

ASSEMBLY, No. 2867

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 1, 2018

Sponsored by:

Assemblyman RONALD S. DANCER

District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

Restores the death penalty for certain murders.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT restoring 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; or (3) the murder
4 occurred during the commission of the crime of terrorism pursuant
5 to section 2 of P.L.2002, c.26 (C.2C:38-2), shall be sentenced as
6 provided hereinafter:

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

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

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

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

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

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

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

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

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

20 (a) If the jury or the court finds that any aggravating factors
21 exist and that all of the aggravating factors outweigh beyond a
22 reasonable doubt all of the mitigating factors, the court shall
23 sentence the defendant to death.

24 (b) If the jury or the court finds that no aggravating factors
25 exist, or that all of the aggravating factors which exist do not
26 outweigh all of the mitigating factors, the court shall sentence the
27 defendant pursuant to subsection b.

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

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

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

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

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

42 (d) The defendant committed the murder as consideration for the
43 receipt, or in expectation of the receipt of anything of pecuniary
44 value;

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

- 1 (f) The murder was committed for the purpose of escaping
2 detection, apprehension, trial, punishment or confinement for
3 another offense committed by the defendant or another;
- 4 (g) The murder was committed while the defendant was engaged
5 in the commission of, or an attempt to commit, or flight after
6 committing or attempting to commit murder, robbery, sexual
7 assault, arson, burglary, kidnapping, carjacking or the crime of
8 contempt in violation of N.J.S.2C:29-9b.;
- 9 (h) The defendant murdered a public servant, as defined in
10 N.J.S.2C:27-1, while the victim was engaged in the performance of
11 his official duties, or because of the victim's status as a public
12 servant;
- 13 (i) The defendant: (i) as a leader of a narcotics trafficking
14 network as defined in N.J.S.2C:35-3 and in furtherance of a
15 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
16 or by threat or promise solicited the commission of the murder or
17 (ii) committed the murder at the direction of a leader of a narcotics
18 trafficking network as defined in N.J.S.2C:35-3 in furtherance of a
19 conspiracy enumerated in N.J.S.2C:35-3;
- 20 (j) The homicidal act that the defendant committed or procured
21 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2;
- 22 (k) The victim was less than 14 years old; or
- 23 (l) The murder was committed during the commission of, or an
24 attempt to commit, or flight after committing or attempting to
25 commit, terrorism pursuant to section 2 of P.L.2002, c.26 (C.2C:38-
26 2).
- 27 (5) The mitigating factors which may be found by the jury or the
28 court are:
- 29 (a) The defendant was under the influence of extreme mental or
30 emotional disturbance insufficient to constitute a defense to
31 prosecution;
- 32 (b) The victim solicited, participated in or consented to the
33 conduct which resulted in his death;
- 34 (c) The age of the defendant at the time of the murder;
- 35 (d) The defendant's capacity to appreciate the wrongfulness of
36 his conduct or to conform his conduct to the requirements of the
37 law was significantly impaired as the result of mental disease or
38 defect or intoxication, but not to a degree sufficient to constitute a
39 defense to prosecution;
- 40 (e) The defendant was under unusual and substantial duress
41 insufficient to constitute a defense to prosecution;
- 42 (f) The defendant has no significant history of prior criminal
43 activity;
- 44 (g) The defendant rendered substantial assistance to the State in
45 the prosecution of another person for the crime of murder; or
- 46 (h) Any other factor which is relevant to the defendant's
47 character or record or to the circumstances of the offense.

1 (6) When a defendant at a sentencing proceeding presents
2 evidence of the defendant's character or record pursuant to
3 subparagraph (h) of paragraph (5) of this subsection, the State may
4 present evidence of the murder victim's character and background
5 and of the impact of the murder on the victim's survivors. If the
6 jury finds that the State has proven at least one aggravating factor
7 beyond a reasonable doubt and the jury finds the existence of a
8 mitigating factor pursuant to subparagraph (h) of paragraph (5) of
9 this subsection, the jury may consider the victim and survivor
10 evidence presented by the State pursuant to this paragraph in
11 determining the appropriate weight to give mitigating evidence
12 presented pursuant to subparagraph (h) of paragraph (5) of this
13 subsection. As used in this paragraph "victim and survivor
14 evidence" may include the display of a photograph of the victim
15 taken before the homicide.

