

ASSEMBLY, No. 2946

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 20, 2020

Sponsored by:

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Reinstates the death penalty for certain murders.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/24/2020)

1 **AN ACT** reinstating the death penalty for certain murders, amending
2 and supplementing various parts of the statutory law.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. N.J.S.2B:23-10 is amended to read as follows:

8 2B:23-10. Examination of jurors. a. In the discretion of the
9 court, parties to any trial may question any person summoned as a
10 juror after the name is drawn and before the swearing, and without
11 the interposition of any challenge, to determine whether or not to
12 interpose a peremptory challenge or a challenge for cause. Such
13 examination shall be permitted in order to disclose whether or not
14 the juror is qualified, impartial and without interest in the result of
15 the action. The questioning shall be conducted in open court under
16 the trial judge's supervision.

17 b. (Deleted by amendment, P.L.2007, c.204).

18 c. The examination of jurors shall be under oath only in cases
19 in which a death penalty may be imposed.

20 (cf: P.L.2007, c.204, s.4)

21
22 2. N.J.S.2B:23-13 is amended to read as follows:

23 2B:23-13. Peremptory challenges.

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

26 a. In any civil action, each party, 6.

27 b. Upon an indictment for kidnapping, murder, aggravated
28 manslaughter, manslaughter, aggravated assault, aggravated sexual
29 assault, sexual assault, aggravated criminal sexual contact,
30 aggravated arson, arson, burglary, robbery, forgery if it constitutes a
31 crime of the third degree as defined by subsection b. of
32 N.J.S.2C:21-1, or perjury, the defendant, 20 peremptory challenges
33 if tried alone and 10 challenges if tried jointly and the State, 12
34 peremptory challenges if the defendant is tried alone and 6
35 peremptory challenges for each 10 afforded the defendants if tried
36 jointly. The trial court, in its discretion, may, however, increase
37 proportionally the number of peremptory challenges available to the
38 defendant and the State in any case in which the sentencing
39 procedure set forth in subsection k. of N.J.S.2C:11-3 might be
40 utilized.

41 c. Upon any other indictment, defendants, 10 each; the State,
42 10 peremptory challenges for each 10 challenges allowed to the
43 defendants. When the case is to be tried by a jury from another
44 county, each defendant, 5 peremptory challenges, and the State, 5

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 peremptory challenges for each 5 peremptory challenges afforded
2 the defendants.

3 (cf: P.L.2007, c.204, s.5)
4

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

6 2C:11-3. Murder.

7 a. Except as provided in N.J.S.2C:11-4, criminal homicide
8 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,
17 carjacking, criminal escape or terrorism pursuant to section 2 of
18 P.L.2002, c.26 (C.2C:38-2), and in the course of such crime or of
19 immediate flight therefrom, any person causes the death of a person
20 other than one of the participants; except that in any prosecution
21 under this subsection, in which the defendant was not the only
22 participant in the underlying crime, it is an affirmative defense that
23 the defendant:

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

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

45 (2) If the victim was a law enforcement officer and was
46 murdered while performing his official duties or was murdered
47 because of his status as a law enforcement officer, the person
48 convicted of that murder shall be sentenced, except as otherwise

1 provided in subsection k. of this section, by the court to a term of
2 life imprisonment, during which the person shall not be eligible for
3 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 18 years old; and

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

12 (4) If the defendant was subject to sentencing pursuant to
13 subsection k. of this section and the jury or court found the
14 existence of one or more aggravating factors, but that such factors
15 did not outweigh the mitigating factors found to exist by the jury or
16 court or the jury was unable to reach a unanimous verdict as to the
17 weight of the factors, the defendant shall be sentenced by the court
18 to a term of life imprisonment during which the defendant shall not
19 be eligible for parole.

20 With respect to a sentence imposed pursuant to this subsection,
21 the defendant shall not be entitled to a deduction of commutation
22 and work credits from that sentence.

