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"New law would keep killers behind bars for their lives," 8-23-2000 Asbury Park Press, p.A8

"Relieving anxiety of bereaved kin," 8-6-2000 Trenton Times, p.A1

# SENATE, No. 530

## STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Senator LOUIS F. KOSCO**

**District 38 (Bergen)**

**Senator JOHN J. MATHEUSSEN**

**District 4 (Camden and Gloucester)**

**Co-Sponsored by:**

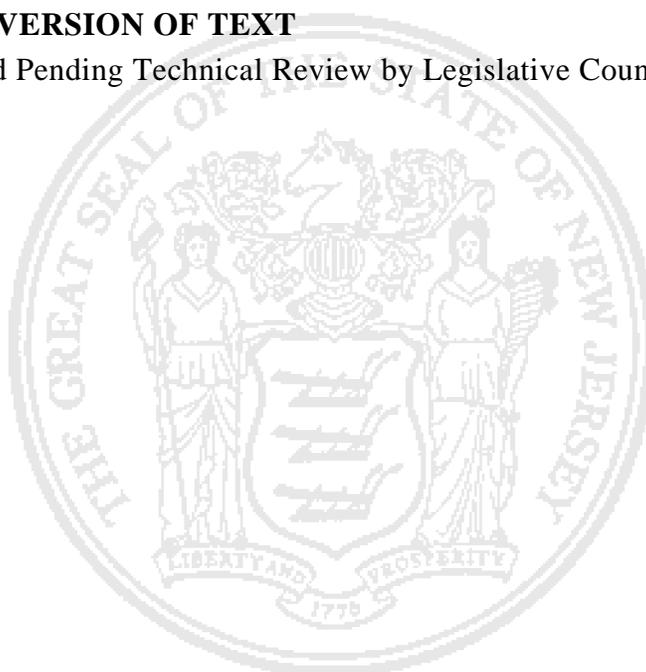
**Senators Bucco, Bennett and Allen**

**SYNOPSIS**

Provides for life sentence without parole eligibility for persons convicted of murder under certain circumstances.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 1/26/2000)**

1 AN ACT concerning the punishment for murder in certain  
2 circumstances and amending 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. N.J.S.2C:11-3 is amended to read as follows:  
8 2C:11-3. Murder.

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

11 (1) The actor purposely causes death or serious bodily injury  
12 resulting in death; or

13 (2) The actor knowingly causes death or serious bodily injury  
14 resulting in death; or

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

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

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

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

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

35 b. (1) Murder is a crime of the first degree but a person convicted  
36 of murder shall be sentenced, except as provided in subsection c. of  
37 this section, by the court to a term of 30 years, during which the  
38 person shall not be eligible for parole, or be sentenced to a specific  
39 term of years which shall be between 30 years and life imprisonment  
40 of which the person shall serve 30 years before being eligible for  
41 parole.

42 (2) If the victim was a law enforcement officer and was murdered  
43 while performing his official duties or was murdered because of his

**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 status as a law enforcement officer, the person convicted of that  
2 murder shall be sentenced, except as otherwise provided in subsection  
3 c. of this section, by the court to a term of life imprisonment, during  
4 which the person shall not be eligible for parole.

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

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

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

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

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

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

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

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

1 verdict becomes ill or is otherwise unable to proceed before or during  
2 the sentencing proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (a) The defendant was under the influence of extreme mental or

1 emotional disturbance insufficient to constitute a defense to  
2 prosecution;

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

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

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

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

13 (f) The defendant has no significant history of prior criminal  
14 activity;

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

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

19 (6) When a defendant at a sentencing proceeding presents evidence  
20 of the defendant's character or record pursuant to subparagraph (h)  
21 of paragraph (5) of this subsection, the State may present evidence of  
22 the murder victim's character and background and of the impact of the  
23 murder on the victim's survivors. If the jury finds that the State has  
24 proven at least one aggravating factor beyond a reasonable doubt and  
25 the jury finds the existence of a mitigating factor pursuant to  
26 subparagraph (h) of paragraph (5) of this subsection, the jury may  
27 consider the victim and survivor evidence presented by the State  
28 pursuant to this paragraph in determining the appropriate weight to  
29 give mitigating evidence presented pursuant to subparagraph (h) of  
30 paragraph (5) of this subsection.