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

18 m. Every judgment of conviction which results in a sentence of
19 death under this section shall be appealed, pursuant to the Rules of
20 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 k. 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.

30 n. Prior to the jury's sentencing deliberations, the trial court
31 shall inform the jury of the sentences which may be imposed
32 pursuant to subsection b. of this section on the defendant if the
33 defendant is not sentenced to death. The jury shall also be informed
34 that a failure to reach a unanimous verdict shall result in sentencing
35 by the court pursuant to subsection b.

36 o. A juvenile who has been tried as an adult and convicted of
37 murder shall not be sentenced pursuant to the provisions of
38 subsection k. but shall be sentenced pursuant to the provisions of
39 subsection b. of this section.

40 p. In a sentencing proceeding conducted pursuant to this
41 section, no evidence shall be admissible concerning the method or
42 manner of execution which would be imposed on a defendant
43 sentenced to death.

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

45
46 4. Section 2 of P.L.2007, c.204 (C.2C:11-3b) is amended to
47 read as follows:

1 2. An inmate sentenced to death prior to the date of the
2 enactment of **[this act]** P.L.2007, c.204, upon motion to the
3 sentencing court and waiver of any further appeals related to
4 sentencing, shall be resentenced to a term of life imprisonment
5 during which the defendant shall not be eligible for parole. Such
6 sentence shall be served in a maximum security prison.

7 Any such motion to the sentencing court shall be made within 60
8 days of the enactment of this act. If the motion is not made within
9 60 days the inmate shall remain under the sentence of death
10 previously imposed by the sentencing court.

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

12

13 5. (New section) Definitions.

14 As used in this act:

15 a. “Commissioner” means the Commissioner of the
16 Department of Corrections.

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

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

21

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

32

33 7. (New section) a. The commissioner shall determine the
34 substances and procedure to be used in an execution. Any
35 imposition of the punishment of death by administration of the
36 required lethal substances in the manner required by section 6 of
37 P.L. , c. (C.) (pending before the Legislature as this bill)
38 shall not be construed to be the practice of medicine and any
39 pharmacist or pharmaceutical supplier is authorized to dispense
40 drugs to the commissioner or his designee, without prescription, for
41 carrying out the provisions of section 6 of P.L. , c. (C.)
42 (pending before the Legislature as this bill), notwithstanding any
43 other provision of law to the contrary.

44 b. The commissioner shall designate persons who are qualified
45 to administer injections and who are familiar with medical
46 procedures, other than licensed physicians, as execution technicians
47 to assist in the carrying out of executions, but the procedures and
48 equipment utilized in imposing the lethal substances shall be

1 designed to insure that the identity of the person actually inflicting
2 the lethal substance is unknown even to the person himself.

3

4 8. (New section) The department shall provide and maintain a
5 suitable and efficient facility enclosed from public view, within the
6 confines of a designated State prison for the imposition of the
7 punishment of death. That facility shall contain the apparatus and
8 equipment necessary for the carrying out of executions in
9 accordance with the provisions of this act.

10

11 9. (New section) a. When a person is sentenced to the
12 punishment of death, the judge who presided at the sentencing
13 proceeding or if that judge is unavailable for any reason, then the
14 assignment judge of the vicinage and, if not available, then any
15 Superior Court judge of the vicinage, shall make out, sign and
16 deliver to the sheriff of the county, a warrant directed to the
17 commissioner, stating the conviction and sentence, appointing a
18 date on which the sentence shall be executed, and commanding the
19 commissioner to execute the sentence on that date.

20 b. If the execution of the sentence on the date appointed shall
21 be delayed while the conviction or sentence is being appealed, the
22 judge authorized to act pursuant to subsection a. of this section, at
23 the conclusion of the appellate process, if the conviction or sentence
24 is not set aside, shall make out, sign and deliver another warrant as
25 provided in subsection a. of this section. If the execution of the
26 sentence on the date appointed is delayed by any other cause, the
27 judge shall, as soon as such cause ceases to exist, make out, sign
28 and deliver another warrant as provided in subsection a. of this
29 section.

