

**ASSEMBLY CONCURRENT
RESOLUTION No. 162**

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

Assemblyman PARKER SPACE

District 24 (Morris, Sussex and Warren)

Assemblyman HAROLD "HAL" J. WIRTHS

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Proposes constitutional amendment to restore the death penalty under certain circumstances.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 4/9/2020)

1 **A CONCURRENT RESOLUTION** proposing to amend Article I,
2 paragraph 12 and Article VI, Section II of the Constitution of the
3 State of New Jersey.

4
5 **BE IT RESOLVED** *by the General Assembly of the State of New*
6 *Jersey (the Senate concurring):*

7
8 1. The following proposed amendment to the Constitution of
9 the State of New Jersey is hereby agreed to:

10
11 PROPOSED AMENDMENT

12
13 a. Amend Article I, paragraph 12 to read as follows:

14 12. Excessive bail shall not be required, excessive fines shall not
15 be imposed, and cruel and unusual punishments shall not be
16 inflicted. The Legislature shall by law provide for the option of the
17 imposition of the death penalty on certain persons convicted of
18 murder. Such law shall provide that a person shall be sentenced to
19 death only if the jury or, if there is no jury, the court, finds without
20 any doubt that all of the aggravating factors of the case outweigh all
21 of the mitigating factors. Such law shall provide that if any juror or
22 the court has a residual or lingering doubt the defendant shall not be
23 sentenced to death.

24 It shall not be cruel and unusual punishment to impose the death
25 penalty on a person convicted of purposely or knowingly causing
26 death or purposely or knowingly causing serious bodily injury
27 resulting in death who committed the homicidal act by his own
28 conduct or who as an accomplice procured the commission of the
29 offense by payment or promise of payment of anything of pecuniary
30 value.

31 (cf: Art. I, par.12; amended eff. December 3, 1992)

32
33 b. Amend Article VI, Section II by adding a new paragraph 4
34 to read as follows:

35 4. a. In all cases in which a sentence of death is imposed, the
36 appeal to the Supreme Court of New Jersey and any proportionality
37 review shall be decided and an opinion reaching the merits shall be
38 filed within 150 days of the certification of the entire record by the
39 sentencing court.

40 b. In all cases in which a sentence of death is imposed and the
41 Supreme Court of New Jersey affirms the defendant's conviction
42 and sentence, no application for post-conviction relief may be filed
43 in the courts of this State after one year from the date of the denial
44 of certiorari or other final action by the United States Supreme
45 Court in respect of defendant's direct appeal. The provisions of this

**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 paragraph shall not apply to a motion for a new trial on the grounds
2 that the defendant is innocent of the crime for which he was
3 convicted and sentenced to death.

4 c. A failure to comply with the time requirements of this
5 paragraph shall not be grounds for precluding the ultimate
6 imposition of the death penalty.

7
8 2. When this proposed amendment to the Constitution is finally
9 agreed to pursuant to Article IX, paragraph 1 of the Constitution, it
10 shall be submitted to the people at the next general election
11 occurring more than three months after the final agreement and
12 shall be published at least once in at least one newspaper of each
13 county designated by the President of the Senate, the Speaker of the
14 General Assembly and the Secretary of State, not less than three
15 months prior to the general election.

16
17 3. This proposed amendment to the Constitution shall be
18 submitted to the people at that election in the following manner and
19 form:

20 There shall be printed on each official ballot to be used at the
21 general election, the following:

22 a. In every municipality in which voting machines are not used,
23 a legend which shall immediately precede the question as follows:

24 If you favor the proposition printed below make a cross (X), plus
25 (+), or check (✓) in the square opposite the word "Yes." If you are
26 opposed thereto make a cross (X), plus (+) or check (✓) in the
27 square opposite the word "No."