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

33 e. Every judgment of conviction which results in a sentence of  
34 death under this section shall be appealed, pursuant to the Rules of  
35 Court, to the Supreme Court. Upon the request of the defendant, the  
36 Supreme Court shall also determine whether the sentence is  
37 disproportionate to the penalty imposed in similar cases, considering  
38 both the crime and the defendant. Proportionality review under this  
39 section shall be limited to a comparison of similar cases in which a  
40 sentence of death has been imposed under subsection c. of this section.  
41 In any instance in which the defendant fails, or refuses to appeal, the  
42 appeal shall be taken by the Office of the Public Defender or other  
43 counsel appointed by the Supreme Court for that purpose.

44 f. Prior to the jury's sentencing deliberations, the trial court shall  
45 inform the jury of the sentences which may be imposed pursuant to  
46 subsection b. of this section on the defendant if the defendant is not

1 sentenced to death. The jury shall also be informed that a failure to  
2 reach a unanimous verdict shall result in sentencing by the court  
3 pursuant to subsection b.

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

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

11 i. For purposes of this section the term "homicidal act" shall mean  
12 conduct that causes death or serious bodily injury resulting in death.  
13 (cf: P.L.1999, c.209, s.1)

14

15 2. This act shall take effect immediately.

16

17

18

STATEMENT

19

20 Under current law, if the death penalty is sought after a murder  
21 conviction and the death penalty is not imposed, the defendant is  
22 sentenced to either thirty years imprisonment with no eligibility for  
23 parole or to life imprisonment with a parole ineligibility term of thirty  
24 years. The only exceptions are if the murder victim was either a law  
25 enforcement officer in the performance of his duties or a child under  
26 14 murdered in connection with a sexual assault. In those cases, if the  
27 death penalty is not imposed, the convicted murderer receives a life  
28 sentence with no parole eligibility.

29 The bill provides that in a capital case, if the death penalty is not  
30 imposed either because the jury is unable to reach a unanimous verdict  
31 or because, after determining that aggravating factors exist, the jury  
32 finds that those factors do not outweigh any mitigating factors  
33 established, the defendant shall be sentenced to life imprisonment with  
34 no parole eligibility.

# SENATE JUDICIARY COMMITTEE

## STATEMENT TO

### **SENATE, No. 530**

# **STATE OF NEW JERSEY**

DATED: JANUARY 31, 2000

The Senate Judiciary Committee reports favorably Senate Bill No. 530.

Under present law, if the death penalty is sought after a murder conviction and the death penalty is not imposed, the defendant is sentenced to either thirty years imprisonment with no eligibility for parole or to life imprisonment with a parole ineligibility term of thirty years. The only exceptions are if the murder victim was either a law enforcement officer in the performance of his duties or a child under 14 murdered in connection with a sexual assault. In those cases, if the death penalty is not imposed, the convicted murderer receives a life sentence with no parole eligibility. This bill provides that in any capital case, if the death penalty is not imposed either because the jury is unable to reach a unanimous verdict or because, after determining that aggravating factors exist, the jury finds that those factors do not outweigh any mitigating factors established, the defendant shall be sentenced to life imprisonment with no parole eligibility.

This bill was prefiled for introduction in the 2000 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

**SENATE, No. 530**

**STATE OF NEW JERSEY**

DATED: MARCH 23, 2000

The Assembly Judiciary Committee reports favorably Senate Bill No. 530.

