

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 171 and 2471

STATE OF NEW JERSEY
212th LEGISLATURE

ADOPTED MAY 10, 2007

Sponsored by:

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator ROBERT J. MARTIN

District 26 (Morris and Passaic)

Senator SHIRLEY K. TURNER

District 15 (Mercer)

Senator NIA H. GILL

District 34 (Essex and Passaic)

Assemblyman WILFREDO CARABALLO

District 29 (Essex and Union)

Assemblyman CHRISTOPHER "KIP" BATEMAN

District 16 (Morris and Somerset)

Assemblyman GORDON M. JOHNSON

District 37 (Bergen)

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

Assemblywoman NILSA CRUZ-PEREZ

District 5 (Camden and Gloucester)

Co-Sponsored by:

Senator Weinberg, Assemblyman Cryan, Assemblywomen Jasey, Evans, Watson Coleman, Assemblyman Connors, Assemblywomen Oliver, Quigley, Assemblymen Scalera, P. Barnes, III, Assemblywoman Voss, Assemblymen Giblin, Schaer, Gusciora, Prieto, McKeon, Egan and Payne

SYNOPSIS

Eliminates the death penalty and replaces it with life imprisonment without eligibility for parole in certain circumstances.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Judiciary Committee.

(Sponsorship Updated As Of: 12/14/2007)

1 AN ACT to eliminate the death penalty and allow for life
2 imprisonment without eligibility for parole, revising various
3 parts of the statutory law, repealing P.L.1983, c.245, and
4 supplementing Title 2C of the New Jersey Statutes.

5

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

8

9 1. N.J.S.2C:11-3 is amended to read as follows:
10 2C:11-3 Murder.

11 a. Except as provided in N.J.S.2C:11-4, criminal homicide
12 constitutes murder when:

13 (1) The actor purposely causes death or serious bodily injury
14 resulting in death; or

15 (2) The actor knowingly causes death or serious bodily injury
16 resulting in death; or

17 (3) It is committed when the actor, acting either alone or with
18 one or more other persons, is engaged in the commission of, or an
19 attempt to commit, or flight after committing or attempting to
20 commit robbery, sexual assault, arson, burglary, kidnapping,
21 carjacking, criminal escape or terrorism pursuant to section 2 of
22 P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of
23 immediate flight therefrom, any person causes the death of a person
24 other than one of the participants; except that in any prosecution
25 under this subsection, in which the defendant was not the only
26 participant in the underlying crime, it is an affirmative defense that
27 the defendant:

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

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

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

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

41 b. (1) Murder is a crime of the first degree but a person
42 convicted of murder shall be sentenced, except as provided in
43 **[subsection c.] paragraphs (2), (3) and (4) of this [section]**
44 **subsection**, by the court to a term of 30 years, during which the
45 person shall not be eligible for parole, or be sentenced to a specific

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

4 (2) If the victim was a law enforcement officer and was
5 murdered while performing his official duties or was murdered
6 because of his status as a law enforcement officer, the person
7 convicted of that murder shall be sentenced[, except as otherwise
8 provided in subsection c. of this section,] by the court to a term of
9 life imprisonment, during which the person shall not be eligible for
10 parole.

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

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

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

19 (4) [If the defendant was subject to sentencing pursuant to
20 subsection c. and the jury or court found the existence of one or
21 more aggravating factors, but that such factors did not outweigh the
22 mitigating factors found to exist by the jury or court or the jury was
23 unable to reach a unanimous verdict as to the weight of the factors,
24 the defendant shall be sentenced by the court to a term of life
25 imprisonment during which the defendant shall not be eligible for
26 parole.

27 With respect to a sentence imposed pursuant to this subsection,
28 the defendant shall not be entitled to a deduction of commutation
29 and work credits from that sentence.]

30 Any person convicted under subsection a.(1) or (2) who
31 committed the homicidal act by his own conduct; or who as an
32 accomplice procured the commission of the offense by payment or
33 promise of payment of anything of pecuniary value; or who, as a
34 leader of a narcotics trafficking network as defined in N.J.S.2C:35-
35 3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,
36 commanded or by threat or promise solicited the commission of the
37 offense, or, if the murder occurred during the commission of the
38 crime of terrorism, any person who committed the crime of
39 terrorism, shall be sentenced by the court to life imprisonment
40 without eligibility for parole, which sentence shall be served in a
41 maximum security prison, if a jury finds beyond a reasonable doubt
42 that any of the following aggravating factors exist:

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

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

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

7 (d) The defendant committed the murder as consideration for the
8 receipt, or in expectation of the receipt of anything of pecuniary
9 value;

