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Yes

974.90 C244, 2006

Public hearing before **New Jersey Death Penalty Study Commission** : testimony concerning whether the **death penalty** serves a legitimate penological intent, such as deterrence; whether the penological interest in executing some of those guilty of murder is sufficiently compelling that the risk of an irreversible mistake is acceptable; whether the **death penalty** is consistent with evolving standards of decency : [July 19, 2006, Trenton, **New Jersey**] / meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit, by **New Jersey. Death Penalty Study Commission**.

974.90 C244, 2006a

Commission meeting of **New Jersey Death Penalty Study Commission** : commission will hear testimony from the following experts: R. Erik Lillquist, Honorable John J. Gibbons, and Joseph Krakora : [August 16, 2006, Trenton, **New Jersey**] / meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit, by **New Jersey. Death Penalty Study Commission**.

974.90 C244, 2006b

New Jersey death penalty study: commission meeting: [September 13, 2006, Trenton, **New Jersey**] / **State of New Jersey Death Penalty Study Commission**, by **New Jersey. Death Penalty Study Commission**.

974.90 C244, 2006c

Public hearing before **New Jersey Death Penalty Study Commission** : testimony concerning whether the selection of defendants for capital trials is arbitrary, unfair, or discriminatory; whether there is unfair, arbitrary, or discriminatory variability in the sentencing phase or at any stage of the process; and whether there is a significant difference in the crimes of those selected for the punishment of **death** as opposed to those who receive life in prison : [September 27, 2006, Trenton, **New Jersey**] / meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit., by **New Jersey. Death Penalty Study Commission**.

974.90 C244, 2006d

Public hearing [October 11, 2006, Trenton, **New Jersey**] / **New Jersey State Legislature Death Penalty Study Commission** by **New Jersey. Death Penalty Study Commission**.

974.90 C244, 2007

New Jersey Death Penalty Study Commission report, by **New Jersey. Death Penalty Study Commission**.

"N.J. may lead U.S. trend with death penalty repeal," Asbury Park Press, 12-18-07, p.A1

"NJ officially abolishes death penalty," Courier News, 12-18-07, p.A-3

"NJ replaces death penalty with life without parole," Courier-Post, 12-18-07. p.4A
"Death penalty abolished in New Jersey," Burlington County Times, 12-18-07, p.A1
"N.J.'s worst killers will live," The Trentonian, 12-18-07, p.1, 4-5
"Death row disappears as Corzine signs bill," The Star Ledger, 12-18-07, p.1
"Life in prison over death," The Times, 12-18-07, p.A01
"Death penalty in N.J. dies by Corzine's pen," The Press, 12-18-07, p.A1
"N.J. first to abolish the death penalty," The Philadelphia Inquirer, 12-18-07, p.A01
"Repeal of death penalty in line with global shift," The Record, 12-18-07, p.A01
"Corzine abolishes death penalty," Gloucester County Times, 12-18-07, p.A-1
"Corzine signs bill ending executions, then commutes sentences of 8," The New York Times, 12-18-07, p.3

RWH 5/29/08

P.L. 2007, CHAPTER 204, *approved December 17, 2007*
Senate Committee Substitute for
Senate, Nos. 171 and 2471

1 **AN ACT** to eliminate the death penalty and allow for life
2 imprisonment without eligibility for parole, revising various parts
3 of the statutory law, repealing P.L.1983, c.245, and supplementing
4 Title 2C of the New Jersey Statutes.

5

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

8

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

10 2C:11-3 Murder.

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

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

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

17 (3) It is committed when the actor, acting either alone or with one
18 or more other persons, is engaged in the commission of, or an attempt
19 to commit, or flight after committing or attempting to commit
20 robbery, sexual assault, arson, burglary, kidnapping, carjacking,
21 criminal escape or terrorism pursuant to section 2 of P.L.2002, c.26
22 (C.2C:38-2), and in the course of such crime or of immediate flight
23 therefrom, any person causes the death of a person other than one of
24 the participants; except that in any prosecution under this subsection,
25 in which the defendant was not the only participant in the underlying
26 crime, it is an affirmative defense that the defendant:

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

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

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

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

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 b. (1) Murder is a crime of the first degree but a person
2 convicted of murder shall be sentenced, except as provided in
3 subsection c. paragraphs (2), (3) and (4) of this section
4 subsection, by the court to a term of 30 years, during which the
5 person shall not be eligible for parole, or be sentenced to a specific
6 term of years which shall be between 30 years and life imprisonment
7 of which the person shall serve 30 years before being eligible for
8 parole.

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

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

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

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

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

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

35 Any person convicted under subsection a.(1) or (2) who committed
36 the homicidal act by his own conduct; or who as an accomplice
37 procured the commission of the offense by payment or promise of
38 payment of anything of pecuniary value; or who, as a leader of a
39 narcotics trafficking network as defined in N.J.S.2C:35-3 and in
40 furtherance of a conspiracy enumerated in N.J.S.2C:35-3,
41 commanded or by threat or promise solicited the commission of the
42 offense, or, if the murder occurred during the commission of the
43 crime of terrorism, any person who committed the crime of terrorism,
44 shall be sentenced by the court to life imprisonment without
45 eligibility for parole, which sentence shall be served in a maximum
46 security prison, if a jury finds beyond a reasonable doubt that any of
47 the following aggravating factors exist:

- 1 (a) The defendant has been convicted, at any time, of another
2 murder. For purposes of this section, a conviction shall be deemed
3 final when sentence is imposed and may be used as an aggravating
4 factor regardless of whether it is on appeal;
- 5 (b) In the commission of the murder, the defendant purposely or
6 knowingly created a grave risk of death to another person in addition
7 to the victim;
- 8 (c) The murder was outrageously or wantonly vile, horrible or
9 inhuman in that it involved torture, depravity of mind, or an
10 aggravated assault to the victim;
- 11 (d) The defendant committed the murder as consideration for the
12 receipt, or in expectation of the receipt of anything of pecuniary
13 value;
- 14 (e) The defendant procured the commission of the murder by
15 payment or promise of payment of anything of pecuniary value;
- 16 (f) The murder was committed for the purpose of escaping
17 detection, apprehension, trial, punishment or confinement for another
18 offense committed by the defendant or another;
- 19 (g) The murder was committed while the defendant was engaged
20 in the commission of, or an attempt to commit, or flight after
21 committing or attempting to commit murder, robbery, sexual assault,
22 arson, burglary, kidnapping, carjacking or the crime of contempt in
23 violation of N.J.S.2C:29-9b.;
- 24 (h) The defendant murdered a public servant, as defined in
25 N.J.S.2C:27-1, while the victim was engaged in the performance of
26 his official duties, or because of the victim's status as a public
27 servant;
- 28 (i) The defendant: (i) as a leader of a narcotics trafficking
29 network as defined in N.J.S.2C:35-3 and in furtherance of a
30 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded or
31 by threat or promise solicited the commission of the murder or (ii)
32 committed the murder at the direction of a leader of a narcotics
33 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a
34 conspiracy enumerated in N.J.S.2C:35-3;
- 35 (j) The homicidal act that the defendant committed or procured
36 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;
- 37 (k) The victim was less than 14 years old; or
- 38 (l) The murder was committed during the commission of, or an
39 attempt to commit, or flight after committing or attempting to
40 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
41 2).
- 42 (5) A juvenile who has been tried as an adult and convicted of
43 murder shall be sentenced pursuant to paragraph (1), (2) or (3) of this
44 subsection.
- 45 c. **【**Any person convicted under subsection a.(1) or (2) who
46 committed the homicidal act by his own conduct; or who as an
47 accomplice procured the commission of the offense by payment or
48 promise of payment of anything of pecuniary value; or who, as a

1 leader of a narcotics trafficking network as defined in N.J.S.2C:35-3
2 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,
3 commanded or by threat or promise solicited the commission of the
4 offense, or, if the murder occurred during the commission of the
5 crime of terrorism, any person who committed the crime of terrorism,
6 shall be sentenced as provided hereinafter:]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 (f) The murder was committed for the purpose of escaping
47 detection, apprehension, trial, punishment or confinement for another

1 offense committed by the defendant or another;

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

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

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

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

20 (k) The victim was less than 14 years old; or

21 (l) The murder was committed during the commission of, or an
22 attempt to commit, or flight after committing or attempting to
23 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
24 2).】

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

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

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

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

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

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

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

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

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

46 【(6) When a defendant at a sentencing proceeding presents
47 evidence of the defendant's character or record pursuant to

1 subparagraph (h) of paragraph (5) of this subsection, the State may
2 present evidence of the murder victim's character and background and
3 of the impact of the murder on the victim's survivors. If the jury
4 finds that the State has proven at least one aggravating factor beyond
5 a reasonable doubt and the jury finds the existence of a mitigating
6 factor pursuant to subparagraph (h) of paragraph (5) of this
7 subsection, the jury may consider the victim and survivor evidence
8 presented by the State pursuant to this paragraph in determining the
9 appropriate weight to give mitigating evidence presented pursuant to
10 subparagraph (h) of paragraph (5) of this subsection. As used in this
11 paragraph "victim and survivor evidence" may include the display of
12 a photograph of the victim taken before the homicide.】 (Deleted by
13 amendment, P.L. , c.) (pending before the Legislature as this bill).

14 d. 【The sentencing proceeding set forth in subsection c. of this
15 section shall not be waived by the prosecuting attorney.】 (Deleted by
16 amendment, P.L. , c.) (pending before the Legislature as this bill).

17 e. 【Every judgment of conviction which results in a sentence of
18 death under this section shall be appealed, pursuant to the Rules of
19 Court, to the Supreme Court. Upon the request of the defendant, the
20 Supreme Court shall also determine whether the sentence is
21 disproportionate to the penalty imposed in similar cases, considering
22 both the crime and the defendant. Proportionality review under this
23 section shall be limited to a comparison of similar cases in which a
24 sentence of death has been imposed under subsection c. of this
25 section. In any instance in which the defendant fails, or refuses to
26 appeal, the appeal shall be taken by the Office of the Public Defender
27 or other counsel appointed by the Supreme Court for that purpose.】
28 (Deleted by amendment, P.L. , c.) (pending before the Legislature
29 as this bill).

30 f. 【Prior to the jury's sentencing deliberations, the trial court
31 shall inform the jury of the sentences which may be imposed pursuant
32 to subsection b. of this section on the defendant if the defendant is
33 not sentenced to death. The jury shall also be informed that a failure
34 to reach a unanimous verdict shall result in sentencing by the court
35 pursuant to subsection b.】 (Deleted by amendment, P.L. , c.)
36 (pending before the Legislature as this bill).

37 g. 【A juvenile who has been tried as an adult and convicted of
38 murder shall not be sentenced pursuant to the provisions of
39 subsection c. but shall be sentenced pursuant to the provisions of
40 subsection b. of this section.】 (Deleted by amendment, P.L. , c.)
41 (pending before the Legislature as this bill).

42 h. 【In a sentencing proceeding conducted pursuant to this
43 section, no evidence shall be admissible concerning the method or
44 manner of execution which would be imposed on a defendant
45 sentenced to death.】(Deleted by amendment, P.L. , c.) (pending
46 before the Legislature as this bill).

47 i. For purposes of this section the term "homicidal act" shall

1 mean conduct that causes death or serious bodily injury resulting in
2 death.

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

6 (cf: P.L.2002, c.26, s.10)

7
8 2. (New section) An inmate sentenced to death prior to the date
9 of the enactment of this act, upon motion to the sentencing court and
10 waiver of any further appeals related to sentencing, shall be
11 resentenced to a term of life imprisonment during which the
12 defendant shall not be eligible for parole. Such sentence shall be
13 served in a maximum security prison.

14 Any such motion to the sentencing court shall be made within 60
15 days of the enactment of this act. If the motion is not made within 60
16 days the inmate shall remain under the sentence of death previously
17 imposed by the sentencing court.

18

19 3. (New section) In addition to the provisions of any other law
20 requiring restitution, a person convicted of murder pursuant to
21 N.J.S.2C:11-3 shall be required to pay restitution to the nearest
22 surviving relative of the victim. The court shall determine the amount
23 and duration of the restitution pursuant to N.J.S.2C:43-3 and the
24 provisions of chapter 46 of Title 2C of the New Jersey Statutes.

