

2C:11-3

LEGISLATIVE HISTORY CHECKLIST
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(Victim impact evidence--sentencing)

NJSA: 2C:11-3

LAWS OF: 1995 CHAPTER: 123

BILL NO: S1728

SPONSOR(S): Inverso

DATE INTRODUCED: January 23, 1995

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Law & Public Safety

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: ASSEMBLY: May 22, 1995

SENATE: March 30, 1995

DATE OF APPROVAL: June 19, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings -- attached:

"Victim testimony legislation signed," 6-20-95, Home News.

"Crime victims surviving relatives now allowed to have their say," 6-20-95, Star Ledger.

"Victims families allowed to speak...", 6-20-95, Courier News.

KBG:pp

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 1728

STATE OF NEW JERSEY

ADOPTED MARCH 20, 1995

Sponsored by Senators INVERSO and KOSCO

1 AN ACT concerning victim impact statements at the death
2 penalty sentencing proceeding and amending N.J.S.2C:11-3.

3

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

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

7 2C:11-3. Murder.

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

10 (1) The actor purposely causes death or serious bodily injury
11 resulting in death; or

12 (2) The actor knowingly causes death or serious bodily injury
13 resulting in death; or

14 (3) It is committed when the actor, acting either alone or with
15 one or more other persons, is engaged in the commission of, or an
16 attempt to commit, or flight after committing or attempting to
17 commit robbery, sexual assault, arson, burglary, kidnapping or
18 criminal escape, and in the course of such crime or of immediate
19 flight therefrom, any person causes the death of a person other
20 than one of the participants; except that in any prosecution under
21 this subsection, in which the defendant was not the only
22 participant in the underlying crime, it is an affirmative defense
23 that the defendant:

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

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

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 c. Any person convicted under subsection a.(1) or (2) who
2 committed the homicidal act by his own conduct; or who as an
3 accomplice procured the commission of the offense by payment
4 or promise of payment of anything of pecuniary value; or who, as
5 a leader of a narcotics trafficking network as defined in
6 N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in
7 N.J.S.2C:35-3, commanded or by threat or promise solicited the
8 commission of the offense, shall be sentenced as provided
9 hereinafter:

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

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

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

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

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

52 (d) The State and the defendant shall be permitted to rebut
53 any evidence presented by the other party at the sentencing
54 proceeding and to present argument as to the adequacy of the

1 evidence to establish the existence of any aggravating or
2 mitigating factor.

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

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

13 (3) The jury or, if there is no jury, the court shall return a
14 special verdict setting forth in writing the existence or
15 nonexistence of each of the aggravating and mitigating factors
16 set forth in paragraphs (4) and (5) of this subsection. If any
17 aggravating factor is found to exist, the verdict shall also state
18 whether it outweighs beyond a reasonable doubt any one or more
19 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
27 the 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
34 deemed final when sentence is imposed and may be used as an
35 aggravating factor regardless of whether it is on appeal;

36 (b) In the commission of the murder, the defendant purposely
37 or 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
43 the receipt, or in expectation of the receipt of anything of
44 pecuniary value;

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

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

50 (g) The offense was committed while the defendant was
51 engaged in the commission of, or an attempt to commit, or flight
52 after committing or attempting to commit murder, robbery,
53 sexual assault, arson, burglary or kidnapping;

54 (h) The defendant murdered a public servant, as defined in

1 N.J.S.2C:27-1, while the victim was engaged in the performance
2 of his official duties, or because of the victim's status as a public
3 servant;

4 (i) The defendant: (i) as a leader of a narcotics trafficking
5 network as defined in N.J.S.2C:35-3 and in furtherance of a
6 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
7 or by threat or promise solicited the commission of the offense or
8 (ii) committed the offense at the direction of a leader of a
9 narcotics trafficking network as defined in N.J.S.2C:35-3 in
10 furtherance of a conspiracy enumerated in N.J.S.2C:35-3;

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

14 (k) The victim was less than 14 years old.