23 **【**Any person convicted under subsection a.(1) or (2) who
24 committed the homicidal act by his own conduct; or who as an
25 accomplice procured the commission of the offense by payment or
26 promise of payment of anything of pecuniary value; or who, as a
27 leader of a narcotics trafficking network as defined in N.J.S.2C:35-
28 3 and in furtherance of a conspiracy enumerated in N.J.S.2C:35-3,
29 commanded or by threat or promise solicited the commission of the
30 offense, or, if the murder occurred during the commission of the
31 crime of terrorism, any person who committed the crime of
32 terrorism, shall be sentenced by the court to life imprisonment
33 without eligibility for parole, which sentence shall be served in a
34 maximum security prison, if a jury finds beyond a reasonable doubt
35 that any of the following aggravating factors exist:

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

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

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

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

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

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

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

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

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

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

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

25 (l) The murder was committed during the commission of, or an
26 attempt to commit, or flight after committing or attempting to
27 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
28 2).

29 (5) A juvenile who has been tried as an adult and convicted of
30 murder shall be sentenced pursuant to paragraph (1) of this
31 subsection.】

32 c. (Deleted by amendment, P.L.2007, c.204).

33 d. (Deleted by amendment, P.L.2007, c.204).

34 e. (Deleted by amendment, P.L.2007, c.204).

35 f. (Deleted by amendment, P.L.2007, c.204).

36 g. (Deleted by amendment, P.L.2007, c.204).

37 h. (Deleted by amendment, P.L.2007, c.204).

38 i. For purposes of this section the term “homicidal act” shall
39 mean conduct that causes death or serious bodily injury resulting in
40 death.

41 j. In a sentencing proceeding conducted pursuant to this
42 section, the display of a photograph of the victim taken before the
43 homicide shall be permitted.

44 k. Any person convicted under subsection a.(1) or (2) who
45 committed the homicidal act by his own conduct; or who as an
46 accomplice procured the commission of the offense by payment or
47 promise of payment of anything of pecuniary value if: (1) the victim
48 was a law enforcement officer or correction officer and was

1 murdered while performing his official duties or was murdered
2 because of his status as a law enforcement officer or correction
3 officer; (2) the victim was less than 18 years old and the act was
4 committed in the course of the commission, whether alone or with
5 one or more persons, of a violation of N.J.S.2C:14-2 or
6 N.J.S.2C:14-3; (3) the murder occurred during the commission of
7 the crime of terrorism pursuant to section 2 of
8 P.L.2002, c.26 (C.2C:38-2); (4) the defendant was convicted, at any
9 time, of another murder; or (5) the defendant murdered more than
10 one person during the same criminal transaction or during different
11 criminal transactions but the murders were committed pursuant to
12 the same scheme or course of conduct, shall be sentenced as
13 provided hereinafter:

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

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

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

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

1 may rebut that evidence without regard to the rules governing the
2 admission of evidence at criminal trials.

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

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

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

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

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

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

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

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

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

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

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

- 1 (c) The murder was outrageously or wantonly vile, horrible or
2 inhuman in that it involved torture, depravity of mind, or an
3 aggravated assault to the victim;
- 4 (d) The defendant committed the murder as consideration for the
5 receipt, or in expectation of the receipt of anything of pecuniary
6 value;
- 7 (e) The defendant procured the commission of the murder by
8 payment or promise of payment of anything of pecuniary value;
- 9 (f) The murder was committed for the purpose of escaping
10 detection, apprehension, trial, punishment or confinement for
11 another offense committed by the defendant or another;
- 12 (g) The murder was committed while the defendant was engaged
13 in the commission of, or an attempt to commit, or flight after
14 committing or attempting to commit murder, robbery, sexual
15 assault, arson, burglary, kidnapping, carjacking or the crime of
16 contempt in violation of N.J.S.2C:29-9b.;
- 17 (h) The defendant murdered a public servant, as defined in
18 N.J.S.2C:27-1, while the victim was engaged in the performance of
19 his official duties, or because of the victim's status as a public
20 servant;
- 21 (i) The defendant: (i) as a leader of a narcotics trafficking
22 network as defined in N.J.S.2C:35-3 and in furtherance of a
23 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
24 or by threat or promise solicited the commission of the murder or
25 (ii) committed the murder at the direction of a leader of a narcotics
26 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a
27 conspiracy enumerated in N.J.S.2C:35-3;
- 28 (j) The homicidal act that the defendant committed or procured
29 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;
- 30 (k) The victim was less than 18 years old;
- 31 (l) The murder was committed during the commission of, or an
32 attempt to commit, or flight after committing or attempting to
33 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
34 2); or
- 35 (m) The defendant murdered more than one person during the
36 same criminal transaction or during different criminal transactions
37 but the murders were committed pursuant to the same scheme or
38 course of conduct.
- 39 (5) The mitigating factors which may be found by the jury or the
40 court are:
- 41 (a) The defendant was under the influence of extreme mental or
42 emotional disturbance insufficient to constitute a defense to
43 prosecution;
- 44 (b) The victim solicited, participated in or consented to the
45 conduct which resulted in his death;
- 46 (c) The age of the defendant at the time of the murder;
- 47 (d) The defendant's capacity to appreciate the wrongfulness of
48 his conduct or to conform his conduct to the requirements of the