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

33

34 10. (New section) a. Within 10 days after issuance of a warrant
35 as provided in section 9 of P.L. , c. (C.) (pending before
36 the Legislature as this bill), the sheriff shall deliver the warrant, and
37 also the person sentenced, if he is not already in the custody of the
38 department, to the department. From the time of the delivery of the
39 warrant and until the imposition of the punishment of death upon
40 him, unless discharged from the sentence, the person shall be kept
41 isolated from the general prison population in a designated State
42 prison.

43 b. During the confinement and isolation no person shall be
44 allowed physical access to him without a court order which shall
45 not be unreasonably withheld, except corrections officers and
46 officials, his counsel, and the members of his immediate family, and
47 then only in accordance with the department's rules for security.
48 Upon the request of the inmate, a clergyman or a member of the

1 press shall be allowed access to the inmate without a court order but
2 only in accordance with the department's rules for security.

3
4 11. (New section) a. The commissioner, the persons designated
5 by the commissioner to act as execution technicians, and one
6 licensed physician shall be present at the execution. The
7 commissioner shall also select and invite the presence of, by at least
8 three days' prior notice, six adult citizens. The names of the
9 execution technicians shall not be disclosed, and the names of the
10 six adult citizens who witnessed the execution shall not be disclosed
11 until after the execution.

12 b. The commissioner shall, at the request of the person
13 sentenced to death, authorize and permit no more than two
14 clergymen, who are not related to the inmate, to be present at the
15 execution. The commissioner may, at the request of the person
16 sentenced to death, authorize and permit no more than two adult
17 members of the person's immediate family to be present at the
18 execution.

19 c. The commissioner shall permit four representatives of the
20 news media to be present at the execution, for the purpose of giving
21 their respective newspapers and associations accounts of the
22 execution. The four representatives shall be composed of one
23 representative of the major wire services, one representative of
24 television news services, one representative of newspapers, and one
25 representative of radio news services. Immediately following the
26 execution, the four representatives of the news media may hold a
27 press conference for the purpose of giving other news
28 representatives an account of the execution.

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

31 e. The commissioner shall authorize and permit no more than
32 four adult members of the victim's immediate family to be present
33 at the execution. The names of the members of the victim's
34 immediate family who witnessed the execution shall not be
35 disclosed.

36 f. For purposes of this section, "immediate family" means a
37 spouse, parent, stepparent, legal guardian, grandparent, child, or
38 sibling.

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

44
45 12. (New section) a. Immediately after the execution an
46 examination of the body of the inmate shall be made by the licensed
47 physicians present at the execution, and their report in writing
48 stating the nature of the examination and occurrence of death, so

1 made by them, shall be annexed to the certificate hereinafter
2 mentioned and filed therewith.

3 b. The commissioner shall prepare and sign a certificate setting
4 forth the time and place of the execution and stating that the
5 execution was conducted in conformity to the sentence of the court
6 and the provisions of this act. He shall cause the certificate to be
7 filed, within 10 days after the execution, with the Superior Court in
8 the county in which the person executed was convicted.

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

12

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

40 b. If the body is not delivered to a relative, bona fide friend, or
41 a duly authorized and incorporated pathological and anatomical
42 association, the commissioner shall cause the body to be decently
43 buried, and the fee for embalming shall be paid by the State, and no
44 religious or other services shall be held over the body after the
45 execution, except within the facility selected for the execution by
46 the department, and no one shall be present at the service except the
47 officers of the prison, the person conducting the services and
48 relatives by blood or marriage of the person executed.

1 c. The commissioner shall contact the Social Security
2 Administration, Veterans' Administration, Public Welfare, and
3 appropriate insurance companies for any possible death benefits to
4 offset the State incurred burial expenses. The inmate's account may
5 also be used for burial expenses.

6
7 14. (New section) a. If there is reasonable ground to believe
8 that a female inmate, sentenced to the punishment of death, is
9 pregnant, the superintendent of the State institution having custody
10 of the inmate shall impanel a jury of three licensed physicians to
11 inquire into her pregnancy. A physician acting as a juror upon this
12 inquisition need not be qualified to serve as a juror in a court of
13 record.

14 b. The inquisition of the jury shall be signed by the jurors and
15 the superintendent of the institution. If it is found by the jury that
16 the inmate is pregnant, the superintendent shall suspend the
17 execution of the warrant directing her execution until he receives a
18 warrant from the commissioner directing that the convict be
19 executed.

