



LEGISLATIVE HISTORY CHECKLIST

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LAWS OF: 1998

CHAPTER: 25

NJSA:2C:11-3

"Carjacking -- 'felony murder' "

BILL NO: S831 (Substituted for A121)

SPONSOR(S): Ciesla and Bennett

DATE INTRODUCED:March 2, 1998

COMMITTEE:

ASSEMBLY: ~~~~

SENATE: Judiciary

AMENDED DURING PASSAGE:No

DATE OF PASSAGE:

ASSEMBLY: May 18, 1998

SENATE: March 30, 1998

DATE OF APPROVAL: June 12, 1998

THE FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL: Original

(Amendments during passage denoted by superscript numbers)

S831

SPONSORS STATEMENT: *Yes* (Begins on page 7 of original bill)

COMMITTEE STATEMENT:

ASSEMBLY: *No*

SENATE: *Yes*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

A121

SPONSORS STATEMENT: *Yes* (Begins on page 6 of original bill)
(Bill and Sponsors Statement identical to S831)

COMMITTEE STATEMENT:

ASSEMBLY: *Yes* (Identical to Senate Statement for S831)

SENATE: *No*

FLOOR AMENDMENT STATEMENTS: *No*

LEGISLATIVE FISCAL ESTIMATE: *No*

VETO MESSAGE: *No*

GOVERNOR'S PRESS RELEASE ON SIGNING: *Yes*

THE FOLLOWING WERE PRINTED:

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NEWSPAPER ARTICLES: *No*

SENATE, No. 831

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MARCH 2, 1998

Sponsored by:

Senator ANDREW R. CIESLA
District 10 (Monmouth and Ocean)
Senator JOHN O. BENNETT
District 12 (Monmouth)

Co-Sponsored by:

Senators Palaia, Matheussen, Connors, Cafiero, Cardinale, Sacco, Baer,
Assemblymen Holzapfel, Wolfe, Zecker, Luongo and Connors

SYNOPSIS

Adds the crime of carjacking to the enumerated offenses under "felony-murder."

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/19/1998)

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

2

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

5

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

7 2C:11-3. Murder.

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

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

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

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

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

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

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

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

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

41 (2) If the victim was a law enforcement officer and was murdered
42 while performing his official duties or was murdered because of his
43 status as a law enforcement officer, the person convicted of that

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 murder shall be sentenced, except as otherwise provided in subsection
2 c. of this section, by the court to a term of life imprisonment, during
3 which the person shall not be eligible for parole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (a) The defendant has been convicted, at any time, of another

- 1 murder. For purposes of this section, a conviction shall be deemed
2 final when sentence is imposed and may be used as an aggravating
3 factor regardless of whether it is on appeal;
- 4 (b) In the commission of the murder, the defendant purposely or
5 knowingly created a grave risk of death to another person in addition
6 to the victim;
- 7 (c) The murder was outrageously or wantonly vile, horrible or
8 inhuman in that it involved torture, depravity of mind, or an
9 aggravated assault to the victim;
- 10 (d) The defendant committed the murder as consideration for the
11 receipt, or in expectation of the receipt of anything of pecuniary
12 value;
- 13 (e) The defendant procured the commission of the offense by
14 payment or promise of payment of anything of pecuniary value;
- 15 (f) The murder was committed for the purpose of escaping
16 detection, apprehension, trial, punishment or confinement for another
17 offense committed by the defendant or another;
- 18 (g) The offense was committed while the defendant was engaged
19 in the commission of, or an attempt to commit, or flight after
20 committing or attempting to commit murder, robbery, sexual assault,
21 arson, burglary or kidnapping;
- 22 (h) The defendant murdered a public servant, as defined in
23 N.J.S.2C:27-1, while the victim was engaged in the performance of his
24 official duties, or because of the victim's status as a public servant;
- 25 (i) The defendant: (i) as a leader of a narcotics trafficking network
26 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
27 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
28 promise solicited the commission of the offense or (ii) committed the
29 offense at the direction of a leader of a narcotics trafficking network
30 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
31 in N.J.S.2C:35-3;
- 32 (j) The homicidal act that the defendant committed or procured
33 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or
- 34 (k) The victim was less than 14 years old.
- 35 (5) The mitigating factors which may be found by the jury or the
36 court are:
- 37 (a) The defendant was under the influence of extreme mental or
38 emotional disturbance insufficient to constitute a defense to
39 prosecution;
- 40 (b) The victim solicited, participated in or consented to the
41 conduct which resulted in his death;
- 42 (c) The age of the defendant at the time of the murder;
- 43 (d) The defendant's capacity to appreciate the wrongfulness of his
44 conduct or to conform his conduct to the requirements of the law was
45 significantly impaired as the result of mental disease or defect or

1 intoxication, but not to a degree sufficient to constitute a defense to
2 prosecution;

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

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

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

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

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

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

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

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

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

46 h. In a sentencing proceeding conducted pursuant to this section,

1 no evidence shall be admissible concerning the method or manner of
2 execution which would be imposed on a defendant sentenced to death.