1 law was significantly impaired as the result of mental disease or
2 defect or intoxication, but not to a degree sufficient to constitute a
3 defense to prosecution;

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

6 (f) The defendant has no significant history of prior criminal
7 activity;

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

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

12 (6) When a defendant at a sentencing proceeding presents
13 evidence of the defendant's character or record pursuant to
14 subparagraph (h) of paragraph (5) of this subsection, the State may
15 present evidence of the murder victim's character and background
16 and of the impact of the murder on the victim's survivors. If the
17 jury finds that the State has proven at least one aggravating factor
18 beyond a reasonable doubt and the jury finds the existence of a
19 mitigating factor pursuant to subparagraph (h) of paragraph (5) of
20 this subsection, the jury may consider the victim and survivor
21 evidence presented by the State pursuant to this paragraph in
22 determining the appropriate weight to give mitigating evidence
23 presented pursuant to subparagraph (h) of paragraph (5) of this
24 subsection. As used in this paragraph "victim and survivor
25 evidence" may include the display of a photograph of the victim
26 taken before the homicide.

27 l. The sentencing proceeding set forth in subsection k. of this
28 section shall not be waived by the prosecuting attorney.

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

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

47 o. A juvenile who has been tried as an adult and convicted of
48 murder shall not be sentenced pursuant to the provisions of

1 subsection k. but shall be sentenced pursuant to the provisions of
2 paragraph (1) of subsection b. of this section.

3 p. In a sentencing proceeding conducted pursuant to this
4 section, no evidence shall be admissible concerning the method or
5 manner of execution which would be imposed on a defendant
6 sentenced to death.

7 (cf: P.L.2017, c.150, s.1)

8
9 4. Section 2 of P.L.2007, c.204 (C.2C:11-3b) is amended to
10 read as follows:

11 2. An inmate sentenced to death prior to the date of the
12 enactment of **【this act】** P.L.2007, c.204, upon motion to the
13 sentencing court and waiver of any further appeals related to
14 sentencing, shall be resentenced to a term of life imprisonment
15 during which the defendant shall not be eligible for parole. Such
16 sentence shall be served in a maximum security prison.

17 Any such motion to the sentencing court shall be made within 60
18 days of the enactment of this act. If the motion is not made within
19 60 days the inmate shall remain under the sentence of death
20 previously imposed by the sentencing court.

21 (cf: P.L.2007, c.204, s.2)

22
23 5. (New section) Definitions.

24 As used in this act:

25 a. “Commissioner” means the Commissioner of the
26 Department of Corrections.

27 b. “Department” means the Department of Corrections.

28 c. “Inmate” means a person who is incarcerated in the
29 department who is sentenced to death pursuant to the provisions of
30 N.J.S.2C:11-3.

31
32 6. (New section) When a person is sentenced to death
33 pursuant to the provisions of N.J.S.2C:11-3, that punishment shall
34 be imposed by continuous, intravenous, administration until the
35 person is dead of a lethal quantity of an ultrashort-acting barbiturate
36 in combination with a chemical paralytic agent in a quantity
37 sufficient to cause death. Prior to the injection of the lethal
38 substance, the person shall be sedated by a licensed physician,
39 registered nurse, or other qualified personnel, by either an oral
40 tablet or capsule or an intramuscular injection of a narcotic or
41 barbiturate such as morphine, cocaine or demerol.

42
43 7. (New section) a. The commissioner shall determine the
44 substances and procedure to be used in an execution. Any
45 imposition of the punishment of death by administration of the
46 required lethal substances in the manner required by section 6 of
47 P.L. , c. (C.) (pending before the Legislature as this bill)
48 shall not be construed to be the practice of medicine and any

1 pharmacist or pharmaceutical supplier is authorized to dispense
2 drugs to the commissioner or his designee, without prescription, for
3 carrying out the provisions of section 6 of
4 P.L. , c. (C.) (pending before the Legislature as this bill),
5 notwithstanding any other provision of law to the contrary.