Under present law, if the death penalty is sought after a murder conviction and the death penalty is not imposed, the defendant is sentenced to either thirty years imprisonment with no eligibility for parole or to life imprisonment with a parole ineligibility term of thirty years. The only exceptions are if the murder victim was either a law enforcement officer in the performance of his duties or a child under 14 murdered in connection with a sexual assault. In those cases, if the death penalty is not imposed, the convicted murderer receives a life sentence with no parole eligibility. This bill provides that in any capital case, if the death penalty is not imposed either because the jury is unable to reach a unanimous verdict or because, after determining that aggravating factors exist, the jury finds that those factors do not outweigh any mitigating factors established, the defendant shall be sentenced to life imprisonment with no parole eligibility.

This bill is identical to the Assembly Committee Substitute for Assembly Nos. 2148/1482.

# SENATE, No. 530

## STATE OF NEW JERSEY 209th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Senator LOUIS F. KOSCO**

**District 38 (Bergen)**

**Senator JOHN J. MATHEUSSEN**

**District 4 (Camden and Gloucester)**

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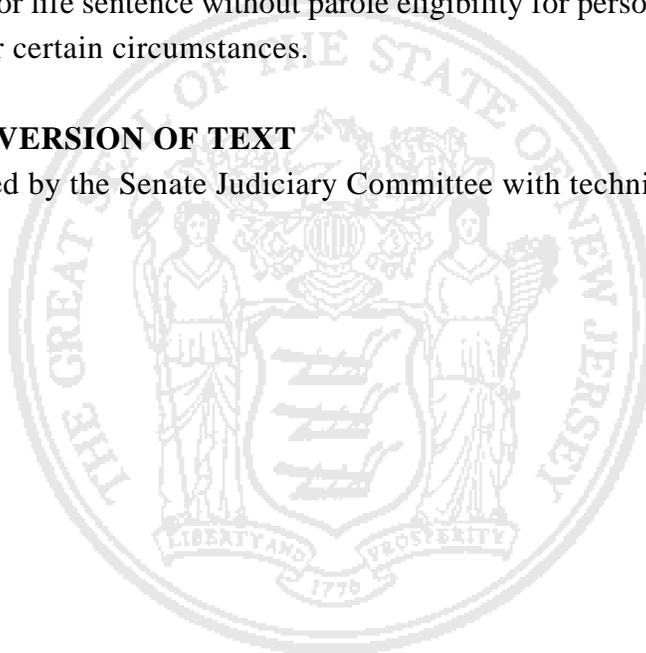
**Senators Bucco, Bennett, Allen, Palaia, Inverso, Assemblywoman Heck, Assemblymen Talarico, Garrett, Biondi, Merkt, DiGaetano, O'Toole, Holzapfel, Carroll, LeFevre, Kelly, Assemblywoman Greenstein and Assemblyman Gregg**

**SYNOPSIS**

Provides for life sentence without parole eligibility for persons convicted of murder under certain circumstances.

**CURRENT VERSION OF TEXT**

As reported by the Senate Judiciary Committee with technical review.



**(Sponsorship Updated As Of: 5/26/2000)**

1 AN ACT concerning the punishment for murder in certain  
2 circumstances and amending 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. N.J.S.2C:11-3 is amended to read as follows:  
8 2C:11-3. Murder.

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

11 (1) The actor purposely causes death or serious bodily injury  
12 resulting in death; or

13 (2) The actor knowingly causes death or serious bodily injury  
14 resulting in death; or

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

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

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

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

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

35 b. (1) Murder is a crime of the first degree but a person convicted  
36 of murder shall be sentenced, except as provided in subsection c. of  
37 this section, by the court to a term of 30 years, during which the  
38 person shall not be eligible for parole, or be sentenced to a specific  
39 term of years which shall be between 30 years and life imprisonment  
40 of which the person shall serve 30 years before being eligible for  
41 parole.

42 (2) If the victim was a law enforcement officer and was murdered  
43 while performing his official duties or was murdered because of his

**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 status as a law enforcement officer, the person convicted of that  
2 murder shall be sentenced, except as otherwise provided in subsection  
3 c. of this section, by the court to a term of life imprisonment, during  
4 which the person shall not be eligible for parole.

