

26: 2H-11.1

LEGISLATIVE HISTORY CHECKLIST

(Municipal notice required when drug abuse treatment center is located near a school)

NJSA 26:2H-11.1

LAWS 1982

CHAPTER 149

Bill No. S771

Sponsor(s) Orechio and Russo

Date Introduced July 18, 1982

Committee: Assembly Corrections, Health and Human Services

Senate Institutions, Health and Welfare

Amended during passage Yes

~~No~~ Amendments denoted by asterisks

according to Governor's recommendations

Date of Passage: Assembly May 20, 1982

Re-enacted 9-30-82

Senate March 15, 1982

Re-enacted 9-16-82

Date of approval Oct. 8, 1982

Following statements are attached if available:

Sponsor statement Yes

~~No~~ (Below) Also attached: Senate amendments, adopted 3-8-82

Committee Statement: Assembly Yes

~~No~~ (with statement)

Senate Yes

~~No~~

Fiscal Note Yes

~~No~~

Veto Message Yes

~~No~~

Message on signing Yes

~~No~~

Following were printed:

Reports Yes

~~No~~

Hearings Yes

~~No~~

Sponsors' statement:

The purpose of this bill is to prohibit the location of narcotic and drug abuse treatment centers within 500 feet of a school.

6/22/81

[THIRD OFFICIAL COPY REPRINT]

SENATE, No. 771

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1982

By Senators ORECHIO and RUSSO

Referred to Committee on Institutions, Health and Welfare

AN ACT concerning narcotic and drug abuse treatment centers and supplementing ***[P. L. 1970, c. 334]*** ***P. L. 1971, c. 136***.

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

1 1. ***[No]*** ***[*After the effective date of this act no*]***
2 *****[*No*]***** ****In the case of an application for a certificate*
3 *of need for a*** narcotic and drug abuse treatment center ***[shall*
4 *be approved by the commissioner for establishment]*** ***to be*
5 *located*** within 500 feet from any building in this State used for*
6 *the instruction of children between the ages of five and 18 years***,*
7 *the applicant shall notify the governing body of the municipality*
8 *within which he proposes to locate the treatment center of his in-*
9 *tenion to apply for the certificate of need and the proposed location*
10 *of the center. Documentation of such notice shall be filed with the*
11 *certificate of need application. The Commissioner of Health is*
12 *hereby authorized to adopt reasonable rules and regulations, in*
13 *accordance with the provisions of the "Administrative Procedure*
14 *Act," P. L. 1968, c. 410 (C. 52:14B-1 et seq.), to effectuate the*
15 *purposes of this act. For the purposes of this act, the definition of*
16 *"narcotic and drug abuse treatment center" shall be identical to the*
17 *definition in subsection (a) of section 2 of P. L. 1970, c. 334 (C.*
18 *26:2G-22(a))***. **This act shall not apply to any such narcotic*
19 *and drug abuse treatment center ***[approved by the commis-*
20 *sioner]*** ***for which an application was filed*** prior to the*
21 *effective date of this act.***

1 2. This act shall take effect immediately.

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendment adopted March 1, 1982.

**—Senate amendments adopted March 8, 1982.

***—Senate amendments adopted in accordance with Governor's recommendations July 12, 1982.

ASSEMBLY, No. 771

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1982

By Assemblymen PATERNITI, ZANGARI, DEVERIN, OTLOWSKI,
MARKERT, VISOTCKY, HAYTAIAN and MUZIANI

Referred to Committee on Judiciary, Law, Public Safety
and Defense

AN ACT concerning capital punishment and amending N. J. S.
2C:11-3.

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

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

2 2C:11-3. Murder. a. Except as provided in section 2C:11-4
3 criminal homicide constitutes murder when:

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

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

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

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

21 (b) Was not armed with a deadly weapon, or any instrument,

Matter printed in italics thus is new matter.