6 b. The commissioner shall designate persons who are qualified
7 to administer injections and who are familiar with medical
8 procedures, other than licensed physicians, as execution technicians
9 to assist in the carrying out of executions, but the procedures and
10 equipment utilized in imposing the lethal substances shall be
11 designed to insure that the identity of the person actually inflicting
12 the lethal substance is unknown even to the person himself.

13
14 8. (New section) The department shall provide and maintain a
15 suitable and efficient facility enclosed from public view, within the
16 confines of a designated State prison for the imposition of the
17 punishment of death. That facility shall contain the apparatus and
18 equipment necessary for the carrying out of executions in
19 accordance with the provisions of this act.

20
21 9. (New section) a. When a person is sentenced to the
22 punishment of death, the judge who presided at the sentencing
23 proceeding or if that judge is unavailable for any reason, then the
24 assignment judge of the vicinage and, if not available, then any
25 Superior Court judge of the vicinage, shall make out, sign and
26 deliver to the sheriff of the county, a warrant directed to the
27 commissioner, stating the conviction and sentence, appointing a
28 date on which the sentence shall be executed, and commanding the
29 commissioner to execute the sentence on that date.

30 b. If the execution of the sentence on the date appointed shall
31 be delayed while the conviction or sentence is being appealed, the
32 judge authorized to act pursuant to subsection a. of this section, at
33 the conclusion of the appellate process, if the conviction or sentence
34 is not set aside, shall make out, sign and deliver another warrant as
35 provided in subsection a. of this section. If the execution of the
36 sentence on the date appointed is delayed by any other cause, the
37 judge shall, as soon as such cause ceases to exist, make out, sign
38 and deliver another warrant as provided in subsection a. of this
39 section.

40 c. The date appointed in the warrant shall be not less than 30
41 days and not more than 60 days after the issuance of the warrant.
42 The commissioner may fix the time of execution on that date.

43
44 10. (New section) a. Within 10 days after issuance of a
45 warrant as provided in section 9 of P.L. , c. (C.) (pending
46 before the Legislature as this bill), the sheriff shall deliver the
47 warrant, and also the person sentenced, if he is not already in the
48 custody of the department, to the department. From the time of the

1 delivery of the warrant and until the imposition of the punishment
2 of death upon him, unless discharged from the sentence, the person
3 shall be kept isolated from the general prison population in a
4 designated State prison.

5 b. During the confinement and isolation no person shall be
6 allowed physical access to him without a court order which shall
7 not be unreasonably withheld, except corrections officers and
8 officials, his counsel, and the members of his immediate family, and
9 then only in accordance with the department's rules for security.
10 Upon the request of the inmate, a clergyman or a member of the
11 press shall be allowed access to the inmate without a court order but
12 only in accordance with the department's rules for security.

13

14 11. (New section) a. The commissioner, the persons
15 designated by the commissioner to act as execution technicians, and
16 one licensed physician shall be present at the execution. The
17 commissioner shall also select and invite the presence of, by at least
18 three days' prior notice, six adult citizens. The names of the
19 execution technicians shall not be disclosed, and the names of the
20 six adult citizens who witnessed the execution shall not be disclosed
21 until after the execution.

22 b. The commissioner shall, at the request of the person
23 sentenced to death, authorize and permit no more than two
24 clergymen, who are not related to the inmate, to be present at the
25 execution. The commissioner may, at the request of the person
26 sentenced to death, authorize and permit no more than two adult
27 members of the person's immediate family to be present at the
28 execution.

29 c. The commissioner shall permit four representatives of the
30 news media to be present at the execution, for the purpose of giving
31 their respective newspapers and associations accounts of the
32 execution. The four representatives shall be composed of one
33 representative of the major wire services, one representative of
34 television news services, one representative of newspapers, and one
35 representative of radio news services. Immediately following the
36 execution, the four representatives of the news media may hold a
37 press conference for the purpose of giving other news
38 representatives an account of the execution.

39 d. The commissioner shall not authorize or permit any person
40 to be present, except those authorized by this section.

41 e. The commissioner shall authorize and permit no more than
42 four adult members of the victim's immediate family to be present
43 at the execution. The names of the members of the victim's
44 immediate family who witnessed the execution shall not be
45 disclosed.