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

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

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

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

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

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

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

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

1 verdict becomes ill or is otherwise unable to proceed before or during  
2 the sentencing proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (a) The defendant was under the influence of extreme mental or

1 emotional disturbance insufficient to constitute a defense to  
2 prosecution;

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

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

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

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

13 (f) The defendant has no significant history of prior criminal  
14 activity;

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

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

19 (6) When a defendant at a sentencing proceeding presents evidence  
20 of the defendant's character or record pursuant to subparagraph (h)  
21 of paragraph (5) of this subsection, the State may present evidence of  
22 the murder victim's character and background and of the impact of the  
23 murder on the victim's survivors. If the jury finds that the State has  
24 proven at least one aggravating factor beyond a reasonable doubt and  
25 the jury finds the existence of a mitigating factor pursuant to  
26 subparagraph (h) of paragraph (5) of this subsection, the jury may  
27 consider the victim and survivor evidence presented by the State  
28 pursuant to this paragraph in determining the appropriate weight to  
29 give mitigating evidence presented pursuant to subparagraph (h) of  
30 paragraph (5) of this subsection. As used in this paragraph "victim  
31 and survivor evidence" may include the display of a photograph of the  
32 victim taken before the homicide.

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

35 e. Every judgment of conviction which results in a sentence of  
36 death under this section shall be appealed, pursuant to the Rules of  
37 Court, to the Supreme Court. Upon the request of the defendant, the  
38 Supreme Court shall also determine whether the sentence is  
39 disproportionate to the penalty imposed in similar cases, considering  
40 both the crime and the defendant. Proportionality review under this  
41 section shall be limited to a comparison of similar cases in which a  
42 sentence of death has been imposed under subsection c. of this section.  
43 In any instance in which the defendant fails, or refuses to appeal, the  
44 appeal shall be taken by the Office of the Public Defender or other  
45 counsel appointed by the Supreme Court for that purpose.

46 f. Prior to the jury's sentencing deliberations, the trial court shall

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

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

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

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

15 j. In a sentencing proceeding conducted pursuant to this section,  
16 the display of a photograph of the victim taken before the homicide  
17 shall be permitted.

18 (cf: P.L.1999, c.294, s.1)

19

20 2. This act shall take effect immediately.

STATEMENT TO  
**SENATE, No. 530**

with Assembly Floor Amendments  
(Proposed By Assemblywoman Heck and Assemblyman TALARICO)

ADOPTED: MAY 25, 2000

This bill provides that in any capital case, if the death penalty is not imposed either because the jury or court is unable to reach a unanimous verdict or because, after determining that aggravating factors exist, the jury or court finds that those factors do not outweigh any mitigating factors established, the defendant shall be sentenced to life imprisonment with no parole eligibility.

This floor amendment moves and modifies slightly the language in the statute concerning no entitlement to commutation and work credit. This change is intended to be a clarification of current practice. If the language were not changed, the sponsor was concerned an issue could be raised as to its applicability to paragraph (4) of subsection b. of N.J.S.A.2C:11-3. The intent that the provision concerning no entitlement to commutation and work credit applies to the entire subsection b. of N.J.S.A.2C:11-3 is made clear by this floor amendment.

[First Reprint]

**SENATE, No. 530**

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**STATE OF NEW JERSEY**  
**209th LEGISLATURE**

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PRE-FILED FOR INTRODUCTION IN THE 2000 SESSION