25

26 4. N.J.S.2B:23-10 is amended to read as follows:

27 2B:23-10. Examination of jurors. **[a.]** In the discretion of the
28 court, parties to any trial may question any person summoned as a
29 juror after the name is drawn and before the swearing, and without
30 the interposition of any challenge, to determine whether or not to
31 interpose a peremptory challenge or a challenge for cause. Such
32 examination shall be permitted in order to disclose whether or not the
33 juror is qualified, impartial and without interest in the result of the
34 action. The questioning shall be conducted in open court under the
35 trial judge's supervision.

36 b. **[The examination of jurors shall be under oath only in cases**
37 **in which a death penalty may be imposed.]** (Deleted by amendment,
38 P.L. , c.) (pending before the Legislature as this bill).

39 (cf: N.J.S.2B:23-10)

40

41 5. N.J.S.2B:23-13 is amended to read as follows:

42 2B:23-13. Peremptory challenges.

43 Upon the trial of any action in any court of this State, the parties
44 shall be entitled to peremptory challenges as follows:

45 a. In any civil action, each party, 6.

46 b. Upon an indictment for kidnapping, murder, aggravated
47 manslaughter, manslaughter, aggravated assault, aggravated sexual

1 assault, sexual assault, aggravated criminal sexual contact,
2 aggravated arson, arson, burglary, robbery, forgery if it constitutes a
3 crime of the third degree as defined by subsection b. of N.J.S.2C:21-
4 1, or perjury, the defendant, 20 peremptory challenges if tried alone
5 and 10 challenges if tried jointly and the State, 12 peremptory
6 challenges if the defendant is tried alone and 6 peremptory challenges
7 for each 10 afforded the defendants if tried jointly. [The trial court,
8 in its discretion, may, however, increase proportionally the number of
9 peremptory challenges available to the defendant and the State in any
10 case in which the sentencing procedure set forth in subsection c. of
11 N.J.S.2C:11-3 might be utilized.]

12 c. Upon any other indictment, defendants, 10 each; the State, 10
13 peremptory challenges for each 10 challenges allowed to the
14 defendants. When the case is to be tried by a jury from another
15 county, each defendant, 5 peremptory challenges, and the State, 5
16 peremptory challenges for each 5 peremptory challenges afforded the
17 defendants.
18 (cf: N.J.S.2B:23-13)

19

20 6. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to
21 read as follows:

22 7. a. Each adult inmate sentenced to a term of incarceration in a
23 county penal institution, or to a specific term of years at the State
24 Prison or the correctional institution for women shall become
25 primarily eligible for parole after having served any judicial or
26 statutory mandatory minimum term, or one-third of the sentence
27 imposed where no mandatory minimum term has been imposed less
28 commutation time for good behavior pursuant to N.J.S.2A:164-24 or
29 R.S.30:4-140 and credits for diligent application to work and other
30 institutional assignments pursuant to P.L.1972, c.115 (C.30:8-28.1 et
31 seq.) or R.S.30:4-92. Consistent with the provisions of the New
32 Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6,
33 2C:43-7), commutation and work credits shall not in any way reduce
34 any judicial or statutory mandatory minimum term and such credits
35 accrued shall only be awarded subsequent to the expiration of the
36 term.

37 b. Each adult inmate sentenced to a term of life imprisonment
38 shall become primarily eligible for parole after having served any
39 judicial or statutory mandatory minimum term, or 25 years where no
40 mandatory minimum term has been imposed less commutation time
41 for good behavior and credits for diligent application to work and
42 other institutional assignments. If an inmate sentenced to a specific
43 term or terms of years is eligible for parole on a date later than the
44 date upon which he would be eligible if a life sentence had been
45 imposed, then in such case the inmate shall be eligible for parole after
46 having served 25 years, less commutation time for good behavior and
47 credits for diligent application to work and other institutional

1 assignments. Consistent with the provisions of the New Jersey Code
2 of Criminal Justice (N.J.S.2C:11-3, 2C:14-6, 2C:43-6, 2C:43-7),
3 commutation and work credits shall not in any way reduce any
4 judicial or statutory mandatory minimum term and such credits
5 accrued shall only be awarded subsequent to the expiration of the
6 term.

7 c. Each inmate sentenced to a specific term of years pursuant to
8 the "Controlled Dangerous Substances Act," P.L.1970, c.226
9 (C.24:21-1 through 45) shall become primarily eligible for parole
10 after having served one-third of the sentence imposed less
11 commutation time for good behavior and credits for diligent
12 application to work and other institutional assignments.

13 d. Each adult inmate sentenced to an indeterminate term of years
14 as a young adult offender pursuant to N.J.S.2C:43-5 shall become
15 primarily eligible for parole consideration pursuant to a schedule of
16 primary eligibility dates developed by the board, less adjustment for
17 program participation. In no case shall the board schedule require
18 that the primary parole eligibility date for a young adult offender be
19 greater than the primary parole eligibility date required pursuant to
20 this section for the presumptive term for the crime authorized
21 pursuant to N.J.S.2C:44-1(f).

22 e. Each adult inmate sentenced for an offense specified in
23 N.J.S.2C:47-1 shall become primarily eligible for parole as follows:

24 (1) If the court finds that the offender's conduct was not
25 characterized by a pattern of repetitive, compulsive behavior or finds
26 that the offender is not amenable to sex offender treatment, or if after
27 sentencing the Department of Corrections in its most recent
28 examination determines that the offender is not amenable to sex
29 offender treatment, the offender shall become primarily eligible for
30 parole after having served any judicial or statutory mandatory
31 minimum term or one-third of the sentence imposed where no
32 mandatory minimum term has been imposed. Neither such term shall
33 be reduced by commutation time for good behavior pursuant to
34 R.S.30:4-140 or credits for diligent application to work and other
35 institutional assignments pursuant to R.S.30:4-92.

36 (2) All other offenders shall be eligible for parole pursuant to the
37 provisions of N.J.S.2C:47-5, except no offender shall become
38 primarily eligible for parole prior to the expiration of any judicial or
39 statutory mandatory minimum term.

40 f. Each juvenile inmate committed to an indeterminate term shall
41 be immediately eligible for parole.

42 g. Each adult inmate of a county jail, workhouse or penitentiary
43 shall become primarily eligible for parole upon service of 60 days of
44 his aggregate sentence or as provided for in subsection a. of this
45 section, whichever is greater. Whenever any such inmate's parole
46 eligibility is within six months of the date of such sentence, the judge
47 shall state such eligibility on the record which shall satisfy all public

1 and inmate notice requirements. The chief executive officer of the
2 institution in which county inmates are held shall generate all reports
3 pursuant to subsection d. of section 10 of P.L.1979, c.441 (C.30:4-
4 123.54). The parole board shall have the authority to promulgate
5 time periods applicable to the parole processing of inmates of county
6 penal institutions, except that no inmate may be released prior to the
7 primary eligibility date established by this subsection, unless
8 consented to by the sentencing judge. No inmate sentenced to a
9 specific term of years at the State Prison or the correctional
10 institution for women shall become primarily eligible for parole until
11 service of a full nine months of his aggregate sentence.

12 h. When an inmate is sentenced to more than one term of
13 imprisonment, the primary parole eligibility terms calculated
14 pursuant to this section shall be aggregated by the board for the
15 purpose of determining the primary parole eligibility date, except that
16 no juvenile commitment shall be aggregated with any adult sentence.
17 The board shall promulgate rules and regulations to govern
18 aggregation under this subsection.

19 i. The primary eligibility date shall be computed by a designated
20 representative of the board and made known to the inmate in writing
21 not later than 90 days following the commencement of the sentence.
22 In the case of an inmate sentenced to a county penal institution such
23 notice shall be made pursuant to subsection g. of this section. Each
24 inmate shall be given the opportunity to acknowledge in writing the
25 receipt of such computation. Failure or refusal by the inmate to
26 acknowledge the receipt of such computation shall be recorded by the
27 board but shall not constitute a violation of this subsection.

28 j. Except as provided in this subsection, each inmate sentenced
29 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,
30 N.J.S.2A:164-17 for a fixed minimum and maximum term or
31 N.J.S.2C:1-1(b) shall not be primarily eligible for parole on a date
32 computed pursuant to this section, but shall be primarily eligible on a
33 date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.),
34 which is continued in effect for this purpose. Inmates classified as
35 second, third or fourth offenders pursuant to section 12 of P.L.1948,
36 c.84 (C.30:4-123.12) shall become primarily eligible for parole after
37 serving one-third, one-half or two-thirds of the maximum sentence
38 imposed, respectively, less in each instance commutation time for
39 good behavior and credits for diligent application to work and other
40 institutional assignments; provided, however, that if the prosecuting
41 attorney or the sentencing court advises the board that the punitive
42 aspects of the sentence imposed on such inmates will not have been
43 fulfilled by the time of parole eligibility calculated pursuant to this
44 subsection, then the inmate shall not become primarily eligible for
45 parole until serving an additional period which shall be one-half of
46 the difference between the primary parole eligibility date calculated
47 pursuant to this subsection and the parole eligibility date calculated

1 pursuant to section 12 of P.L.1948, c.84 (C.30:4-123.12). If the
2 prosecuting attorney or the sentencing court advises the board that the
3 punitive aspects of the sentence have not been fulfilled, such advice
4 need not be supported by reasons and will be deemed conclusive and
5 final. Any such decision shall not be subject to judicial review
6 except to the extent mandated by the New Jersey and United States
7 Constitutions. The board shall, reasonably prior to considering any
8 such case, advise the prosecuting attorney and the sentencing court of
9 all information relevant to such inmate's parole eligibility.

10 k. Notwithstanding any provisions of this section to the contrary,
11 a person sentenced to imprisonment pursuant to paragraph (2) **[or]**,
12 (3) or (4) of subsection b. of N.J.S.2C:11-3 shall not be eligible for
13 parole.

14 l. Notwithstanding the provisions of subsections a. through j. of
15 this section, the appropriate board panel, as provided in section 1 of
16 P.L.1997, c.214 (C.30:4-123.51c), may release an inmate serving a
17 sentence of imprisonment on medical parole at any time.
18 (cf: P.L.1998, c.73, s.2)

19

20 7. P.L.1983, c.245 (C.2C:49-1 through 2C:49-12, inclusive) is
21 repealed.

22

23 8. This act shall take effect immediately.

24

25

26

27

28 Eliminates the death penalty and replaces it with life imprisonment
29 without eligibility for parole in certain circumstances.

SENATE, No. 171

STATE OF NEW JERSEY 212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Co-Sponsored by:

Senator Weinberg

SYNOPSIS

Repeals the death penalty and replaces it with life imprisonment without eligibility for parole in certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 1/23/2007)

1 AN ACT to allow for life imprisonment without eligibility for parole
2 when certain aggravators exist and to repeal the death penalty,
3 amending N.J.S.2C:11-3 and N.J.S.2B:23-10, repealing
4 P.L.1983, c.245, and supplementing Title 2C of the New Jersey
5 Statutes.

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. N.J.S.2C:11-3 is amended to read as follows:

11 2C:11-3 Murder.

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

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

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

18 (3) It is committed when the actor, acting either alone or with
19 one or more other persons, is engaged in the commission of, or an
20 attempt to commit, or flight after committing or attempting to
21 commit robbery, sexual assault, arson, burglary, kidnapping,
22 carjacking, criminal escape or terrorism pursuant to section 2 of
23 P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of
24 immediate flight therefrom, any person causes the death of a person
25 other than one of the participants; except that in any prosecution
26 under this subsection, in which the defendant was not the only
27 participant in the underlying crime, it is an affirmative defense that
28 the defendant:

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

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

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

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

42 b. (1) Murder is a crime of the first degree but a person
43 convicted of murder shall be sentenced, except as provided in
44 **[subsection c.] paragraphs (2), (3) and (4) of this [section]**
45 **subsection**, by the court to a term of 30 years, during which the

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 person shall not be eligible for parole, or be sentenced to a specific
2 term of years which shall be between 30 years and life
3 imprisonment of which the person shall serve 30 years before being
4 eligible for parole.