46 f. For purposes of this section, "immediate family" means a
47 spouse, parent, stepparent, legal guardian, grandparent, child, or
48 sibling.

1 g. Nothing in this section shall be construed to give a right to
2 any person to delay or prevent the execution of a sentence of death
3 on the date appointed in the warrant pursuant to section 9 of
4 P.L. , c. (C.) (pending before the Legislature as this bill).

5
6 12. (New section) a. Immediately after the execution an
7 examination of the body of the inmate shall be made by the licensed
8 physicians present at the execution, and their report in writing
9 stating the nature of the examination and occurrence of death, so
10 made by them, shall be annexed to the certificate hereinafter
11 mentioned and filed therewith.

12 b. The commissioner shall prepare and sign a certificate setting
13 forth the time and place of the execution and stating that the
14 execution was conducted in conformity to the sentence of the court
15 and the provisions of this act. He shall cause the certificate to be
16 filed, within 10 days after the execution, with the Superior Court in
17 the county in which the person executed was convicted.

18 c. The commissioner may appoint a deputy within the
19 department to execute the warrant of execution and to perform all
20 the other duties imposed upon the commissioner by this act.

21
22 13. (New section) a. Prior to the execution, the inmate shall
23 be given the opportunity to decide in writing to whom his body
24 shall be delivered after the execution. The commissioner or his
25 deputy designated pursuant to subsection c. of section 12 of
26 P.L. , c. (C.) (pending before the Legislature as this bill)
27 shall sign and authorize the inmate's request if the request is not
28 contrary to public policy or law. If the inmate does not indicate to
29 whom his body shall be delivered or if his request is contrary to
30 public policy or law, then the body of an inmate who has been
31 legally executed shall be embalmed immediately and so directed by
32 the commissioner, unless prior to execution, the inmate, relative, or
33 bona fide friend indicates that the body is to be cremated or buried
34 within 48 hours after death. If the body is not demanded or
35 requested by a relative or bona fide friend within 72 hours after
36 execution then it shall be delivered to a duly authorized and
37 incorporated pathological and anatomical association in the State, if
38 requested by an authorized association. If the body is requested by a
39 relative or bona fide friend, the State shall pay a fee, not to exceed
40 \$25 to the mortician for his services in embalming the body for
41 which the mortician shall issue to the State a written receipt. If the
42 body is requested by a duly authorized and incorporated
43 pathological and anatomical association, the association shall pay a
44 fee, not to exceed \$25 to the mortician for his services in
45 embalming the body for which the mortician shall issue to the
46 association a written receipt. When the receipt is delivered to the
47 commissioner, the body of the deceased shall be delivered to the
48 party named in the receipt or his authorized agent.

1 b. If the body is not delivered to a relative, bona fide friend, or
2 a duly authorized and incorporated pathological and anatomical
3 association, the commissioner shall cause the body to be decently
4 buried, and the fee for embalming shall be paid by the State, and no
5 religious or other services shall be held over the body after the
6 execution, except within the facility selected for the execution by
7 the department, and no one shall be present at the service except the
8 officers of the prison, the person conducting the services and
9 relatives by blood or marriage of the person executed.

10 c. The commissioner shall contact the Social Security
11 Administration, Veterans' Administration, Public Welfare, and
12 appropriate insurance companies for any possible death benefits to
13 offset the State incurred burial expenses. The inmate's account may
14 also be used for burial expenses.

15

16 14. (New section) a. If there is reasonable ground to believe
17 that a female inmate, sentenced to the punishment of death, is
18 pregnant, the superintendent of the State institution having custody
19 of the inmate shall impanel a jury of three licensed physicians to
20 inquire into her pregnancy. A physician acting as a juror upon this
21 inquisition need not be qualified to serve as a juror in a court of
22 record.

23 b. The inquisition of the jury shall be signed by the jurors and
24 the superintendent of the institution. If it is found by the jury that
25 the inmate is pregnant, the superintendent shall suspend the
26 execution of the warrant directing her execution until he receives a
27 warrant from the commissioner directing that the convict be
28 executed.

29 c. The superintendent shall immediately transmit the
30 inquisition to the commissioner, who, as soon as he is satisfied that
31 the inmate is no longer pregnant, shall issue his warrant, appointing
32 a time and place for her execution, pursuant to her sentence.

