

2C:11-3

LEGISLATIVE HISTORY CHECKLIST  
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NJSA: 2C:11-3 (Death penalty cases--aggravating factors)

LAWS OF: 1993 CHAPTER: 27

BILL NO: A50/A55

SPONSOR(S) Hartmann and others

DATE INTRODUCED: January 14, 1992

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary, Law Public & Safety

AMENDED DURING PASSAGE: Yes Assembly Committee  
substitute enacted

DATE OF PASSAGE: ASSEMBLY: April 30, 1992

SENATE: December 14, 1992

DATE OF APPROVAL: January 26, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes 10-8-92 & 12-3-92

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clipping -- attached:

"Druglord death penalty law keys bid to 'take back' towns," 1-27-93 Star Ledger.

974.90 New Jersey. Legislature. Assembly. Judiciary Committee.  
C244 Public hearing on death penalty, held March 14, 1989.  
1989 Haddonfield, 1989.

(see Vol. I - p. 31, 43; Vol. II - p. 7-8)

974.90 New Jersey. Legislature. Assembly. Judiciary, Law & Public  
C244 Safety Committee.

1991 Public hearing on death penalty, held 1-31-91. Trenton, 1991.  
(see A4453)

ASSEMBLY COMMITTEE SUBSTITUTE FOR  
ASSEMBLY, Nos. 50 and 55  
STATE OF NEW JERSEY

ADOPTED FEBRUARY 27, 1992

Sponsored by Assemblymen HARTMANN, FRANKS,  
Assemblywoman DERMAN, Assemblymen HAYTAIAN,  
Azzolina and Roma

1 AN ACT concerning murders committed by, or at the direction  
2 of, leaders of narcotics trafficking networks, and amending  
3 N.J.S.2C:11-3.

4

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

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

8 2C:11-3. Murder. a. Except as provided in section 2C:11-4  
9 criminal homicide constitutes murder when:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (d) The State and the defendant shall be permitted to rebut

1 any evidence presented by the other party at the sentencing  
2 proceeding and to present argument as to the adequacy of the  
3 evidence to establish the existence of any aggravating or  
4 mitigating factor.

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (g) The offense was committed while the defendant was  
53 engaged in the commission of, or an attempt to commit, or flight  
54 after committing or attempting to commit murder, robbery,

1 sexual assault, arson, burglary or kidnapping; [or]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

51 g. A juvenile who has been tried as an adult and convicted of  
52 murder shall not be sentenced pursuant to the provisions of  
53 subsection c. but shall be sentenced pursuant to the provisions of  
54 subsection b. of this section.

55 (cf: P.L.1985, c.478, s.1)

ACS for A50

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1       2. This act shall take effect immediately.

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6       Makes leaders of narcotics trafficking network eligible for death  
7       penalty; adds aggravating factor concerning one acting as, or at  
8       direction of, leader of narcotics trafficking network.

ASSEMBLY, No. 50  
STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1992 SESSION

By Assemblyman HAYTAIAN

1 AN ACT concerning penalties for murder committed in  
2 connection with certain narcotics offenses and amending  
3 N.J.S.2C:11-3.

4

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

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

8 2C:11-3. Murder. a. Except as provided in section 2C:11-4  
9 criminal homicide constitutes murder when:

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

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

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

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

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

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

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

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

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, procured, counseled, commanded, induced or  
8 caused the commission of the offense, shall be sentenced as  
9 provided 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; [or]

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; or

4 (i) The offense was committed by a leader of a narcotics  
5 trafficking network, as defined by N.J.S.2C:35-3, or at his  
6 direction or command, in furtherance of or arising from the  
7 manufacture, distribution, dispensation, bringing into or  
8 transporting in the State methamphetamine, lysergic acid  
9 diethylamide, phencyclidine, or any controlled dangerous  
10 substance classified in Schedule I or II, or any controlled  
11 substance analog thereof.

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

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

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

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

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

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

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

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

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

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

35 e. Every judgment of conviction which results in a sentence of  
36 death under this section shall be appealed, pursuant to the Rules  
37 of Court, to the Supreme Court. Upon the request of the  
38 defendant, the Supreme Court shall also determine whether the  
39 sentence is disproportionate to the penalty imposed in similar  
40 cases, considering both the crime and the defendant. In any  
41 instance in which the defendant fails, or refuses to appeal, the  
42 appeal shall be taken by the Office of the Public Defender or  
43 other counsel appointed by the Supreme Court for that purpose.