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

24
25 15. (New section) The department may adopt any rules or
26 regulations necessary to implement the provisions of this
27 amendatory and supplementary act.

28
29 16. (New section) The Judiciary Committee of the General
30 Assembly and the Judiciary Committee of the Senate, or their
31 respective successors, are constituted a joint committee for the
32 purposes of monitoring and evaluating the effectiveness of the
33 implementation of this act. The Commissioner of the Department of
34 Corrections shall, two years from the effective date of this act,
35 report to the joint committee, an evaluation of the effectiveness of
36 this act and the joint committee shall, upon receiving the report,
37 issue as it may deem necessary and proper, recommendations for
38 administrative or legislative changes affecting the implementation
39 of this act.

40
41 17. This act shall take effect immediately and shall be applicable
42 to any murder committed on or after the effective date.

43
44
45 STATEMENT

46
47 P.L.2007, c.204, enacted on December 17, 2007, repealed the
48 death penalty in this State and replaced it with life without parole.

1 This bill would restore the death penalty for persons convicted of
2 certain murders.

3 Under the bill, a person who committed the homicidal act by his
4 own conduct, or, as an accomplice procured the commission of the
5 offense by payment or promise of payment of anything of pecuniary
6 value, could be sentenced to death if: (1) the victim was a law
7 enforcement officer or correction officer and was murdered while
8 performing his official duties or was murdered because of his status
9 as a law enforcement officer or correction officer; (2) the victim
10 was less than 18 years old; or (3) the murder occurred during the
11 commission of the crime of terrorism.

12 Under the bill, as under prior law, a defendant found guilty of
13 capital murder could only be sentenced to death after a second
14 proceeding concerning sentencing. During the sentencing
15 proceeding, the jury or the court would weigh the aggravating
16 factors of the case against the mitigating factors in order to
17 determine whether the defendant would receive a sentence of death.
18 The aggravating factors would consist of the following:

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

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

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

27 (d) The defendant committed the murder as consideration for the
28 receipt, or in expectation of the receipt of anything of pecuniary
29 value;

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

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

35 (g) The murder was committed while the defendant was engaged
36 in the commission of, or an attempt to commit, or flight after
37 committing or attempting to commit murder, robbery, sexual
38 assault, arson, burglary, kidnapping, carjacking or the crime of
39 contempt in violation of the N.J.S.A.2C:29-9 b. (concerning
40 domestic violence);

41 (h) The defendant murdered a public servant while the victim
42 was engaged in the performance of his official duties, or because of
43 the victim's status as a public servant;

44 (i) The defendant: (i) as a leader of a narcotics trafficking
45 network and in furtherance of a conspiracy committed, commanded
46 or by threat or promise solicited the commission of the murder or
47 (ii) committed the murder at the direction of a leader of a narcotics
48 trafficking network in furtherance of a conspiracy;

- 1 (j) The homicidal act that the defendant committed or procured
2 was in violation of paragraph (1) of subsection a. of N.J.S.2C:17-2
3 (causing widespread injury or damage);
- 4 (k) The victim was less than 14 years old; or
- 5 (l) The murder was committed during the commission of, or an
6 attempt to commit, or flight after committing or attempting to
7 commit, terrorism.
- 8 As under prior law, the mitigating factors would consist of the
9 following:
- 10 (a) The defendant was under the influence of extreme mental or
11 emotional disturbance insufficient to constitute a defense to
12 prosecution;
- 13 (b) The victim solicited, participated in or consented to the
14 conduct which resulted in his death;
- 15 (c) The age of the defendant at the time of the murder;
- 16 (d) The defendant's capacity to appreciate the wrongfulness of
17 his conduct or to conform his conduct to the requirements of the
18 law was significantly impaired as the result of mental disease or
19 defect or intoxication, but not to a degree sufficient to constitute a
20 defense to prosecution;
- 21 (e) The defendant was under unusual and substantial duress
22 insufficient to constitute a defense to prosecution;
- 23 (f) The defendant has no significant history of prior criminal
24 activity;
- 25 (g) The defendant rendered substantial assistance to the State in
26 the prosecution of another person for the crime of murder; or
- 27 (h) Any other factor which is relevant to the defendant's
28 character or record or to the circumstances of the offense.