

# ASSEMBLY, No. 1435

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## STATE OF NEW JERSEY

### 211th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**

**Assemblyman WILFREDO CARABALLO**

**District 29 (Essex and Union)**

**Co-Sponsored by:**

**Assemblyman Barnes**

**SYNOPSIS**

Abolishes the death penalty in New Jersey.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



A1435 CARABALLO

2

1 AN ACT abolishing the death penalty, amending N.J.S.2C:11-3 and  
2 supplementing Title 2C of the New Jersey Statutes.

3

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

6

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

8 2C:11-3. Murder. a. Except as provided in N.J.S.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 one  
15 or more other persons, is engaged in the commission of, or an attempt  
16 to commit, or flight after committing or attempting to commit robbery,  
17 sexual assault, arson, burglary, kidnaping, carjacking or criminal  
18 escape, and in the course of such crime or of immediate flight  
19 therefrom, any person causes the death of a person other than one of  
20 the participants; except that in any prosecution under this subsection,  
21 in which the defendant was not the only participant in the underlying  
22 crime, it is an affirmative defense that the defendant:

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

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

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

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

34 b. (1) Murder is a crime of the first degree but a person convicted  
35 of murder shall be sentenced, except as provided in **[subsection c.]**  
36 paragraphs (2), (3) and (4) of this section, by the court to a term of 30  
37 years, during which the person shall not be eligible for parole, or be  
38 sentenced to a specific term of years which shall be between 30 years  
39 and life imprisonment of which the person shall serve 30 years before  
40 being eligible for parole.

41 (2) If the victim was a law enforcement officer and was murdered  
42 while performing his official duties or was murdered because of his  
43 status as a law enforcement officer, the person convicted of that

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

**Matter underlined thus is new matter.**

1 murder shall be sentenced[, except as otherwise provided in  
2 subsection c. of this section,] by the court to a term of life  
3 imprisonment, during which the person shall not be eligible for parole.

4 (3) A person convicted of murder [and who is not sentenced to  
5 death under this section] shall be sentenced to a term of life  
6 imprisonment without eligibility for parole if the murder was  
7 committed under all of the following circumstances:

8 (a) The victim is less than 14 years old; and

9 (b) The act is committed in the course of the commission, whether  
10 alone or with one or more persons, of a violation of N.J.S.2C:14-2 or  
11 N.J.S.2C:14-3.

12 The defendant shall not be entitled to a deduction of commutation  
13 and work credits from that sentence.

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

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

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

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

1 (b) The admissibility of evidence offered by the State to establish  
2 any of the aggravating factors shall be governed by the rules governing  
3 the admission of evidence at criminal trials. The defendant may offer,  
4 without regard to the rules governing the admission of evidence at  
5 criminal trials, reliable evidence relevant to any of the mitigating  
6 factors. If the defendant produces evidence in mitigation which would  
7 not be admissible under the rules governing the admission of evidence  
8 at criminal trials, the State may rebut that evidence without regard to  
9 the rules governing the admission of evidence at criminal trials.

10 (c) Evidence admitted at the trial, which is relevant to the  
11 aggravating and mitigating factors set forth in paragraphs (4) and (5)  
12 of this subsection, shall be considered without the necessity of  
13 reintroducing that evidence at the sentencing proceeding; provided  
14 that the fact finder at the sentencing proceeding was present as either  
15 the fact finder or the judge at the trial.

16 (d) The State and the defendant shall be permitted to rebut any  
17 evidence presented by the other party at the sentencing proceeding and  
18 to present argument as to the adequacy of the evidence to establish the  
19 existence of any aggravating or mitigating factor.

20 (e) Prior to the commencement of the sentencing proceeding, or at  
21 such time as he has knowledge of the existence of an aggravating  
22 factor, the prosecuting attorney shall give notice to the defendant of  
23 the aggravating factors which he intends to prove in the proceeding.

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

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

34 (a) If the jury or the court finds that any aggravating factors exist  
35 and that all of the aggravating factors outweigh beyond a reasonable  
36 doubt all of the mitigating factors, the court shall sentence the  
37 defendant to death.

38 (b) If the jury or the court finds that no aggravating factors exist,  
39 or that all of the aggravating factors which exist do not outweigh all  
40 of the mitigating factors, the court shall sentence the defendant  
41 pursuant to subsection b.