22 article or substance readily capable of causing death or serious
23 physical injury and of a sort not ordinarily carried in public
24 places by law-abiding persons; and

25 (c) Had no reasonable ground to believe that any other par-
26 ticipant was armed with such a weapon, instrument, article or
27 substance; and

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

31 *If a person is convicted under this section, the jury shall specify*
32 *in writing by its verdict whether the person was convicted under*
33 *subsection a. (1), (2), or (3), and if under subsection a. (1) or (2),*
34 *the jury shall also specify if the defendant was convicted as a*
35 *perpetrator or as an accomplice pursuant to 2C:2-6c. (1) (a).*

36 b. Murder is a crime of the first degree but a person convicted
37 of murder may be sentenced except as provided in subsection c., of
38 *this section* by the court (1) to a term of 30 years of which the
39 person must serve 15 years before being eligible for parole, or (2)
40 as in a crime of the first degree except that the maximum term for
41 such a crime of the first degree shall be 30 years. Nothing contained
42 in this subsection shall prohibit the court from imposing an extended
43 term pursuant to 2C:43-7 for the crime of murder.

44 c. *Any person convicted under subsection a. (1) or (2) as a perpe-*
45 *trator or an accomplice pursuant to 2C:2-6c. (1) (a) shall be sen-*
46 *tenced to death or life imprisonment as provided hereafter:*

47 (1) *The court shall conduct a separate sentencing proceeding to*
48 *determine whether the defendant should be sentenced to death or to*
49 *life imprisonment. Where the defendant has been tried by a jury*
50 *the proceeding shall be conducted by the judge who presided at the*
51 *trial and before the trial jury which determined the defendant's*
52 *guilt or before a jury empaneled for the purpose of the proceeding*
53 *if the jury which determined the defendant's guilt has been dis-*
54 *charged by the court. Where there has been no jury trial the*
55 *proceeding shall be conducted by the judge who accepted the*
56 *defendant's plea and by a jury empaneled for the purpose of the*
57 *proceeding.*

58 *The court may conduct the proceeding without a jury upon the*
59 *motion of the defendant and with the approval of the court and of*
60 *the State.*

61 (2) *In the sentencing proceeding the court shall disclose to the*
62 *defendant or his counsel all material contained in any presentence*
63 *report, if one has been prepared, except such material as the court*
64 *determines is required to be withheld for the protection of human*

65 *life. Presentence reports shall not be given to the jury. Any evi-*
66 *dence relevant to any of the mitigating factors set forth in para-*
67 *graph (5) may be presented by either the State or the defendant,*
68 *regardless of its admissibility under the rules governing admission*
69 *of evidence at criminal trials; but the admissibility of evidence*
70 *relevant to any of the aggravating factors set forth in paragraph*
71 *(6) shall be governed by the rules governing the admission of*
72 *evidence at criminal trials; except that evidence determined by the*
73 *court to be relevant to both an aggravating and a mitigating factor*
74 *shall be admissible regardless of its admissibility under the Rules of*
75 *Evidence. The State and the defendant shall be permitted to rebut*
76 *any evidence received at the sentencing proceeding, and shall be*
77 *given fair opportunity to present argument as to the adequacy of*
78 *the evidence to establish the existence of any of the factors set*
79 *forth in paragraph (5) or (6). The burden of establishing beyond*
80 *a reasonable doubt the existence of any of the factors set forth in*
81 *paragraph (6) is on the State. The burden of establishing by a*
82 *preponderance of the evidence the existence of any of the factors*
83 *set forth in paragraph (5) is on the defendant.*

84 (3) *The jury, or if there is no jury, the court shall return a*
85 *special verdict specifically setting forth in writing its findings as*
86 *to the existence or nonexistence of each of the factors set forth in*
87 *paragraph (5) and as to the existence or nonexistence of each of*
88 *the factors set forth in paragraph (6), its reasons for so finding,*
89 *and its determination after weighing its findings whether the pen-*
90 *alty should be death or imprisonment.*

91 (4) *If the jury or, if there is no jury, the court finds that one or*
92 *more of the factors set forth in paragraph (6) exists and that any*
93 *of the factors set forth in paragraph (5) which it finds exists do*
94 *not sufficiently outweigh the factors of paragraph (6) and, there-*
95 *fore, recommends that the sentence should be death, the court shall*
96 *sentence the defendant to death. If the jury, or if there is no jury,*
97 *the court finds that none of the aggravating factors set forth in*
98 *paragraph (6) exists, or finds that one or more of the mitigating*
99 *factors set forth in paragraph (5) exists sufficiently to outweigh*
100 *any factors under paragraph (6) which are found to exist, and*
101 *therefore recommends imprisonment, or if the jury is unable to*
102 *reach a unanimous verdict, the court shall not sentence the defen-*
103 *dant to death but shall impose a sentence of life imprisonment.*

104 (5) *The mitigating factors which may be found by the court or*
105 *the jury if proven by a preponderance of the evidence are:*

106 (a) *The defendant was under the influence of extreme mental*
107 *or emotional disturbance but not such disturbance as to con-*
108 *stitute a defense to prosecution;*

109 (b) *The victim was a willing participant in the defendant's*
110 *conduct or consented to the act;*

111 (c) *The defendant was under the age of 18;*

112 (d) *The defendant was under unusual and substantial*
113 *duress, although not such duress as to constitute a defense to*
114 *prosecution; or*

115 (c) *The defendant has no significant history of prior crim-*
116 *inal activity.*

117 (6) *The aggravating factors which may be found by the court or*
118 *the jury if proven beyond a reasonable doubt are:*

119 (a) *The defendant has previously been convicted of murder*
120 *for which a sentence of life imprisonment or death was im-*
121 *posable, or murder under subsection a. (3) of this section;*

122 (b) *The defendant had a significant history of assaultive*
123 *criminal convictions;*

124 (c) *In the commission of the offense, the defendant purposely*
125 *or knowingly created a grave risk of death to another person in*
126 *addition to the victim of the offense;*

127 (d) *The murder was committed in an especially heinous, cruel*
128 *or depraved manner;*

129 (c) *The defendant committed the offense as consideration for*
130 *the receipt, or in expectation of the receipt of any thing of*
131 *pecuniary value or in the expectation that defendant would*
132 *thereby substantially reduce or eliminate an expectation of*
133 *pecuniary loss;*

134 (f) *The defendant committed the offense against a police or*
135 *other law enforcement officer, corrections employee or fireman,*
136 *while performing his duties or because of his status as a public*
137 *servant; or*

138 (g) *The defendant committing the offense against a judicial*
139 *officer, former judicial officer, prosecuting attorney or former*
140 *prosecuting attorney, elected official or former elected official*
141 *while performing or because the exercise of his official duties;*

142 (h) *The offense was committed while the defendant was en-*
143 *gaged in the commission of, or an attempt to commit, or flight*
144 *after committing, or attempting to commit robbery, sexual*
145 *assault, arson, burglary or kidnapping.*

146 (i) *The defendant committed the offense for the purpose of*
147 *preventing any person from testifying in any lawful proceed-*
148 *ing, inquiry, investigation or hearing conducted before any*
149 *officially constituted body corporate and politic of this State*
150 *or any political subdivision thereof.*

151 (7) *If the jury, or if there is no jury, the court does not find by a*

152 *special verdict as provided in paragraph (3) that any of the factors*
153 *enumerated in paragraph (6) is present or does not recommend*
154 *death, or if the jury is unable to reach a unanimous verdict, the*
155 *court shall impose a sentence of life imprisonment.*

156 (8) *Every judgment of conviction and sentence of death shall be*
157 *subject to automatic review by the Supreme Court.*

158 (9) *Whenever a sentence of death is imposed pursuant to this*
159 *section, the court shall affix a specific data upon which the sentence*
160 *shall be imposed. Any appeal, whether of law or fact, from a*
161 *sentence of death imposed pursuant to this section, which is based*
162 *upon or arises out of evidence introduced or specifically excluded*
163 *at the trial or at the sentencing hearing, shall, absent a showing of*
164 *extraordinary circumstances, be filed no later than 15 days prior*
165 *to the date set for execution. Any appeal based upon or arising out*
166 *of new evidence may be entered at any time subject to the discretion*
167 *of the court.*

1 2. This act shall take effect immediately.

