

NJ
10
C244
1991
U. 2

PUBLIC HEARING

before

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY COMMITTEE

on

ASSEMBLY CONCURRENT RESOLUTION No. 76

(Amends the State Constitution to provide that
it is not cruel and unusual punishment to
make certain defendants eligible
for the death penalty)

May 9, 1991
Room 418
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Marlene Lynch Ford, Chairman
Assemblyman Frank M. Pelly, Vice-Chairman

ALSO PRESENT:

Patricia K. Nagle
Office of Legislative Services
Aide, Assembly Judiciary, Law
and Public Safety Committee

* * * * *

Hearing Recorded and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
CN 068
Trenton, New Jersey 08625

100-100000

PUBLIC HEALTH AND SAFETY

RECEIVED FROM
MAY 19 1951
J. BELL
J. BELL
John Bell
4-10-51

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY COMMITTEE

ASSEMBLY CONCURRENT RESOLUTION NO. 18

Amends the State Constitution to provide that
it is not considered unusual punishment to
make certain defendants eligible
for parole. The bill provides that a public hearing on
the matter shall be held in the House of Representatives.

LEGISLATION:

May 9, 1951
Room 418
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT

Assemblywoman Madeline Lynchford, Chairman
Assemblyman Frank M. Bell, Vice-Chairman

ALSO PRESENT:
Patricia K. Neagle,
Office of Legislative Services,
Assembly Judiciary,
and Public Safety Committee

Hearing Reported and Transcribed by
Office of Legislative Services
Public Information Office
Hearing Unit
State House Annex
Trenton, New Jersey 08625



MARLENE LYNCH FORD
CHAIRMAN

FRANK M. PELLY
VICE-CHAIRMAN

Joseph Charles, Jr.

Lee A. Solomon
GARY W. STUHLTRAGER

New Jersey State Legislature

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY COMMITTEE

STATE HOUSE ANNEX, CN-068

TRENTON, NEW JERSEY 08625-0068

(609) 292-5526

NOTICE OF PUBLIC HEARING

The Assembly Judiciary, Law and Public Safety Committee will hold a public hearing on **Thursday, May 9, 1991 at 9:30 a.m. in Room 418, State House Annex, Trenton.**

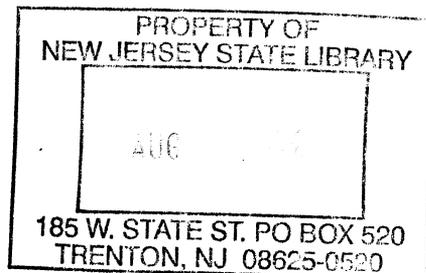
THE HEARING WILL BE HELD ON THE FOLLOWING LEGISLATION:

ACR-76
Hardwick/Shusted

Amends the State Constitution to provide that it is not cruel and unusual punishment to make certain defendants eligible for the death penalty.

The public may address comments and questions to Patricia K. Nagle, Committee Aide and persons wishing to testify should contact Miriam Torres or Helen Rouze, secretaries at (609) 292-5526. Those persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.

Issued 4/29/91



ASSEMBLY CONCURRENT RESOLUTION No. 76

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Assemblymen HARDWICK, SHUSTED, Felice and Haytaian

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

3
4 BE IT RESOLVED *by the General Assembly of the State of*
5 *New Jersey (the Senate concurring):*

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

PROPOSED AMENDMENT

8
9
10 Amend Article I, paragraph 12 to read as follows:

11 12. Excessive bail shall not be required, excessive fines shall
12 not be imposed, and cruel and unusual punishments shall not be
13 inflicted. It shall not be cruel and unusual punishment to make
14 eligible for the death penalty a defendant convicted of purposely
15 or knowingly causing serious bodily injury resulting in death who
16 committed the homicidal act by his own conduct or who as an
17 accomplice procured the commission of the offense by payment
18 or promise of payment of anything of pecuniary value.

19 (cf: Art. 1, para. 12)

20
21 2. When this proposed amendment to the Constitution is finally
22 agreed to pursuant to Article IX, paragraph 1 of the Constitution,
23 it shall be submitted to the people at the next general election
24 occurring more than three months after the final agreement and
25 shall be published at least once in at least one newspaper of each
26 county designated by the President of the Senate, the Speaker of
27 the General Assembly and the Secretary of State, not less than
28 three months prior to the general election.