**Sponsored by:**

**Senator LOUIS F. KOSCO**

**District 38 (Bergen)**

**Senator JOHN J. MATHEUSSEN**

**District 4 (Camden and Gloucester)**

**Co-Sponsored by:**

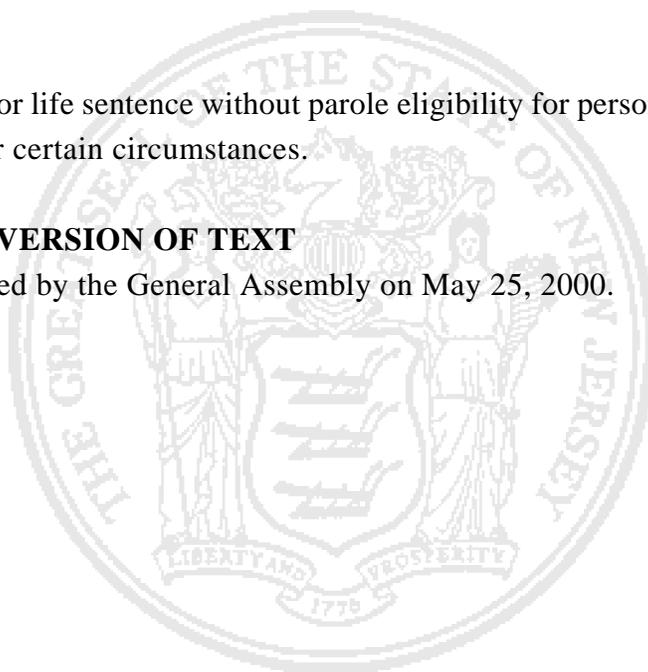
**Senators Bucco, Bennett, Allen, Palaia, Inverso, Assemblywoman Heck, Assemblymen Talarico, Garrett, Biondi, Merkt, DiGaetano, O'Toole, Holzapfel, Carroll, LeFevre, Kelly, Assemblywoman Greenstein and Assemblyman Gregg**

**SYNOPSIS**

Provides for life sentence without parole eligibility for persons convicted of murder under certain circumstances.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on May 25, 2000.



**(Sponsorship Updated As Of: 5/26/2000)**

1 AN ACT concerning the punishment for murder in certain  
2 circumstances and amending 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. N.J.S.2C:11-3 is amended to read as follows:  
8 2C:11-3. Murder.

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

11 (1) The actor purposely causes death or serious bodily injury  
12 resulting in death; or

13 (2) The actor knowingly causes death or serious bodily injury  
14 resulting in death; or

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

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

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

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

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

35 b. (1) Murder is a crime of the first degree but a person convicted  
36 of murder shall be sentenced, except as provided in subsection c. of  
37 this section, by the court to a term of 30 years, during which the  
38 person shall not be eligible for parole, or be sentenced to a specific  
39 term of years which shall be between 30 years and life imprisonment  
40 of which the person shall serve 30 years before being eligible for  
41 parole.

42 (2) If the victim was a law enforcement officer and was murdered

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly floor amendments adopted May 25, 2000.

1 while performing his official duties or was murdered because of his  
2 status as a law enforcement officer, the person convicted of that  
3 murder shall be sentenced, except as otherwise provided in subsection  
4 c. of this section, by the court to a term of life imprisonment, during  
5 which the person shall not be eligible for parole.

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

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

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

14 <sup>1</sup>[The defendant shall not be entitled to a deduction of  
15 commutation and work credits from that sentence.]<sup>1</sup>

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

24 <sup>1</sup>With respect to a sentence imposed pursuant to this subsection,  
25 the defendant shall not be entitled to a deduction of commutation and  
26 work credits from that sentence.<sup>1</sup>

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

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

38 Where the defendant has been tried by a jury, the proceeding shall  
39 be conducted by the judge who presided at the trial and before the jury  
40 which determined the defendant's guilt, except that, for good cause,  
41 the court may discharge that jury and conduct the proceeding before  
42 a jury empaneled for the purpose of the proceeding. Where the  
43 defendant has entered a plea of guilty or has been tried without a jury,  
44 the proceeding shall be conducted by the judge who accepted the  
45 defendant's plea or who determined the defendant's guilt and before a  
46 jury empaneled for the purpose of the proceeding. On motion of the

1 defendant and with consent of the prosecuting attorney the court may  
2 conduct a proceeding without a jury. Nothing in this subsection shall  
3 be construed to prevent the participation of an alternate juror in the  
4 sentencing proceeding if one of the jurors who rendered the guilty  
5 verdict becomes ill or is otherwise unable to proceed before or during  
6 the sentencing proceeding.