STATEMENT

This bill reinstates capital punishment in New Jersey.

Pursuant to the provisions of the bill, anyone who "purposely" or "knowingly" commits murder and an accomplice who solicits the commission of such a murder, would stand in jeopardy of the death penalty. Persons convicted of murder under the felony-murder doctrine and persons convicted of murder as accomplices other than as procurers would be subject to life imprisonment. Those convicted murderers not subject to the possibility of capital punishment would be subject to penalties presently provided in the code for murder.

The bill establishes a separate post-conviction proceeding to determine whether the convicted murder will be actually sentenced to death or to life imprisonment. This bifurcated trial situation has been given substantial support in recent years as the result of constitutional litigation before the United States Supreme Court.

Where a jury trial has taken place, the sentencing proceeding takes place before the judge who presided over the trial and before the jury which returned the verdict. If the jury has been discharged, another jury is empaneled for the purpose of the proceeding. Where there has been no jury trial, the proceeding shall be conducted by the judge who accepted the defendant's plea and by a jury empaneled for the purpose of the proceeding. The judge may conduct the proceeding without a jury upon motion of the defendant and upon approval of the court and of the prosecution. The jury or the

court considers specific aggravating and mitigating factors, and returns a special verdict setting forth its findings as to the existence or nonexistence of each of the following factors:

MITIGATING:

(1) The defendant was under the influence of extreme mental or emotional disturbance but not such disturbance as to constitute a defense to prosecution;

(2) The victim was a willing participant in the defendant's conduct or consented to the act;

(3) The defendant was under the age of 18;

(4) The defendant was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution;

(5) The defendant has no significant history of prior criminal activity.

AGGRAVATING:

(1) The defendant has previously been convicted of first or second degree murder, for which a sentence of life imprisonment or death was imposable;

(2) The defendant had a significant history of assaultive criminal convictions;

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

(4) The murder was committed in an especially heinous, cruel or depraved manner;

(5) The defendant committed the offense as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value, including an expectation of elimination of pecuniary loss;

(6) The defendant committed the offense against a policeman, fireman or corrections employee while performing his duties;

(7) The defendant committed the offense against a present or former (a) judge (b) prosecutor or (c) elected official because of his position;

(8) 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 robbery, rape, sodomy, arson, burglary or kidnaping;

(9) The offense was committed to prevent a person from testifying in an official proceeding.

If the jury or the court finds one or more of the aggravating circumstances exist, and that they are not outweighed by any mitigating factors, the death penalty would be imposed. If the

jury or the court finds that none of the aggravating factors exists, or finds that one or more of the mitigating factors exist, sufficient to outweigh any aggravating factors which may exist, the jury shall recommend imprisonment. If the jury is unable to reach a unanimous verdict, a sentence of life imprisonment shall be imposed.

Every judgment of conviction and sentence of death is subject to automatic review by the Supreme Court.

Finally, the bill contains a provision requiring certain appeals taken from a sentence of death to be filed at least 15 days prior to the date of execution. This provision takes account of the court's procedural jurisdiction because no limit is placed on the amount of time a defendant is given to appeal. That is subject to court rule. What this provision does is to require a defendant raising an appeal on evidence introduced or specifically excluded at the trial to make a timely appeal. It would seek to discourage a specific dilatory practice so often employed by the defense in making a last-second appeal merely to obtain a delay. Appeals based on new evidence, of course, could be raised at any time prior to execution.

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ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 771

STATE OF NEW JERSEY

ADOPTED MAY 20, 1982

Sponsored by Assemblymen PATERNITI and CHINNICI

AN ACT concerning capital punishment and amending N. J. S.
2C:11-3 and N. J. S. 2C:43-7.

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

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

2 2C:11-3. Murder. a. Except as provided in section 2C:11-4
3 criminal homicide constitutes murder when:

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

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

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

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

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

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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Assembly amendments adopted June 21, 1982.

25 (c) Had no reasonable ground to believe that any other par-
26 ticipant was armed with such a weapon, instrument, article or
27 substance; and

28 (d) Had no reasonable ground to believe that any other partici-
29 pant intended to engage in conduct likely to result in death or
30 serious physical injury.

31 b. Murder is a crime of the first degree but a person convicted
32 of murder may be sentenced *,* *except as provided in subsection c.*
33 *of this section*, by the court [(1) to a term of 30 years of which the
34 person must serve 15 years before being eligible for parole, or (2)
35 as in a crime of the first degree except that the maximum term for
36 such a crime of the first degree shall be 30 years. Nothing contained
37 in this subsection shall prohibit the court from imposing an
38 extended term pursuant to 2C:43-7 for the crime of murder] *to a*
39 *term of 30 years, during which the person shall not be eligible for*
40 *parole or to a specific term of years which shall be between 30 years*
41 *and life imprisonment of which the person shall serve 30 years*
42 *before being eligible for parole.*

43 c. *Any person convicted under subsection a. (1) or (2) * [of this*
44 *section] * who committed the homicidal act by his own conduct or*
45 *who as an accomplice procured the commission of the offense by pay-*
46 *ment or promise of payment, of anything of pecuniary value shall*
47 *be sentenced as provided hereafter:*

48 (1) *The court shall conduct a separate sentencing proceeding to*
49 *determine whether the defendant should be sentenced to death or*
50 *pursuant to the provisions of subsection b. of this section. Where*
51 *the defendant has been tried by a jury, the proceeding shall be*
52 *conducted by the judge who presided at the trial and before the*
53 *jury which determined the defendant's guilt except that, for*
54 *good cause, the court may discharge that jury and conduct the*
55 *proceeding before a jury empaneled for the purpose of the pro-*
56 *ceeding. Where the defendant has entered a plea of guilty or has*
57 *been tried without a jury, the proceeding shall be conducted by the*
58 *judge who accepted the defendant's plea or who determined the*
59 *defendant's guilt and before a jury empaneled for the purpose of*
60 *the proceeding. On motion of the defendant and with consent of the*
61 *prosecuting attorney the court may conduct a proceeding without a*
62 *jury.*

63 (2) *At the proceeding, the State shall have the burden of estab-*
64 *lishing beyond a reasonable doubt the existence of any aggravating*
65 *factors set forth in paragraph (4) of this subsection. The defendant*
66 *shall have the burden of producing evidence of the existence of any*
67 *mitigating factors set forth in paragraph (5) of this subsection.*

68 *The State and the defendant shall be permitted to rebut any evi-*
 69 *dence presented by the other party at the sentencing proceeding and*
 70 *to present argument as to the adequacy of the evidence to establish*
 71 *the existence of any aggravating or mitigating factor. Prior to the*
 72 *commencement of the sentencing proceeding, or at such time as*
 73 *he has knowledge of the existence of an aggravating factor, the*
 74 *prosecuting attorney shall give notice to the defendant of the aggra-*
 75 *vating factors which he intends to prove in the proceeding.*

76 (3) *The jury, or if there is no jury, the court shall return a*
 77 *special verdict setting forth in writing the existence or non-exist-*
 78 *ence of each of the aggravating and mitigating factors set forth in*
 79 *paragraphs (4) and (5) of this subsection. If any aggravating*
 80 *factor is found to exist, the verdict shall also state whether it is or*
 81 *is not outweighed by any one or more mitigating factors.*

82 (a) *If the jury or the court finds that any aggravating factor*
 83 *exists and is not outweighed by one or more mitigating factors, the*
 84 *court shall sentence the defendant to death.*

85 (b) *If the jury or the court finds that no aggravating factors*
 86 *exist, or that any aggravating factors which exist are outweighed*
 87 *by one or more mitigating factors, the court shall sentence the*
 88 *defendant pursuant to subsection b. ***[of this section]****

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

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

93 (a) *The defendant has previously been convicted of murder;*

94 (b) *In the commission of the murder, the defendant purposely or*
 95 *knowingly created a grave risk of death to another person in addi-*
 96 *tion to the victim;*

97 (c) *The murder was outrageously or wantonly vile, horrible or*
 98 *inhuman in that it involved torture, depravity of mind, or an aggra-*
 99 *vated battery to the victim;*