29 3. This proposed amendment to the Constitution shall be
30 submitted to the people at that election in the following manner
31 and form:

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

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

36 If you favor the proposition printed below make a cross (x), plus
37 (+) or check (✓) in the square opposite the word "Yes." If you are
38 opposed thereto make a cross (x), plus (+) or check (✓) in the
39 square opposite the word "No."

40 b. In every municipality the following question:

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

	YES.	<p>MAKING ELIGIBLE FOR THE DEATH PENALTY PERSONS WHO PURPOSELY OR KNOWINGLY CAUSE SERIOUS BODILY INJURY RESULTING IN DEATH</p> <p>Shall the amendment to Article I, paragraph 12 of the Constitution providing that it is not cruel and unusual punishment to make eligible for the death penalty a defendant who is convicted of purposely or knowingly causing serious bodily injury resulting in death who committed the homicidal act by his own conduct or who as an accomplice procured the commission of the offense by payment or promise of payment of anything of pecuniary value be approved?</p>
	NO.	<p>INTERPRETIVE STATEMENT</p> <p>This constitutional amendment would provide that it is not cruel and unusual punishment under our State Constitution to make eligible for the death penalty a defendant who is convicted of purposely or knowingly causing serious bodily injury resulting in death if that defendant committed the act himself or paid for another to commit the act.</p>

CRIMINAL JUSTICE

Amends the State Constitution to provide that it is not cruel and unusual punishment to make certain defendants eligible for the death penalty.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY CONCURRENT RESOLUTION No. 76

STATE OF NEW JERSEY

DATED: MARCH 7, 1991

The Assembly Judiciary, Law and Public Safety Committee reports favorably Assembly Concurrent Resolution No. 76.

The proposed constitutional amendment provides that it is not cruel and unusual punishment to make a defendant eligible for the death penalty who has purposely or knowingly caused serious bodily injury resulting in death if he committed the act himself or paid another to do it. Presently the New Jersey murder statute, N.J.S.A.2C:11-3 provides that criminal homicide constitutes murder if:

(1) the actor purposely causes death or serious bodily injury resulting in death or (2) the actor knowingly causes death or serious bodily injury resulting in death or (3) the homicide was committed in the attempt or commission of enumerated crimes, the so-called "felony murder rule." Under the terms of the statute only a defendant who falls into categories (1) or (2) as listed who is convicted and who committed the act himself or paid another to do it may be eligible for the death penalty sentencing phase in which the judge or jury weighs aggravating and mitigating factors. This statutory scheme was called into question by the New Jersey Supreme Court in the decision of State v. Gerald, 113 N.J. 40 (1988) in which the court differentiated between "causing death" and "causing serious bodily injury resulting in death."

The court stated: "We hold, on state constitutional grounds, that a defendant who is convicted of purposely or knowingly causing 'serious bodily injury resulting in death' under N.J.S.A.2C:11-3(a)(1) and (2), or either of them - as opposed to one who is convicted of purposely or knowingly causing death under those same provisions - may not be subjected to the death penalty." 113 N.J. at 69.

This proposed constitutional amendment is intended to overturn this portion of the court's decision in the Gerald case and establish that it is not violative of the State Constitution to make these defendants eligible for the death penalty sentencing process.

This concurrent resolution was prefiled for introduction in the 1990 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.

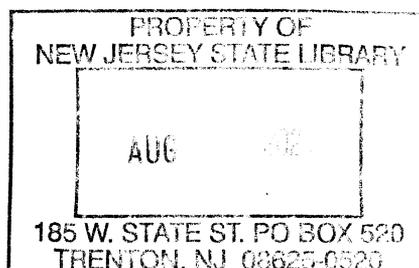


TABLE OF CONTENTS

	<u>Page</u>
APPENDIX:	
Statement submitted by Garabed "Chuck" Haytaian Minority Leader New Jersey General Assembly	1x
Letter from Peter J. McDonough, Jr. Representing the New Jersey State Policemen's Benevolent Association	4x
Statement submitted by William F. Bolan, Jr. Executive Director New Jersey Catholic Conference	5x

* * * * *

NOTE: Transcripts of the public hearing held on
January 31, 1991, dealing with this same subject
matter, are available from the Committee Aide.
(phone 609-292-5526)

hw: 1

APPENDIX

the imposition of the death penalty... We should acknowledge that in the public debate over capital punishment, we are dealing with values of the highest importance: respect for the sanctity of human life, the protection of human life, the preservation of order in society, and the achievement of justice through law."

In light of the foregoing, we ask that you oppose ACR-76.

Respectfully submitted,

William F. Bolan, Jr.

William F. Bolan, Jr.
Executive Director

WFB:pr