15 (5) The mitigating factors which may be found by the jury or
16 the court are:

17 (a) The defendant was under the influence of extreme mental
18 or emotional disturbance insufficient to constitute a defense to
19 prosecution;

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

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

23 (d) The defendant's capacity to appreciate the wrongfulness of
24 his conduct or to conform his conduct to the requirements of the
25 law was significantly impaired as the result of mental disease or
26 defect or intoxication, but not to a degree sufficient to
27 constitute a defense to prosecution;

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

30 (f) The defendant has no significant history of prior criminal
31 activity;

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

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

36 (6) When a defendant at a sentencing proceeding presents
37 evidence of defendant's character or record pursuant to
38 subparagraph (h) of paragraph (5) of this subsection, the State
39 may present evidence of the murder victim's character and
40 background and of the impact of the murder on the victim's
41 survivors. If the jury finds that the State has proven at least one
42 aggravating factor beyond a reasonable doubt and the jury finds
43 the existence of a mitigating factor pursuant to subparagraph (h)
44 of paragraph (5) of this subsection, the jury may consider the
45 victim and survivor evidence presented by the State pursuant to
46 this paragraph in determining the appropriate weight to give
47 mitigating evidence presented pursuant to subparagraph (h) of
48 paragraph (5) of this subsection.

49 d. The sentencing proceeding set forth in subsection c. of this
50 section shall not be waived by the prosecuting attorney.

51 e. Every judgment of conviction which results in a sentence of
52 death under this section shall be appealed, pursuant to the Rules
53 of Court, to the Supreme Court. Upon the request of the
54 defendant, the Supreme Court shall also determine whether the

1 sentence is disproportionate to the penalty imposed in similar
2 cases, considering both the crime and the defendant.
3 Proportionality review under this section shall be limited to a
4 comparison of similar cases in which a sentence of death has been
5 imposed under subsection c. of this section. In any instance in
6 which the defendant fails, or refuses to appeal, the appeal shall
7 be taken by the Office of the Public Defender or other counsel
8 appointed by the Supreme Court for that purpose.

9 f. Prior to the jury's sentencing deliberations, the trial court
10 shall inform the jury of the sentences which may be imposed
11 pursuant to subsection b. of this section on the defendant if the
12 defendant is not sentenced to death. The jury shall also be
13 informed that a failure to reach a unanimous verdict shall result
14 in sentencing by the court pursuant to subsection b.

15 g. A juvenile who has been tried as an adult and convicted of
16 murder shall not be sentenced pursuant to the provisions of
17 subsection c. but shall be sentenced pursuant to the provisions of
18 subsection b. of this section.

19 h. In a sentencing proceeding conducted pursuant to this
20 section, no evidence shall be admissible concerning the method or
21 manner of execution which would be imposed on a defendant
22 sentenced to death.

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

26 (cf: P.L.1994, c.132, s.1)

27 2. This act shall take effect immediately.

28

29

30

31

32 _____
33 Permits prosecutor to introduce victim impact evidence at the
separate sentencing phase of a death penalty trial.

SENATE, No. 1728

STATE OF NEW JERSEY

INTRODUCED JANUARY 23, 1995

By Senator INVERSO

1 AN ACT concerning statements by relatives of certain murder
2 victims at the death penalty sentencing proceeding and
3 amending N.J.S.2C:11-3 and P.L.1985, c.404.

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

7 1. N.J.S.2C:11-3 is amended to read as follows:
8 2C:11-3. Murder.

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

11 (1) The actor purposely causes death or serious bodily injury
12 resulting in death; or

13 (2) The actor knowingly causes death or serious bodily injury
14 resulting in death; or

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

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

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

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

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

38 b. Murder is a crime of the first degree but a person convicted
39 of murder shall be sentenced, except as provided in subsection c.
40 of this section, by the court to a term of 30 years, during which
41 the person shall not be eligible for parole or 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.

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 c. Any person convicted under subsection a.(1) or (2) who
2 committed the homicidal act by his own conduct; or who as an
3 accomplice procured the commission of the offense by payment
4 or promise of payment of anything of pecuniary value; or who, as
5 a leader of a narcotics trafficking network as defined in
6 N.J.S.2C:35-3 and in furtherance of a conspiracy enumerated in
7 N.J.S.2C:35-3, commanded or by threat or promise solicited the
8 commission of the offense, shall be sentenced as provided
9 hereinafter:

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

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

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

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

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

52 (d) The State and the defendant shall be permitted to rebut
53 any evidence presented by the other party at the sentencing
54 proceeding and to present argument as to the adequacy of the

1 evidence to establish the existence of any aggravating or
2 mitigating factor.

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

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

13 (g) In addition to offering evidence establishing the
14 aggravating factors, the State shall be permitted to offer
15 testimony by the relatives of the victim as to the impact of the
16 death of the victim on them.

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

24 (a) If the jury or the court finds that any aggravating factors
25 exist and that all of the aggravating factors outweigh beyond a
26 reasonable doubt all of the mitigating factors, the court shall
27 sentence the defendant to death.