3 i. For purposes of this section the term "homicidal act" shall mean
4 conduct that causes death or serious bodily injury resulting in death.
5 (cf: P.L1997, c.60, s.1.)

6

7 2. This act shall take effect immediately .

8

9

10 STATEMENT

11

12 Under the "felony-murder" doctrine, codified under N.J.S.A.2C:11-
13 3, a person who is engaged in the commission of certain enumerated
14 felonies, such as sexual assault, arson, robbery, burglary or
15 kidnapping, is guilty of murder if in the course of the crime, any
16 person causes the death of a person other than one of the participants.
17 This bill would add the crime of carjacking to this list of felonies.

SENATE, No. 831

STATE OF NEW JERSEY 208th LEGISLATURE

INTRODUCED MARCH 2, 1998

Sponsored by:

Senator ANDREW R. CIESLA
District 10 (Monmouth and Ocean)
Senator JOHN O. BENNETT
District 12 (Monmouth)

Co-Sponsored by:

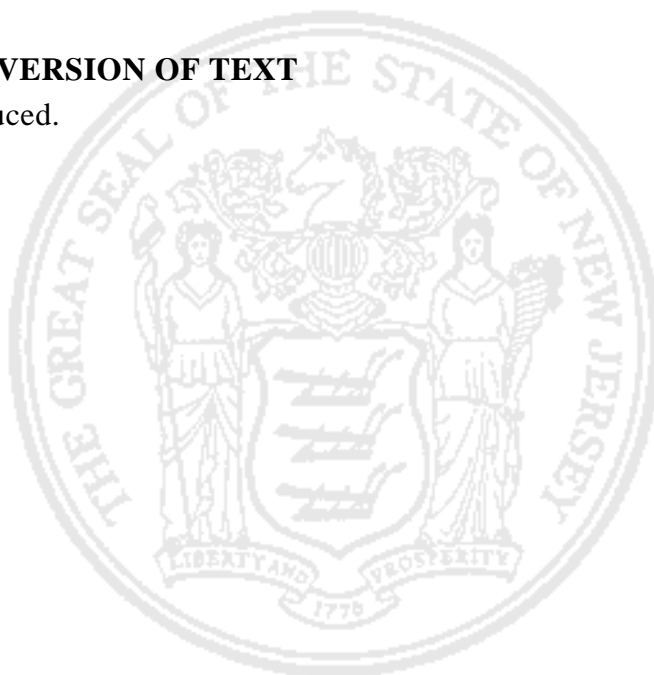
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7 2C:11-3. Murder.

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

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

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

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

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

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

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

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

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

41 (2) If the victim was a law enforcement officer and was murdered
42 while performing his official duties or was murdered because of his
43 status as a law enforcement officer, the person convicted of that

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 murder shall be sentenced, except as otherwise provided in subsection
2 c. of this section, by the court to a term of life imprisonment, during
3 which the person shall not be eligible for parole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (a) The defendant has been convicted, at any time, of another

- 1 murder. For purposes of this section, a conviction shall be deemed
2 final when sentence is imposed and may be used as an aggravating
3 factor regardless of whether it is on appeal;
- 4 (b) In the commission of the murder, the defendant purposely or
5 knowingly created a grave risk of death to another person in addition
6 to the victim;
- 7 (c) The murder was outrageously or wantonly vile, horrible or
8 inhuman in that it involved torture, depravity of mind, or an
9 aggravated assault to the victim;
- 10 (d) The defendant committed the murder as consideration for the
11 receipt, or in expectation of the receipt of anything of pecuniary
12 value;
- 13 (e) The defendant procured the commission of the offense by
14 payment or promise of payment of anything of pecuniary value;
- 15 (f) The murder was committed for the purpose of escaping
16 detection, apprehension, trial, punishment or confinement for another
17 offense committed by the defendant or another;
- 18 (g) The offense was committed while the defendant was engaged
19 in the commission of, or an attempt to commit, or flight after
20 committing or attempting to commit murder, robbery, sexual assault,
21 arson, burglary or kidnapping;
- 22 (h) The defendant murdered a public servant, as defined in
23 N.J.S.2C:27-1, while the victim was engaged in the performance of his
24 official duties, or because of the victim's status as a public servant;
- 25 (i) The defendant: (i) as a leader of a narcotics trafficking network
26 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
27 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
28 promise solicited the commission of the offense or (ii) committed the
29 offense at the direction of a leader of a narcotics trafficking network
30 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
31 in N.J.S.2C:35-3;
- 32 (j) The homicidal act that the defendant committed or procured
33 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or
- 34 (k) The victim was less than 14 years old.
- 35 (5) The mitigating factors which may be found by the jury or the
36 court are:
- 37 (a) The defendant was under the influence of extreme mental or
38 emotional disturbance insufficient to constitute a defense to
39 prosecution;
- 40 (b) The victim solicited, participated in or consented to the
41 conduct which resulted in his death;
- 42 (c) The age of the defendant at the time of the murder;
- 43 (d) The defendant's capacity to appreciate the wrongfulness of his
44 conduct or to conform his conduct to the requirements of the law was
45 significantly impaired as the result of mental disease or defect or

1 intoxication, but not to a degree sufficient to constitute a defense to
2 prosecution;

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

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

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

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

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

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

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

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

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

46 h. In a sentencing proceeding conducted pursuant to this section,

1 no evidence shall be admissible concerning the method or manner of
2 execution which would be imposed on a defendant sentenced to death.

