent since the effective date of P.L.1982, c.111 which added subsection c. and other subsections to N.J.S.2C:11-3, the current capital punishment statute.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2113

STATE OF NEW JERSEY

DATED: FEBRUARY 18, 1993

The Senate Judiciary Committee reports favorably Assembly Bill No. 2113.

As a result of the last election an amendment to Article I, paragraph 12 of the New Jersey Constitution was adopted. That amendment, which became effective on December 3, 1992, provides that, "It shall not be cruel and unusual punishment to impose the death penalty on a person convicted of purposely or knowingly causing serious bodily injury resulting in death who committed the homicidal act by his own conduct or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value." This amendment was adopted in response to the New Jersey Supreme Court's decision in State v. Gerald, 113 N.J. 40 (1988). In Gerald the Court held that Article I, paragraph 12, prohibited subjecting to the death penalty persons convicted of purposely or knowingly causing serious bodily injury resulting in death.

This bill is designed to ensure that this recently adopted amendment is given full effect. In reaching its decision in Gerald, the Supreme Court ruled that not only did New Jersey's Constitution prohibit the imposition of the death penalty on persons convicted of intentionally causing bodily injury resulting in death but also that the exclusion of this type of murderer from the scope of the capital punishment statute comported with the Legislature's intent in restoring the death penalty.

Therefore, in order to clarify legislative intent and thereby avoid additional judicial construction that might narrow the scope of the law to comport with the court's view of the legislative intent, this bill would amend New Jersey's death penalty statute to clearly state that the term "homicidal act" means conduct that causes "death or serious bodily injury resulting in death."

This bill is identical to Senate Bill No. 1482.

974-901
661



OFFICE OF THE GOVERNOR

NEWS RELEASE

CN-001
Contact:

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Release: Wednesday
May 4, 1993

GOVERNOR SIGNS LAW CLARIFYING DEATH PENALTY LAW

PISCATAWAY -- Giving prosecutors another tool to use in court against murderers, Governor Jim Florio today signed a law which continues to close legal loopholes in the state's death penalty law, unused since its creation in 1982. The measure enforces a constitutional amendment approved by state voters last November.

"Last November, the citizens of New Jersey spoke out on an issue that concerns us all. They wanted to be sure that vicious killers who cause a death face the possibility of death themselves, so they amended the state Constitution to make that intent crystal clear. We're here today to carry out their will," said Governor Florio. "This law restores reason to our system and faith in our system by preventing the kinds of loopholes that have in the past made New Jersey's death penalty one that existed on paper only."

"This new law ensures that our statutes are consistent with the constitution and it reflects our belief as a society that there are crimes so heinous, so depraved, that people who commit them forfeit their own claims on life," said the Governor.

Under the new law, the death penalty can be sought in cases where someone inflicts serious bodily injury resulting in death regardless of whether they actually intended to kill. The law clarifies the intent of the death penalty law in accordance with a constitutional amendment approved by voters last November. Following its passage, Governor Florio directed Attorney General Robert Del Tufo to take immediate steps to ensure the proper implementation of the amendment, which led to the legislation signed today by the Governor. The amendment expands the state Constitution to provide that it is not "cruel and unusual punishment" to sentence to death someone who inflicts serious bodily injury that results in death.

Under the current law, prosecutors can seek the death penalty only in cases where an *intent* to kill can be demonstrated. The restrictions to the death penalty law were imposed by a 1988 state Supreme Court ruling. The court case, State v. Gerald, involved a man who beat his victim to death, but the court ruled that the death penalty could not be applied to such cases because the person did not intend to kill his victim.

A 2113/S 1482 was sponsored by Assemblypersons Stephen Mikulak and Anthony Impeveduto, and Senators Jack Sinagra and Andrew Ciesla.

"Whether a murderer kills with intent or simply with a vicious and willful disregard for human life is a legal complexity that need not concern most of us. The result is the same," said Governor Florio. "Survivors suffer just as deeply. Our social fabric is just as badly torn, and the punishment should be just as severe. Violent killers should not be shielded by legal technicalities."

Last January, Governor Florio signed a law extending the death penalty to drug traffickers who order others to commit murder as part of their trafficking network. That law was one of three actions called for by the Governor to strengthen and enforce the state's death penalty. He previously called on the state's Supreme Court to fully enforce the death penalty and urged clarification of "proportionality review" to make it a stricter, fairer and more sensible standard -- a measure he signed into law last May.

"We need more than theories to fight back against killers," Governor Florio said. "We need a death penalty that works."

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