44 f. Prior to the jury's sentencing deliberations, the trial court  
45 shall inform the jury of the sentences which may be imposed  
46 pursuant to subsection b. of this section on the defendant if the  
47 defendant is not sentenced to death. The jury shall also be  
48 informed that a failure to reach a unanimous verdict shall result  
49 in sentencing by the court pursuant to subsection b.

50 g. A juvenile who has been tried as an adult and convicted of  
51 murder shall not be sentenced pursuant to the provisions of  
52 subsection c. but shall be sentenced pursuant to the provisions of  
53 subsection b. of this section.

54 (cf: P.L.1985, c.478, s.1)

1       2. This act shall take effect immediately.

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STATEMENT

5

6       This bill provides that a murder committed by a leader of a  
7 narcotics trafficking network, or at his direction or command, in  
8 furtherance of or arising from the manufacture, distribution,  
9 dispensation, bringing into or transporting in the State  
10 methamphetamine, lysergic acid diethylamide, phencyclidine, or  
11 any Schedule I or II controlled dangerous substance or analog is an  
12 additional aggravating factor in death penalty cases. Under this  
13 bill, the additional aggravating factor would be applied only to  
14 the leader of the narcotics trafficking network.

15       Enactment of this bill will reaffirm and strengthen the  
16 implementation of the Declaration of Policy and Legislative  
17 Findings to the Comprehensive Drug Reform Act of 1986, which  
18 states: "In order to be effective, the battle against drug abuse  
19 and drug-related crime must be waged aggressively at every level  
20 along the drug distribution chain, but in particular, our criminal  
21 laws must target for expedited prosecution and enhanced  
22 punishment those repeat offenders and upper echelon members of  
23 organized narcotics trafficking networks who pose the greatest  
24 danger to society."

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29       Adds murder in connection with certain drug trafficking as  
30 aggravating factor in death penalty cases.

ASSEMBLY, No. 55  
STATE OF NEW JERSEY

INTRODUCED FEBRUARY 3, 1992

By Assemblyman FRANKS and Assemblywoman DERMAN

- 1 AN ACT concerning assault and murder under certain  
2 circumstances and amending N.J.S.2C:11-3 and N.J.S.2C:12-1.  
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 section 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 or a violation of N.J.S.2C:35-5 involving the  
18 manufacturing, distributing or dispensing of a controlled  
19 dangerous substance, controlled dangerous substance analog or  
20 counterfeit controlled dangerous substance, and in the course of  
21 such crime or of immediate flight therefrom, any person causes  
22 the death of a person other than one of the participants; except  
23 that in any prosecution under this subsection, in which the  
24 defendant was not the only participant in the underlying crime, it  
25 is an affirmative defense that the defendant:  
26 (a) Did not commit the homicidal act or in any way solicit,  
27 request, command, importune, cause or aid the commission  
28 thereof; and  
29 (b) Was not armed with a deadly weapon, or any instrument,  
30 article or substance readily capable of causing death or serious  
31 physical injury and of a sort not ordinarily carried in public places  
32 by law-abiding persons; and  
33 (c) Had no reasonable ground to believe that any other  
34 participant was armed with such a weapon, instrument, article or  
35 substance; and  
36 (d) Had no reasonable ground to believe that any other  
37 participant intended to engage in conduct likely to result in death  
38 or serious physical injury.  
39 b. Murder is a crime of the first degree but a person convicted  
40 of murder shall be sentenced, except as provided in subsection c.  
41 of this section, by the court to a term of 30 years, during which  
42 the person shall not be eligible for parole or to a specific term of

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

4 c. Any person convicted under subsection a. (1) or (2) who  
5 committed the homicidal act by his own conduct or who as an  
6 accomplice procured the commission of the offense by payment  
7 or promise of payment of anything of pecuniary value shall be  
8 sentenced as provided hereinafter:

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

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

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

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

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

51 (d) The State and the defendant shall be permitted to rebut  
52 any evidence presented by the other party at the sentencing  
53 proceeding and to present argument as to the adequacy of the  
54 evidence to establish the existence of any aggravating or  
55 mitigating factor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        (i) The offense was committed while the defendant was  
2 engaged in the commission of, an attempt to commit, or flight  
3 after committing or attempting to commit a violation of  
4 N.J.S.2C:35-5, involving manufacturing, distributing or dispensing  
5 of a controlled dangerous substance, controlled dangerous  
6 substance analog or counterfeit controlled dangerous substance.