28 (b) If the jury or the court finds that no aggravating factors
29 exist, or that all of the aggravating factors which exist do not
30 outweigh all of the mitigating factors, the court shall sentence
31 the defendant pursuant to subsection b.

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

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

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

40 (b) In the commission of the murder, the defendant purposely
41 or 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
47 the receipt, or in expectation of the receipt of anything of
48 pecuniary value;

49 (e) The defendant procured the commission of the offense by
50 payment or promise of payment of anything of pecuniary value;

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

54 (g) The offense was committed while the defendant was

- 1 engaged in the commission of, or an attempt to commit, or flight
2 after committing or attempting to commit murder, robbery,
3 sexual assault, arson, burglary or kidnapping;
- 4 (h) The defendant murdered a public servant, as defined in
5 N.J.S.2C:27-1, while the victim was engaged in the performance
6 of his official duties, or because of the victim's status as a public
7 servant;
- 8 (i) The defendant: (i) as a leader of a narcotics trafficking
9 network as defined in N.J.S.2C:35-3 and in furtherance of a
10 conspiracy enumerated in N.J.S.2C:35-3, committed, commanded
11 or by threat or promise solicited the commission of the offense or
12 (ii) committed the offense at the direction of a leader of a
13 narcotics trafficking network as defined in N.J.S.2C:35-3 in
14 furtherance of a conspiracy enumerated in N.J.S.2C:35-3;
- 15 (j) The homicidal act that the defendant committed or
16 procured was in violation of paragraph (1) of subsection a. of
17 N.J.S.2C:17-2; or
- 18 (k) The victim was less than 14 years old.
- 19 (5) The mitigating factors which may be found by the jury or
20 the court are:
- 21 (a) The defendant was under the influence of extreme mental
22 or emotional disturbance insufficient to constitute a defense to
23 prosecution;
- 24 (b) The victim solicited, participated in or consented to the
25 conduct which resulted in his death;
- 26 (c) The age of the defendant at the time of the murder;
- 27 (d) The defendant's capacity to appreciate the wrongfulness of
28 his conduct or to conform his conduct to the requirements of the
29 law was significantly impaired as the result of mental disease or
30 defect or intoxication, but not to a degree sufficient to
31 constitute a defense to prosecution;
- 32 (e) The defendant was under unusual and substantial duress
33 insufficient to constitute a defense to prosecution;
- 34 (f) The defendant has no significant history of prior criminal
35 activity;
- 36 (g) The defendant rendered substantial assistance to the State
37 in the prosecution of another person for the crime of murder; or
- 38 (h) Any other factor which is relevant to the defendant's
39 character or record or to the circumstances of the offense.
- 40 d. The sentencing proceeding set forth in subsection c. of this
41 section shall not be waived by the prosecuting attorney.
- 42 e. Every judgment of conviction which results in a sentence of
43 death under this section shall be appealed, pursuant to the Rules
44 of Court, to the Supreme Court. Upon the request of the
45 defendant, the Supreme Court shall also determine whether the
46 sentence is disproportionate to the penalty imposed in similar
47 cases, considering both the crime and the defendant.
48 Proportionality review under this section shall be limited to a
49 comparison of similar cases in which a sentence of death has been
50 imposed under subsection c. of this section. In any instance in
51 which the defendant fails, or refuses to appeal, the appeal shall
52 be taken by the Office of the Public Defender or other counsel
53 appointed by the Supreme Court for that purpose.
- 54 f. Prior to the jury's sentencing deliberations, the trial court

1 shall inform the jury of the sentences which may be imposed
2 pursuant to subsection b. of this section on the defendant if the
3 defendant is not sentenced to death. The jury shall also be
4 informed that a failure to reach a unanimous verdict shall result
5 in sentencing by the court pursuant to subsection b.

6 g. A juvenile who has been tried as an adult and convicted of
7 murder shall not be sentenced pursuant to the provisions of
8 subsection c. but shall be sentenced pursuant to the provisions of
9 subsection b. of this section.

10 h. In a sentencing proceeding conducted pursuant to this
11 section, no evidence shall be admissible concerning the method or
12 manner of execution which would be imposed on a defendant
13 sentenced to death.

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

17 (cf: P.L.1994, c.132, s.1)

18 2. Section 6 of P.L.1985, c.404 (C.52:4B-44) is amended to
19 read as follows:

20 6. a. The Attorney General shall, through the Office of
21 Victim-Witness Advocacy in the Division of Criminal Justice in
22 the Department of Law and Public Safety and in consultation
23 with the county prosecutors, promulgate standards for law
24 enforcement agencies to ensure that the rights of crime victims
25 are enforced.

