

2C:28-5.1 to 2C:28-5.5

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:28-5.1 to 2C:28-5.5

(Victims and witnesses of crimes--protect from intimidation and retaliation)

LAWS OF: 1985

CHAPTER: 250

Bill No: A574

Sponsor(s): Girgenti

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes

Assembly committee substitute for A574 (OCR) enacted. Amendments during passage denoted by asterisks.

Date of Passage: Assembly: January 24, 1985

Senate: June 24, 1985

Date of Approval: July 31, 1985

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly No

Senate No

Fiscal Note: No

Veto Message: No

Message on Signing: ~~No~~ Yes

Following were printed:

Reports: No

Hearings: No

[OFFICIAL COPY REPRINT]
 ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 574

STATE OF NEW JERSEY

INTRODUCED DECEMBER 17, 1984

By Assemblyman GIRGENTI

AN ACT concerning the protection of victims and witnesses of crime from intimidation and retaliation and supplementing Title 2C of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
 2 *of New Jersey:*

1 1. If a court having jurisdiction under any criminal matter finds
 2 that the defendant in that criminal action or any other person
 3 connected in any way with the action has violated or is likely to
 4 violate N. J. S. 2C:28-5, N. J. S. 2C:29-3 or N. J. S. 2C:29-4 in
 5 regard to the pending offense, or that the defendant or other person
 6 has injured or intimidated or is threatening to injure or intimidate
 7 any witness in the pending offense or member of the witness' family
 8 with purpose to affect the testimony of the witness, the court may
 9 issue a protective order providing:

10 a. That the defendant or other person not violate any provision
 11 of N. J. S. 2C:28-5, N. J. S. 2C:29-3, or N. J. S. 2C:29-4;

12 b. That the defendant or other person maintain a prescribed
 13 geographic distance from any specified witness or victim;

14 c. That the defendant or other person have no communication
 15 with any specified witness or victim, except through an attorney
 16 under any reasonable restrictions which the court may impose.

1 2. Any person violating any order made pursuant to section 1
 2 of this act may be subject to any of the following penalties:

3 a. He may be charged with any substantive offense defined in
 4 N. J. S. 2C:28-5, N. J. S. 2C:29-3, or N. J. S. 2C:29-4 when viola-
 5 tion of an order constitutes violation of any provision of those
 6 statutes;

**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 printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

***—Senate committee amendments adopted June 20, 1985.**

7 b. He may be charged with contempt of the court that made
8 the order. No finding of contempt shall be a bar to prosecution for
9 a substantive offense; ***[**however:

10 (1) Any sentence served for contempt of an order issued pur-
11 suant to section 1 of this act shall be credited against any sentence
12 imposed for conviction of any substantive offense arising out of
13 substantially the same acts; and

14 (2) Any conviction or acquittal for any substantive offense shall
15 be a bar to subsequent punishment for contempt arising out of
16 substantially the same acts.]* **and any sentence for a conviction of*
17 *contempt may be served consecutively to any sentence imposed for*
18 *the underlying substantive offense. If the court does not impose a*
19 *consecutive sentence, the court shall state on the record the reason*
20 *for not imposing a consecutive sentence.**

1 3. A motion for an order as provided by section 1 of this act
2 may be made by the prosecuting authority, the defendant, or by
3 any witness.

1 4. No order may be issued under this act unless the court's find-
2 ings are made upon a ***[**clear]* preponderance of evidence adduced
3 at a hearing. ***[**All parties at that hearing shall have the right to
4 cross-examine witnesses presented and to introduce evidence rele-
5 vant to the proposed order. Any person sought to be the subject
6 of a court order shall have the right to be represented by counsel
7 and the right to have counsel appointed for him if he is unable to
8 secure his own counsel.]* **The rules of evidence shall not be*
9 *applicable to any such hearing.**

1 5. No order shall be entered under this act which interferes with
2 the preparation of the underlying criminal case by the defendant
3 or by his attorney, if any.

1 6. This act shall take effect immediately.

ASSEMBLY, No. 574

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1984 SESSION

By Assemblyman GIRGENTI

AN ACT concerning the protection of victims and witnesses of crime
from intimidation and retaliation and supplementing Title 2C
of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. After a hearing and upon a preponderance of the evidence that
2 may include hearsay or the declaration of the prosecutor that a
3 violation of N. J. S. 2C:28-5, N. J. S. 2C:29-3 or N. J. S. 2C:29-4
4 has occurred or is reasonably likely to occur, any court with juris-
5 diction over any criminal matter may issue protective orders in-
6 cluding but not limited to the following:

7 a. An order that a defendant not violate any provision of N. J. S.
8 2C:28-5, N. J. S. 2C:29-3, or N. J. S. 2C:29-4;

9 b. An order that a person other than the defendant, including but
10 not limited to a subpoenaed witness, not violate any provision of
11 N. J. S. 2C:28-5, N. J. S. 2C:29-3, or N. J. S. 2C:29-4;

12 c. An order that any person described in paragraph a. or b.
13 maintain a prescribed geographic distance from any specified
14 witness or victim;

15 d. An order that any person described in paragraph a. or b. have
16 no communication with any specified witness or victim, except
17 through an attorney under any reasonable restrictions which the
18 court may impose.

