

2C:11-3, 2C:43-7

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:11-3, 2C:43-7 (Capital punishment - reinstates - requires bifurcated trial)

LAWS OF: 1982 CHAPTER: 111

Bill No: S112

Sponsor(s): Russo and others

Date Introduced: Pre-filed

Committee: Assembly: Judiciary, Law, Public Safety and Defense

Senate: Judiciary

Amended during passage: Yes // Substituted for A771; (ACS-OCR), Assembly statement and original bill attached.

Date of Passage: Assembly: June 21, 1982

Senate: May 6, 1982

Date of Approval: Aug. 6, 1982

Following statements are attached if available:

Sponsor statement: Yes // Also attached: Senate amendments, adopted 3-15-82 (with statement) and Senate floor amendments, adopted 3-29-82 (with statement)

Committee statement: Assembly Yes //

Senate Yes //

Fiscal Note: /// No

Veto Message: /// No

Message on Signing: Yes //

Following were printed:

Reports: /// No

Hearings: Yes //

(over)

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074.90 New Jersey. Legislature. Judiciary Committee.
C244 Public hearing, held 2-26-82. Trenton, 1982.
1982

For hearings and reports on earlier proposed bills, see card catalog "New Jersey-Capital punishment"

See also: New Jersey clipping file in New Jersey Reference Section - "New Jersey-Capital punishment - 19081"

CHAPTER 111 LAWS OF N. J. 19⁸²
APPROVED 8-6-82

[FOURTH OFFICIAL COPY REPRINT]

SENATE, No. 112

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Senators RUSSO and EWING

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

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

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

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

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

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

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

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

21 (b) Was not armed with a deadly weapon, or any instrument,
22 article or substance readily capable of causing death or serious

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

Matter printed in italics *thus* is new matter.

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

*—Senate committee amendments adopted March 1, 1982.

**—Senate amendment adopted March 15, 1982.

***—Senate amendments adopted March 29, 1982.

****—Assembly committee amendments adopted May 20, 1982.

23 physical injury and of a sort not ordinarily carried in public places
24 by law-abiding persons; and

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

28 (d) Had ****[not]**** ****no**** reasonable ground to believe
29 that any other participant intended to engage in conduct likely to
30 result in death or serious physical injury.

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

36 b. Murder is a crime of the first degree but a person convicted
37 of murder may be sentenced**[, except as provided in subsection*
38 *c.,]** ***, *except as provided in subsection c. of this section,*** by
38A the court ****[(1)]**** **[to a term of 30 years of which the person*
39 *must serve 15 years before being eligible for parole, or (2) as in a*
40 *crime of the first degree except that the maximum term for such a*
41 *crime of the first degree shall be 30 years. Nothing contained in this*
42 *subsection shall prohibit the court from imposing an extended term*
43 *pursuant to 2C:43-7 for the crime of murder]** ****[*to death, or*
44 *(2)]**** *to a term of 30 years, during which the person shall not be*
44A *eligible for parole*****;* *provided, however, that nothing contained*
44B *in this subsection shall prohibit the court from imposing an*
44C *extended term pursuant to 2C:43-7 for the crime of murder.****
44D ****or to a specific term of years which shall be between 30 years*
44E *and life imprisonment of which the person shall serve 30 years*
44F *before being eligible for parole****.

44G c. *Any person convicted under subsection a. (1) or (2) ***[as a*
45 *perpetrator or]**** ****who committed the homicidal act by his own*
45A *conduct or who as**** *an accomplice ***[pursuant to 2C:2-6c.(1)(a)]**
45B ****[*who]**** *procured the commission of the offense by payment*
45C *or promise of payment, of anything of pecuniary value* shall be*
46 *sentenced ****[to death or life imprisonment]*** *as provided here-*
46A *after:*

47 **[(1) The court shall conduct a separate sentencing proceeding*
48 *to determine whether the defendant should be sentenced to death or*
49 *to life imprisonment. Where the defendant has been tried by a jury*
50 *the proceeding shall be conducted by the judge who presided at the*
51 *trial and before the trial jury which determined the defendant's*
52 *guilt or before a jury empaneled for the purpose of the proceeding*
53 *if the jury which determined the defendant's guilt has been dis-*

54 *charged by the court. Where there has been no jury trial the*
55 *proceeding shall be conducted by the judge who accepted the*
56 *defendant's plea and by a jury empaneled for the purpose of the*
57 *proceeding.*