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

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

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

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

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

28 With respect to a sentence imposed pursuant to this subsection,
29 the defendant shall not be entitled to a deduction of commutation
30 and work credits from that sentence. Except as provided in
31 paragraphs (2) and (3), a person convicted of murder may be
32 sentenced by the court to life imprisonment without eligibility for
33 parole if a jury finds that any of the following aggravating factors
34 exist:

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
41 addition 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
47 value;

1 (e) The defendant procured the commission of the murder 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
5 another offense committed by the defendant or another;

6 (g) The murder 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
9 assault, arson, burglary, kidnapping, carjacking or the crime of
10 contempt in violation of subsection b. of N.J.S.2C:29-9;

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

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

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

24 (k) The victim was less than 14 years old; or

25 (l) The murder was committed during the commission of, or an
26 attempt to commit, or flight after committing or attempting to
27 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
28 2).

29 (5) A juvenile who has been tried as an adult and convicted of
30 murder shall be sentenced pursuant to paragraph (1) of this
31 subsection.

32 c. **【Any person convicted under subsection a.(1) or (2) who**
33 **committed the homicidal act by his own conduct; or who as an**
34 **accomplice procured the commission of the offense by payment or**
35 **promise of payment of anything of pecuniary value; or who, as a**
36 **leader of a narcotics trafficking network as defined in N.J.S.2C:35-**
37 **3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,**
38 **commanded or by threat or promise solicited the commission of the**
39 **offense, or, if the murder occurred during the commission of the**
40 **crime of terrorism, any person who committed the crime of**
41 **terrorism, shall be sentenced as provided hereinafter:】**

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

45 Where the defendant has been tried by a jury, the proceeding
46 shall be conducted by the judge who presided at the trial and before
47 the jury which determined the defendant's guilt, except that, for

1 good cause, the court may discharge that jury and conduct the
2 proceeding before a jury empaneled for the purpose of the
3 proceeding. Where the defendant has entered a plea of guilty or has
4 been tried without a jury, the proceeding shall be conducted by the
5 judge who accepted the defendant's plea or who determined the
6 defendant's guilt and before a jury empaneled for the purpose of the
7 proceeding. On motion of the defendant and with consent of the
8 prosecuting attorney the court may conduct a proceeding without a
9 jury. Nothing in this subsection shall be construed to prevent the
10 participation of an alternate juror in the sentencing proceeding if
11 one of the jurors who rendered the guilty verdict becomes ill or is
12 otherwise unable to proceed before or during the sentencing
13 proceeding.】

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

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

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

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

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

45 (f) Evidence offered by the State with regard to the establishment
46 of a prior homicide conviction pursuant to paragraph (4)(a) of this
47 subsection may include the identity and age of the victim, the

1 manner of death and the relationship, if any, of the victim to the
2 defendant.】

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (k) The victim was less than 14 years old; or

11 (l) The murder was committed during the commission of, or an
12 attempt to commit, or flight after committing or attempting to
13 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
14 2).]

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

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

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

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

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

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

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

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

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

36 [(6) When a defendant at a sentencing proceeding presents
37 evidence of the defendant's character or record pursuant to
38 subparagraph (h) of paragraph (5) of this subsection, the State may
39 present evidence of the murder victim's character and background
40 and of the impact of the murder on the victim's survivors. If the
41 jury finds that the State has proven at least one aggravating factor
42 beyond a reasonable doubt and the jury finds the existence of a
43 mitigating factor pursuant to subparagraph (h) of paragraph (5) of
44 this subsection, the jury may consider the victim and survivor
45 evidence presented by the State pursuant to this paragraph in
46 determining the appropriate weight to give mitigating evidence
47 presented pursuant to subparagraph (h) of paragraph (5) of this

1 subsection. As used in this paragraph "victim and survivor
2 evidence" may include the display of a photograph of the victim
3 taken before the homicide.】 (Deleted by amendment, P.L. , c.)
4 (pending before the Legislature as this bill).

5 d. 【The sentencing proceeding set forth in subsection c. of this
6 section shall not be waived by the prosecuting attorney.】 (Deleted
7 by amendment, P.L. , c.) (pending before the Legislature as this
8 bill).

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

22 f. 【Prior to the jury's sentencing deliberations, the trial court
23 shall inform the jury of the sentences which may be imposed
24 pursuant to subsection b. of this section on the defendant if the
25 defendant is not sentenced to death. The jury shall also be informed
26 that a failure to reach a unanimous verdict shall result in sentencing
27 by the court pursuant to subsection b.】 (Deleted by amendment,
28 P.L. , c.) (pending before the Legislature as this bill).

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
31 subsection c. but shall be sentenced pursuant to the provisions of
32 subsection b. of this section.】 (Deleted by amendment, P.L. , c.)
33 (pending before the Legislature as this bill).

34 h. 【In a sentencing proceeding conducted pursuant to this
35 section, no evidence shall be admissible concerning the method or
36 manner of execution which would be imposed on a defendant
37 sentenced to death.】 (Deleted by amendment, P.L. , c.)
38 (pending before the Legislature as this bill).

39 i. 【For purposes of this section the term "homicidal act" shall
40 mean conduct that causes death or serious bodily injury resulting in
41 death.】 (Deleted by amendment, P.L. , c.) (pending before the
42 Legislature as this bill).

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

46 (cf: P.L.2002, c.26, s.10)

1 shall not be eligible for parole.

2 These circumstances are:

3 (1) If the victim was a law enforcement officer and was
4 murdered while performing his official duties or was murdered
5 because of his status as a law enforcement officer;

6 (2) If the murder victim is less than 14 years old and the act is
7 committed in the course of the commission, whether alone or with
8 one or more persons, of a violation of N.J.S.2C:14-2 (sexual
9 assault) or N.J.S.2C:14-3 (criminal sexual contact); and

10 (3) If certain aggravators exist.

11 An inmate sentenced to death prior to the date of the passage of
12 this bill, upon motion to the sentencing court and waiver of any
13 further appeals related to sentencing, will be resentenced to a term
14 of life imprisonment during which the defendant shall not be
15 eligible for parole.

16 A person convicted of murder under certain circumstances would
17 be required to pay restitution to the nearest surviving relative of the
18 victim when certain aggravators exist. The court will determine the
19 amount and duration of the restitution.

20 The bill would also remove the reference to death penalty cases
21 in N.J.S.A.2B:23-10 concerning examination of jurors.

22 The bill repeals chapter 49 of the criminal code which pertains to
23 capital punishment and provides for procedures for the execution of
24 death sentences.

25 It is the desire of the sponsor that a significant portion of any
26 projected savings to be realized through this change in the statute be
27 allocated to benefits and services for victims of violent crime.

SENATE, No. 2471

STATE OF NEW JERSEY
212th LEGISLATURE

INTRODUCED JANUARY 9, 2007

Sponsored by:
Senator SHIRLEY K. TURNER
District 15 (Mercer)

SYNOPSIS

Eliminates the death penalty and replaces it with life imprisonment without eligibility for parole.

CURRENT VERSION OF TEXT

As introduced.



S2471 TURNER

2

1 AN ACT to allow for life imprisonment without eligibility for parole
2 and to eliminate the death penalty, amending N.J.S.2C:11-3 and
3 N.J.S.2B:23-10, repealing P.L.1983, c.245, and supplementing
4 Title 2C of the New Jersey Statutes.

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

8
9 1. N.J.S.2C:11-3 is amended to read as follows:
10 2C:11-3 Murder.

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

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

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

17 (3) It is committed when the actor, acting either alone or with
18 one or more other persons, is engaged in the commission of, or an
19 attempt to commit, or flight after committing or attempting to
20 commit robbery, sexual assault, arson, burglary, kidnapping,
21 carjacking, criminal escape or terrorism pursuant to section 2 of
22 P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of
23 immediate flight therefrom, any person causes the death of a person
24 other than one of the participants; except that in any prosecution
25 under this subsection, in which the defendant was not the only
26 participant in the underlying crime, it is an affirmative defense that
27 the defendant:

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

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

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

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

41 b. (1) Murder is a crime of the first degree but a person
42 convicted of murder shall be sentenced, except as provided in
43 **[subsection c.] paragraphs (2), (3) and (4) of this [section]**
44 **subsection**, by the court to a term of 30 years, during which the
45 person shall not be eligible for parole, or be sentenced to a specific

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 term of years which shall be between 30 years and life
2 imprisonment of which the person shall serve 30 years before being
3 eligible for parole.

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

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

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

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

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

27 With respect to a sentence imposed pursuant to this subsection,
28 the defendant shall not be entitled to a deduction of commutation
29 and work credits from that sentence. Any person convicted under
30 subsection a.(1) or (2) who committed the homicidal act by his own
31 conduct; or who as an accomplice procured the commission of the
32 offense by payment or promise of payment of anything of pecuniary
33 value; or who, as a leader of a narcotics trafficking network as
34 defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
35 enumerated in N.J.S.2C:35-3, commanded or by threat or promise
36 solicited the commission of the offense, or, if the murder occurred
37 during the commission of the crime of terrorism, any person who
38 committed the crime of terrorism, shall be sentenced by the court to
39 life imprisonment without eligibility for parole, to be served at a
40 maximum security prison, if a jury finds beyond a reasonable doubt
41 that any of the following aggravating factors exist:

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

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

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

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

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

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

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

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

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

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

30 (k) The victim was less than 14 years old; or

31 (l) The murder was committed during the commission of, or an
32 attempt to commit, or flight after committing or attempting to
33 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
34 2).

35 The aggravating factors relied on by the State in a given case
36 shall be presented to the grand jury and alleged in the indictment.
37 If the jury finds that no alleged aggravating factor has been
38 established by the State but the defendant's guilt has been
39 established under paragraph (1) or paragraph (2) of subsection a. of
40 this section, the defendant shall be sentenced pursuant to this
41 subsection.

42 (5) A juvenile who has been tried as an adult and convicted of
43 murder shall be sentenced pursuant to paragraph (1) of this
44 subsection.

45 c. Any person convicted under subsection a.(1) or (2) who
46 committed the homicidal act by his own conduct; or who as an
47 accomplice procured the commission of the offense by payment or
48 promise of payment of anything of pecuniary value; or who, as a
49 leader of a narcotics trafficking network as defined in N.J.S.2C:35-

1 3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,
2 commanded or by threat or promise solicited the commission of the
3 offense, or, if the murder occurred during the commission of the
4 crime of terrorism, any person who committed the crime of
5 terrorism, shall be sentenced as provided hereinafter:】

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

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

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

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

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

48 (d) The State and the defendant shall be permitted to rebut any
49 evidence presented by the other party at the sentencing proceeding

1 and to present argument as to the adequacy of the evidence to
2 establish the existence of any aggravating or mitigating factor.

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

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

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

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

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

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

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

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

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

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

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

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

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

48 (g) The murder was committed while the defendant was engaged
49 in the commission of, or an attempt to commit, or flight after

1 committing or attempting to commit murder, robbery, sexual
2 assault, arson, burglary, kidnapping, carjacking or the crime of
3 contempt in violation of N.J.S.2C:29-9b.;

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

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

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

17 (k) The victim was less than 14 years old; or

18 (l) The murder was committed during the commission of, or an
19 attempt to commit, or flight after committing or attempting to
20 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
21 2).】

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

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

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

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

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

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

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

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

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

43 【(6) When a defendant at a sentencing proceeding presents
44 evidence of the defendant's character or record pursuant to
45 subparagraph (h) of paragraph (5) of this subsection, the State may
46 present evidence of the murder victim's character and background
47 and of the impact of the murder on the victim's survivors. If the
48 jury finds that the State has proven at least one aggravating factor
49 beyond a reasonable doubt and the jury finds the existence of a

- 1 mitigating factor pursuant to subparagraph (h) of paragraph (5) of
2 this subsection, the jury may consider the victim and survivor
3 evidence presented by the State pursuant to this paragraph in
4 determining the appropriate weight to give mitigating evidence
5 presented pursuant to subparagraph (h) of paragraph (5) of this
6 subsection. As used in this paragraph "victim and survivor
7 evidence" may include the display of a photograph of the victim
8 taken before the homicide.】 (Deleted by amendment, P.L. , c.)
9 (pending before the Legislature as this bill).
- 10 d. 【The sentencing proceeding set forth in subsection c. of this
11 section shall not be waived by the prosecuting attorney.】 (Deleted
12 by amendment, P.L. , c.) (pending before the Legislature as this
13 bill).
- 14 e. 【Every judgment of conviction which results in a sentence of
15 death under this section shall be appealed, pursuant to the Rules of
16 Court, to the Supreme Court. Upon the request of the defendant,
17 the Supreme Court shall also determine whether the sentence is
18 disproportionate to the penalty imposed in similar cases,
19 considering both the crime and the defendant. Proportionality
20 review under this section shall be limited to a comparison of similar
21 cases in which a sentence of death has been imposed under
22 subsection c. of this section. In any instance in which the defendant
23 fails, or refuses to appeal, the appeal shall be taken by the Office of
24 the Public Defender or other counsel appointed by the Supreme
25 Court for that purpose.】 (Deleted by amendment, P.L. , c.)
26 (pending before the Legislature as this bill).
- 27 f. 【Prior to the jury's sentencing deliberations, the trial court
28 shall inform the jury of the sentences which may be imposed
29 pursuant to subsection b. of this section on the defendant if the
30 defendant is not sentenced to death. The jury shall also be informed
31 that a failure to reach a unanimous verdict shall result in sentencing
32 by the court pursuant to subsection b.】 (Deleted by amendment,
33 P.L. , c.) (pending before the Legislature as this bill).
- 34 g. 【A juvenile who has been tried as an adult and convicted of
35 murder shall not be sentenced pursuant to the provisions of
36 subsection c. but shall be sentenced pursuant to the provisions of
37 subsection b. of this section.】 (Deleted by amendment, P.L. , c.)
38 (pending before the Legislature as this bill).
- 39 h. 【In a sentencing proceeding conducted pursuant to this
40 section, no evidence shall be admissible concerning the method or
41 manner of execution which would be imposed on a defendant
42 sentenced to death.】 (Deleted by amendment, P.L. , c.)
43 (pending before the Legislature as this bill).
- 44 i. 【For purposes of this section the term "homicidal act" shall
45 mean conduct that causes death or serious bodily injury resulting in
46 death.】 (Deleted by amendment, P.L. , c.) (pending before the
47 Legislature as this bill).
- 48 j. In a sentencing proceeding conducted pursuant to this section,

1 the display of a photograph of the victim taken before the homicide
2 shall be permitted.