28 b. In every municipality the following question:

	YES	<p>CONSTITUTIONAL AMENDMENT TO RESTORE THE DEATH PENALTY</p> <p>Do you approve amending the Constitution to allow the death penalty for certain persons convicted of murder? The amendment would also set time limits for appeals of death penalty cases.</p>
	NO	<p>INTERPRETIVE STATEMENT</p> <p>In 2007, a law was enacted that eliminated the death penalty. This constitutional amendment requires the Legislature to pass a new law to impose the death penalty in certain murder cases. The amendment also sets time limits on appeals of death penalty cases in State courts.</p> <p>Compared to the prior death penalty law, the new law would make it more difficult for a prosecutor to prove that a person should be sentenced to death. This is intended as a safeguard against the possibility that an innocent person might be sentenced to death.</p> <p>Under the new law, a person could be sentenced to death only if the jury finds that there is no doubt that all of the “aggravating factors” of the case outweigh all of the “mitigating factors.” This is a new standard.</p> <p>Under the prior death penalty law, a person could be sentenced to death if the jury found that the aggravating factors outweighed the mitigating factors beyond a reasonable doubt. Aggravating and mitigating factors are circumstances related to the murder and the defendant’s character. The new law would also provide that if any juror has any doubt about the aggravating and mitigating factors, the defendant could not be sentenced to death.</p> <p>The amendment establishes deadlines to shorten the time period for death penalty appeals. The New Jersey Supreme Court would have 150 days to issue an opinion in the case and to decide any “proportionality review.” A proportionality review analyzes whether a defendant’s death sentence is disproportionate to the sentences of other defendants convicted of similar crimes. If the case is appealed to the United States Supreme Court, the defendant would have one year after that court’s final decision to file any other appeals.</p>

1 SCHEDULE
2

3 This constitutional amendment shall only apply to persons
4 convicted and sentenced for crimes committed on or after noon on
5 the first day of January next following approval.
6

7
8 STATEMENT
9

10 This constitutional amendment would restore the death penalty,
11 which was abolished in 2007 by the enactment of P.L.2007, c.204.

12 The amendment provides that the Legislature shall by law
13 provide for the imposition of the death penalty on persons convicted
14 of certain murders.

15 The law would heighten the burden of proof as a safeguard
16 against the possibility that an innocent person might receive the
17 death penalty. Under the law, a person would be sentenced to death
18 only if the jury or, if there is no jury, the court, finds *with no doubt*
19 that all of the aggravating factors of the case outweigh all of the
20 mitigating factors. Aggravating and mitigating factors are relevant
21 circumstances concerning the murder and the defendant's character
22 and history. The law would also provide that if any juror or the
23 court has a residual or lingering doubt the defendant shall not be
24 sentenced to death. Under the prior death penalty statute, a
25 defendant could be sentenced to death upon the lesser finding of
26 "*beyond a reasonable doubt.*"

27 The amendment also establishes deadlines to shorten the time
28 period for death penalty appeals. Under the amendment, in all cases
29 in which a sentence of death is imposed the appeal to the New
30 Jersey Supreme Court and any proportionality review shall be
31 decided and an opinion reaching the merits filed within 150 days of
32 the certification of the entire record by the sentencing court. A
33 proportionality review is a review to determine whether a
34 defendant's death sentence is disproportionate to the sentences of
35 other defendants convicted of factually similar crimes.

36 The amendment also provides that in all cases in which a
37 sentence of death is imposed and the New Jersey Supreme Court
38 affirms the defendant's conviction and sentence, no application for
39 post-conviction relief may be filed in the courts of this State after
40 one year from the date of the denial of certiorari or other final
41 action by the United States Supreme Court in respect of defendant's
42 direct appeal. However, the amendment would not prohibit a
43 defendant from applying for a new trial on the grounds that he is
44 innocent of the crime for which he was convicted.

45 The amendment also includes a provision stating that a failure to
46 comply with the time requirements shall not be grounds for
47 precluding the ultimate imposition of the death penalty.

1 If approved, the amendment would apply only to persons
2 convicted and sentenced for crimes committed on or after noon on
3 the first day of January next following approval of the amendment
4 by the voters.

5 The sponsor is naming the proposed amendment the “Respect for
6 the Majority of New Jersey Voters Amendment” in recognition of
7 the fact that opinion polls at the time of the abolition of the death
8 penalty showed that the majority of New Jersey voters supported
9 the death penalty and opposed its abolition. According to a
10 December 2007 Quinnipiac University poll, 78% of New Jersey
11 voters supported keeping the death penalty for “the most violent
12 cases.”