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

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

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

91 *(4) If the jury or, if there is no jury, the court finds that one or*
92 *more of the factors set forth in paragraph (6) exists and that any*
93 *of the factors set forth in paragraph (5) which it finds exists do*
94 *not sufficiently outweigh the factors of paragraph (6) and, there-*
95 *fore, recommends that the sentence should be death, the court shall*
96 *sentence the defendant to death. If the jury, or if there is no jury,*

97 *the court finds that none of the aggravating factors set forth in*
98 *paragraph (6) exists, or finds that one or more of the mitigating*
99 *factors set forth in paragraph (5) exists sufficiently to outweigh*
100 *any factors under paragraph (6) which are found to exist, and*
101 *therefore recommends imprisonment, or if the jury is unable to*
102 *reach a unanimous verdict, the court shall not sentence the defen-*
103 *dant to death but shall impose a sentence of life imprisonment.*

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

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

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

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

112 *(d) The defendant's capacity to appreciate the wrongfulness of*
113 *his conduct or to conform his conduct to the requirements of law*
114 *was significantly impaired, but not so impaired as to constitute a*
115 *defense to prosecution;*

116 *(e) The defendant was under unusual and substantial duress,*
117 *although not such duress as to constitute a defense to prosecution;*
118 *or*

119 *(f) The defendant has no significant history of prior criminal*
120 *activity.*

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

123 *(a) The defendant has previously been convicted of murder for*
124 *which a sentence of life imprisonment or death was imposable, or*
125 *murder under 2C:11-3a(3);*

126 *(b) In the commission of the offense, the defendant purposely or*
127 *knowingly created a grave risk of death to another person in addi-*
128 *tion to the victim of the offense;*

129 *(c) The murder was committed in an especially heinous, cruel or*
130 *depraved manner;*

131 *(d) The defendant committed the offense as consideration for the*
132 *receipt, or in expectation of the receipt of any thing of pecuniary*
133 *value;*

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

138 *(f) The offense was committed while the defendant was engaged*
139 *in the commission of, or an attempt to commit, or flight after com-*

140 mitting, or attempting to commit robbery, sexual assault, arson,
141 burglary or kidnapping.

142 (7) If the jury, or if there is no jury, the court does not find by a
143 special verdict as provided in paragraph (3) that any of the factors
144 enumerated in paragraph (6) is present or does not recommend
145 death, or if the jury is unable to reach a unanimous verdict, the
146 court shall impose a sentence of life imprisonment.

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

149 (1) ***The court shall conduct a separate sentencing proceeding
150 to determine whether the defendant should be sentenced to death
150A or pursuant to the provisions of subsection b. of this section***
150B ****[where]****. Where**** the defendant has been tried
150C by a jury, the proceeding shall be conducted by the judge who pre-
150D sided at the trial and before the jury which determined the de-
151 fendant's guilt except that, for good cause, the court may discharge
152 that jury and conduct the proceeding before a jury empaneled for
153 the purpose of the proceeding. Where the defendant has entered a
154 plea of ****[non vult]**** or has been tried without
155 a jury, the proceeding shall be conducted by the judge who accepted
156 the defendant's plea ****or who determined the defendant's
157 guilt**** and before a jury empaneled for the purpose of the pro-
158 ceeding. On motion of the defendant and with consent of the prose-
159 cuting attorney the court may conduct a proceeding without a jury.

160 (2) At the proceeding, the State shall have the burden of estab-
161 lishing beyond a reasonable doubt the existence of any aggravating
162 factors set forth in paragraph (4) of this subsection. The defendant
163 shall have the burden of producing evidence of the existence of any
164 mitigating factors set forth in paragraph (5) of this subsection. The
165 State and the defendant shall be permitted to rebut any evidence
166 presented by the other party at the sentencing proceeding and to
167 present argument as to the adequacy of the evidence to establish
168 the existence of any aggravating or mitigating factor. Prior to the
169 commencement of the sentencing proceeding, or at such time as
170 he has knowledge of the existence of an aggravating factor, the
171 prosecuting attorney shall give notice to the defendant of the
172 aggravating factors which he intends to ****[rely upon]****
172A ****prove**** in the proceeding.