3 (cf: P.L.2002, c.26, s.10)

4

5 2. (New section) An inmate sentenced to death prior to the date
6 of the passage of this bill, upon motion to the sentencing court and
7 waiver of any further appeals related to sentencing, shall be
8 resentenced to a term of life imprisonment during which the
9 defendant shall not be eligible for parole. Such sentence shall be
10 served in a maximum security prison.

11

12 3. (New section) A person convicted of murder under
13 paragraphs (2), (3), or (4) of subsection b. of N.J.S.2C:11-3 shall be
14 required to pay restitution to the nearest surviving relative of the
15 victim. The court shall determine the amount and duration of the
16 restitution pursuant to N.J.S.2C:43-3 and the provisions of chapter
17 46 of Title 2C of the New Jersey Statutes.

18

19 4. N.J.S.2B:23-10 is amended to read as follows:

20 2B:23-10. Examination of jurors. a. In the discretion of the
21 court, parties to any trial may question any person summoned as a
22 juror after the name is drawn and before the swearing, and without
23 the interposition of any challenge, to determine whether or not to
24 interpose a peremptory challenge or a challenge for cause. Such
25 examination shall be permitted in order to disclose whether or not
26 the juror is qualified, impartial and without interest in the result of
27 the action. The questioning shall be conducted in open court under
28 the trial judge's supervision.

29 b. **[The examination of jurors shall be under oath only in cases in**
30 **which a death penalty may be imposed.]** (Deleted by amendment,
31 P.L. , c.) (pending before the Legislature as this bill).

32 (cf: N.J.S. 2B:23-10)

33

34 5. P.L.1983, c.245 (C.2C:49-1 through 2C:49-12, inclusive) is
35 repealed.

36

37 6. This act shall take effect immediately.

38

39

40

STATEMENT

41

42 This bill eliminates the death penalty in New Jersey and replaces
43 it with life imprisonment without eligibility for parole, which
44 sentence shall be served in a maximum security prison.

45 The bill amends N.J.S.2C:11-3 to remove the references to
46 current subsection c. concerning the death penalty. Under the bill,
47 murder generally would be punishable by a term of 30 years, during
48 which the person shall not be eligible for parole, or a specific term
49 of years which shall be between 30 years and life imprisonment of

1 which the person shall serve 30 years before being eligible for
2 parole.

3 The bill sets out certain provisions for sentencing by the court to
4 a term of life imprisonment during which the defendant shall not be
5 eligible for parole. These circumstances are:

6 (1) If the victim was a law enforcement officer and was
7 murdered while performing his official duties or was murdered
8 because of his status as a law enforcement officer;

9 (2) If the murder victim is less than 14 years old and the act is
10 committed in the course of the commission, whether alone or with
11 one or more persons, of a violation of N.J.S.2C:14-2 (sexual
12 assault) or N.J.S.2C:14-3 (criminal sexual contact); or

13 (3) If certain aggravators exist.

14 An inmate sentenced to death prior to the date of the passage of
15 this bill, upon motion to the sentencing court and waiver of any
16 further appeals related to sentencing, will be resentenced to a term
17 of life imprisonment during which the defendant shall not be
18 eligible for parole. Such a sentence shall be served in a maximum
19 security prison.

20 A person convicted of murder would be required to pay
21 restitution to the nearest surviving relative of the victim when
22 certain aggravators exist. The court will determine the amount and
23 duration of the restitution.

24 The bill would also remove the reference to death penalty cases
25 in N.J.S.A.2B:23-10 concerning examination of jurors.

26 The bill repeals chapter 49 of the criminal code which pertains to
27 capital punishment and provides for procedures for carrying out
28 death sentences.

29 It is the desire of the sponsor that any projected savings to be
30 realized through the elimination of the death penalty be allocated to
31 benefits and services for survivors of victims of homicide.

32 This bill was proposed by the New Jersey Death Penalty Study
33 Commission, which issued its report and recommendations on
34 January 2, 2007.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 171 and 2471**

STATE OF NEW JERSEY

DATED: MAY 10, 2007

The Senate Judiciary Committee reports favorably Senate Committee Substitute for Senate Bill Nos. 171 and 2471.

This substitute eliminates the death penalty in New Jersey and replaces it with life imprisonment without eligibility for parole in certain circumstances.

The substitute amends N.J.S.2C:11-3 to delete current subsection c. concerning the sentencing phase of the murder statute and deletes other statutory provisions pertaining to the death penalty.

Under the substitute, murder generally would continue to be punishable by a term of 30 years, during which the person shall not be eligible for parole, or a specific term of years between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole. This provision is unchanged from current law.

Current law also provides that the defendant must be sentenced to a term of life imprisonment without eligibility for parole if (1) 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, or (2) the victim was less than 14 years old and the murder was committed in the course of the commission of a violation of N.J.S.2C:14-2 (sexual assault) or N.J.S.2C:14-3 (criminal sexual contact). These provisions would also not be changed by the substitute.

The substitute amends paragraph (4) of subsection b. of N.J.S.A.2C:11-3 to provide that certain defendants convicted of murder would be sentenced to life imprisonment without eligibility for parole, to be served in a maximum security prison, if the jury finds beyond a reasonable doubt that any of the following aggravating factors exist:

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

(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 murder 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;

(g) The murder 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, kidnapping, carjacking or the crime of contempt in violation of the Domestic Violence Act;

(h) The defendant murdered a public servant 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 and in furtherance of a conspiracy committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network in furtherance of a conspiracy;

(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 (causing widespread injury or damage);

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism.

These aggravating factors are identical to those set out in current law concerning the death penalty. Currently, 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.

The substitute provides that a juvenile who has been tried as an adult and convicted of murder would not be sentenced to life imprisonment without eligibility for parole under the provisions of the substitute concerning aggravating factors. Such a juvenile would remain subject to sentencing under the general sentencing provisions for murder (a term of 30 years to life with a term of parole ineligibility of 30 years). Current law provides that a juvenile tried as an adult and convicted of murder may not be sentenced to death.

Under the substitute, a juvenile tried as an adult and convicted of murder would remain subject to sentencing to life imprisonment without eligibility for parole if (1) the victim was a law enforcement officer and was murdered while performing official duties or murdered because of his status as a law enforcement officer, or (2) the victim

was less than 14 years old and the murder was committed in the course of the commission of a sex crime. Both of these provisions are contained in current law.

An inmate sentenced to death prior to the date of enactment of this substitute, upon motion to the sentencing court and waiver of any further appeals related to sentencing, would be resentenced to a term of life imprisonment during which the defendant would not be eligible for parole. The sentence would be served in a maximum security prison. The substitute provides that any such motion to the sentencing court shall be made within 60 days of enactment of the act. If the motion is not made within 60 days the inmate would remain under the sentence of death previously imposed by the sentencing court.

The substitute provides that in addition to the provisions of any other law requiring restitution, a person convicted of murder would be required to pay restitution to the nearest surviving relative of the victim. The court would determine the amount and duration of the restitution.

The substitute repeals chapter 49 of the Criminal Code which pertains to capital punishment and provides for procedures for carrying out execution of death sentences.

The substitute would also make technical amendments to remove the reference to death penalty cases in several statutes. These include N.J.S.A.2B:23-10, concerning examination of jurors; N.J.S.A.2B:23-13, concerning peremptory challenges; and N.J.S.A.30:4-123.51, concerning sentences of life without parole.

It is the desire of the sponsor that a significant portion of any projected savings to be realized through this change in the statute be allocated to benefits and services for victims of violent crime.

This substitute is substantially similar to the bill proposed by the New Jersey Death Penalty Study Commission in its January 2, 2007 report.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR **SENATE, Nos. 171 and 2471**

STATE OF NEW JERSEY

DATED: DECEMBER 3, 2007

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 171/2471 (SCS).

This substitute eliminates the death penalty in New Jersey and replaces it with life imprisonment without eligibility for parole in certain circumstances.

This substitute amends N.J.S.A.2C:11-3 to delete the current provisions in subsection c. which provide when a defendant would be eligible to be subject to the death penalty. Currently, subsection c. provides that any person convicted under paragraph (1) of subsection a. of N.J.S.A.2C:11-3 (purposely causes death or serious bodily injury resulting in death) or under paragraph (2) of subsection a. of N.J.S.A.2C:11-3 (knowingly causes death or serious bodily injury resulting in death) who committed the homicidal act by his own conduct; or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value; 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, or, if the murder occurred during the commission of the crime of terrorism may be eligible for the death sentence. Once this determination is made, the trial enters the penalty phase where the jury or the court must weigh the aggravating factors of a murder case against the mitigating factors in order to determine whether a defendant subject to the death penalty will actually be sentenced to death.

This substitute provides that the same categories of defendants who were eligible for the death penalty would now be eligible for life imprisonment without eligibility for parole which would be served in a maximum security prison, if the jury finds beyond a reasonable doubt that certain aggravating factors exist. These aggravating factors are enumerated below and are identical to those set out in the current law concerning the death penalty.

Aggravating factors:

(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 murder 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 murder 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, kidnapping, carjacking or the crime of contempt in violation of the N.J.S.A.2C:29-9 b. (concerning domestic violence);

(h) The defendant murdered a public servant 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 and in furtherance of a conspiracy committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network in furtherance of a conspiracy;

(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 (causing widespread injury or damage);

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism.

Under the substitute, as under current law, murder generally would continue to be punishable by a term of 30 years, during which the person shall not be eligible for parole, or a specific term of years between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole.

Under the substitute, as under the current law, a defendant shall be sentenced to a term of life imprisonment without eligibility for parole 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 (see paragraph (2) of subsection b.), or the victim was less than 14 years old and the murder was committed in the course of the commission of the commission of a sexual assault or criminal sexual contact (see paragraph (3) of subsection b.).

Juveniles tried as adults. The substitute provides that a juvenile who has been tried as an adult and convicted of murder generally would not be sentenced to life imprisonment without eligibility for parole. Such a juvenile would remain subject to sentencing under the general sentencing provisions for murder (a term of 30 years to life with a term of parole ineligibility of 30 years).

However, the substitute provides that a juvenile shall be sentenced to a term of life imprisonment without eligibility for parole if the victim was a law enforcement officer and was murdered while performing official duties or murdered because of his status as a law enforcement officer, or if the victim was less than 14 years old and the murder was committed in the course of the commission of a sex crime.

Under current law a juvenile tried as an adult and convicted of murder may not be sentenced to death.

