

2C:11-3

**LEGISLATIVE HISTORY CHECKLIST**  
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(Prohibits introduction of  
evidence--execution--capital  
punishment cases)

NJSA: 2C:11-3

LAWS OF: 1992 CHAPTER: 76

BILL NO: A256

SPONSOR(S) Stuhtrager and others

DATE INTRODUCED: Pre-filed

COMMITTEE: ASSEMBLY: Judiciary, Law, Public Safety & Defense  
SENATE: Judiciary

AMENDED DURING PASSAGE: Yes Amendments during passage  
denoted by asterisk

DATE OF PASSAGE: ASSEMBLY: April 30, 1992  
SENATE: July 20, 1992

DATE OF APPROVAL: July 31, 1992

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

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached

KBG:pp

[FIRST REPRINT]  
ASSEMBLY, No. 256

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Assemblyman STUHLTRAGER, Assemblywoman HAINES  
and Assemblyman Geist

1 AN ACT concerning capital punishment 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 section 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  
14 with one or more other persons, is engaged in the commission  
15 of, or an attempt to commit, or flight after committing or  
16 attempting to commit robbery, sexual assault, arson, burglary,  
17 kidnapping or criminal escape, and in the course of such crime  
18 or of immediate flight therefrom, any person causes the death  
19 of a person other than one of the participants; except that in  
20 any prosecution under this subsection, in which the defendant  
21 was not the only participant in the underlying crime, it is an  
22 affirmative defense that the defendant:

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

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

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

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

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

Matter enclosed in superscript numerals has been adopted as follows:  
1 Assembly AJL committee amendments adopted February 27, 1992.

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  
8 death or pursuant to the provisions of subsection b. of this  
9 section.

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

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

33 (b) The admissibility of evidence offered by the State to  
34 establish any of the aggravating factors shall be governed by the  
35 rules governing the admission of evidence at criminal trials.  
36 The defendant may offer, without regard to the rules governing  
37 the admission of evidence at criminal trials, reliable evidence  
38 relevant to any of the mitigating factors. If the defendant  
39 produces evidence in mitigation which would not be admissible  
40 under the rules governing the admission of evidence at criminal  
41 trials, the State may rebut that evidence without regard to the  
42 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)  
45 and (5) of this subsection, shall be considered without the  
46 necessity of reintroducing that evidence at the sentencing  
47 proceeding; provided that the fact finder at the sentencing  
48 proceeding was present as either the fact finder or the judge at  
49 the trial.

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

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

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

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

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

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

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

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

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

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

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

40 (d) The defendant committed the murder as consideration for  
41 the receipt, or in expectation of the receipt of anything of  
42 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  
47 another offense committed by the defendant or another;

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

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

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

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

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

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

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

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

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

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

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

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

24 e. Every judgment of conviction which results in a sentence  
25 of death under this section shall be appealed, pursuant to the  
26 Rules of Court, to the Supreme Court. Upon the request of the  
27 defendant, the Supreme Court shall also determine whether the  
28 sentence is disproportionate to the penalty imposed in similar  
29 cases, considering both the crime and the defendant. In any  
30 instance in which the defendant fails, or refuses to appeal, the  
31 appeal shall be taken by the Office of the Public Defender or  
32 other counsel appointed by the Supreme Court for that purpose.

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

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

43 h. In a sentencing proceeding conducted pursuant to this  
44 section, no <sup>1</sup>[testimony] evidence<sup>1</sup> shall be admissible <sup>1</sup>[which  
45 describes] concerning<sup>1</sup> the method <sup>1</sup>or manner<sup>1</sup> of execution  
46 which would be imposed on a defendant sentenced to death.

47 (cf: P.L.1985, c.478, s.1)

48 2. This act shall take effect immediately.

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53 Prohibits the introduction of evidence concerning the method or  
54 manner of execution in a capital punishment case.

1 public servant.

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

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

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

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

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

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

17 (f) The defendant has no significant history of prior criminal  
18 activity;

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

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

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

25 e. Every judgment of conviction which results in a sentence  
26 of death under this section shall be appealed, pursuant to the  
27 Rules of Court, to the Supreme Court. Upon the request of the  
28 defendant, the Supreme Court shall also determine whether the  
29 sentence is disproportionate to the penalty imposed in similar  
30 cases, considering both the crime and the defendant. In any  
31 instance in which the defendant fails, or refuses to appeal, the  
32 appeal shall be taken by the Office of the Public Defender or  
33 other counsel appointed by the Supreme Court for that purpose.

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

44 h. In a sentencing proceeding conducted pursuant to this  
45 section, no testimony shall be admissible which describes the  
46 method of execution which would be imposed on a defendant  
47 sentenced to death.

48 2. This act shall take effect immediately.

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## STATEMENT

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Some states allow defendants in capital punishment cases to present testimony describing the method of execution that

1 would be carried out if the jury decided upon a sentence of  
2 death. This bill prohibits the introduction of such testimony.

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7 Prohibits the introduction of testimony concerning the method  
8 of execution in a capital punishment case.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 256

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 27, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 256.

This bill prohibits the introduction of evidence in the sentencing proceeding in a capital punishment case concerning the method or manner of execution that would be imposed on a defendant sentenced to death. The bill in its original form used the term "testimony" rather than evidence. The committee felt that the term "evidence" was broader and thus, more appropriate. The committee amendments also changed the phrase "which describes" to "concerning" for the same reason and inserted "or manner" after "method".

This bill was pre-filed for introduction in the 1992 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.



SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 256

STATE OF NEW JERSEY

DATED: JUNE 15, 1992

The Senate Judiciary Committee reports favorably Assembly Bill No. 256.

This bill would prohibit the introduction of evidence in the sentencing phase of a capital punishment prosecution concerning the method or manner of execution if the jury were to decide to impose the death sentence.