173 (3) The jury, or if there is no jury, the court shall return a
174 special verdict setting forth in writing the existence or non-exist-
175 ence of each of the aggravating and mitigating factors set forth in
176 paragraphs (4) and (5) of this subsection. If any aggravating

177 factor is found to exist, the verdict shall also state whether it is or
178 is not outweighed by any one or more mitigating factors.

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

182 (b) If the jury or the court finds that no aggravating factors
183 exist, or that any aggravating factors which exist are outweighed
184 by one or more mitigating factors, the court shall sentence the
185 defendant pursuant to subsection b. *****[(2)]*** ****[.]******

186 (c) If the jury is unable to reach a unanimous verdict, the
187 court shall sentence the defendant pursuant to subsection b.
187A ******[(2).]******

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

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

191 (b) In the commission of the murder, the defendant purposely or
192 knowingly created a grave risk of death to another person in addi-
193 tion to the victim;

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

197 (d) The defendant committed the murder as consideration for
198 the receipt, or in expectation of the receipt of any thing of pecu-
199 niary value;

199A *****(e) The defendant procured the commission of the offense by**
199B **payment or promise of payment of anything of pecuniary**
199C **value;*****

200 *****[(e)]*** *****(f)***** The murder was committed for the pur-**
201 **pose of escaping detection, apprehension, trial, punishment or con-**
202 **finement for another offense committed by the defendant or**
202A **another; *****[or]*******

203 *****[(f)]*** *****(g)***** The offense was committed while the**
204 **defendant was engaged in the commission of, or an attempt to com-**
205 **mit, or flight after committing****[.]**** or attempting to commit**
206 **robbery, sexual assault, arson, burglary or kidnapping; or**

207 *****[(g)]*** *****(h)***** The defendant murdered a public ser-**
208 **vant, as defined in 2C:27-1, while the victim was engaged in the**
209 **performance of his official duties, or because of the victim's status**
209A **as a public servant.**

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

212 (a) The defendant was under the influence of extreme mental or
213 emotional disturbance insufficient to constitute a defense to prose-
214 cution;

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

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

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

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

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

227 *****[(g)]** *The defendant was an accomplice to a murder committed*
 228 *by another person and his participation in the homicidal act was*
 229 *relatively insubstantial.****

230 *****[(h)]***** **(g)** *The defendant rendered substantial*
 231 *assistance to the State in the prosecution of another person for the*
 232 *crime of murder******[.]***** ****;*** or*

233 *****[(i)]***** **(h)** *Any other factor which is relevant to the*
 234 *defendant's character or record or to the circumstances of the*
 235 *offense.*

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

238 *****[d.]***** ****e.*** Every judgment of conviction which results*
 239 *in a sentence of death under this section may be appealed, pursuant*
 240 *to the rules of court, to the Supreme Court, which shall also deter-*
 241 *mine whether the sentence is disproportionate to the penalty im-*
 242 *posed in similar cases, considering both the crime and the*
 243 *defendant.*

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

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

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

6 (1) *****[In the case of a crime sentenced under 2C:11-3 for a**
 7 **specific term of years which shall be between 30 years and life**
 8 **imprisonment, of which the person shall serve 30 years before**
 9 **being eligible for parole, notwithstanding the provisions of sub-**
 9A **section b.;]***** ***** (Deleted by amendment, P. L.,**
 9B **c.)*****

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

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

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

17 (5) In the case of a crime of the fourth degree pursuant to
18 2C:43-6c. and 2C:44-3d. for a term of 5 years.

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

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

1 ***[2.]*** *3.* This act shall take effect immediately.

SENATE, No. 112

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1982 SESSION

By Senators RUSSO and EWING

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

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

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

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

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

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

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

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

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

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

28 (d) Had not reasonable ground to believe that any other partici-
29 pant intended to engage in conduct likely to result in death or
30 serious physical injury.