Inmates currently sentenced to death. An inmate sentenced to death prior to the date of enactment of this substitute, upon motion to the sentencing court and waiver of any further appeals related to sentencing, would be resentenced to a term of life imprisonment during which the defendant would not be eligible for parole. The sentence would be served in a maximum security prison. The substitute provides that any such motion to the sentencing court shall be made within 60 days of enactment of the act.

If the motion is not made within 60 days the inmate would remain under the sentence of death previously imposed by the sentencing court.

Restitution. The substitute provides that in addition to the provisions of any other law requiring restitution, a person convicted of murder would be required to pay restitution to the nearest surviving relative of the victim. The court would determine the amount and duration of the restitution.

FISCAL IMPACT:

The Office of Legislative Services (OLS) concludes that due to the number of variables inherent in the consideration of this bill's impact it cannot quantify with accuracy the costs or savings to be generated by this bill. Variables include the number of death penalty eligible cases to be considered in the future; the respective strategies adopted by the prosecuting and defense attorneys should the death penalty be continued or eliminated; whether the State would resume carrying out death sentences or continue to house prisoners in the Capital Sentence Unit should the death penalty remain in effect; and how the courts will react to current law or the proposed bill.

The cost of incarceration (discussed more fully below) would be affected by the enactment of this bill. In the short run, savings would result from the ability to move inmates in the Capital Sentence Unit to the general population at an annual savings of \$32,481 per inmate. However, the bill's incarceration cost impact in the long term is uncertain. If the death penalty remains in effect and if the State were to

begin to execute convicted offenders, the cost of housing an inmate in the Capital Sentence Unit for a limited time could ultimately be less than housing the inmate in the general population for the rest of his natural life. However, if the death penalty remains in effect and the State does not execute these offenders, the cost of housing them in the Capital Sentence Unit is substantially higher than the cost of housing them in the general population.

The OLS also concludes that impact of this bill on trial costs cannot be accurately estimated because it is not clear whether the bill would prompt more plea bargains, thus eliminating the need for trial, or what strategies would be adopted by both the prosecuting and defense attorneys that would directly affect the cost of each trial.

While it is difficult to ascertain the total fiscal impact of this bill, the OLS notes the following cost variables associated with imposition of the death penalty as currently incurred by the various affected governmental agencies:

Department of Corrections – Incarceration Costs

As of May, 2007, there were nine inmates housed in the Capital Sentencing Unit, for a total cost of \$653,418. It would cost the State \$361,089 to house these inmates in the general population of New Jersey State Prison, one of the State's two maximum security prisons, a savings of \$292,329 per year. According to the Department of Corrections, the average age of an inmate entering the Capital Sentence Unit is 32. Elimination of the death penalty would result in a savings of \$32,481 for every year that each is incarcerated. Given that no inmate has been put to death under the current death penalty statute, and assuming that upon sentencing these inmates would serve 30 to 40 years in the Capital Sentence Unit, the elimination of the death penalty would save the State approximately \$970,000 to \$1.3 million per inmate over each inmates lifetime.

County Jails - Incarceration Costs:

Indicted offenders either receive bail and are allowed to go free until a trial or are incarcerated in a county jail facility until trial. Death penalty eligible offenders would most likely be denied bail and therefore would remain in the county jail until conviction or acquittal. Not included in the Department of Corrections housing cost is cost to the counties for housing these offenders until and during the trial, a period of time which may be much longer than those tried in non-death penalty cases. Therefore, the elimination of the death penalty may reduce inmate housing costs at the county level.

Office of the Attorney General:

No formal fiscal information has been received from the Office of the Attorney General concerning savings to be realized by the prosecution from the elimination of the death penalty. However, since a trial to determine guilt or innocence would still be necessary, and both the prosecutor and public defender would be required to mount

aggressive prosecution or defense efforts, there would be little savings during the trial phase of prosecution.

Office of the Public Defender - Trial Costs

According to the Office of the Public Defender, as of August 2006 there was a caseload of 19 active death penalty cases being handled by this office. Of these cases, 4 had been added during the preceding 12 months. The Public Defender notes that the number of active death penalty cases is low because of the current environment against the death penalty. Prior to this decrease in death penalty prosecutions, the Public Defender's office had averaged between 40 and 50 cases per year. In order to provide the best possible defense in capital cases, the Public Defender has traditionally assigned two attorneys to each death penalty case, one senior and one junior attorney. Elimination of the death penalty would allow the Public Defender to use one, rather than two attorneys in all criminal trials, generating savings.

The Office of the Public Defender states that based on an average number of 19 active death penalty cases per year, the abolition of the death penalty would save \$1,360,000 annually, consisting primarily of savings in the pool attorney and expert witnesses categories. An additional \$101,000 for appellate attorney salaries would also be saved for a total annual cost savings of \$1.46 million.

Administrative Office of the Courts - Trial Costs, Proportionality Review Costs

The Administrative Office of the Courts (AOC) states that the elimination of the death penalty would generate savings for the Judiciary in two areas, trial court costs and the costs of conducting the proportionality review for each death penalty case. Typical trial costs per death penalty case, currently costs the AOC approximately \$148,185. However, the AOC notes that because of the different variables in non death penalty murder trials which range from the possibility of plea bargaining, negating the need for a trial altogether, to aggressive prosecution efforts and lengthy jury selection, information is not available concerning the cost of conducting a "typical" non-death penalty, life sentence without parole trial.

In addition to trial costs, the AOC also incurs "Proportionality Review Costs." Once an offender has been convicted in a death penalty trial, the State is required to conduct a proportionality review to determine whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Should the death penalty be abolished, proportionality review would cease, saving \$98,018 per inmate.

LEGISLATIVE FISCAL ESTIMATE
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 171 and 2471
STATE OF NEW JERSEY
212th LEGISLATURE

DATED: NOVEMBER 21, 2007

SUMMARY

- Synopsis:** Eliminates the death penalty and replaces it with life imprisonment without eligibility for parole in certain circumstances.
- Type of Impact:** Indeterminate - See comments below.
- Agencies Affected:** Judiciary, Office of the Public Defender, Department of Corrections, Department of Law and Public Safety, County Prosecutors, County Jails.

Office of Legislative Services Estimate

Fiscal Impact	<u>Short Term</u>	<u>Long Term</u>
Incarceration		
Costs	Savings of \$32,481 per inmate per year	Indeterminate-See comments below
Proportionality		
Review Costs	Savings of \$93,018 per review	Savings of \$93,018 per review
Trial Costs	Indeterminate - See comments below	
County Costs	Indeterminate - See comments below	

- The committee substitute eliminates the death penalty in New Jersey and replaces it with life imprisonment without eligibility for parole in certain circumstances.
- The Office of Legislative Services (OLS) concludes that due to the number of variables inherent in the consideration of this bill's impact it cannot quantify with accuracy the costs or savings to be generated by this bill. Variables include the number of death penalty eligible cases to be considered in the future; the respective strategies adopted by the prosecuting and defense attorneys should the death penalty be continued or eliminated; whether the State would resume carrying out death sentences or continue to house prisoners in the Capital Sentence Unit should the death penalty remain in effect; and how the courts will react to current law or the proposed bill.

- The cost of incarceration would be affected by the enactment of this bill. In the short run, savings would result from the ability to move inmates in the Capital Sentence Unit to the general population at an annual savings of \$32,481 per inmate. However, the bill's incarceration cost impact in the long term is uncertain. If the death penalty remains in effect and if the State were to begin to execute convicted offenders, the cost of housing an inmate in the Capital Sentence Unit for a limited time could ultimately be less than housing the inmate in the general population for the rest of his natural life. However, if the death penalty remains in effect and the State does not execute these offenders, the cost of housing them in the Capital Sentence Unit is substantially higher than the cost of housing them in the general population.
- The elimination of the death penalty would eliminate the necessity of conducting proportionality reviews, thus saving the State about \$93,018 per review.
- The OLS concludes that impact of this bill on trial costs cannot be accurately estimated because it is not clear whether the bill would prompt more plea bargains, thus eliminating the need for trial, or what strategies would be adopted by both the prosecuting and defense attorneys that would directly affect the cost of each trial.

BILL DESCRIPTION

Senate Committee Substitute for Senate Bill Nos. 171 and 2471 of 2007 eliminates the death penalty in New Jersey and replaces it with life imprisonment without eligibility for parole in certain circumstances.

Under the substitute, murder generally would continue to be punishable by a term of 30 years, during which the person shall not be eligible for parole, or a specific term of years between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole. This provision is unchanged from current law.

Current law also provides that the defendant must be sentenced to a term of life imprisonment without eligibility for parole if (1) 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, or (2) the victim was less than 14 years old and the murder was committed in the course of the commission of a violation of N.J.S.2C:14-2 (sexual assault) or N.J.S.2C:14-3 (criminal sexual contact). These provisions would also not be changed by the substitute.

The substitute amends paragraph (4) of subsection b. of N.J.S.A.2C:11-3 to provide that certain defendants convicted of murder would be sentenced to life imprisonment without eligibility for parole, to be served in a maximum security prison, if the jury finds beyond a reasonable doubt that any of the following aggravating factors exist:

- (a) The defendant has been convicted, at any time, of another murder;
- (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 murder 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;

(g) The murder 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, kidnapping, carjacking or the crime of contempt in violation of the Domestic Violence Act;

(h) The defendant murdered a public servant 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 and in furtherance of a conspiracy committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network in furtherance of a conspiracy;

(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 (causing widespread injury or damage);

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism.

These aggravating factors are identical to those set out in current law concerning the death penalty. Currently, 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.

The substitute provides that a juvenile who has been tried as an adult and convicted of murder would not be sentenced to life imprisonment without eligibility for parole under the provisions of the substitute concerning aggravating factors. Such a juvenile would remain subject to sentencing under the general sentencing provisions for murder (a term of 30 years to life with a term of parole ineligibility of 30 years). Current law provides that a juvenile tried as an adult and convicted of murder may not be sentenced to death.

Under the substitute, a juvenile tried as an adult and convicted of murder would remain subject to sentencing to life imprisonment without eligibility for parole if (1) the victim was a law enforcement officer and was murdered while performing official duties or murdered because of his status as a law enforcement officer, or (2) the victim was less than 14 years old and the murder was committed in the course of the commission of a sex crime. Both of these provisions are contained in current law.

An inmate sentenced to death prior to the date of enactment of this substitute, upon motion to the sentencing court and waiver of any further appeals related to sentencing, would be resentenced to a term of life imprisonment during which the defendant would not be eligible for parole. The sentence would be served in a maximum security prison. The substitute provides that any such motion to the sentencing court shall be made within 60 days of enactment of the act. If the motion is not made within 60 days the inmate would remain under the sentence of death previously imposed by the sentencing court.

The substitute provides that in addition to the provisions of any other law requiring restitution, a person convicted of murder would be required to pay restitution to the nearest surviving relative of the victim. The court would determine the amount and duration of the restitution.

FISCAL ANALYSIS

EXECUTIVE BRANCH

Office of the Attorney General

No formal fiscal information has been received from the Office of the Attorney General concerning savings to be realized by the prosecution from the elimination of the death penalty. However, representatives from the office have noted that if the death penalty were abolished, these defendants would most likely be facing a very lengthy sentence, or life without parole. As a result, a trial to determine guilt or innocence would still be necessary, and both the prosecutor and public defender would be required to mount aggressive prosecution or defense efforts. Because of this, there would be little savings during the trial phase of prosecution.

Office of the Public Defender - Trial Costs

According to the Office of the Public Defender, as of August 2006 there was a caseload of 19 active death penalty cases being handled by this office. Of these cases, 4 had been added during the preceding 12 months. The Public Defender notes that the number of active death penalty cases is low because of the current environment against the death penalty. Prior to this decrease in death penalty prosecutions, the Public Defender's office had averaged between 40 and 50 cases per year.

In order to provide the best possible defense in capital cases, the Public Defender has traditionally assigned two attorneys to each death penalty case, one senior and one junior attorney. Elimination of the death penalty would allow the Public Defender to use one, rather than two attorneys in all criminal trials, generating savings.

All death penalty prosecutions consist of two phases, the actual trial to determine guilt or innocence and the sentencing phase to determine whether the death penalty or a term of imprisonment would be imposed. The abolition of the death penalty would generate savings through the elimination of the 2-week sentencing phase of a capital trial. This in turn would reduce the number of expert witnesses required and eliminate pool attorney costs for those cases in which a conflict among defendants exists.

