

2C:11-3

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Death penalty--victims age)

NJSA: 2C:11-3

LAWS OF: 1994

CHAPTER: 132

BILL NO: A81

SPONSOR(S): Catania and Crecco

DATE INTRODUCED: August 15, 1994

COMMITTEE: **ASSEMBLY:** ---

SENATE: Judiciary

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** August 29, 1994

SENATE: October 3, 1994

DATE OF APPROVAL: October 31, 1994

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FISCAL NOTE: ~~Yes~~ NO

VETO MESSAGE: No

MESSAGE ON SIGNING: ~~No~~ YES

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

1 AN ACT concerning, the death penalty and amending
2 N.J.S.2C:11-3.

3

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

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

7 2C:11-3. Murder. a. Except as provided in N.J.S.2C:11-4
8 criminal homicide constitutes murder when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (d) The State and the defendant shall be permitted to rebut
53 any evidence presented by the other party at the sentencing
54 proceeding and to present argument as to the adequacy of the

1 evidence to establish the existence of any aggravating or
2 mitigating factor.

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

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

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

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

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

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

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

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

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

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

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

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

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

50 (g) The offense was committed while the defendant was
51 engaged in the commission of, or an attempt to commit, or flight
52 after committing or attempting to commit murder, robbery,
53 sexual assault, arson, burglary or kidnapping;

54 (h) The defendant murdered a public servant, as defined in

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

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

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

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

15 (s) 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
18 or 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
27 constitute a 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
33 in 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 d. The sentencing proceeding set forth in subsection c. of this
37 section shall not be waived by the prosecuting attorney.

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

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

1 in sentencing by the court pursuant to subsection b.

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

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

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

13 (cf: P.L.1993, c.208)

14 2. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 Under current law, the death penalty may be imposed on a
20 person found guilty of murder if, in a separate sentencing
21 proceeding following the person's trial, the jury or judge finds
22 that the "aggravating factors" surrounding the commission of the
23 murder outweigh the "mitigating factors" beyond a reasonable
24 doubt. This bill provides that, in a case where the murder victim
25 was less than 14 years old, that fact would be required to be
26 weighed as one of the "aggravating factors" in the sentencing
27 proceeding.

28

29

30

31

32 Adds the age of the victim as an "aggravating factor" in death
33 penalty proceedings.

1 in sentencing by the court pursuant to subsection b.

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

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

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

13 (cf: P.L.1993, c.206)

14 2. This act shall take effect immediately.

15

16

17

STATEMENT

18

19 Under current law, the death penalty may be imposed on a
20 person found guilty of murder if, in a separate sentencing
21 proceeding following the person's trial, the jury or judge finds
22 that the "aggravating factors" surrounding the commission of the
23 murder outweigh the "mitigating factors" beyond a reasonable
24 doubt. This bill provides that, in a case where the murder victim
25 was less than 14 years old, that fact would be required to be
26 weighed as one of the "aggravating factors" in the sentencing
27 proceeding.

28

29

30

31

32 Adds the age of the victim as an "aggravating factor" in death
33 penalty proceedings.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 81

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1994

The Senate Judiciary Committee reports favorably Assembly, No. 81.

Under present law, the death penalty may be imposed on a person found guilty of murder if, in a separate sentencing proceeding following the person's trial, the jury finds that the "aggravating factors" surrounding the commission of the murder outweigh the "mitigating factors" beyond a reasonable doubt. This bill would add that the victim of the murder was 14 years of age or less as an additional "aggravating factor" to be considered during a death penalty sentencing proceeding.



OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
Contact:

CARL GOLDEN
609-777-2205

TRENTON, N.J. 08625

Release: IMMEDIATE
OCT. 31, 1994

Gov. Christie Whitman today signed an 11-bill package of legislation establishing a comprehensive system for dealing with convicted sex offenders, ranging from community notification to extended prison sentences.

Whitman signed the legislation at a public ceremony in her office.

"This package represents a comprehensive and balanced response to a complex law enforcement and social issue," Whitman said. "Our priority in these efforts was to create a system of protection for the community at large as well as to enhance our ability to deal with individuals who commit crimes of this nature."

Whitman commended the Legislature for its reasoned response as embodied in the bill package.

"These bills are an outstanding example of what can be accomplished through bi-partisan cooperation and when there is a high level of coordination between the Executive and Legislative branches of government to solve problems," Whitman said.

The bills signed into law today are:

A-165, sponsored by Assemblymen Patrick Roma, R-Bergen, and Gary Stuhltrager, R-Salem, to require the Department of Corrections or the Department of Human Services to provide written notification to a county prosecutor prior to the release of an adult or juvenile who has been convicted or judged delinquent of certain offenses, including murder and sexual crimes. The prosecutor, in turn, is required to notify the Office of Victim-Witness Advocacy.

A-84, sponsored by Assemblywomen Joanna Gregory-Scocchi, R-Middlesex, and Joan Quigley, D-Bergen, to require the registration of sex offenders with a designated registration agency

or the chief law enforcement officer of the municipality in which the person resides.

S-14, sponsored by Sens. Peter Inverso, R-Mercer, and Gerald Cardinale, R-Bergen, to provide for community notification when a sex offender is released from an institution and moves into a municipality. The community notification is to be given in accordance with guidelines developed by the Attorney General.

S-320, sponsored by Sens. John Girgenti, D-Passaic, and Louis Kosco, R-Bergen, to establish community supervision for life for convicted sex offenders. Community supervision will begin upon the offender's release and the monitoring system is similar to that used for parolees.

S-1396, sponsored by Sens. Andrew Ciesla, R-Monmouth, and John Scott, R-Bergen, to establish victim notification procedures for victims of domestic violence when the offender is scheduled to appear for any court proceeding related to the offense. It also requires notification to a county prosecutor upon the offender's release from jail.

S-11, sponsored by Sens. Donald DiFrancesco, R-Union, and Robert Martin, R-Morris, to provide for an extended prison term for a sexual offender if the crime involved violence and if the victim was 16 years of age or under.

S-15, sponsored by Sens. Andrew Ciesla, R-Monmouth, and Jack Sinagra, R-Middlesex, to provide that no inmate at the Adult Diagnostic and Treatment Center at Avenel will be eligible for good behavior credit unless the individual cooperates with the treatment program offered at the institution.

A-1592, sponsored by Assemblywoman Joan Quigley, D-Bergen, and Assemblyman Nicholas Felice, R-Bergen, to require persons convicted of sexual offenses to provide samples of blood for DNA profiling and use in connection with criminal investigations.

A-81, sponsored by former Assemblyman Frank Catania, R-Passaic, and Assemblywoman Marion Crecco, R-Essex, to establish a victim's age of less than 14 years old as an aggravating factor in death penalty cases.

A-86, sponsored by Assemblymen Patrick Roma, R-Bergen, and Gary Stuhltrager, R-Salem, to provide for the involuntary commitment of sex offenders whose conduct has been characterized by a pattern of repetitive, compulsive behavior.

A-1602, sponsored by Assemblymen John Rocco and Lee Solomon, both R-Camden, to provide that a prosecuting agency must notify the victim of a domestic violence matter whenever a defendant charged with an offense involving domestic violence is released from custody.