100 (d) *The defendant committed the murder as consideration for*
 101 *the receipt, or in expectation of the receipt of any thing of pecu-*
 102 *niary value;*

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

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

108 (g) *The offense was committed while the defendant was engaged*
 109 *in the commission of, or an attempt to commit, or flight after com-*
 110 *mitting or attempting to commit robbery, sexual assault, arson,*
 111 *burglary or kidnapping; or*

112 (h) *The defendant murdered a public servant, as defined in*
 113 *2C:27-1, while the victim was engaged in the performance of his*
 114 *official duties, or because of the victim's status as a public servant.*

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

117 (a) *The defendant was under the influence of extreme mental or*
 118 *emotional disturbance ***[in sufficient]*** ***insufficient*** to constitute*
 119 *a defense to prosecution;*

120 (b) *The victim solicited, participated in or consented to the con-*
 121 *duct which resulted in his death;*

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

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

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

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

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

134 (h) *Any other factor which is relevant to the defendant's char-*
 135 *acter or record or to the circumstances of the offense.*

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

138 e. *Every judgment of conviction which results in a sentence of*
 139 *death under this section may be appealed, pursuant to the rules of*
 140 *court, to the Supreme Court, which shall also determine whether*
 141 *the sentence is disproportionate to the penalty imposed in similar*
 142 *cases, considering both the crime and the defendant.*

1 2. N. J. S. 2C:43-7 is amended to read as follows:

2 2C:43-7. Sentence of Imprisonment for Crime; Extended Terms.

3 a. In the cases designated in section 2C:44-3 **[or 2C:11-3]**, a
 4 person who has been convicted of a crime may be sentenced to an
 5 extended term of imprisonment, as follows:

6 (1) **[In the case of a crime sentenced under 2C:11-3 for a**
 7 **specific term of years which shall be between 30 years and life**
 8 **imprisonment;]** *(Deleted by amendment, P. L., c. . . .)*

9 (2) In the case of a crime of the first degree *other than murder,*
 10 *for a specific term of years which shall be fixed by the court and*
 11 *shall be between 20 years and life imprisonment;*

12 (3) In the case of a crime of the second degree, for a term which
13 shall be fixed by the court between 10 and 20 years;

14 (4) In the case of a crime of the third degree, for a term which
15 shall be fixed by the court between 5 and 10 years;

16 (5) In the case of a crime of the fourth degree pursuant to
17 2C:43-6c. and 2C:44-3d. for a term of 5 years.

18 b. As part of a sentence for an extended term and notwithstand-
19 ing the provisions of 2C:43-9, the court may fix a minimum term
20 not to exceed one-half of the term set pursuant to subsection a.
21 during which the defendant shall not be eligible for parole or a
22 term of 25 years during which time the defendant shall not be
23 eligible for parole where the sentence imposed was life imprison-
24 ment provided that no defendant shall be eligible for parole at a
25 date earlier than otherwise provided by the law governing parole.

26 c. In the case of a person sentenced to an extended term pursuant
27 to 2C:43-6c. and 2C:44-3d., the court shall impose a sentence
28 within the ranges permitted by 2C:43-7a. **[(1),]** (2), (3), (4) or
29 (5) according to the degree or nature of the crime for which the
30 defendant is being sentenced, which sentence shall include a mini-
31 mum term which shall be fixed at, or between one-third and one-half
32 of the sentence imposed by the court or 5 years, whichever is
33 greater, during which the defendant shall not be eligible for parole.
34 Where the sentence imposed is life imprisonment, the court shall
35 impose a minimum term of 25 years during which the defendant
36 shall not be eligible for parole.

1 3. This act shall take effect immediately.

ASSEMBLY CORRECTIONS, HEALTH AND
HUMAN SERVICES COMMITTEE

STATEMENT TO

SENATE, No. 771

[SECOND OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: MAY, 13, 1982

This bill provides that no narcotic or drug abuse treatment center shall receive a certificate of approval from the Commissioner of Health for location within 500 feet of any school. Treatment centers located near schools and established prior to the effective date of this act could continue to operate without relocating.