The Office of the Public Defender states that based on an average number of 19 active death penalty cases per year, the abolition of the death penalty would save \$1,360,000 annually, consisting primarily of savings in the pool attorney and expert witnesses categories. An additional \$101,000 for appellate attorney salaries would also be saved for a total annual cost savings of \$1.46 million as follows:

PUBLIC DEFENDER COSTS			
Professional Services	Death Penalty	Non Death Penalty	Savings
Defense Attorney Costs	\$1,109,099	\$386,328	\$722,771
Expert witnesses	\$ 731,066	\$184,184	\$546,882
Court Reporters	\$ 41,902	\$ 0	\$ 41,902
Miscellaneous	\$ 49,030	\$ 0	\$ 49,030
Appellate Attorney Costs	\$ 101,000	\$ 0	\$101,000
TOTAL SAVINGS	\$2,032,097	\$ 570,512	\$1,461,585
Savings per trial based on 19 cases per year			\$76,926

Administrative Office of the Courts - Trial Costs, Proportionality Review Costs

The Administrative Office of the Courts (AOC) states that the elimination of the death penalty would generate savings for the Judiciary in two areas, trial court costs and the costs of conducting the proportionality review for each death penalty case.

Trial Costs

The following table provides the AOC's estimate of the cost of conducting a typical death penalty trial:

JUDICIARY TRIAL COSTS		
Salary Costs Position	Time Spent	Salary & Fringe Benefits
Superior Court Judge	48 days	\$39,440
Judge's Secretary	50.5 days	\$10,584
Court Clerk	45 days	\$ 8,660
Superior Court Law Clerk	50.5 days	\$ 9,431
Court Reporter	45 days	\$13,998
Criminal Division Manager	2 days	\$ 891
Probation Officer Report	2 days	\$ 605
Court Investigator	0.5 days	\$ 113
Total Salary Costs		\$83,722
Non-Salary Costs		
Overhead		\$48,240
Juror fees		\$16,223
Total Non-Salary Costs		\$64,463
TOTAL TRIAL COURT COSTS		\$148,185

According to the AOC, because of the different variables in non death penalty murder trials which range from the possibility of plea bargaining, negating the need for a trial altogether, to aggressive prosecution efforts and lengthy jury selection, information is not available concerning the cost of conducting a "typical" non-death penalty, life sentence without parole trial.

Proportionality Review Costs

Once an offender has been convicted in a death penalty trial, the State is required to conduct a proportionality review to determine whether the sentence is disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. Should the death penalty be abolished, proportionality review would cease. The following table illustrates the AOC's estimate of the time and associated costs devoted to proportionality review during death penalty cases.

JUDICIARY PROPORTIONALITY REVIEW COSTS		
Salary Costs Position	Time Spent	Salary & Fringe Benefits
Court-Appointed Special Master	16 days	\$ 4,900
Asst Director, Criminal Practice	5 days	\$ 2,285
Asst Chief Sentencing Unit	156 days	\$52,361
Legal Assistant	13 days	\$ 3,120
Statistical Consultant	14.5 days	\$14,527
Systems Coordinator	23 days	\$ 8,058
Head Data Entry Mach Operator	15 days	\$ 3,338
Sr. Data Entry Mach Operator	15 days	\$ 2,620
Secretarial Assistant	5 days	\$ 816
Judiciary Secretary	5 days	\$ 993
Total Salary Costs		\$93,018

Not included in this estimate is the cost of non salary items such as equipment, materials and supplies, fixed assets, maintenance, travel, training and capital improvements.

Department of Corrections - Incarceration Costs

According to the Department of Corrections, the cost of housing an inmate in the Capital Sentence Unit (death row) at the New Jersey State Prison totals about \$72,602 per year, \$32,481 more than the \$40,121 cost of housing an inmate within New Jersey State Prison's general population. Because New Jersey State Prison is a maximum security prison, requiring higher security levels, its average daily housing cost is higher than the department's average annual housing cost of \$32,000.

As of May, 2007, there were 9 inmates housed in the Capital Sentence Unit, for a total annual cost of \$653,418. It would cost the State \$361,089 to house these inmates in the general population of New Jersey State Prison, one of the State's two maximum security prisons, a savings of \$292,329 per year.

According to the department, the average age that an inmate enters the Capital Sentence Unit is 32. Elimination of the death penalty would result in a savings of \$32,481 for every year that each inmate is incarcerated. In light of the fact that no inmate has been put to death under the current death penalty statute, and assuming that upon conviction these inmates would serve 30 to 40 years within the Capital Sentence Unit, the elimination of the death penalty would save the State \$974,430 to \$1,299,240 per inmate over each inmate's lifetime.

However, elimination of the death penalty may increase the number individuals sentenced to life without parole.

County Jails - Incarceration Costs

Indicted offenders either receive bail and are allowed to go free until a trial or are incarcerated in a county jail facility until trial. Death penalty eligible offenders would most likely be denied bail and therefore would remain in the county jail until conviction or acquittal. Not included in the Department of Corrections housing cost is cost to the counties for housing these offenders until and during the trial. Often because of the time required for the defense and prosecuting attorneys to prepare for a death penalty trial, these offenders remain in the county jail facilities much longer than those tried in non-death penalty cases. Therefore, the elimination of the death penalty may reduce inmate housing costs at the county level.

SUMMARY

In sum, the potential and actual imposition of the death penalty affects many governmental agencies. While some of the costs can be identified, others such as the impact on the trial court schedule and backlog are not so easy to distinguish.

Some of the costs that have been identified by the various agencies involved with the prosecution, defense and housing of death penalty eligible offenders are summarized as follows:

SUMMARY GOVERNMENT AGENCY DEATH PENALTY COSTS	
AGENCY	COST
Attorney General's Office (Prosecutors)	Not available
Office of the Public Defender	\$ 76,926 per trial
Judiciary:	
Trial	\$ 148,185 per trial
Proportionality Review	\$ 93,018 per review
Department of Corrections	\$ 32,481 per inmate per year
County Jail Costs	Not available

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that due to the number of variables inherent in the consideration of this bill's impact, it cannot quantify with accuracy the exact cost or savings to be generated by this bill. Variables include the number of death penalty eligible cases to be considered in the future; the respective strategies adopted by the prosecuting and defense attorneys should the death penalty be continued or eliminated; whether the State would commence with putting inmates to death or continue to house them in the Capital Sentence Unit should the death penalty remain in effect; and how the court will react to current law or the proposed bill.

The OLS notes that while the cost of incarcerating an inmate in the Capital Sentence Unit is significantly higher than the cost of housing an inmate in a maximum security prison, the total cost of incarcerating an inmate in the Capital Sentence Unit would be reduced if the State were to begin executing those sentenced to death. Conversely, with the elimination of the death penalty, more inmates could be sentenced to life without parole, generating a cost to be borne for 30 years or more.

Trial costs vary greatly among criminal cases. Capital trial costs are traditionally higher than non-capital trial costs due to the extremely high stakes involved as well as the necessity to conduct the penalty phase to a capital trial. The OLS cannot estimate with any accuracy the potential short term or long term trial costs as a result of this bill's enactment.

Savings would also be generated from the elimination of the need to conduct proportionality reviews on all cases in which an offender is convicted and sentenced to capital punishment.

Section: Judiciary

*Analyst: Anne Raughley
Principal Fiscal Analyst*

*Approved: David J. Rosen
Legislative Budget and Finance Officer*

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C. 52:13B-1 et seq.).

ASSEMBLY, No. 3716

STATE OF NEW JERSEY

212th LEGISLATURE

INTRODUCED NOVEMBER 20, 2006

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Co-Sponsored by:

Assemblyman Cryan, Assemblywomen Jasey, Evans and Watson Coleman

SYNOPSIS

Repeals the death penalty and replaces it with life imprisonment without eligibility for parole in certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/11/2007)

1 AN ACT to allow for life imprisonment without eligibility for parole
2 when certain aggravators exist and to repeal the death penalty,
3 amending N.J.S.2C:11-3 and N.J.S.2B:23-10, repealing
4 P.L.1983, c.245, and supplementing Title 2C of the New Jersey
5 Statutes.

6
7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. N.J.S.2C:11-3 is amended to read as follows:

11 2C:11-3 Murder.

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

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

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

18 (3) It is committed when the actor, acting either alone or with
19 one or more other persons, is engaged in the commission of, or an
20 attempt to commit, or flight after committing or attempting to
21 commit robbery, sexual assault, arson, burglary, kidnapping,
22 carjacking, criminal escape or terrorism pursuant to section 2 of
23 P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of
24 immediate flight therefrom, any person causes the death of a person
25 other than one of the participants; except that in any prosecution
26 under this subsection, in which the defendant was not the only
27 participant in the underlying crime, it is an affirmative defense that
28 the defendant:

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

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

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

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

42 b. (1) Murder is a crime of the first degree but a person
43 convicted of murder shall be sentenced, except as provided in
44 **[subsection c.] paragraphs (2), (3) and (4) of this [section]**
45 subsection, by the court to a term of 30 years, during which the

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 person shall not be eligible for parole, or be sentenced to a specific
2 term of years which shall be between 30 years and life
3 imprisonment of which the person shall serve 30 years before being
4 eligible for parole.

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

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

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

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

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

28 With respect to a sentence imposed pursuant to this subsection,
29 the defendant shall not be entitled to a deduction of commutation
30 and work credits from that sentence.】 Except as provided in
31 paragraphs (2) and (3), a person convicted of murder may be
32 sentenced by the court to life imprisonment without eligibility for
33 parole if a jury finds that any of the following aggravating factors
34 exist:

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
41 addition 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
47 value;

48 (e) The defendant procured the commission of the murder by

1 payment or promise of payment of anything of pecuniary value;

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

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

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
12 his official duties, or because of the victim's status as a public
13 servant;

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

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

23 (k) The victim was less than 14 years old; or

24 (l) The murder was committed during the commission of, or an
25 attempt to commit, or flight after committing or attempting to
26 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
27 2).

28 (5) A juvenile who has been tried as an adult and convicted of
29 murder shall be sentenced pursuant to paragraph (1) of this
30 subsection.

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

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

44 **Where the defendant has been tried by a jury, the proceeding**
45 **shall be conducted by the judge who presided at the trial and before**
46 **the jury which determined the defendant's guilt, except that, for**
47 **good cause, the court may discharge that jury and conduct the**
48 **proceeding before a jury empaneled for the purpose of the**

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

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

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

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

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

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

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

48 【(3) The jury or, if there is no jury, the court shall return a

1 special verdict setting forth in writing the existence or nonexistence
2 of each of the aggravating and mitigating factors set forth in
3 paragraphs (4) and (5) of this subsection. If any aggravating factor
4 is found to exist, the verdict shall also state whether it outweighs
5 beyond a reasonable doubt any one or more mitigating factors.

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

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

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

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

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

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

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

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

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

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

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

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

45 (i) The defendant: (i) as a leader of a narcotics trafficking
46 network as defined in N.J.S.2C:35-3 and in furtherance of a
47 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
48 or by threat or promise solicited the commission of the murder or

1 (ii) committed the murder at the direction of a leader of a narcotics
2 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a
3 conspiracy enumerated in N.J.S.2C:35-3;

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

6 (k) The victim was less than 14 years old; or

7 (l) The murder was committed during the commission of, or an
8 attempt to commit, or flight after committing or attempting to
9 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
10 2).]

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

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

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

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

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

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

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

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

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

32 [(6) When a defendant at a sentencing proceeding presents
33 evidence of the defendant's character or record pursuant to
34 subparagraph (h) of paragraph (5) of this subsection, the State may
35 present evidence of the murder victim's character and background
36 and of the impact of the murder on the victim's survivors. If the
37 jury finds that the State has proven at least one aggravating factor
38 beyond a reasonable doubt and the jury finds the existence of a
39 mitigating factor pursuant to subparagraph (h) of paragraph (5) of
40 this subsection, the jury may consider the victim and survivor
41 evidence presented by the State pursuant to this paragraph in
42 determining the appropriate weight to give mitigating evidence
43 presented pursuant to subparagraph (h) of paragraph (5) of this
44 subsection. As used in this paragraph "victim and survivor
45 evidence" may include the display of a photograph of the victim
46 taken before the homicide.] (Deleted by amendment, P.L. __, c. __)
47 (pending before the Legislature as this bill).