1 2. Any person violating any order made pursuant to section 1
2 of this act may be subject to any of the following penalties:

3 a. He may be charged with any substantive offense defined in
4 N. J. S. 2C:28-5, N. J. S. 2C:29-3, or N. J. S. 2C:29-4 when viola-

5 tion of an order constitutes violation of any provision of those
6 statutes;

7 b. He may be charged with contempt of the court that made the
8 order. No finding of contempt shall be a bar to prosecution for
9 a substantive offense as defined by N. J. S. 2C:28-5, N. J. S.
10 2C:29-3, or N. J. S. 2C:29-4; however:

11 (1) Any sentence served for contempt of an order issued pur-
12 suant to section 1 of this act shall be credited against any sentence
13 imposed for conviction of any substantive offense defined in N. J. S.
14 2C:28-5, N. J. S. 2C:29-3, or N. J. S. 2C:29-4; and

15 (2) Any conviction or acquittal for any substantive offense as
16 defined in N. J. S. 2C:28-5, N. J. S. 2C:29-3, or N. J. S. 2C:29-4
17 shall be a bar to subsequent punishment for contempt arising out
18 of the same act;

19 c. He may have any form of pretrial release revoked, or any
20 bail forfeited, and be returned to custody. After a hearing and
21 upon a preponderance of the evidence, revocation may be made
22 whether the violation of the order complained of has been com-
23 mitted by the defendant personally or was caused or encouraged
24 to have been committed by the defendant.

1 3. a. Any pretrial release of any defendant, whether on bail or
2 under any other form of recognizance, shall include a condition
3 that the defendant neither do, nor cause to be done, nor permit to
4 be done on his behalf, any act proscribed by N. J. S. 2C:28-5,
5 N. J. S. 2C:29-3, or N. J. S. 2C:29-4. Any defendant who purposely
6 or knowingly violates this condition is subject to punishment as
7 prescribed in section 2 of this act.

8 b. Upon the effective date of this act, any receipt for any bail or
9 bond given by the clerk of any court, by any court, or by any surety
10 or bondsman, and any written promise to appear on one's recogni-
11 zance shall contain, in a conspicuous location, notice of the condition.

1 4. This act shall take effect on the ninetieth day following enact-
2 ment.

STATEMENT

If justice is to be administered successfully, the victims of crime must be willing to report what has happened to them, and witnesses to crimes must be willing to testify. But in recent years, victims and witnesses have become increasingly fearful that participating in the criminal justice system will harm them more severely than the crime itself. Often their fears are not merely imaginary; in many cases, they are the subjects of intimidation or retaliation by

defendants who wish to avoid indictment, prosecution, and conviction.

It is already a crime to tamper with or retaliate against witnesses or informants (N. J. S. 2C:28-5); to hinder apprehension or prosecution of oneself or another person by suppressing evidence, intimidating another person, or volunteering false information to a law enforcement officer (N. J. S. 2C:29-3); or to accept or agree to accept or to confer or agree to confer upon another person any pecuniary benefit in consideration for refraining from reporting information about a crime to law enforcement authorities (N. J. S. 2C:29-4).

The purpose of this bill is to strengthen these statutes by encouraging victims to report crimes and witnesses to testify while at the same time discouraging defendants from resorting to intimidation or retaliation.

Section 1 of the bill provides for protective orders to be issued when intimidation or retaliation is suspected or threatened, and section 2 specifies penalties to be imposed when a protective order is violated, including revocation of any form of pretrial release.

Section 3 prohibits as a condition of a defendant's pretrial release any intimidation of or retaliation against victims or witnesses.

Section 4 establishes that the bill will become effective 90 days following enactment.

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2 that the defendant in that criminal action or any other person
3 connected in any way with the action has violated or is likely to
4 violate N. J. S. 2C:28-5, N. J. S. 2C:29-3 or N. J. S. 2C:29-4 in
5 regard to the pending offense, or that the defendant or other person
6 has injured or intimidated or is threatening to injure or intimidate
7 any witness in the pending offense or member of the witness' family
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9 issue a protective order providing:

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13 geographic distance from any specified witness or victim;

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3 any witness.

1 4. No order may be issued under this act unless the court's find-
2 ings are made upon a clear preponderance of evidence adduced
3 at a hearing. All parties at that hearing shall have the right to
4 cross-examine witnesses presented and to introduce evidence rele-
5 vant to the proposed order. Any person sought to be the subject
6 of a court order shall have the right to be represented by counsel
7 and the right to have counsel appointed for him if he is unable to
8 secure his own counsel.

1 5. No order shall be entered under this act which interferes with
2 the preparation of the underlying criminal case by the defendant
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1 6. This act shall take effect immediately.

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6 **of a court order shall have the right to be represented by counsel**
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8 **secure his own counsel.]*** **The rules of evidence shall not be*
9 *applicable to any such hearing.**

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OFFICE OF THE GOVERNOR NEWS RELEASE

CN-001
Contact: PAUL WOLCOTT
609-292-8956

TRENTON, N.J. 08625
Release: WED., JULY 31, 1985

Governor Thomas H. Kean has signed a package of four bills designed to protect the rights of crime victims and witnesses to crimes.

"I have long sought just this combination of laws to afford the innocent victims of crimes at least the same rights and protections society has long given to criminals," Kean said. "I am pleased that the Legislature has passed this bi-partisan package of bills, and I am proud to sign them."

Speaking at a public ceremony in Haddonfield, the Governor signed A-571 and A-574, both sponsored by Assemblyman John A. