

2C:11-3

LEGISLATIVE HISTORY CHECKLIST
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(Death penalty--for fatalities for
widespread injuries)

NJSA: 2C:11-3

LAWS OF: 1993 **CHAPTER:** 206

BILL NO: A2390

SPONSOR(S) Mikulak and others

DATE INTRODUCED: March 22, 1993

COMMITTEE: **ASSEMBLY:** Judiciary
SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by superscript numbers

DATE OF PASSAGE: **ASSEMBLY:** May 20, 1993
SENATE: June 28, 1993

DATE OF APPROVAL: July 28, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: No

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: ~~No~~ YES

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached

KBG:pp

[FIRST REPRINT]
ASSEMBLY, No. 2390

STATE OF NEW JERSEY

INTRODUCED MARCH 22, 1993

By Assemblymen MIKULAK, IMPREVEDUTO
and Assemblywoman Derman

1 AN ACT concerning the imposition of the death penalty on
2 certain persons and amending 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

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AJL committee amendments adopted May 6, 1993.

1 parole.

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

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

14 ¹[Notwithstanding the provisions of paragraph (3) of subsection
15 a. of this section, a person shall be deemed to have committed
16 the homicidal act by his own conduct within the meaning of this
17 subsection if he purposely or knowingly causes death or serious
18 bodily injury resulting in death in the course of causing or risking
19 widespread injury as set forth in paragraph (1) of subsection a. of
20 N.J.S.2C:17-2.]¹

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

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

44 (b) The admissibility of evidence offered by the State to
45 establish any of the aggravating factors shall be governed by the
46 rules governing the admission of evidence at criminal trials. The
47 defendant may offer, without regard to the rules governing the
48 admission of evidence at criminal trials, reliable evidence
49 relevant to any of the mitigating factors. If the defendant
50 produces evidence in mitigation which would not be admissible
51 under the rules governing the admission of evidence at criminal
52 trials, the State may rebut that evidence without regard to the
53 rules governing the admission of evidence at criminal trials.

54 (c) Evidence admitted at the trial, which is relevant to the

1 aggravating and mitigating factors set forth in paragraphs (4) and
2 (5) of this subsection, shall be considered without the necessity of
3 reintroducing that evidence at the sentencing proceeding;
4 provided that the fact finder at the sentencing proceeding was
5 present as either the fact finder or the judge at the trial.

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

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

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

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

28 (a) If the jury or the court finds that any aggravating factors
29 exist and that all of the aggravating factors outweigh beyond a
30 reasonable doubt all of the mitigating factors, the court shall
31 sentence the defendant to death.

32 (b) If the jury or the court finds that no aggravating factors
33 exist, or that all of the aggravating factors which exist do not
34 outweigh all of the mitigating factors, the court shall sentence
35 the defendant pursuant to subsection b.

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

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

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

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

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

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

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

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

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

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

12 (i) The defendant: (i) as a leader of a narcotics trafficking
13 network as defined in N.J.S.2C:35-3 and in furtherance of a
14 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
15 or by threat or promise solicited the commission of the offense or
16 (ii) committed the offense at the direction of a leader of a
17 narcotics trafficking network as defined in N.J.S.2C:35-3 in
18 furtherance of a conspiracy enumerated in N.J.S.2C:35-3¹or

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

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

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

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

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

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

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

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

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

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

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

45 e. Every judgment of conviction which results in a sentence of
46 death under this section shall be appealed, pursuant to the Rules
47 of Court, to the Supreme Court. Upon the request of the
48 defendant, the Supreme Court shall also determine whether the
49 sentence is disproportionate to the penalty imposed in similar
50 cases, considering both the crime and the defendant. Proportionality
51 review under this section shall be limited to a
52 comparison of similar cases in which a sentence of death has been
53 imposed under subsection c. of this section. In any instance in
54 which the defendant fails, or refuses to appeal, the appeal shall

1 be taken by the Office of the Public Defender or other counsel
2 appointed by the Supreme Court for that purpose.

3 f. Prior to the jury's sentencing deliberations, the trial court
4 shall inform the jury of the sentences which may be imposed
5 pursuant to subsection b. of this section on the defendant if the
6 defendant is not sentenced to death. The jury shall also be
7 informed that a failure to reach a unanimous verdict shall result
8 in sentencing by the court pursuant to subsection b.

9 g. A juvenile who has been tried as an adult and convicted of
10 murder shall not be sentenced pursuant to the provisions of
11 subsection c. but shall be sentenced pursuant to the provisions of
12 subsection b. of this section.

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

17 (cf: P.L.1993, c.27, s.1)

18 2. This act shall take effect immediately.

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23 Provides that persons who cause death when committing act of
24 causing or risking widespread injury or damage are eligible for
25 the death penalty.

1 pursuant to subsection b. of this section on the defendant if the
2 defendant is not sentenced to death. The jury shall also be
3 informed that a failure to reach a unanimous verdict shall result
4 in sentencing by the court pursuant to subsection b.

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

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

13 (cf:P.L. 1993,c.27,s.1)

14 2. This act shall take effect immediately.

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STATEMENT

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19 This bill amends N.J.S.2C:11-3 to provide that a person who
20 causes death or serious bodily injury resulting in death by causing
21 or risking widespread injury shall be eligible for the death
22 penalty. The bill amends subsection c. of N.J.S.2C:11-3
23 concerning those classes of persons who are eligible for the death
24 penalty to clarify that a person shall be deemed to have
25 committed the homicidal act by his own conduct within the
26 meaning of this subsection if he purposely or knowingly causes
27 death or serious bodily injury resulting in death in the course of
28 causing or risking widespread injury as set forth in paragraph (1)
29 of subsection a. of N.J.S.2C:17-2. The sponsor wishes to clarify
30 that this type of murder is a homicidal act by the actor's own
31 conduct, thus overcoming any objections raised that an act of
32 causing or risking widespread injury which results in death to one
33 or more persons is similar to the felony murder situation and, as
34 such, is not a murder for which a person is eligible for the death
35 penalty. The sponsor believes that the complete disregard for
36 loss of human life evidenced by an act of this type warrants a
37 potential death sentence, particularly in light of the recent
38 bombing of the World Trade Center Towers. Currently, a person
39 is punishable under the New Jersey Criminal Code for making
40 terroristic threats under N.J.S.2C:12-3. Actual terroristic
41 actions are punishable as the specific crimes involved, such as
42 arson, kidnapping or assault, for example. There is no specific
43 crime of terrorism.

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48 Provides that persons who cause death when committing act of
49 causing or risking widespread injury or damage are eligible for
50 the death penalty.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2390

with committee amendments

STATE OF NEW JERSEY

DATED: APRIL 29, 1993

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 2390.

This bill amends N.J.S.2C:11-3, the murder statute. Prior to committee amendment it provided that a person who causes death or serious bodily injury resulting in death by causing or risking widespread injury shall be eligible for the death penalty. The bill amended subsection c. of N.J.S.2C:11-3 concerning those classes of persons who are eligible for the death penalty to clarify that a person shall be deemed to have committed the homicidal act by his own conduct within the meaning of this subsection if he purposely or knowingly causes death or serious bodily injury resulting in death in the course of causing or risking widespread injury as set forth in paragraph (1) of subsection a. of N.J.S.2C:17-2.

The amendments adopted by the committee would provide that among the aggravating factors which the jury can consider in determining whether to impose the death penalty is whether the homicidal act was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2 which criminalizes acts which threaten widespread injury or damage. The amendments adopted by the committee also deleted the bill's original language.

As amended, this bill is identical to Senate Bill No. 1660 [1R].



OFFICE OF THE GOVERNOR

NEWS RELEASE

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Wednesday
July 28, 1993

GOVERNOR FLORIO SIGNS LAW EXTENDING DEATH PENALTY FOR TERRORISTS

JERSEY CITY -- With the World Trade Center standing behind him, Governor Jim Florio today signed a new law in the war against terrorism, calling it the ultimate price for terrorists who spill innocent blood. The law broadens the death penalty to include persons who commit murders as a result of terrorist acts.

"None of us will ever forget that day when the entire nation stopped and watched in horror as smoke billowed from the Twin Towers and thousands of frightened, but brave men and women poured into the streets," said Governor Florio, who signed the law at Liberty State Park. "In one terrible moment, the World Trade Center became the symbol of the worst terrorist attack in American history."

"This bill will impose the death penalty on terrorists who kill in their ruthless and cold-blooded attacks," he said. "Today, we're here with a message to anyone who thinks that terrorism can crush democracy. We will track you, arrest you and convict you. And if you spill innocent blood, you will pay the ultimate price. The law is our greatest weapon."

Governor Florio called for extending the death penalty to terrorists following the February bombing of the World Trade Center.

Currently, the death penalty, enacted in 1982, is applied in cases where the defendant "knowingly and purposefully" commits murders under certain heinous circumstances, such as killing a police officer or a contract murder. Today's signing upgrades the law to include murders committed as a result of causing or risking widespread injury as another aggravating factor to be weighed by the jury in considering the death penalty.

"Our new death penalty law for convicted terrorists is just and it's fair. Terrorists target innocent people going about their daily lives. They plan with stealth and they attack without warning," Governor Florio said. "We won't be held hostage to the threat of terrorism. The goal of these terrorists is to break

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our spirit and our confidence, to shackle commerce and trade, and to hold our state and our great nation hostage to fear. We're never going to let them win."

Governor Florio thanked the members of the Jersey City Bomb Squad, the Jersey City Special Investigations Unit, the State Police Bomb Squad and the Joint Terrorist Task Force -- "the front line in the battle of terrorism" -- for their courageous efforts following the bombing.

The new law is one of several steps taken by Governor Florio to strengthen the state's death penalty law, unused since its creation. In May, he signed a law which allows the death penalty to be sought in cases where someone inflicts serious bodily injury resulting in death regardless of whether they actually intended to kill. The law clarifies the intent of the death penalty law in accordance with a constitutional amendment approved by voters last November.

Last January, Governor Florio signed a law extending the death penalty to drug traffickers who order others to commit murder as part of their trafficking network. That law was one of three actions called for by the Governor to strengthen and enforce the state's death penalty. He previously called on the state's Supreme Court to fully enforce the death penalty and urged clarification of "proportionality review" to make it a stricter, fairer and more sensible standard -- a measure he signed into law in May, 1992.

A 2390/S 1660 was sponsored by Assemblyperson Stephen Mikulak and Senator Randy Corman.

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