48 d. [The sentencing proceeding set forth in subsection c. of this

1 section shall not be waived by the prosecuting attorney.】 (Deleted
2 by amendment, P.L. , c.) (pending before the Legislature as this
3 bill).

4 e. 【Every judgment of conviction which results in a sentence of
5 death under this section shall be appealed, pursuant to the Rules of
6 Court, to the Supreme Court. Upon the request of the defendant,
7 the Supreme Court shall also determine whether the sentence is
8 disproportionate to the penalty imposed in similar cases,
9 considering both the crime and the defendant. Proportionality
10 review under this section shall be limited to a comparison of similar
11 cases in which a sentence of death has been imposed under
12 subsection c. of this section. In any instance in which the defendant
13 fails, or refuses to appeal, the appeal shall be taken by the Office of
14 the Public Defender or other counsel appointed by the Supreme
15 Court for that purpose.】 (Deleted by amendment, P.L. , c.)
16 (pending before the Legislature as this bill).

17 f. 【Prior to the jury's sentencing deliberations, the trial court
18 shall inform the jury of the sentences which may be imposed
19 pursuant to subsection b. of this section on the defendant if the
20 defendant is not sentenced to death. The jury shall also be informed
21 that a failure to reach a unanimous verdict shall result in sentencing
22 by the court pursuant to subsection b.】 (Deleted by amendment,
23 P.L. , c.) (pending before the Legislature as this bill).

24 g. 【A juvenile who has been tried as an adult and convicted of
25 murder shall not be sentenced pursuant to the provisions of
26 subsection c. but shall be sentenced pursuant to the provisions of
27 subsection b. of this section.】 (Deleted by amendment, P.L. , c.)
28 (pending before the Legislature as this bill).

29 h. 【In a sentencing proceeding conducted pursuant to this
30 section, no evidence shall be admissible concerning the method or
31 manner of execution which would be imposed on a defendant
32 sentenced to death.】 (Deleted by amendment, P.L. , c.)
33 (pending before the Legislature as this bill).

34 i. 【For purposes of this section the term "homicidal act" shall
35 mean conduct that causes death or serious bodily injury resulting in
36 death.】 (Deleted by amendment, P.L. , c.) (pending before the
37 Legislature as this bill).

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

41 (cf: P.L.2002, c.26, s.10)

42

43 2. (New section) An inmate sentenced to death prior to the date
44 of the passage of this bill, upon motion to the sentencing court and
45 waiver of any further appeals related to sentencing, shall be
46 resentenced to a term of life imprisonment during which the
47 defendant shall not be eligible for parole.

1 3. (New section) A person convicted of murder under
2 paragraphs (2), (3), or (4) of subsection b. of N.J.S.2C:11-3 shall be
3 required to pay restitution to the nearest surviving relative of the
4 victim. The court shall determine the amount and duration of the
5 restitution pursuant to N.J.S.2C:43-3 and the provisions of chapter
6 46 of Title 2C of the New Jersey Statutes.

7
8 4. N.J.S.2B:23-10 is amended to read as follows:

9 2B:23-10. Examination of jurors. a. In the discretion of the
10 court, parties to any trial may question any person summoned as a
11 juror after the name is drawn and before the swearing, and without
12 the interposition of any challenge, to determine whether or not to
13 interpose a peremptory challenge or a challenge for cause. Such
14 examination shall be permitted in order to disclose whether or not
15 the juror is qualified, impartial and without interest in the result of
16 the action. The questioning shall be conducted in open court under
17 the trial judge's supervision.

18 b. ~~【The examination of jurors shall be under oath only in cases in~~
19 ~~which a death penalty may be imposed.】~~ (Deleted by amendment,
20 P.L. , c.) (pending before the Legislature as this bill).
21 (cf: N.J.S. 2B:23-10)

22
23 5. P.L.1983, c.245 (C.2C:49-1 through 2C:49-12, inclusive) is
24 repealed.

25
26 6. This act shall take effect immediately.

27
28
29 STATEMENT

30
31 This bill repeals the death penalty in New Jersey and replaces it
32 with life imprisonment without eligibility for parole in certain
33 circumstances.

34 The bill amends N.J.S.2C:11-3 to remove the references to
35 current subsection c. concerning the death penalty. Under the bill,
36 murder generally would be punishable by a court to a term of 30
37 years, during which the person shall not be eligible for parole, or to
38 a specific term of years which shall be between 30 years and life
39 imprisonment of which the person shall serve 30 years before being
40 eligible for parole. There are certain provisions for sentencing by a
41 court to a term of life imprisonment during which the defendant
42 shall not be eligible for parole.

43 These circumstances are:

44 (1) If the victim was a law enforcement officer and was
45 murdered while performing his official duties or was murdered
46 because of his status as a law enforcement officer;

47 (2) If the murder victim is less than 14 years old and the act is
48 committed in the course of the commission, whether alone or with

1 one or more persons, of a violation of N.J.S.2C:14-2 (sexual
2 assault) or N.J.S.2C:14-3 (criminal sexual contact); and

3 (3) If certain aggravators exist.

4 An inmate sentenced to death prior to the date of the passage of
5 this bill, upon motion to the sentencing court and waiver of any
6 further appeals related to sentencing, will be resentenced to a term
7 of life imprisonment during which the defendant shall not be
8 eligible for parole.

9 A person convicted of murder under certain circumstances would
10 be required to pay restitution to the nearest surviving relative of the
11 victim when certain aggravators exist. The court will determine the
12 amount and duration of the restitution.

13 The bill would also remove the reference to death penalty cases
14 in N.J.S.A.2B:23-10 concerning examination of jurors.

15 The bill repeals chapter 49 of the criminal code which pertains to
16 capital punishment and provides for procedures for the execution of
17 death sentences.

18 It is the desire of the sponsor that a significant portion of any
19 projected savings to be realized through this change in the statute be
20 allocated to benefits and services for victims of violent crime.

ASSEMBLY, No. 795

STATE OF NEW JERSEY

212th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2006 SESSION

Sponsored by:

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblywoman NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Co-Sponsored by:

Assemblyman Connors, Assemblywomen Oliver, Quigley, Assemblymen Scalera, Barnes, Assemblywoman Voss, Assemblymen Giblin, Schaer, Gusciora, Steele, Prieto, Hackett and McKeon

SYNOPSIS

Repeals the death penalty and replaces it with life imprisonment without eligibility for parole in certain circumstances.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 6/12/2007)

1 AN ACT to allow for life imprisonment without eligibility for parole
2 when certain aggravators exist and to repeal the death penalty,
3 amending N.J.S.2C:11-3, repealing P.L.1983, c.245, and
4 supplementing Title 2C of the New Jersey Statutes.

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

8
9 1. N.J.S.2C:11-3 is amended to read as follows:
10 2C:11-3 Murder.

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

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

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

17 (3) It is committed when the actor, acting either alone or with
18 one or more other persons, is engaged in the commission of, or an
19 attempt to commit, or flight after committing or attempting to
20 commit robbery, sexual assault, arson, burglary, kidnapping,
21 carjacking, criminal escape or terrorism pursuant to section 2 of
22 P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of
23 immediate flight therefrom, any person causes the death of a person
24 other than one of the participants; except that in any prosecution
25 under this subsection, in which the defendant was not the only
26 participant in the underlying crime, it is an affirmative defense that
27 the defendant:

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

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

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

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

41 b. (1) Murder is a crime of the first degree but a person
42 convicted of murder shall be sentenced, except as provided in
43 **[subsection c.] paragraphs (2), (3) and (4) of this [section]**
44 **subsection**, by the court to a term of 30 years, during which the
45 person shall not be eligible for parole, or be sentenced to a specific

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 term of years which shall be between 30 years and life
2 imprisonment of which the person shall serve 30 years before being
3 eligible for parole.

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

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

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

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

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

27 With respect to a sentence imposed pursuant to this subsection,
28 the defendant shall not be entitled to a deduction of commutation
29 and work credits from that sentence.】 Except as provided in
30 paragraphs (2) and (3), a person convicted of murder may be
31 sentenced by the court to life imprisonment without eligibility for
32 parole if a jury finds that any of the following aggravating factors
33 exist:

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

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

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

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

47 (e) The defendant procured the commission of the murder by

- 1 payment or promise of payment of anything of pecuniary value;
2 (f) The murder was committed for the purpose of escaping
3 detection, apprehension, trial, punishment or confinement for
4 another offense committed by the defendant or another;
5 (g) The murder was committed while the defendant was engaged
6 in the commission of, or an attempt to commit, or flight after
7 committing or attempting to commit murder, robbery, sexual
8 assault, arson, burglary, kidnapping, carjacking or the crime of
9 contempt in violation of N.J.S.2C:29-9b.;
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
12 his official duties, or because of the victim's status as a public
13 servant;
14 (i) The defendant: (i) as a leader of a narcotics trafficking
15 network as defined in N.J.S.2C:35-3 and in furtherance of a
16 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
17 or by threat or promise solicited the commission of the murder or
18 (ii) committed the murder at the direction of a leader of a narcotics
19 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a
20 conspiracy enumerated in N.J.S.2C:35-3;
21 (j) The homicidal act that the defendant committed or procured
22 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;
23 (k) The victim was less than 14 years old; or
24 (l) The murder was committed during the commission of, or an
25 attempt to commit, or flight after committing or attempting to
26 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
27 2).
28 (5) A juvenile who has been tried as an adult and convicted of
29 murder shall be sentenced pursuant to paragraph (1) of this
30 subsection.
31 c. **【Any person convicted under subsection a.(1) or (2) who**
32 **committed the homicidal act by his own conduct; or who as an**
33 **accomplice procured the commission of the offense by payment or**
34 **promise of payment of anything of pecuniary value; or who, as a**
35 **leader of a narcotics trafficking network as defined in N.J.S.2C:35-**
36 **3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,**
37 **commanded or by threat or promise solicited the commission of the**
38 **offense, or, if the murder occurred during the commission of the**
39 **crime of terrorism, any person who committed the crime of**
40 **terrorism, shall be sentenced as provided hereinafter:】**
41 **【(1) The court shall conduct a separate sentencing proceeding to**
42 **determine whether the defendant should be sentenced to death or**
43 **pursuant to the provisions of subsection b. of this section.**
44 **Where the defendant has been tried by a jury, the proceeding**
45 **shall be conducted by the judge who presided at the trial and before**
46 **the jury which determined the defendant's guilt, except that, for**
47 **good cause, the court may discharge that jury and conduct the**

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

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

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

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

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

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

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

1 defendant.】

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

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

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

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

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

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

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

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

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

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

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

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

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

47 (i) The defendant: (i) as a leader of a narcotics trafficking

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

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

9 (k) The victim was less than 14 years old; or

10 (l) The murder was committed during the commission of, or an
11 attempt to commit, or flight after committing or attempting to
12 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
13 2).】

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

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

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

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

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

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

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

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

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

35 【(6) When a defendant at a sentencing proceeding presents
36 evidence of the defendant's character or record pursuant to
37 subparagraph (h) of paragraph (5) of this subsection, the State may
38 present evidence of the murder victim's character and background
39 and of the impact of the murder on the victim's survivors. If the
40 jury finds that the State has proven at least one aggravating factor
41 beyond a reasonable doubt and the jury finds the existence of a
42 mitigating factor pursuant to subparagraph (h) of paragraph (5) of
43 this subsection, the jury may consider the victim and survivor
44 evidence presented by the State pursuant to this paragraph in
45 determining the appropriate weight to give mitigating evidence
46 presented pursuant to subparagraph (h) of paragraph (5) of this
47 subsection. As used in this paragraph "victim and survivor

1 evidence" may include the display of a photograph of the victim
2 taken before the homicide.】 (Deleted by amendment, P.L. , c.)
3 (Now pending before the Legislature as this bill).

4 d. 【The sentencing proceeding set forth in subsection c. of this
5 section shall not be waived by the prosecuting attorney.】 (Deleted
6 by amendment, P.L. , c.) (Now pending before the Legislature
7 as this bill).

8 e. 【Every judgment of conviction which results in a sentence of
9 death under this section shall be appealed, pursuant to the Rules of
10 Court, to the Supreme Court. Upon the request of the defendant,
11 the Supreme Court shall also determine whether the sentence is
12 disproportionate to the penalty imposed in similar cases,
13 considering both the crime and the defendant. Proportionality
14 review under this section shall be limited to a comparison of similar
15 cases in which a sentence of death has been imposed under
16 subsection c. of this section. In any instance in which the defendant
17 fails, or refuses to appeal, the appeal shall be taken by the Office of
18 the Public Defender or other counsel appointed by the Supreme
19 Court for that purpose.】 (Deleted by amendment, P.L. , c.)
20 (Now pending before the Legislature as this bill).