10 (e) The defendant procured the commission of the murder by
11 payment or promise of payment of anything of pecuniary value;

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

15 (g) The murder was committed while the defendant was engaged
16 in the commission of, or an attempt to commit, or flight after
17 committing or attempting to commit murder, robbery, sexual
18 assault, arson, burglary, kidnapping, carjacking or the crime of
19 contempt in violation of N.J.S.2C:29-9b.;

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

24 (i) The defendant: (i) as a leader of a narcotics trafficking
25 network as defined in N.J.S.2C:35-3 and in furtherance of a
26 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
27 or by threat or promise solicited the commission of the murder or
28 (ii) committed the murder at the direction of a leader of a narcotics
29 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a
30 conspiracy enumerated in N.J.S.2C:35-3;

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

33 (k) The victim was less than 14 years old; or

34 (l) The murder was committed during the commission of, or an
35 attempt to commit, or flight after committing or attempting to
36 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
37 2).

38 (5) A juvenile who has been tried as an adult and convicted of
39 murder shall be sentenced pursuant to paragraph (1), (2) or (3) of
40 this subsection.

41 c. **【**Any person convicted under subsection a.(1) or (2) who
42 committed the homicidal act by his own conduct; or who as an
43 accomplice procured the commission of the offense by payment or
44 promise of payment of anything of pecuniary value; or who, as a
45 leader of a narcotics trafficking network as defined in N.J.S.2C:35-
46 3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,
47 commanded or by threat or promise solicited the commission of the
48 offense, or, if the murder occurred during the commission of the

1 crime of terrorism, any person who committed the crime of
2 terrorism, shall be sentenced as provided hereinafter:】

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

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

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

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

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

45 (d) The State and the defendant shall be permitted to rebut any
46 evidence presented by the other party at the sentencing proceeding

1 and to present argument as to the adequacy of the evidence to
2 establish the existence of any aggravating or mitigating factor.

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

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

12 【(3) The jury or, if there is no jury, the court shall return a
13 special verdict setting forth in writing the existence or nonexistence
14 of each of the aggravating and mitigating factors set forth in
15 paragraphs (4) and (5) of this subsection. If any aggravating factor
16 is found to exist, the verdict shall also state whether it outweighs
17 beyond a reasonable doubt any one or more 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 the
25 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 deemed
32 final when sentence is imposed and may be used as an aggravating
33 factor regardless of whether it is on appeal;

34 (b) In the commission of the murder, the defendant purposely or
35 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 the
41 receipt, or in expectation of the receipt of anything of pecuniary
42 value;

43 (e) The defendant procured the commission of the murder 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;

1 (g) The murder was committed while the defendant was engaged
2 in the commission of, or an attempt to commit, or flight after
3 committing or attempting to commit murder, robbery, sexual
4 assault, arson, burglary, kidnapping, carjacking or the crime of
5 contempt in violation of N.J.S.2C:29-9b.;

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

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

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

19 (k) The victim was less than 14 years old; or

20 (l) The murder was committed during the commission of, or an
21 attempt to commit, or flight after committing or attempting to
22 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
23 2).】

24 【(5) The mitigating factors which may be found by the jury or
25 the court are:

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

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

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

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

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

39 (f) The defendant has no significant history of prior criminal
40 activity;

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

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

45 【(6) When a defendant at a sentencing proceeding presents
46 evidence of the defendant's character or record pursuant to
47 subparagraph (h) of paragraph (5) of this subsection, the State may

1 present evidence of the murder victim's character and background
2 and of the impact of the murder on the victim's survivors. If the
3 jury finds that the State has proven at least one aggravating factor
4 beyond a reasonable doubt and the jury finds the existence of a
5 mitigating factor pursuant to subparagraph (h) of paragraph (5) of
6 this subsection, the jury may consider the victim and survivor
7 evidence presented by the State pursuant to this paragraph in
8 determining the appropriate weight to give mitigating evidence
9 presented pursuant to subparagraph (h) of paragraph (5) of this
10 subsection. As used in this paragraph "victim and survivor
11 evidence" may include the display of a photograph of the victim
12 taken before the homicide.】 (Deleted by amendment, P.L. , c.)
13 (pending before the Legislature as this bill).

14 d. 【The sentencing proceeding set forth in subsection c. of this
15 section shall not be waived by the prosecuting attorney.】 (Deleted
16 by amendment, P.L. , c.) (pending before the Legislature as this
17 bill).