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

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

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

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

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

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

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

1 (a) If the jury or the court finds that any aggravating factors exist  
2 and that all of the aggravating factors outweigh beyond a reasonable  
3 doubt all of the mitigating factors, the court shall sentence the  
4 defendant to death.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 (a) The defendant was under the influence of extreme mental or  
5 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 of his  
11 conduct or to conform his conduct to the requirements of the law was  
12 significantly impaired as the result of mental disease or defect or  
13 intoxication, but not to a degree sufficient to constitute a defense to  
14 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 in  
20 the prosecution of another person for the crime of murder; or

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

23 (6) When a defendant at a sentencing proceeding presents evidence  
24 of the defendant's character or record pursuant to subparagraph (h) of  
25 paragraph (5) of this subsection, the State may present evidence of the  
26 murder victim's character and background and of the impact of the  
27 murder on the victim's survivors. If the jury finds that the State has  
28 proven at least one aggravating factor beyond a reasonable doubt and  
29 the jury finds the existence of a mitigating factor pursuant to  
30 subparagraph (h) of paragraph (5) of this subsection, the jury may  
31 consider the victim and survivor evidence presented by the State  
32 pursuant to this paragraph in determining the appropriate weight to  
33 give mitigating evidence presented pursuant to subparagraph (h) of  
34 paragraph (5) of this subsection. As used in this paragraph "victim  
35 and survivor evidence" may include the display of a photograph of the  
36 victim taken before the homicide.

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

39 e. Every judgment of conviction which results in a sentence of  
40 death under this section shall be appealed, pursuant to the Rules of  
41 Court, to the Supreme Court. Upon the request of the defendant, the  
42 Supreme Court shall also determine whether the sentence is  
43 disproportionate to the penalty imposed in similar cases, considering  
44 both the crime and the defendant. Proportionality review under this  
45 section shall be limited to a comparison of similar cases in which a  
46 sentence of death has been imposed under subsection c. of this section.

1 In any instance in which the defendant fails, or refuses to appeal, the  
2 appeal shall be taken by the Office of the Public Defender or other  
3 counsel appointed by the Supreme Court for that purpose.

4 f. Prior to the jury's sentencing deliberations, the trial court shall  
5 inform the jury of the sentences which may be imposed pursuant to  
6 subsection b. of this section on the defendant if the defendant is not  
7 sentenced to death. The jury shall also be informed that a failure to  
8 reach a unanimous verdict shall result in sentencing by the court  
9 pursuant to subsection b.

10 g. A juvenile who has been tried as an adult and convicted of  
11 murder shall not be sentenced pursuant to the provisions of subsection  
12 c. but shall be sentenced pursuant to the provisions of subsection b. of  
13 this section.

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

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

19 j. In a sentencing proceeding conducted pursuant to this section,  
20 the display of a photograph of the victim taken before the homicide  
21 shall be permitted.

22 (cf: P.L.1999, c.294, s.1)

23

24 2. This act shall take effect immediately.

P.L. 2000, CHAPTER 88, *approved August 22, 2000*  
Senate, No. 530 (*First Reprint*)

1 **AN ACT** concerning the punishment for murder in certain  
2 circumstances and amending 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. N.J.S.2C:11-3 is amended to read as follows:

8 2C:11-3. Murder.

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

11 (1) The actor purposely causes death or serious bodily injury  
12 resulting in death; or

13 (2) The actor knowingly causes death or serious bodily injury  
14 resulting in death; or

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

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

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

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

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

35 b. (1) Murder is a crime of the first degree but a person convicted  
36 of murder shall be sentenced, except as provided in subsection c. of  
37 this section, by the court to a term of 30 years, during which the  
38 person shall not be eligible for parole, or be sentenced to a specific  
39 term of years which shall be between 30 years and life imprisonment  
40 of which the person shall serve 30 years before being eligible for

**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.**

**Matter enclosed in superscript numerals has been adopted as follows:**

<sup>1</sup> Assembly floor amendments adopted May 25, 2000.