21 f. 【Prior to the jury's sentencing deliberations, the trial court
22 shall inform the jury of the sentences which may be imposed
23 pursuant to subsection b. of this section on the defendant if the
24 defendant is not sentenced to death. The jury shall also be informed
25 that a failure to reach a unanimous verdict shall result in sentencing
26 by the court pursuant to subsection b.】 (Deleted by amendment,
27 P.L. , c.) (Now pending before the Legislature as this bill).

28 g. 【A juvenile who has been tried as an adult and convicted of
29 murder shall not be sentenced pursuant to the provisions of
30 subsection c. but shall be sentenced pursuant to the provisions of
31 subsection b. of this section.】 (Deleted by amendment, P.L. , c.)
32 (Now pending before the Legislature as this bill).

33 h. 【In a sentencing proceeding conducted pursuant to this
34 section, no evidence shall be admissible concerning the method or
35 manner of execution which would be imposed on a defendant
36 sentenced to death.】 (Deleted by amendment, P.L. , c.) (Now
37 pending before the Legislature as this bill).

38 i. 【For purposes of this section the term "homicidal act" shall
39 mean conduct that causes death or serious bodily injury resulting in
40 death.】 (Deleted by amendment, P.L. , c.) (Now pending before
41 the Legislature as this bill).

42 j. 【In a sentencing proceeding conducted pursuant to this
43 section, the display of a photograph of the victim taken before the
44 homicide shall be permitted.】 (Deleted by amendment, P.L. , c.)
45 (Now pending before the Legislature as this bill).

46 (cf: P.L.2002, c.26, s.10)

1 2. (New section) An inmate sentenced to death prior to the date
2 of the passage of this bill, upon motion to the sentencing court and
3 waiver of any further appeals related to sentencing, shall be
4 resentenced to a term of life imprisonment during which the
5 defendant shall not be eligible for parole.

6
7 3. (New section) A person convicted of murder under
8 paragraphs (2), (3) or (4) of subsection b. of N.J.S.2C:11-3 shall be
9 required to pay restitution to the nearest surviving relative of the
10 victim. The court shall determine the amount and duration of the
11 restitution pursuant to N.J.S.2C:43-3 and the provisions of chapter
12 46 of Title 2C of the New Jersey Statutes.

13
14 4. P.L.1983, c.245 (C.2C:49-1 through 2C:49-12, inclusive) is
15 repealed.

16
17 5. This act shall take effect immediately.

18

19

20

STATEMENT

21

22 This bill repeals the death penalty in New Jersey and replaces it
23 with life imprisonment without eligibility for parole in certain
24 circumstances.

25 The bill amends N.J.S.2C:11-3 to remove the references to
26 current subsection c. concerning the death penalty. Under the bill,
27 murder generally would be punishable by a court to a term of 30
28 years, during which the person shall not be eligible for parole, or to
29 a specific term of years which shall be between 30 years and life
30 imprisonment of which the person shall serve 30 years before being
31 eligible for parole. There are certain provisions for sentencing by a
32 court to a term of life imprisonment during which the defendant
33 shall not be eligible for parole. These circumstances are:

34 *If the victim was a law enforcement officer and was murdered
35 while performing his official duties or was murdered because of his
36 status as a law enforcement officer.

37 *If the murder victim is less than 14 years old; and the act is
38 committed in the course of the commission, whether alone or with
39 one or more persons, of a violation of N.J.S.2C:14-2 (sexual
40 assault) or N.J.S.2C:14-3 (criminal sexual contact).

41 *If certain aggravators exist.

42 An inmate sentenced to death prior to the date of the passage of
43 this bill, upon motion to the sentencing court and waiver of any
44 further appeals related to sentencing, will be resentenced to a term
45 of life imprisonment during which the defendant shall not be
46 eligible for parole.

47 A person convicted of murder will be required to pay restitution
48 to the nearest surviving relative of the victim when certain

1 aggravators exist. The court will determine the amount and
2 duration of the restitution.

3 The bill repeals chapter 49 of the criminal code which pertains to
4 capital punishment and provides for procedures for the execution of
5 death sentences.

6 It is the desire of the sponsor that a significant portion of any
7 projected savings to be realized through this change in the statute be
8 allocated to benefits and services for victims of violent crime.

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, Nos. 3716 and 795

STATE OF NEW JERSEY

DATED: DECEMBER 10, 2007

The Assembly Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bill Nos. 3716 and 795.

This Assembly Committee Substitute for Assembly Bill Nos. 3716 and 795 eliminates the death penalty in New Jersey and replaces it with life imprisonment without eligibility for parole in certain circumstances.

The committee substitute amends N.J.S.A.2C:11-3 to delete the current provisions in subsection c. which provide when a defendant would be eligible to be subject to the death penalty. Currently, subsection c. provides that any person convicted under paragraph (1) of subsection a. of N.J.S.A.2C:11-3 (purposely causes death or serious bodily injury resulting in death) or under paragraph (2) of subsection a. of N.J.S.A.2C:11-3 (knowingly causes death or serious bodily injury resulting in death) who committed the homicidal act by his own conduct; or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value; or who, as a leader of a narcotics trafficking network as defined in N.J.S.A.2C:35-3 and in furtherance of a conspiracy enumerated in N.J.S.A.2C:35-3, commanded or by threat or promise solicited the commission of the offense, or, if the murder occurred during the commission of the crime of terrorism may be eligible for the death sentence. Once this determination is made, the trial enters the penalty phase where the jury or the court must weigh the aggravating factors of a murder case against the mitigating factors in order to determine whether a defendant subject to the death penalty will actually be sentenced to death.

This committee substitute provides that the same categories of defendants who were eligible for the death penalty would now be eligible for life imprisonment without eligibility for parole which would be served in a maximum security prison, if the jury finds beyond a reasonable doubt that certain aggravating factors exist. These aggravating factors are enumerated below and are identical to those set out in the current law concerning the death penalty.

Aggravating factors:

(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 murder 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 murder 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, kidnapping, carjacking or the crime of contempt in violation of the N.J.S.A.2C:29-9 b. (concerning domestic violence);

(h) The defendant murdered a public servant 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 and in furtherance of a conspiracy committed, commanded or by threat or promise solicited the commission of the murder or (ii) committed the murder at the direction of a leader of a narcotics trafficking network in furtherance of a conspiracy;

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

(k) The victim was less than 14 years old; or

(l) The murder was committed during the commission of, or an attempt to commit, or flight after committing or attempting to commit, terrorism.

Under the committee substitute, as under current law, murder generally would continue to be punishable by a term of 30 years, during which the person shall not be eligible for parole, or a specific term of years between 30 years and life imprisonment of which the person shall serve 30 years before being eligible for parole.

Under the committee substitute, as under the current law, a defendant shall be sentenced to a term of life imprisonment without eligibility for parole 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 (see paragraph (2) of subsection b.), or the victim was less than 14 years old and the murder

was committed in the course of the commission of the commission of a sexual assault or criminal sexual contact (see paragraph (3) of subsection b.).

Juveniles tried as adults. The committee substitute provides that a juvenile who has been tried as an adult and convicted of murder generally would not be sentenced to life imprisonment without eligibility for parole. Such a juvenile would remain subject to sentencing under the general sentencing provisions for murder (a term of 30 years to life with a term of parole ineligibility of 30 years).

However, the committee substitute provides that a juvenile shall be sentenced to a term of life imprisonment without eligibility for parole if the victim was a law enforcement officer and was murdered while performing official duties or murdered because of his status as a law enforcement officer, or if the victim was less than 14 years old and the murder was committed in the course of the commission of a sex crime.

Under current law a juvenile tried as an adult and convicted of murder may not be sentenced to death.

Inmates currently sentenced to death. An inmate sentenced to death prior to the date of enactment of this committee substitute, upon motion to the sentencing court and waiver of any further appeals related to sentencing, would be resentenced to a term of life imprisonment during which the defendant would not be eligible for parole. The sentence would be served in a maximum security prison. The committee substitute provides that any such motion to the sentencing court shall be made within 60 days of enactment of the act.

If the motion is not made within 60 days the inmate would remain under the sentence of death previously imposed by the sentencing court.

Restitution. The committee substitute provides that in addition to the provisions of any other law requiring restitution, a person convicted of murder would be required to pay restitution to the nearest surviving relative of the victim. The court would determine the amount and duration of the restitution.

MINORITY STATEMENT

By Assemblyman Bramnick

This bill eliminates the death penalty. We have had the privilege of many hours of testimony from the families of victims. There is a controversy between the many families as to whether the death penalty is an appropriate remedy for heinous criminal acts. It is my position that the death penalty option should be available to prosecutors and families who deem such an option appropriate.

We also heard testimony from legal experts on the deterrent effect of the death penalty. Again, there is a difference of opinion on this issue. While some experts assert there is little or no deterrent effect, other experts point to the results of recent studies indicating that the

death penalty saves lives. This difference of opinion further strengthens my position that the death penalty should remain as an option in limited circumstances.

The statutory language of a death penalty bill must be very narrow and limited in order that the courts can clearly interpret the legislative intent. My position is that only in very rare circumstances should a death penalty option be utilized, but it should remain an option.

Dec-17-07 Governor Corzine Signs Legislation Eliminating Death Penalty in New Jersey

[Español](#)

NEWS RELEASE

Governor Jon S. Corzine
December 17, 2007

FOR MORE INFORMATION:

Press Office
609-777-2600

GOVERNOR CORZINE SIGNS LEGISLATION ELIMINATING DEATH PENALTY IN NEW JERSEY

TRENTON - Governor Jon S. Corzine today signed legislation abolishing the death penalty in New Jersey and replacing it with life imprisonment without parole. New Jersey is the first state in the nation to enact a law to end use of the death penalty since it was reinstated by the United States Supreme Court in 1976. To ensure that the intent of the legislation was fully carried out as to the eight remaining inmates on death row, on Sunday evening Governor Corzine commuted the sentences of those inmates to life in prison without parole.

"Today New Jersey evolves. This is a day of progress for us and for the millions of people across our nation and around the globe who reject the death penalty as a moral or practical response to the grievous, even heinous, crime of murder," Corzine said. "I have been moved by the passionate views on both sides of this issue, and I firmly believe that replacing the death penalty with life in prison without parole best captures our State's highest values and reflects our best efforts to search for true justice."

"We can't logically argue the deterrent factor of the death penalty when, in fact, we never use it," said Senate President Richard J. Codey (D-Essex). "The best thing we can do for the residents of New Jersey is to enact a measure that will speak to the truth of what the real sentence is and help victim's families put this painful chapter in their life behind them more quickly,"

"New Jersey's death penalty has been nothing more than a paper deterrent, the epitome of false security," said Speaker Joe Roberts (D-Camden). "When Sister Helen Prejean visited the State House last month, she said that by abolishing the death penalty New Jersey would become 'a beacon on a hill.' At the least, we have set an example for other states to follow."

"I can't imagine how I would react if I had a loved one murdered. Hopefully, my faith would guide me as it has guided the families of murder victims who have supported repeal of the death penalty," said Senator Raymond J. Lesniak (D-Union). "It's not often we vote our conscience in the legislature. We should do it more often."

"Our death penalty has been cruel and unusual punishment both for the criminals on death row and the families of the victims," said Assemblyman Wilfredo Caraballo (D-Essex/Union). "We have seized the moment and now join the ranks of other states and countries that view the death penalty as discriminatory, immoral, and barbaric. We're a better state than one that puts people to death."

The legislation (S171/A3716) was sponsored in the Senate by Senator Raymond J. Lesniak (D-Union), Senator Robert J. Martin (R-Morris/Passaic), Senator Shirley K. Turner (D-Mercer) and Senator Nia H. Gill (D-Essex/Passaic). It was sponsored in the Assembly by Assemblyman Wilfredo Caraballo (D-Essex/Union), Assemblyman Christopher Bateman (R-Morris/Somerset), Assemblyman Gordon M. Johnson (D-Bergen), Assemblywoman Valerie Vainieri Huttel (D-Bergen) and Assemblywoman Nilsa Cruz-Perez (D-Camden/Gloucester).