18 e. 【Every judgment of conviction which results in a sentence
19 of death under this section shall be appealed, pursuant to the Rules
20 of Court, to the Supreme Court. Upon the request of the defendant,
21 the Supreme Court shall also determine whether the sentence is
22 disproportionate to the penalty imposed in similar cases,
23 considering both the crime and the defendant. Proportionality
24 review under this section shall be limited to a comparison of similar
25 cases in which a sentence of death has been imposed under
26 subsection c. of this section. In any instance in which the defendant
27 fails, or refuses to appeal, the appeal shall be taken by the Office of
28 the Public Defender or other counsel appointed by the Supreme
29 Court for that purpose.】 (Deleted by amendment, P.L. , c.)
30 (pending before the Legislature as this bill).

31 f. 【Prior to the jury's sentencing deliberations, the trial court
32 shall inform the jury of the sentences which may be imposed
33 pursuant to subsection b. of this section on the defendant if the
34 defendant is not sentenced to death. The jury shall also be informed
35 that a failure to reach a unanimous verdict shall result in sentencing
36 by the court pursuant to subsection b.】 (Deleted by amendment,
37 P.L. , c.) (pending before the Legislature as this bill).

38 g. 【A juvenile who has been tried as an adult and convicted of
39 murder shall not be sentenced pursuant to the provisions of
40 subsection c. but shall be sentenced pursuant to the provisions of
41 subsection b. of this section.】 (Deleted by amendment, P.L. , c.)
42 (pending before the Legislature as this bill).

43 h. 【In a sentencing proceeding conducted pursuant to this
44 section, no evidence shall be admissible concerning the method or
45 manner of execution which would be imposed on a defendant
46 sentenced to death.】 (Deleted by amendment, P.L. , c.) (pending
47 before the Legislature as this bill).

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

4 j. In a sentencing proceeding conducted pursuant to this
5 section, the display of a photograph of the victim taken before the
6 homicide shall be permitted.

7 (cf: P.L.2002, c.26, s.10)

8

9 2. (New section) An inmate sentenced to death prior to the
10 date of the enactment of this act, upon motion to the sentencing
11 court and waiver of any further appeals related to sentencing, shall
12 be resentenced to a term of life imprisonment during which the
13 defendant shall not be eligible for parole. Such sentence shall be
14 served in a maximum security prison.

15 Any such motion to the sentencing court shall be made within 60
16 days of the enactment of this act. If the motion is not made within
17 60 days the inmate shall remain under the sentence of death
18 previously imposed by the sentencing court.

19

20 3. (New section) In addition to the provisions of any other law
21 requiring restitution, a person convicted of murder pursuant to
22 N.J.S.2C:11-3 shall be required to pay restitution to the nearest
23 surviving relative of the victim. The court shall determine the
24 amount and duration of the restitution pursuant to N.J.S.2C:43-3
25 and the provisions of chapter 46 of Title 2C of the New Jersey
26 Statutes.

27

28 4. N.J.S.2B:23-10 is amended to read as follows:

29 2B:23-10. Examination of jurors. **[a.]** In the discretion of the
30 court, parties to any trial may question any person summoned as a
31 juror after the name is drawn and before the swearing, and without
32 the interposition of any challenge, to determine whether or not to
33 interpose a peremptory challenge or a challenge for cause. Such
34 examination shall be permitted in order to disclose whether or not
35 the juror is qualified, impartial and without interest in the result of
36 the action. The questioning shall be conducted in open court under
37 the trial judge's supervision.

38 b. **[The examination of jurors shall be under oath only in cases**
39 **in which a death penalty may be imposed.]** (Deleted by
40 amendment, P.L. , c.) (pending before the Legislature as this
41 bill).

42 (cf: N.J.S.2B:23-10)

43

44 5. N.J.S.2B:23-13 is amended to read as follows:

45 2B:23-13. Peremptory challenges.

46 Upon the trial of any action in any court of this State, the parties
47 shall be entitled to peremptory challenges as follows:

- 1 a. In any civil action, each party, 6.
- 2 b. Upon an indictment for kidnapping, murder, aggravated
3 manslaughter, manslaughter, aggravated assault, aggravated sexual
4 assault, sexual assault, aggravated criminal sexual contact,
5 aggravated arson, arson, burglary, robbery, forgery if it constitutes a
6 crime of the third degree as defined by subsection b. of
7 N.J.S.2C:21-1, or perjury, the defendant, 20 peremptory challenges
8 if tried alone and 10 challenges if tried jointly and the State, 12
9 peremptory challenges if the defendant is tried alone and 6
10 peremptory challenges for each 10 afforded the defendants if tried
11 jointly. **【The trial court, in its discretion, may, however, increase**
12 **proportionally the number of peremptory challenges available to the**
13 **defendant and the State in any case in which the sentencing**
14 **procedure set forth in subsection c. of N.J.S.2C:11-3 might be**
15 **utilized.】**
- 16 c. Upon any other indictment, defendants, 10 each; the State,
17 10 peremptory challenges for each 10 challenges allowed to the
18 defendants. When the case is to be tried by a jury from another
19 county, each defendant, 5 peremptory challenges, and the State, 5
20 peremptory challenges for each 5 peremptory challenges afforded
21 the defendants.
22 (cf: N.J.S.2B:23-13)
23
- 24 6. Section 7 of P.L.1979, c.441 (C.30:4-123.51) is amended to
25 read as follows:
- 26 7. a. Each adult inmate sentenced to a term of incarceration in
27 a county penal institution, or to a specific term of years at the State
28 Prison or the correctional institution for women shall become
29 primarily eligible for parole after having served any judicial or
30 statutory mandatory minimum term, or one-third of the sentence
31 imposed where no mandatory minimum term has been imposed less
32 commutation time for good behavior pursuant to N.J.S.2A:164-24
33 or R.S.30:4-140 and credits for diligent application to work and
34 other institutional assignments pursuant to P.L.1972, c.115 (C.30:8-
35 28.1 et seq.) or R.S.30:4-92. Consistent with the provisions of the
36 New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6,
37 2C:43-6, 2C:43-7), commutation and work credits shall not in any
38 way reduce any judicial or statutory mandatory minimum term and
39 such credits accrued shall only be awarded subsequent to the
40 expiration of the term.
- 41 b. Each adult inmate sentenced to a term of life imprisonment
42 shall become primarily eligible for parole after having served any
43 judicial or statutory mandatory minimum term, or 25 years where
44 no mandatory minimum term has been imposed less commutation
45 time for good behavior and credits for diligent application to work
46 and other institutional assignments. If an inmate sentenced to a
47 specific term or terms of years is eligible for parole on a date later

1 than the date upon which he would be eligible if a life sentence had
2 been imposed, then in such case the inmate shall be eligible for
3 parole after having served 25 years, less commutation time for good
4 behavior and credits for diligent application to work and other
5 institutional assignments. Consistent with the provisions of the
6 New Jersey Code of Criminal Justice (N.J.S.2C:11-3, 2C:14-6,
7 2C:43-6, 2C:43-7), commutation and work credits shall not in any
8 way reduce any judicial or statutory mandatory minimum term and
9 such credits accrued shall only be awarded subsequent to the
10 expiration of the term.

11 c. Each inmate sentenced to a specific term of years pursuant
12 to the "Controlled Dangerous Substances Act," P.L.1970, c.226
13 (C.24:21-1 through 45) shall become primarily eligible for parole
14 after having served one-third of the sentence imposed less
15 commutation time for good behavior and credits for diligent
16 application to work and other institutional assignments.

17 d. Each adult inmate sentenced to an indeterminate term of
18 years as a young adult offender pursuant to N.J.S.2C:43-5 shall
19 become primarily eligible for parole consideration pursuant to a
20 schedule of primary eligibility dates developed by the board, less
21 adjustment for program participation. In no case shall the board
22 schedule require that the primary parole eligibility date for a young
23 adult offender be greater than the primary parole eligibility date
24 required pursuant to this section for the presumptive term for the
25 crime authorized pursuant to N.J.S.2C:44-1(f).

26 e. Each adult inmate sentenced for an offense specified in
27 N.J.S.2C:47-1 shall become primarily eligible for parole as
28 follows:

29 (1) If the court finds that the offender's conduct was not
30 characterized by a pattern of repetitive, compulsive behavior or
31 finds that the offender is not amenable to sex offender treatment, or
32 if after sentencing the Department of Corrections in its most recent
33 examination determines that the offender is not amenable to sex
34 offender treatment, the offender shall become primarily eligible for
35 parole after having served any judicial or statutory mandatory
36 minimum term or one-third of the sentence imposed where no
37 mandatory minimum term has been imposed. Neither such term
38 shall be reduced by commutation time for good behavior pursuant
39 to R.S.30:4-140 or credits for diligent application to work and other
40 institutional assignments pursuant to R.S.30:4-92.

41 (2) All other offenders shall be eligible for parole pursuant to
42 the provisions of N.J.S.2C:47-5, except no offender shall become
43 primarily eligible for parole prior to the expiration of any judicial or
44 statutory mandatory minimum term.