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

9        (a) The defendant was under the influence of extreme mental  
10 or emotional disturbance insufficient to constitute a defense to  
11 prosecution;

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

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

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

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

22        (f) The defendant has no significant history of prior criminal  
23 activity;

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

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

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

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

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

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

49 (cf: P.L.1985, c.478, s.1)

50        2. N.J.S.2C:12-1 is amended to read as follows:

51        2C:12-1. Assault. a. Simple assault. A person is guilty of  
52 assault if he:

53        (1) Attempts to cause or purposely, knowingly or recklessly  
54 causes bodily injury to another; or

1 (2) Negligently causes bodily injury to another with a deadly  
2 weapon; or

3 (3) Attempts by physical menace to put another in fear of  
4 imminent serious bodily injury.

5 Simple assault is a disorderly persons offense unless committed  
6 in a fight or scuffle entered into by mutual consent, in which case  
7 it is a petty disorderly persons offense.

8 b. Aggravated assault. A person is guilty of aggravated  
9 assault if he:

10 (1) Attempts to cause serious bodily injury to another, or  
11 causes such injury purposely or knowingly or under circumstances  
12 manifesting extreme indifference to the value of human life  
13 recklessly causes such injury; or

14 (2) Attempts to cause or purposely or knowingly causes bodily  
15 injury to another with a deadly weapon; or

16 (3) Recklessly causes bodily injury to another with a deadly  
17 weapon; or

18 (4) Knowingly under circumstances manifesting extreme  
19 indifference to the value of human life points a firearm, as  
20 defined in subsection f. of N.J.S.2C:39-1, at or in the direction of  
21 another, whether or not the actor believes it to be loaded; or

22 (5) Commits a simple assault as defined in subsection a. (1) and  
23 (2) of this section upon:

24 (a) Any law enforcement officer acting in the performance of  
25 his duties while in uniform or exhibiting evidence of his authority;  
26 or

27 (b) Any paid or volunteer fireman acting in the performance of  
28 his duties while in uniform or otherwise clearly identifiable as  
29 being engaged in the performance of the duties of a fireman; or

30 (c) Any person engaged in emergency first-aid or medical  
31 services acting in the performance of his duties while in uniform  
32 or otherwise clearly identifiable as being engaged in the  
33 performance of emergency first-aid or medical services; or

34 (d) Any school board member or school administrator, teacher  
35 or other employee of a school board while clearly identifiable as  
36 being engaged in the performance of his duties or because of his  
37 status as a member or employee of a school board.

38 Aggravated assault under subsection b. (1) is a crime of the  
39 second degree; under subsection b. (2) is a crime of the third  
40 degree; under subsections b. (3) and b. (4) is a crime of the fourth  
41 degree; and, except as provided in subsection f., under subsection  
42 b. (5) is a crime of the third degree if the victim suffers bodily  
43 injury, otherwise it is a crime of the fourth degree.

44 c. A person is guilty of assault by auto or vessel when the  
45 person drives a vehicle or vessel recklessly and causes either  
46 serious bodily injury or bodily injury to another. Assault by auto  
47 or vessel is a crime of the fourth degree if serious bodily injury  
48 results and is a disorderly persons offense if bodily injury results.

49 As used in this section, "auto or vessel" means all means of  
50 conveyance propelled otherwise than by muscular power.

51 d. A person who is employed by a facility as defined in section  
52 2 of P.L.1977, c.239 (C.52:27G-2) who commits a simple assault  
53 as defined in paragraph (1) or (2) of subsection a. of this section  
54 upon an institutionalized elderly person as defined in section 2 of



1 P.L.1977, c.239 (C.52:27G-2) is guilty of a crime of the fourth  
2 degree.

3 e. A person who commits a simple assault as defined in  
4 subsection a. of this section is guilty of a crime of the fourth  
5 degree if the person acted, at least in part, with ill will, hatred or  
6 bias toward, and with a purpose to intimidate, an individual or  
7 group of individuals because of race, color, religion, sexual  
8 orientation, or ethnicity.