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

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

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

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

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

61 (2) *In the sentencing proceeding the court shall disclose to the*
62 *defendant or his counsel all material contained in any presentence*
63 *report, if one has been prepared, except such material as the court*
64 *determines is required to be withheld for the protection of human*
65 *life. Presentence reports shall not be given to the jury. Any evi-*
66 *dence relevant to any of the mitigating factors set forth in para-*
67 *graph (5) may be presented by either the State or the defendant,*
68 *regardless of its admissibility under the rules governing admission*
69 *of evidence at criminal trials; but the admissibility of evidence*
70 *relevant to any of the aggravating factors set forth in paragraph*

71 (6) shall be governed by the rules governing the admission of
72 evidence at criminal trials; except that evidence determined by the
73 court to be relevant to both an aggravating and a mitigating factor
74 shall be admissible regardless of its admissibility under the Rules of
75 Evidence. The State and the defendant shall be permitted to rebut
76 any evidence received at the sentencing proceeding, and shall be
77 given fair opportunity to present argument as to the adequacy of
78 the evidence to establish the existence of any of the factors set
79 forth in paragraph (5) or (6). The burden of establishing beyond
80 a reasonable doubt the existence of any of the factors set forth in
81 paragraph (6) is on the State. The burden of establishing by a
82 preponderance of the evidence the existence of any of the factors
83 set forth in paragraph (5) is on the defendant.

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

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

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

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

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

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

112 (d) The defendant's capacity to appreciate the wrongfulness of
113 his conduct or to conform his conduct to the requirements of law

114 was significantly impaired, but not so impaired as to constitute a
115 defense to prosecution;

116 (e) The defendant was under unusual and substantial duress,
117 although not such duress as to constitute a defense to prosecution;
118 or

119 (f) The defendant has no significant history of prior criminal
120 activity.

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

123 (a) The defendant has previously been convicted of murder for
124 which a sentence of life imprisonment or death was imposable, or
125 murder under 2C:11-3a(3);

126 (b) In the commission of the offense, the defendant purposely or
127 knowingly created a grave risk of death to another person in addi-
128 tion to the victim of the offense;

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

131 (d) The defendant committed the offense as consideration for the
132 receipt, or in expectation of the receipt of any thing of pecuniary
133 value;

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

138 (f) The offense was committed while the defendant was engaged
139 in the commission of, or an attempt to commit, or flight after com-
140 mitting, or attempting to commit robbery, sexual assault, arson,
141 burglary or kidnapping.

142 (7) If the jury, or if there is no jury, the court does not find by a
143 special verdict as provided in paragraph (3) that any of the factors
144 enumerated in paragraph (6) is present or does not recommend
145 death, or if the jury is unable to reach a unanimous verdict, the
146 court shall impose a sentence of life imprisonment.

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

1. 2. This act shall take effect immediately.

STATEMENT

This bill restores capital punishment for certain acts of murder, permits a plea of guilty upon an indictment for murder, and requires a separate sentencing proceeding for convictions of capital offenses.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 112

STATE OF NEW JERSEY

DATED: MARCH 1, 1982

The purpose of Senate Bill No. 112 is to reinstate capital punishment in New Jersey. Under the provisions of Senate Bill No. 112, as clarified by amendments adopted by the committee, only a person who actually commits an intentional murder, the perpetrator, and a person convicted as an accomplice who hired the perpetrator, the procurer, would stand in jeopardy of the death penalty. Persons convicted under the felony-murder doctrine and persons convicted as accomplices other than as procurers would not be eligible for capital punishment.

Under an amendment adopted by the committee, those convicted murderers not subject to the possibility of capital punishment and those murderers eligible for capital punishment but on whom the death penalty is not imposed would receive a mandatory minimum sentence of 30 years imprisonment without eligibility for parole.

Senate Bill No. 112 provides a separate post-convention proceeding to determine whether the death penalty is imposed on a murderer eligible for that sanction. As clarified by committee amendments, Senate Bill No. 112 envisions that in most cases the sentencing proceeding would take place upon return of the guilty verdict before the judge who presided over the trial and before the jury which returned the verdict. However, for good cause (i. e. lengthy delay caused by illness of the defendant), the court may discharge the jury and at a later date empanel another jury for the purpose of conducting the sentencing proceeding. Where there has been no jury trial, the proceeding shall be conducted by the judge who accepted the defendant's plea or who found the defendant guilty and by a jury empaneled for the purpose of the proceeding. The judge may conduct the proceeding without a jury upon motion of the defendant and upon approval of the court and of the prosecution.

During this sentencing certain aggravating and mitigating factors are to be considered by the trier of fact. As originally drafted the prosecution had the burden of proving the existence of any aggravating factor by a preponderance of the evidence and the defendant had the burden of proving the existence of any mitigating factor by a pre-

ponderance of the evidence. To aid a defendant facing the possibility of a death sentence, the committee adopted amendments providing that the prosecution must prove the existence of an aggravating factor beyond a reasonable doubt while the defendant merely has the burden of producing evidence with regard to any mitigating factor. The committee also adopted an amendment requiring the prosecution to notify the defendant of the aggravating factors on which the prosecution intends to rely.