26 b. The standards shall require that the Office of
27 Victim-Witness Advocacy in the Division of Criminal Justice and
28 each county prosecutor's office provide the following services
29 upon request for victims and witnesses involved in the
30 prosecution of a case:

31 (1) Orientation information about the criminal justice system
32 and the victim's and witness's role in the criminal justice
33 process;

34 (2) Notification of any change in the case status and of final
35 disposition;

36 (3) Information on crime prevention and on available responses
37 to witness intimidation;

38 (4) Information about available services to meet needs
39 resulting from the crime and referrals to service agencies, where
40 appropriate;

41 (5) Advance notice of the date, time and place of the
42 defendant's initial appearance before a judicial officer,
43 submission to the court of any plea agreement, the trial and
44 sentencing;

45 (6) Advance notice of when presence in court is not needed;

46 (7) Advice about available compensation, restitution and other
47 forms of recovery and assistance in applying for government
48 compensation;

49 (8) A waiting or reception area separate from the defendant
50 for use during court proceedings;

51 (9) An escort or accompaniment for intimidated victims or
52 witnesses during court appearances;

53 (10) Information about directions, parking, courthouse and
54 courtroom locations, transportation services and witness fees, in

1 advance of court appearances;

2 (11) Assistance for victims and witnesses in meeting special
3 needs when required to make court appearances, such as
4 transportation and child care arrangements;

5 (12) Assistance in making travel and lodging arrangements for
6 out-of-State witnesses;

7 (13) Notification to employers of victims and witnesses, if
8 cooperation in the investigation or prosecution causes absence
9 from work;

10 (14) Notification of the case disposition, including the trial and
11 sentencing;

12 (15) Assistance to victims in submitting a written statement to
13 a representative of the county prosecutor's office about the
14 impact of the crime prior to the prosecutor's final decision
15 concerning whether formal charges will be filed;

16 (16) Advice to victims about their right to make a statement
17 about the impact of the crime for inclusion in the presentence
18 report or at time of parole consideration, if applicable;

19 (17) Notification to victims of the right to make an in-person
20 statement, prior to sentencing, directly to the sentencing court
21 concerning the impact of the crime; and notification to the
22 relatives of a murder victim of the right to make an in-person
23 statement at the separate sentencing proceeding conducted
24 pursuant to subsection c. of N.J.S.2C:11-3 concerning the impact
25 of the victim's death on the relatives;

26 (18) Expediting the return of property when no longer needed
27 as evidence;

28 (19) Advise and counsel, or refer for advice or counseling,
29 victims of sexual assault, or other criminal acts involving a risk
30 of transmission of disease, concerning available medical testing
31 and assist such victims, or refer such victims for assistance, in
32 obtaining appropriate testing, counseling and medical care and in
33 making application to the Violent Crimes Compensation Board
34 for compensation for the costs of such testing, counseling and
35 care;

36 (20) Assistance to victims in submitting a written impact
37 statement to a representative of the county prosecutor's office
38 concerning the impact of the crime which shall be considered
39 prior to the prosecutor's accepting a negotiated plea agreement
40 containing recommendations as to sentence and assistance to
41 victims in securing an explanation of the terms of any such
42 agreement and the reasons for the agreement; and

43 (21) Notification to the victim of the defendant's release from
44 custody which shall include:

45 (a) notice of the defendant's escape from custody and return
46 to custody following escape;

47 (b) notice of any other release from custody, including
48 placement in an Intensive Supervision Program or other
49 alternative disposition, and any associated conditions of release;

50 (c) notice of the filing by an inmate of an application for
51 commutation of sentence pursuant to N.J.S.2A:167-4 and its
52 disposition;

53 (d) notice of parole consideration pursuant to provisions of
54 P.L.1979, c.441 (C.30:4-123.45 et seq.); and

1 (e) notice of the pending release of an inmate due to
2 expiration of sentence.