9 f. If a person while in the commission of, an attempt to  
10 commit, or flight after committing or attempting to commit a  
11 violation of N.J.S.2C:35-5, involving manufacturing, distributing  
12 or dispensing a controlled dangerous substance, controlled  
13 substance analog or counterfeit controlled dangerous substance,  
14 commits an assault punishable pursuant to the provisions of  
15 subparagraph (a) of paragraph (5) of subsection b. of this section  
16 and the victim suffers bodily injury, the person shall be sentenced  
17 by the court to a term of 25 years imprisonment during which the  
18 person shall not be eligible for parole.

19 (cf: P.L.1991, c.237, s.2)

20 3. This act shall take effect immediately.

21

22

23

#### STATEMENT

24

25 The bill provides that among the "aggravating factors" which a  
26 jury may consider in determining whether to impose the death  
27 penalty is that the murder was committed during the course of a  
28 drug-related crime.

29 The bill also provides that an unintentional homicide  
30 committed during the commission of a drug-related crime would  
31 constitute murder under the "felony-murder" section of the penal  
32 code.

33 Additionally, the bill provides that if a person assaults a law  
34 enforcement officer during the commission of a drug-related  
35 crime and that officer suffers bodily injury, the person shall be  
36 sentenced to 25 years imprisonment with no eligibility for parole.

37

38

39

40

41 Provides that drug-related murders are subject to capital  
42 punishment and increases the penalty for drug-related assaults  
43 against law enforcement officers.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, Nos. 50 and 55**

**STATE OF NEW JERSEY**

DATED: FEBRUARY 27, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Bills Nos. 50 and 55.

This substitute adds to the class of defendants eligible for the death penalty those defendants who, as leaders of narcotics trafficking networks and in furtherance of a conspiracy, under the "Comprehensive Drug Reform Act of 1986," order or otherwise direct the murder of another. The substitute amends subsection c. of N.J.S.A.2C:11-3 which currently provides that only certain murder defendants who either commit the act by their own conduct or pay another to do it may be eligible for the death penalty. This substitute adds a third category to the persons who are potentially "death eligible". It is not necessary that the leader of narcotics trafficking network actually paid, or promised payment to, another for the commission of murder in order for the leader to be "death eligible." All that is required is that the leader of a narcotics trafficking network in furtherance of a conspiracy enumerated in N.J.S.2C:35-3 commanded or by threat or promise solicited the commission of the murder and that the murder actually occurred.

This substitute also creates a new aggravating factor within the death penalty statute pertaining to narcotics trafficking for those defendants who may be death eligible on another basis. This aggravating factor would be applicable to: 1) leaders of narcotics trafficking networks who, in furtherance of a conspiracy, commit murder; 2) leaders of narcotics trafficking networks who, in furtherance of a conspiracy, command or direct the commission of murder; or 3) individuals who commit murder at the command or direction of leaders of narcotics trafficking networks in furtherance of a conspiracy.

SENATE JUDICIARY COMMITTEE  
STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, Nos. 50 and 55**  
**STATE OF NEW JERSEY**

DATED: OCTOBER 8, 1992

The Senate Judiciary Committee reports favorably Assembly Committee Substitute for Assembly Bill Nos. 50 and 55.

Under current law, only persons who purposely or knowingly commit a homicide or who pay another person to commit a murder are eligible for the death penalty. The bill would include among those murderers who are death eligible, leaders of narcotics trafficking networks, who in the furtherance of a drug-related conspiracy, order or otherwise direct the murder of another. Under the bill, it is not necessary that the leader of narcotics trafficking network actually paid or promised payment to another for the commission of murder in order for the murder to be "death eligible." All that is required is that the leader of a narcotics trafficking network in furtherance of a drug-related conspiracy commanded or by threat or promise solicited the commission of the murder.