3 i. For purposes of this section the term "homicidal act" shall mean
4 conduct that causes death or serious bodily injury resulting in death.
5 (cf: P.L1997, c.60, s.1.)

6

7 2. This act shall take effect immediately .

8

9

10 STATEMENT

11

12 Under the "felony-murder" doctrine, codified under N.J.S.A.2C:11-
13 3, a person who is engaged in the commission of certain enumerated
14 felonies, such as sexual assault, arson, robbery, burglary or
15 kidnapping, is guilty of murder if in the course of the crime, any
16 person causes the death of a person other than one of the participants.
17 This bill would add the crime of carjacking to this list of felonies.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 831

STATE OF NEW JERSEY

DATED: MARCH 23, 1998

The Senate Judiciary Committee reports favorably Senate Bill No. 831.

Under the "felony-murder" doctrine, codified under N.J.S.A.2C:11-3, a person who is engaged in the commission of certain enumerated felonies, such as sexual assault, arson, robbery, burglary or kidnapping, is guilty of murder if in the course of the crime, any person causes the death of a person other than one of the participants. The bill would add the crime of carjacking to this list of felonies.

ASSEMBLY, No. 121

STATE OF NEW JERSEY

208th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 1998 SESSION

Sponsored by:

Assemblyman JAMES W. HOLZAPFEL

District 10 (Monmouth and Ocean)

Assemblyman DAVID W. WOLFE

District 10 (Monmouth and Ocean)

SYNOPSIS

Adds the crime of carjacking to the enumerated offenses under "felony-murder."

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

2

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

5

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

7 2C:11-3. Murder.

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

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

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

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

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

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

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

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

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

40 (2) If the victim was a law enforcement officer and was murdered
41 while performing his official duties or was murdered because of his
42 status as a law enforcement officer, the person convicted of that
43 murder shall be sentenced, except as otherwise provided in subsection

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 c. of this section, by the court to a term of life imprisonment, during
2 which the person shall not be eligible for parole.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 i. For purposes of this section the term "homicidal act" shall mean
37 conduct that causes death or serious bodily injury resulting in death.
38 (cf: P.L.1996, c.115, s.1)

39

40 2. This act shall take effect immediately .

41

42

43

STATEMENT

44

45 Under the "felony-murder" doctrine, codified under N.J.S.A.2C:11-
46 3, a person who is engaged in the commission of certain enumerated

A121 HOLZAPFEL, WOLFE

7

- 1 felonies, such as sexual assault, arson, robbery, burglary or
- 2 kidnapping, is guilty of murder if in the course of the crime, any
- 3 person causes the death of a person other than one of the participants.
- 4 This bill would add the crime of carjacking to this list of felonies.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 121

STATE OF NEW JERSEY

DATED: MARCH 9, 1998

The Assembly Judiciary Committee reports favorably Assembly Bill No. 121.

Under the "felony-murder" doctrine, codified under N.J.S.A.2C:11-3, a person who is engaged in the commission of certain enumerated felonies, such as sexual assault, arson, robbery, burglary or kidnapping, is guilty of murder if in the course of the crime, any person causes the death of a person other than one of the participants. This bill would add the crime of carjacking to this list of felonies.

This bill was prefiled for introduction in the 1998-1999 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

Office of the Governor

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NEWS RELEASE

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RELEASE: June 12, 1998

GOVERNOR SIGNS LEGISLATION ADDING CARJACKING TO LIST OF FELONY-MURDER CRIMES

Gov. Christie Whitman today signed legislation which adds carjacking to the list of crimes in which a person can be charged with felony-murder for causing the death of someone other than a participant in the crime.

The new law adds carjacking to the list of felony - murder crimes. The list already includes robbery, sexual assault, arson, burglary, kidnapping or criminal escape. Previously, a killing during the course of a carjacking could only be prosecuted as a knowing or purposeful murder or as a manslaughter.

The bill was introduced as a response to a carjacking case which began in Barnegat Township. The driver struck and killed a bicycle rider while driving the carjacked automobile.

Felony-murder is punishable by a prison term of between 30 years and life, with a 30-year period of parole ineligibility.

The bill, S-831, was sponsored by Senators Andrew R. Ciesla (R-Monmouth/Ocean) and John O. Bennett (R-Monmouth) and Assembly Members James W. Holzapfel (R-Monmouth/Ocean) and David W. Wolfe