3 c. In a case involving a victim of aggravated sexual assault or
4 sexual assault as defined in subsection a. or c. of N.J.S.2C:14-2,
5 the Office of Victim-Witness Advocacy or the county
6 prosecutor's office involved in the case shall:

7 (1) Notify the victim of the victim's right to obtain an
8 approved serological test for acquired immune deficiency
9 syndrome (AIDS) or infection with the human immunodeficiency
10 virus (HIV) or any other related virus identified as a probable
11 causative agent of AIDS, and assist the victim, or refer the
12 victim for assistance, in obtaining a test and appropriate
13 counseling and medical care;

14 (2) Notify the victim of the victim's right to obtain a court
15 order pursuant to subsection a. of section 4 of P.L.1993, c.364
16 (C.2C:43-2.2) requiring the offender to submit to an approved
17 serological test for acquired immune deficiency syndrome (AIDS)
18 or infection with the human immunodeficiency virus (HIV) or any
19 other related virus identified as a probable causative agent of
20 AIDS in the event that the offender is indicted, formally charged,
21 convicted or adjudicated delinquent;

22 (3) Communicate the request of a victim who agrees to seek
23 an order pursuant to subsection a. of section 4 of P.L.1993, c.364
24 (C.2C:43-2.2) to the prosecutor handling the case and notify the
25 victim or arrange for the victim to be notified of the test result;
26 and

27 (4) Assist the victim in applying to the Violent Crimes
28 Compensation Board for compensation for the costs of testing,
29 counseling and medical care.

30 (cf: P.L.1994, c.131, s.5)

31 3. This act shall take effect immediately.

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STATEMENT

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36 This bill permits the relatives of a murder victim to testify at
37 the separate sentencing phase of a murder trial. This separate
38 proceeding is conducted by a judge or a jury after eligible
39 defendants are found guilty of murder to determine if the
40 defendant will be sentenced to death or to a term of
41 imprisonment. This bill permits relatives to testify at this
42 proceeding by amending the murder statute, N.J.S.2C:11-3, to
43 provide that in addition to offering evidence establishing the
44 aggravating factors, the State shall be permitted to offer
45 testimony by the relatives of the victim as to the impact of the
46 death of the victim on them.

47 The bill also amends the standards which require that the
48 Office of Victim-Witness Advocacy in the Division of Criminal
49 Justice and each county prosecutor's office provide certain
50 services upon request for victims, to include notification to the
51 relatives of a murder victim of the right to make the in-person
52 statement at the separate sentencing proceeding concerning the
53 impact of the victim's death.

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3 Permits relatives of certain murder victims to make a statement
4 at the separate sentencing phase of a death penalty trial.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1728

STATE OF NEW JERSEY

DATED: APRIL 27, 1995

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 1728 (SCS).

In Payne v. Tennessee, 501 U.S.808, 111 S.Ct.2597 (1991), the United States Supreme Court held that the presentation of victim impact evidence is not per se inadmissible in a capital sentencing proceeding, and that "[a] State may legitimately conclude that evidence about the victim and about the impact of the murder on the victim's family is relevant to the jury's decision as to whether or not the death penalty should be imposed."

On November 5, 1991, the New Jersey electorate demonstrated its agreement with Payne by approving N.J.Const., Art.1, para.22, which authorizes the Legislature to protect and enhance the rights of crime victims. In addition, the Legislature has expressly given crime victims and victims' survivors the right to participate and be considered in the sentencing process by enacting P.L.1991, c.44 (amending P.L.1985, c.249; C.52:4B-36). That right is also manifested in N.J.S.2C:44-6, which permits crime victims or their survivors to make a statement for inclusion in the presentence report.

The purpose of this substitute is to effectuate Art. I, para. 22 to the fullest extent permissible under the federal constitution, and to implement the will of the New Jersey electorate with regard to capital prosecutions. When a defendant presents mitigating evidence concerning his character and background, the State would be permitted to respond by introducing victim impact evidence, because such evidence may affect the weight the jury accords the defendant's mitigating evidence. The substitute does not grant the absolute right to testify; rather, the prosecutor would determine what evidence, if any, should be submitted. As with all evidence, victim impact evidence offered by the State must be relevant and reliable.

For purposes of this substitute, "survivor" means the spouse, parent, legal guardian, grandparent, child or sibling of the victim. This interpretation of "survivor" conforms with the definition set forth in Art. I, para. 22.

It is the committee's understanding and intent that the provisions of this substitute are consistent with ruling of the United States Supreme Court in Payne. In that case, the Court said, "the State has a legitimate interest in counteracting the mitigating evidence which the defendant is entitled to put in, by reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family."

This substitute is identical to the Assembly Committee Substitute for Assembly Bill No. 2441.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, No. 1728

STATE OF NEW JERSEY

DATED: MARCH 20, 1995

The Senate Law and Public Safety Committee favorably reports a Senate Committee Substitute for Senate Bill No. 1728.

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