The bill also creates a new aggravating factor for a jury to consider in determining whether to impose a death sentence. This aggravating factor would apply to: 1) leaders of narcotics trafficking networks who, in furtherance of a drug-related conspiracy, commit murder; 2) leaders of narcotics trafficking networks who, in furtherance of a drug-related conspiracy, command or direct the commission of murder; or 3) individuals who commit murder at the command or direction of leaders of narcotics trafficking networks in furtherance of a drug-related conspiracy.

SENATE LAW AND PUBLIC SAFETY  
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, Nos. 50 and 55**

**STATE OF NEW JERSEY**

DATED: DECEMBER 3, 1992

The Senate Law and Public Safety Committee favorably reports the Assembly Committee Substitute for Assembly Bills No. 50 and 55.

This bill makes a leader of a narcotics trafficking network eligible for the death penalty if he orders or otherwise directs the murder of another in furtherance of a drug crime conspiracy. Under current law, subsection c. of N.J.S.2C:11-3 makes eligible for the death penalty only murder defendants who commit the act by their own conduct or pay another to do.

Under this bill, it would not be necessary for the leader of a narcotics trafficking network to actually pay, or promise to pay, another to commit the murder to become eligible for the death penalty. A leader who, in furtherance of a drug crime conspiracy, commands or solicits by threat or promise the commission of the murder would also face a possible death penalty.

This bill also creates a new aggravating factor within the death penalty statute pertaining to narcotics trafficking for those defendants who may be death eligible on another basis. This aggravating factor would be applicable to: 1) a leader of a narcotics trafficking network who, in furtherance of a conspiracy, commits murder; 2) a leader of a narcotics trafficking network who, in furtherance of a conspiracy, commands or directs the commission of a murder; or 3) an individual who commits murder at the command or direction of a leader of a narcotics trafficking network in furtherance of a conspiracy.

As released by the committee, this bill is identical to Senate Bill No. 754 of 1992.



# OFFICE OF THE GOVERNOR

## NEWS RELEASE

**CN-001**  
**Contact:**

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**TRENTON, N.J. 08625**

**Release:**

Tuesday  
Jan. 26, 1993

### *DRUG KINGPINS TO NOW FACE DEATH PENALTY*

**JERSEY CITY --** The cost of doing business for drug kingpins in the state substantially increased today under legislation signed by Governor Jim Florio which expands the death penalty law to drug traffickers who order others to commit murder as part of their trafficking network.

"We now have the ultimate weapon in the criminal justice arsenal to use against the most destructive and ruthless criminals in our society -- drug traffickers," said Governor Florio. "Today, I want the word to go straight to the street. We've closed another loophole. When drug traffickers or their henchmen use murder to further the drug trade conspiracy, they will pay the price."

Under current law, the death penalty may only be imposed on a person who committed a crime by his own conduct, or was an accomplice to a murder and hired the murderer. If a drug kingpin directed one of his soldiers to murder someone, but did not pay him, the death penalty would not be available. Changing the law allows prosecutors to seek the death penalty for drug kingpins whether or not they paid for the murder. The law would apply to leaders of drug trafficking networks who order killings and to persons who commit the murders at their direction.

"To protect innocent people, we must have laws that work, laws that take today's criminals head on. That's what this bill does. Drug kingpins don't sign formal contracts and write checks for murder. Drugs are big business and murder is an ongoing part of doing business. Murder gives drug kingpins the power to terrorize whole communities," said the Governor. "This law recognizes the violent reality of the drug business. Now prosecutors can bring that violent reality into the court room and let the jury decide."

The new law is one of three measures called for by the Governor to strengthen and enforce the state's death penalty, unused since its creation in 1982. He previously called on the state's Supreme Court to full enforce the death penalty and urged

clarification of "proportionality review" to cut the loopholes out of the death penalty law -- a measure he signed into law last May.

"When I came into office, I pledged to make our criminal justice system work for the people, not the criminals. When our prosecutors and police are frustrated, when they have to fight with one hand tied behind their backs, something is wrong," said Governor Florio. "Today, we're taking on the drug kingpins with both fists."

The bill, A 50/55/S 754, was sponsored by Assemblypersons Garabed Haytaian, John Hartmann and Harriet Derman, and Senators Peter Inverso and Andrew Ciesla.

# # #