A provision of Senate Bill No. 112, as originally drafted, which would have permitted the prosecution to withhold certain information contained in any pre-sentence report from the defendant was deleted as such a provision has been held unconstitutional under recent case law. Another provision of Senate Bill No. 112 as originally drafted which would have made the Rules of Evidence inapplicable to evidence offered by the defendant during the sentence proceeding was also deleted. It was felt that inclusion of this provision could have led to the introduction by the defense of totally irrelevant material solely as a delaying tactic.

As amended by the committee, the aggravating factors to be considered during the post-conviction proceeding are as follows:

1. Prior conviction of murder.
2. In the commission of the offense, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim of the offense.
3. The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.
4. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value.
5. The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by defendant or another.
6. The offense was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, sexual assault, arson, burglary or kidnapping.
7. The defendant murders 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.

As amended by the committee, the mitigating factors to be considered in the post-conviction proceeding are as follows:

1. The defendant was under the influence of extreme mental or emotional disturbance but not such disturbance as to constitute a defense to prosecution.
2. The victim was a participant in the defendant's conduct or consented to the act.
3. The age of the defendant at the time of the murder.
4. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired; but not so impaired as to constitute a defense to prosecution.
5. The defendant was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution.
6. The defendant had no significant prior history of criminal activity.
7. The defendant was an accomplice and his participation was relatively unsubstantial.
8. The defendant rendered assistance in the prosecution of another person for murder.
9. Any other factor which is relevant to the defendant's character or to the circumstances of the offense.

If the jury or the court finds one or more of the aggravating circumstances exist, and that they are not outweighed by any mitigating factors, the death penalty would be imposed. If the jury or the court finds that none of the aggravating factors exists, or finds that one or more of the mitigating factors exist, sufficient to outweigh any aggravating factors which may exist, the death penalty would not be imposed. If the jury is unable to reach a unanimous verdict, the death penalty would not be imposed.

Every judgment of conviction and sentence of death is subject to review by the Supreme Court. As amended by the committee, in its review, the Supreme Court would also determine whether the sentence is disproportionate to the penalty imposed in similar cases considering both the crime and the defendant.

By committee amendment, a new section 2 was added to Senate Bill No. 112. Section 2 amends N. J. S. 2C:43-7 (Extended Terms of Imprisonment) in order to include the mandatory 30 years term of parole in eligibility to any extended term of imprisonment imposed for murder.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY
AND DEFENSE COMMITTEE

STATEMENT TO
SENATE, No. 112
[THIRD OFFICIAL COPY REPRINT]
with committee amendments

STATE OF NEW JERSEY

DATED: MAY 20, 1982

The purpose of Senate Bill No. 112 is to reinstate capital punishment in New Jersey. Under the provision of Senate Bill No. 112, as clarified by amendments adopted by the Senate committee, only a person who actually commits an intentional murder, and a person convicted as an accomplice who hired the murderer, would stand in jeopardy of the death penalty. Persons convicted under the felony-murder doctrine and persons convicted as accomplices other than as procedures would not be subject to capital punishment.

The Assembly committee amendments are technical in nature. They correct several printing errors and clarify language in the bill.

Under an amendment adopted by the Senate committee, those convicted murders not subject to the possibility of capital punishment and those murderers eligible for capital punishment but whom the death penalty is not imposed would receive a mandatory minimum sentence of 30 years imprisonment without eligibility for parole.

Senate Bill No. 112 provides a separate post-conviction proceeding to determine whether the death penalty should be imposed on a murderer for that sanction. Senate Bill No. 112 envisions that in most cases the sentencing proceeding would take place upon return of the guilty verdict before the judge who presided over the trial and before the jury which returned the verdict. However, for good cause (for example, lengthy delay caused by illness of the defendant), the court may discharge the jury and at a later date empanel another jury for the purpose of conducting the sentencing proceeding. Where there has been no jury trial, the proceeding shall be conducted by the judge who accepted the defendant's plea or who found the defendant guilty and by a jury empaneled for the purpose of the proceeding. The judge may conduct the proceeding without a jury upon motion of the defendant and upon approval of the court and of the prosecution.

ADOPTED

MAR 15 1992

R-37
(3/15/82)

Senate Amendments

to

Senate Bill No. 112 OCR

By SENATOR DRECHIO

Amend:

Page	Sec.	Line
2	1	46

Omit "to death or life imprisonment"

S T A T E M E N T

This is a technical amendment which clarifies that if the death penalty is not imposed on a convicted murderer eligible for that sanction, that person shall receive either a 30 year term of imprisonment with no eligibility for parole or a life sentence with a 30 year period of parole ineligibility.

	2		Omit "(h)" Insert "(g)"
5	1	231	Omit "," Insert ";"
6	1	232	Omit "(i)" Insert "(h)"
6	1	233	After line 233 Insert new ^{subsection} paragraph d. as follows: "d. The sentencing proceeding set forth in subsection c. ^{of this section} shall not be waived by the prosecuting attorney."
7	1	234	Omit "d." Insert "e."
7	2	6-9	On line 6 After "(1)" Omit rest of line; omit lines 7 through 9 Omit in entirety Insert "(deleted by amendment, i.e. c. (1))"
7	2	10	Omit "(2)" Insert "(1)"
7	2	10	After "degree" Insert "other than murder"
7	2	29	Omit "(1)"
7	2	13	Omit "(3)" Insert "(2)"
7	2	15	Omit "(4)" Insert "(3)"
7	2	17	Omit "(5)" Insert "(4)"

S T A T E M E N T

Senate floor amendments adopted 3-29-82

These amendments clarify that any person whose conduct directly caused an intentional murder and any person who procured an intentional murder through pecuniary inducements would be subject to the death penalty. These amendments also clarify those murderers who are either not eligible for the death penalty or those eligible on whom the death is not imposed shall be sentenced to either 30 years imprisonment with no eligibility for parole or to a term of years between 30 years and life imprisonment with a 30 year period of parole ineligibility. Additional the amendments specifically add as an aggravating factor to be considered in determining whether to

Senate
Floor Amendments

to

Senate Bill No. 112
(Proposed by Senator Russo)

Amend:

Page	Sec.	Line

impose the death penalty that the person procured the murder through pecuniary inducements. The amendments further state that the prosecuting attorney shall not waive the sentencing proceeding required to determine whether the death penalty should be imposed. The remainder of the amendments are technical.

ASSEMBLY, No. 771

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 22, 1982

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

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

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

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

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

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

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

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

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

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

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

Matter printed in italics thus is new matter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 2. This act shall take effect immediately.

Sponsors STATEMENT

This bill reinstates capital punishment in New Jersey.

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

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

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

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

MITIGATING:

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

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

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

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

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

AGGRAVATING:

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

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

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

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

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

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

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

(8) The offense was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, rape, sodomy, arson, burglary or kidnapping;

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

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

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

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

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

[OFFICIAL COPY REPRINT]
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 771

STATE OF NEW JERSEY

ADOPTED MAY 20, 1982

Sponsored by Assemblymen PATERNITI and CHINNICI

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

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

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

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

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

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

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

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

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

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

Matter printed in italics *thus* is new matter.

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

*—Assembly amendments adopted June 21, 1982.

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

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

31 b. Murder is a crime of the first degree but a person convicted
32 of murder may be sentenced * * *except as provided in subsection c.*
33 *of this section*, by the court [(1) to a term of 30 years of which the
34 person must serve 15 years before being eligible for parole, or (2)
35 as in a crime of the first degree except that the maximum term for
36 such a crime of the first degree shall be 30 years. Nothing contained
37 in this subsection shall prohibit the court from imposing an
38 extended term pursuant to 20:43-7 for the crime of murder] *to a*
39 *term of 30 years, during which the person shall not be eligible for*
40 *parole or to a specific term of years which shall be between 30 years*
41 *and life imprisonment of which the person shall serve 30 years*
42 *before being eligible for parole.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 3. This act shall take effect immediately.

ASSEMBLY JUDICIARY, LAW, PUBLIC SAFETY AND
DEFENSE COMMITTEE

STATEMENT TO
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 771

STATE OF NEW JERSEY

DATED: MAY 20, 1982

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

During this sentencing certain aggravating and mitigating factors are to be considered by the trier of fact. As originally drafted the prosecution had the burden of proving the existence of any aggravating factor by a preponderance of the evidence and the defendant had the burden of proving the existence of any mitigating factor by the preponderance of the evidence. To aid a defendant facing the possibility of a death sentence, the Senate committee adopted amendments providing that the prosecution must prove the existence of an aggravating factor beyond a reasonable doubt while the defendant merely has the burden of producing evidence with regard to any mitigating factor. The committee also adopted an amendment requiring the prosecution to notify the defendant of the aggravating factors on which the prosecution intends to prove.