The committee agrees with the purpose of this legislation and released the bill without amendment.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 771

STATE OF NEW JERSEY

DATED: MAY 20, 1982

This committee substitute is identical in form to Senate Bill No. 112,
which was released from the committee.

**SENATE INSTITUTIONS, HEALTH AND WELFARE
COMMITTEE**

STATEMENT TO

SENATE, No. 771

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 1, 1982

As amended by committee, this bill prohibits the Commissioner of Health from approving any narcotic and drug abuse treatment center established after the effective date of the act which is located within 500 feet of any school.

The committee amended the bill to permit existing treatment centers located near schools to continue to operate without having to relocate.

MAR 8 1984

Senate Bill No. 771 (O.C.R.)

to

(Proposed by Senator Orechio 3/8/83)

Amend:

Page	Sec.	Line	
1	1	1	Omit "After the effective date of this act no" insert "No"
1	1	5	After "years." insert "This act shall not apply to any such narcotic and drug abuse treatment center approved by the commissioner prior to the effective date of this act."

STATEMENT

These amendments make clear that only those narcotic and drug abuse treatment centers newly established need the approval of the Commissioner of Health before they may be located within 500 feet from a school.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

July 12, 1982

SENATE BILL NO. 771 (2nd OCR)

To the Senate:

Pursuant to Article V, Section I, Paragraph 14 of the Constitution, I am returning Senate Bill No. 771 (2nd OCR) with my objections, for reconsideration.

The purpose of this bill is to prohibit the Commissioner of Health from hereafter approving the establishment of a narcotic or drug abuse treatment center, either State-run or private, within 500 feet from any school building. The argument in favor of the bill is that exposing school children to addicts may have untoward or traumatizing effects upon those children.

On the other hand, there are cogent arguments against the bill, namely,

1. It is contrary to the goal of mainstreaming those with drug problems to encourage their readjustment to society.
2. Given the problem of drug abuse in schools, particularly junior high and high schools, placement of a center near a school may have the salutary effect of making treatment readily available to a larger portion of the population that needs it.
3. The Department of Health has had some problems in placing treatment centers, which would only be accentuated by an additional restriction on placement.

Since in some instances, it may be wise, or least not detrimental, to place a narcotic or drug abuse treatment center near a school, I do not believe that an absolute prohibition is wise. I am aware, however, that in some instances there may be legitimate reasons not to locate such a center near a school. Thus, I am recommending that whenever a proposal is made to locate a treatment center near a school, notice be explicitly given to the municipality at an early stage of the process. In that way, concerns about locating a narcotic or drug abuse treatment center near a school are sure to be fully aired before any final decision is made.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-2-

Accordingly, I herewith return Senate Bill No. 771 (2nd OCR) for reconsideration and recommend that it be amended as follows:

Page 1, Title: DELETE "P.L. 1970, c.334"

INSERT "P.L. 1971, c.136"

Page 1, Section 1, Line 1: DELETE "No"

INSERT "In the case of an application for a certificate of need for a"

Page 1, Section 1, Line 2: DELETE "shall be approved by the"

Page 1, Section 1, Line 3: DELETE "commissioner for establishment"

INSERT "to be located"

Page 1, Section 1, Line 5: After "years" INSERT ", the applicant shall notify the governing body of the municipality within which he proposes to locate the treatment center of his intention to apply for the certificate of need and the proposed location of the center. Documentation of such notice shall be filed with the certificate of need application. The Commissioner of Health is hereby authorized to adopt reasonable rules and regulations, in accordance with the provisions of the Administrative Procedure Act, P.L. 1968, c.410 (C.52:14B-1 et seq.), to effectuate the purposes of this act. For the purposes of this act, the definition of narcotic and drug abuse treatment center shall be identical to the definition in section 2 (a) of P.L. 1970, c.334 (C.26:2G-22(a))"

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

-3-

Page 1, Section 1, Line 6: DELETE "approved by the commissioner"
INSERT "for which an application was filed"

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

[seal]

Attest:

/s/ W. Cary Edwards

Chief Counsel to the Governor