1 parole.

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

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

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

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

16 <sup>1</sup>[The defendant shall not be entitled to a deduction of  
17 commutation and work credits from that sentence.]<sup>1</sup>

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

26 <sup>1</sup>With respect to a sentence imposed pursuant to this subsection,  
27 the defendant shall not be entitled to a deduction of commutation and  
28 work credits from that sentence.<sup>1</sup>

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

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

40 Where the defendant has been tried by a jury, the proceeding shall  
41 be conducted by the judge who presided at the trial and before the jury  
42 which determined the defendant's guilt, except that, for good cause,  
43 the court may discharge that jury and conduct the proceeding before  
44 a jury empaneled for the purpose of the proceeding. Where the  
45 defendant has entered a plea of guilty or has been tried without a jury,  
46 the proceeding shall be conducted by the judge who accepted the

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

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

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

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

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

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

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

43 (3) The jury or, if there is no jury, the court shall return a special  
44 verdict setting forth in writing the existence or nonexistence of each  
45 of the aggravating and mitigating factors set forth in paragraphs (4)  
46 and (5) of this subsection. If any aggravating factor is found to exist,

1 the verdict shall also state whether it outweighs beyond a reasonable  
2 doubt any one or more mitigating factors.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 section shall be limited to a comparison of similar cases in which a  
2 sentence of death has been imposed under subsection c. of this section.  
3 In any instance in which the defendant fails, or refuses to appeal, the  
4 appeal shall be taken by the Office of the Public Defender or other  
5 counsel appointed by the Supreme Court for that purpose.

6 f. Prior to the jury's sentencing deliberations, the trial court shall  
7 inform the jury of the sentences which may be imposed pursuant to  
8 subsection b. of this section on the defendant if the defendant is not  
9 sentenced to death. The jury shall also be informed that a failure to  
10 reach a unanimous verdict shall result in sentencing by the court  
11 pursuant to subsection b.

12 g. A juvenile who has been tried as an adult and convicted of  
13 murder shall not be sentenced pursuant to the provisions of subsection  
14 c. but shall be sentenced pursuant to the provisions of subsection b. of  
15 this section.

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

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

21 j. In a sentencing proceeding conducted pursuant to this section,  
22 the display of a photograph of the victim taken before the homicide  
23 shall be permitted.

24 (cf: P.L.1999, c.294, s.1)

25

26 2. This act shall take effect immediately.

27

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29

30

31 Provides for life sentence without parole eligibility for persons  
32 convicted of murder under certain circumstances.

## CHAPTER 88

AN ACT concerning the punishment for murder in certain circumstances and amending N.J.S.2C:11-3.

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

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

Murder.

2C:11-3. Murder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Any person convicted under subsection a.(1) or (2) 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; or who, as a leader of a narcotics trafficking network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3, commanded or by threat or promise solicited the commission of the offense, shall be sentenced as provided hereinafter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

aggravating factor regardless of whether it is on appeal;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(6) When a defendant at a sentencing proceeding presents evidence of the defendant's character or record pursuant to subparagraph (h) of paragraph (5) of this subsection, the State may present evidence of the murder victim's character and background and of the impact of the murder on the victim's survivors. If the jury finds that the State has proven at least one aggravating factor beyond a reasonable doubt and the jury finds the existence of a mitigating factor pursuant to subparagraph (h) of paragraph (5) of this subsection, the jury may consider the victim and survivor evidence presented by the State pursuant to this paragraph in determining the appropriate weight to give mitigating evidence presented pursuant to subparagraph (h) of paragraph (5) of this subsection. As used in this paragraph "victim and survivor evidence" may include the display of a photograph of the victim taken before the homicide.

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

e. Every judgment of conviction which results in a sentence of death under this section shall

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

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

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

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

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

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

2. This act shall take effect immediately.

Approved August 22, 2000.