33

34 15. (New section) The department may adopt any rules or
35 regulations necessary to implement the provisions of this
36 amendatory and supplementary act.

37

38 16. (New section) The Judiciary Committee of the General
39 Assembly and the Judiciary Committee of the Senate, or their
40 respective successors, are constituted a joint committee for the
41 purposes of monitoring and evaluating the effectiveness of the
42 implementation of this act. The Commissioner of the Department of
43 Corrections shall, two years from the effective date of this act,
44 report to the joint committee, an evaluation of the effectiveness of
45 this act and the joint committee shall, upon receiving the report,
46 issue as it may deem necessary and proper, recommendations for
47 administrative or legislative changes affecting the implementation
48 of this act.

1 17. This act shall take effect immediately and shall be applicable
2 to any murder committed on or after the effective date.

3
4
5 STATEMENT

6
7 P.L.2007, c.204, enacted on December 17, 2007, repealed the
8 death penalty in this State and replaced it with life without parole.
9 This bill would restore the death penalty for persons convicted of
10 certain murders.

11 Under the bill, a person who committed the homicidal act by his
12 own conduct, or, as an accomplice procured the commission of the
13 offense by payment or promise of payment of anything of pecuniary
14 value, could be sentenced to death if: (1) the victim was a law
15 enforcement officer or correction officer and was murdered while
16 performing his official duties or was murdered because of his status
17 as a law enforcement officer or correction officer; (2) the victim
18 was less than 18 years old and the act was committed in the course
19 of the commission of a sex crime; (3) the murder occurred during
20 the commission of the crime of terrorism; (4) the defendant was
21 convicted, at any time, of another murder; or (5) the defendant
22 murdered more than one person during the same criminal
23 transaction or during different criminal transactions but the murders
24 were committed pursuant to the same scheme or course of conduct.

25 Under the bill, as under prior law, a defendant found guilty of
26 capital murder could only be sentenced to death after a second
27 proceeding concerning sentencing. During the sentencing
28 proceeding, the jury or the court would weigh the aggravating
29 factors of the case against the mitigating factors in order to
30 determine whether the defendant would receive a sentence of death.
31 The aggravating factors would consist of the following:

32 (a) The defendant has been convicted, at any time, of another
33 murder;

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 the N.J.S.A.2C:29-9 b. (concerning
6 domestic violence);
- 7 (h) The defendant murdered a public servant while the victim
8 was engaged in the performance of his official duties, or because of
9 the victim's status as a public servant;
- 10 (i) The defendant: (i) as a leader of a narcotics trafficking
11 network and in furtherance of a conspiracy committed, commanded
12 or by threat or promise solicited the commission of the murder or
13 (ii) committed the murder at the direction of a leader of a narcotics
14 trafficking network in furtherance of a conspiracy;
- 15 (j) The homicidal act that the defendant committed or procured
16 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2
17 (causing widespread injury or damage);
- 18 (k) The victim was less than 18 years old;
- 19 (l) The murder was committed during the commission of, or an
20 attempt to commit, or flight after committing or attempting to
21 commit, terrorism; or
- 22 (m) The defendant murdered more than one person during the
23 same criminal transaction or during different criminal transactions
24 but the murders were committed pursuant to the same scheme or
25 course of conduct.
- 26 As under prior law, the mitigating factors would consist of the
27 following:
- 28 (a) The defendant was under the influence of extreme mental or
29 emotional disturbance insufficient to constitute a defense to
30 prosecution;
- 31 (b) The victim solicited, participated in or consented to the
32 conduct which resulted in his death;
- 33 (c) The age of the defendant at the time of the murder;
- 34 (d) The defendant's capacity to appreciate the wrongfulness of
35 his conduct or to conform his conduct to the requirements of the
36 law was significantly impaired as the result of mental disease or
37 defect or intoxication, but not to a degree sufficient to constitute a
38 defense to prosecution;
- 39 (e) The defendant was under unusual and substantial duress
40 insufficient to constitute a defense to prosecution;
- 41 (f) The defendant has no significant history of prior criminal
42 activity;
- 43 (g) The defendant rendered substantial assistance to the State in
44 the prosecution of another person for the crime of murder; or
- 45 (h) Any other factor which is relevant to the defendant's
46 character or record or to the circumstances of the offense.