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

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

- 1 (a) The defendant has been convicted, at any time, of another  
2 murder. For purposes of this section, a conviction shall be deemed  
3 final when sentence is imposed and may be used as an aggravating  
4 factor regardless of whether it is on appeal;
- 5 (b) In the commission of the murder, the defendant purposely or  
6 knowingly created a grave risk of death to another person in addition  
7 to the victim;
- 8 (c) The murder was outrageously or wantonly vile, horrible or  
9 inhuman in that it involved torture, depravity of mind, or an  
10 aggravated assault to the victim;
- 11 (d) The defendant committed the murder as consideration for the  
12 receipt, or in expectation of the receipt of anything of pecuniary value;
- 13 (e) The defendant procured the commission of the offense by  
14 payment or promise of payment of anything of pecuniary value;
- 15 (f) The murder was committed for the purpose of escaping  
16 detection, apprehension, trial, punishment or confinement for another  
17 offense committed by the defendant or another;
- 18 (g) The offense was committed while the defendant was engaged  
19 in the commission of, or an attempt to commit, or flight after  
20 committing or attempting to commit murder, robbery, sexual assault,  
21 arson, burglary or kidnaping;
- 22 (h) The defendant murdered a public servant, as defined in  
23 N.J.S.2C:27-1, while the victim was engaged in the performance of his  
24 official duties, or because of the victim's status as a public servant;
- 25 (i) The defendant: (i) as a leader of a narcotics trafficking network  
26 as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy  
27 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or  
28 promise solicited the commission of the offense or (ii) committed the  
29 offense at the direction of a leader of a narcotics trafficking network  
30 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated  
31 in N.J.S.2C:35-3;
- 32 (j) The homicidal act that the defendant committed or procured  
33 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2; or
- 34 (k) The victim was less than 14 years old.
- 35 (5) The mitigating factors which may be found by the jury or the  
36 court are:
- 37 (a) The defendant was under the influence of extreme mental or  
38 emotional disturbance insufficient to constitute a defense to  
39 prosecution;
- 40 (b) The victim solicited, participated in or consented to the  
41 conduct which resulted in his death;
- 42 (c) The age of the defendant at the time of the murder;
- 43 (d) The defendant's capacity to appreciate the wrongfulness of his  
44 conduct or to conform his conduct to the requirements of the law was  
45 significantly impaired as the result of mental disease or defect or  
46 intoxication, but not to a degree sufficient to constitute a defense to  
47 prosecution;

- 1 (e) The defendant was under unusual and substantial duress  
2 insufficient to constitute a defense to prosecution;
- 3 (f) The defendant has no significant history of prior criminal  
4 activity;
- 5 (g) The defendant rendered substantial assistance to the State in  
6 the prosecution of another person for the crime of murder; or
- 7 (h) Any other factor which is relevant to the defendant's character  
8 or record or to the circumstances of the offense.
- 9 (6) When a defendant at a sentencing proceeding presents evidence  
10 of the defendant's character or record pursuant to subparagraph (h) of  
11 paragraph (5) of this subsection, the State may present evidence of the  
12 murder victim's character and background and of the impact of the  
13 murder on the victim's survivors. If the jury finds that the State has  
14 proven at least one aggravating factor beyond a reasonable doubt and  
15 the jury finds the existence of a mitigating factor pursuant to  
16 subparagraph (h) of paragraph (5) of this subsection, the jury may  
17 consider the victim and survivor evidence presented by the State  
18 pursuant to this paragraph in determining the appropriate weight to  
19 give mitigating evidence presented pursuant to subparagraph (h) of  
20 paragraph (5) of this subsection.
- 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, the  
26 Supreme Court shall also determine whether the sentence is  
27 disproportionate to the penalty imposed in similar cases, considering  
28 both the crime and the defendant. Proportionality review under this  
29 section shall be limited to a comparison of similar cases in which a  
30 sentence of death has been imposed under subsection c. of this section.  
31 In any instance in which the defendant fails, or refuses to appeal, the  
32 appeal shall be taken by the Office of the Public Defender or other  
33 counsel appointed by the Supreme Court for that purpose.
- 34 f. Prior to the jury's sentencing deliberations, the trial court shall  
35 inform the jury of the sentences which may be imposed pursuant to  
36 subsection b. of this section on the defendant if the defendant is not  
37 sentenced to death. The jury shall also be informed that a failure to  
38 reach a unanimous verdict shall result in sentencing by the court  
39 pursuant to subsection b.
- 40 g. A juvenile who has been tried as an adult and convicted of  
41 murder shall not be sentenced pursuant to the provisions of subsection  
42 c. but shall be sentenced pursuant to the provisions of subsection b. of  
43 this section.
- 44 h. In a sentencing proceeding conducted pursuant to this section,  
45 no evidence shall be admissible concerning the method or manner of  
46 execution which would be imposed on a defendant sentenced to death.
- 47 i. For purposes of this section the term "homicidal act" shall mean

1 conduct that causes death or serious bodily injury resulting in death]  
2 by the court to a term of life imprisonment, during which the person  
3 shall not be eligible for parole.

4 (cf: P.L.1998, c.25, s.1)

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6 2. (New section) Any person under a sentence of death on the  
7 effective date of this act shall be resented to a term of life  
8 imprisonment during which the person shall be ineligible for parole.

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10 3. This act shall take effect immediately.

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#### STATEMENT

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15 This bill would abolish the death penalty in New Jersey. The bill  
16 would provide a term of life imprisonment without eligibility for parole  
17 for persons convicted of murder who are presently eligible for capital  
18 punishment.