A provision of Senate Bill No. 112, as originally drafted, which would have permitted the prosecution to withhold certain information contained in any pre-sentence report from the defendant was deleted as such a provision has been held unconstitutional under recent case law. Another provision of Senate Bill No. 112 as originally drafted which would have made the Rules of Evidence inapplicable to evidence offered by the defendant during the sentence proceeding was also deleted. It was felt that inclusion of this provision could have led to the introduction by the defense of totally irrelevant material solely as a delaying tactic.

As amended by the committee, the aggravating factors to be considered during the post-conviction proceeding are as follows:

1. Prior conviction of murder.
2. In the commission of the offense, the defendant purposely or knowingly created a grave risk of death to another person in addition to the victim of the offense.
3. The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.
4. The defendant committed the offense as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value.
5. The murder was committed for the purpose of escaping detection, apprehension, trial, punishment or confinement for another offense committed by defendant or another.
6. The offense was committed while the defendant was engaged in the commission of, or an attempt to commit, or flight after committing, or attempting to commit robbery, sexual assault, arson, burglary or kidnapping.
7. The defendant murders 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.

As amended by the committee, the mitigating factors to be considered in the post-conviction proceeding are as follows:

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

2. The victim was a participant in the defendant's conduct or consented to the act.

3. The age of the defendant at the time of the murder.

4. The defendant's capacity to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law was significantly impaired; but not so impaired as to constitute a defense to prosecution.

5. The defendant was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution.

6. The defendant had no significant prior history of criminal activity.

7. The defendant was an accomplice and his participation was relatively unsubstantial.

8. The defendant rendered assistance in the prosecution of another person for murder.

9. Any other factor which is relevant to the defendant's character or to the circumstances of the offense. If the jury or the court finds one or more of the aggravating circumstances exist, and that they are not outweighed by any mitigating factors, the death penalty would be imposed. If the jury or the court finds that none of the aggravating factors exists, or finds that one or more of the mitigating factors exist, sufficient to outweigh any aggravating factors which may exist, the death penalty would not be imposed. If the jury is unable to reach a unanimous verdict, the death penalty would not be imposed.

Every judgment of conviction and sentence of death is subject to review by the Supreme Court. As amended by the committee, in its review, the Supreme Court would also determine whether the sentence is disproportionate to the penalty imposed in similar cases considering both the crime and the defendant.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE:

Friday, August 6, 1982

CONTACT: PAUL WOLCOTT

DAVID DE MAIO

The following are the major provisions of S-112, signed today by Governor Thomas H. Kean:

• The bill institutes a new murder statute in the New Jersey Code of Criminal Justice which includes a two-tiered trial procedure for imposing the death penalty upon a defendant charged under the new statute.

• A first trial to convict, either by jury or judge at the request of the defendant, will be followed by a trial to sentence. Should a defendant plead guilty, he may either be tried for sentence by the convicting judge or a specially empaneled jury. Should he plead not guilty and be convicted by a judge, he would have the option of a sentencing trial by the same judge or a special jury. If convicted by jury, he could choose between a trial to sentence by the same judge and jury, a judge alone, or a specially empaneled jury. Existing statutes providing for the dismissal of judges and jury members would also apply.

• During the trial to sentence, the prosecution must prove that aggravating circumstances, as defined under the bill, exist. The defense may enter evidence of mitigating factors. If no aggravating circumstances exist, or if mitigating circumstances outweigh aggravating circumstances in the opinion of the judge or jury, the death penalty may not be imposed.

• Should the death sentence not be imposed, the convict will be subject to a 30-year minimum prison term without parole. Provisions exist for extended sentences.

• In the event the death penalty is imposed, an automatic review to determine "proportionality" will be conducted by the State Supreme Court. The review is intended to ensure fairness and equity under the new statute. Execution of sentence would only follow the Court's review.

• As with other criminal statutes, the defendant/convict would retain his or her rights of appeal or application for clemency or commutation of sentence.