

2C 11-3

LEGISLATIVE HISTORY CHECKLIST
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(Death penalty cases--)

NJSA: 2C:11-3

LAWS OF: 1992 CHAPTER: 5

BILL NO: A894

SPONSOR(S): Stulhtrager and others

DATE INTRODUCED: February 13, 1992

COMMITTEE: ASSEMBLY: Judiciary
SENATE: ---

AMENDED DURING PASSAGE: Yes Amendments during passage
denoted by asterisks

DATE OF PASSAGE: ASSEMBLY: April 30, 1992
SENATE: May 7, 1992

DATE OF APPROVAL: May 12, 1992

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~~ / ES

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: Yes

Hearing on similar bill during 1990-1991 Legislative Session.
974.90 New Jersey. Legislature. Assembly. Judiciary, Law, Public Safety
C244 Committee.
1991 Public hearing on 2C:11-3, held 1-31-91.
Trenton, 1991.

KBG:pp

[FIRST REPRINT]
ASSEMBLY, No. 894

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 13, 1992

By Assemblymen STULHTRAGER, COLLINS, Azzolina and Geist

1 AN ACT concerning the review of death sentences by the Supreme
2 Court 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 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; 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.

Matter enclosed in superscript numerals has been adopted as follows:
1 Assembly AJL committee amendments adopted February 27, 1992.

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 or
4 promise of payment of anything of pecuniary value shall be
5 sentenced as provided hereinafter:

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

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

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

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

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

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

53 (e) Prior to the commencement of the sentencing proceeding, or
54 at such time as he has knowledge of the existence of an

1 aggravating factor, the prosecuting attorney shall give notice to
2 the defendant of the aggravating factors which he intends to prove
3 in the proceeding.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

54 (5) The mitigating factors which may be found by the jury or

1 the court are:

2 (a) The defendant was under the influence of extreme mental or
3 emotional disturbance insufficient to constitute a defense to
4 prosecution;

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

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

8 (d) The defendant's capacity to appreciate the wrongfulness of
9 his conduct or to conform his conduct to the requirements of the
10 law was significantly impaired as the result of mental disease or
11 defect or intoxication, but not to a degree sufficient to constitute
12 a defense to prosecution;

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

15 (f) The defendant has no significant history of prior criminal
16 activity;

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

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

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

23 e. Every judgment of conviction which results in a sentence of
24 death under this section shall be appealed, pursuant to the Rules of
25 Court, to the Supreme Court. Upon the request of the defendant,
26 the Supreme Court shall also determine whether the sentence is
27 disproportionate to the penalty imposed in similar cases,
28 considering both the crime and the defendant. Proportionality
29 review under this section shall ¹[consist of] be limited to¹ a
30 comparison of similar cases in which a sentence of death has been
31 imposed under subsection c. of this section. In any instance in
32 which the defendant fails, or refuses to appeal, the appeal shall be
33 taken by the Office of the Public Defender or other counsel
34 appointed by the Supreme Court for that purpose.

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

41 g. A juvenile who has been tried as an adult and convicted of
42 murder shall not be sentenced pursuant to the provisions of
43 subsection c. but shall be sentenced pursuant to the provisions of
44 subsection b. of this section.

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

46 2. This act shall take effect immediately.

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51 Clarifies that the Supreme Court conduct a proportionality review
52 of a death penalty case as compared only to other death penalty
53 cases in which a sentence of death imposed, not to all murder
54 cases.

1 the court are:

2 (a) The defendant was under the influence of extreme mental or
3 emotional disturbance insufficient to constitute a defense to
4 prosecution;

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6 conduct which resulted in his death;

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9 his conduct or to conform his conduct to the requirements of the
10 law was significantly impaired as the result of mental disease or
11 defect or intoxication, but not to a degree sufficient to constitute
12 a defense to prosecution;

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16 activity;

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18 in the prosecution of another person for the crime of murder; or

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20 character or record or to the circumstances of the offense.

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25 Court, to the Supreme Court. Upon the request of the defendant,
26 the Supreme Court shall also determine whether the sentence is
27 disproportionate to the penalty imposed in similar cases,
28 considering both the crime and the defendant. Proportionality
29 review under this section shall consist of a comparison of similar
30 cases in which a sentence of death has been imposed under
31 subsection c. of this section. In any instance in which the
32 defendant fails, or refuses to appeal, the appeal shall n by the
33 Office of the Public Defender or other counsel appointed by the
34 Supreme Court for that purpose.

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

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42 murder shall not be sentenced pursuant to the provisions of
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44 subsection b. of this section.

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STATEMENT

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51 Presently, under our capital punishment statute, the Supreme
52 Court, if requested by the defendant, is required to review a case
53 in which the death penalty is imposed in order to determine
54 whether the sentence is disproportionate to the penalty imposed

1 in similar cases considering both the crime and the defendant. This
2 requirement is commonly referred to as "proportionality review."
3 In Pulley v. Harris, 463 U.S. 1248 (1984) the United States Supreme
4 Court ruled that the provisions of the United States Constitution
5 did not require a state's capital punishment statute provide for
6 proportionality review. This bill does not eliminate the present
7 language in the capital punishment statute which requires the New
8 Jersey Supreme Court to conduct a proportionality review upon
9 the request of the defendant but attempts to clarify this
10 requirement. The bill provides that the proportionality review to
11 be conducted should compare the death penalty case at issue only
12 to other similar death penalty cases in which a sentence of death
13 has been imposed and not to all murder cases.

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18 Clarifies that the Supreme Court conduct a proportionality review
19 of a death penalty case as compared only to other death penalty
20 cases in which a sentence of death imposed, not to all murder
21 cases.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY, No. 894

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 27, 1992

The Assembly Judiciary, Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 894.

Presently, under our capital punishment statute, the Supreme Court, if requested by the defendant, is required to review a case in which the death penalty is imposed in order to determine whether the sentence is disproportionate to the penalty imposed in similar cases considering both the crime and the defendant. This requirement is commonly referred to as "proportionality review." In Pulley v. Harris, 463 U.S. 1248 (1984) the United States Supreme Court ruled that the provisions of the United States Constitution do not require a state's capital punishment statute to provide for proportionality review. This bill does not eliminate the present language in the capital punishment statute which requires the New Jersey Supreme Court to conduct a proportionality review upon the request of the defendant but attempts to clarify this requirement. The bill provides that the proportionality review to be conducted should compare the death penalty case at issue only to other similar death penalty cases in which a sentence of death has been imposed and not to all murder cases.

The bill in its original form noted that "proportionality review shall consist of ..". The committee amended this phrasing to indicate that "proportionality review shall be limited to" since it felt that this phrasing was more restrictive language in keeping with the intent of the bill. The committee did not want to leave open a potential argument that the phrase "shall consist of" only indicates a minimum requirement which permits additional comparisons to be made.



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Tuesday
May 12, 1992

GOVERNOR FLORIO SIGNS BILL STRENGTHENING DEATH PENALTY *Bill Clarifies Proportionality to Set a More Reasonable Standard*

OCEAN GROVE -- Governor Jim Florio today signed a law strengthening the state's death penalty law, unused since its creation in 1982, by clarifying the use of proportionality review to make it a stricter, fairer and more sensible standard.

Under the current law, "proportionality review" enables a defendant who has been sentenced to death to request the state Supreme Court, which automatically hears every death sentence appeal, to determine whether his sentence is "disproportionate to the penalty imposed in similar cases".

"What we who make the laws must do for those who enforce them is work to restore public trust in our ideals and in our institutions," said Governor Florio, during a memorial ceremony honoring police officers killed in the line of duty. "We cannot rebuild that trust unless we protect and enforce the rights of victims and the innocent in our courts as well as the streets. We share a deep concern about making the death penalty work to deter crime."

The previous law did not define "similar cases". This had the effect of broadening proportionality review to the point of endless appeals and in some cases, deterring prosecutors from seeking the death penalty at all.

Under the new law, the phrase would be clarified to mean only cases where the judge or jury has imposed the death penalty. It would help ensure that proportionality review serves the limited purpose that it was designed to serve -- as a final safeguard against an unfair sentence.

"This bill helps make our sentencing guidelines more responsive to the hard work and the risks that our prosecutors and law enforcement officers face in the field as they pursue convictions of violent felons," said Governor Florio. "It limits the proportionality review of cases where the death sentence has been imposed."

Governor Florio had called for the tougher measure during an address before the state's police chiefs in December, 1990 as one step to strengthen and enforce the state's death penalty law.

"The proportionality review, if left open-ended, could so frustrate prosecutors that we'll never have a workable death penalty. This bill directly addresses that flaw," said the Governor. "It will help restore public confidence in our criminal justice system by making it clear that deadly crimes including those against police officers will carry the strongest penalty."

"By taking these small, meaningful steps of common sense, we help people feel that their system belongs to them and that we have one law that applies to all," he said.

The bill, A 894, was sponsored by Assemblymen Gary Stulhtrager and Jack Collins. The measure has been supported by the Association of County Prosecutors and the New Jersey State Association of Chiefs of Police.

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