45 f. Each juvenile inmate committed to an indeterminate term
46 shall be immediately eligible for parole.

1 g. Each adult inmate of a county jail, workhouse or
2 penitentiary shall become primarily eligible for parole upon service
3 of 60 days of his aggregate sentence or as provided for in
4 subsection a. of this section, whichever is greater. Whenever any
5 such inmate's parole eligibility is within six months of the date of
6 such sentence, the judge shall state such eligibility on the record
7 which shall satisfy all public and inmate notice requirements. The
8 chief executive officer of the institution in which county inmates
9 are held shall generate all reports pursuant to subsection d. of
10 section 10 of P.L.1979, c.441 (C.30:4-123.54). The parole board
11 shall have the authority to promulgate time periods applicable to the
12 parole processing of inmates of county penal institutions, except
13 that no inmate may be released prior to the primary eligibility date
14 established by this subsection, unless consented to by the
15 sentencing judge. No inmate sentenced to a specific term of years
16 at the State Prison or the correctional institution for women shall
17 become primarily eligible for parole until service of a full nine
18 months of his aggregate sentence.

19 h. When an inmate is sentenced to more than one term of
20 imprisonment, the primary parole eligibility terms calculated
21 pursuant to this section shall be aggregated by the board for the
22 purpose of determining the primary parole eligibility date, except
23 that no juvenile commitment shall be aggregated with any adult
24 sentence. The board shall promulgate rules and regulations to
25 govern aggregation under this subsection.

26 i. The primary eligibility date shall be computed by a
27 designated representative of the board and made known to the
28 inmate in writing not later than 90 days following the
29 commencement of the sentence. In the case of an inmate sentenced
30 to a county penal institution such notice shall be made pursuant to
31 subsection g. of this section. Each inmate shall be given the
32 opportunity to acknowledge in writing the receipt of such
33 computation. Failure or refusal by the inmate to acknowledge the
34 receipt of such computation shall be recorded by the board but shall
35 not constitute a violation of this subsection.

36 j. Except as provided in this subsection, each inmate sentenced
37 pursuant to N.J.S.2A:113-4 for a term of life imprisonment,
38 N.J.S.2A:164-17 for a fixed minimum and maximum term or
39 N.J.S.2C:1-1(b) shall not be primarily eligible for parole on a date
40 computed pursuant to this section, but shall be primarily eligible on
41 a date computed pursuant to P.L.1948, c.84 (C.30:4-123.1 et seq.),
42 which is continued in effect for this purpose. Inmates classified as
43 second, third or fourth offenders pursuant to section 12 of P.L.1948,
44 c.84 (C.30:4-123.12) shall become primarily eligible for parole
45 after serving one-third, one-half or two-thirds of the maximum
46 sentence imposed, respectively, less in each instance commutation
47 time for good behavior and credits for diligent application to work

1 and other institutional assignments; provided, however, that if the
2 prosecuting attorney or the sentencing court advises the board that
3 the punitive aspects of the sentence imposed on such inmates will
4 not have been fulfilled by the time of parole eligibility calculated
5 pursuant to this subsection, then the inmate shall not become
6 primarily eligible for parole until serving an additional period
7 which shall be one-half of the difference between the primary
8 parole eligibility date calculated pursuant to this subsection and the
9 parole eligibility date calculated pursuant to section 12 of P.L.1948,
10 c.84 (C.30:4-123.12). If the prosecuting attorney or the sentencing
11 court advises the board that the punitive aspects of the sentence
12 have not been fulfilled, such advice need not be supported by
13 reasons and will be deemed conclusive and final. Any such
14 decision shall not be subject to judicial review except to the extent
15 mandated by the New Jersey and United States Constitutions. The
16 board shall, reasonably prior to considering any such case, advise
17 the prosecuting attorney and the sentencing court of all information
18 relevant to such inmate's parole eligibility.

19 k. Notwithstanding any provisions of this section to the
20 contrary, a person sentenced to imprisonment pursuant to paragraph
21 (2) ~~or~~, (3) or (4) of subsection b. of N.J.S.2C:11-3 shall not be
22 eligible for parole.

23 l. Notwithstanding the provisions of subsections a. through j.
24 of this section, the appropriate board panel, as provided in section 1
25 of P.L.1997, c.214 (C.30:4-123.51c), may release an inmate serving
26 a sentence of imprisonment on medical parole at any time.
27 (cf: P.L.1998, c.73, s.2)

28

29 7. P.L.1983, c.245 (C.2C:49-1 through 2C:49-12, inclusive) is
30 repealed.

31

32 8. This act shall take effect immediately.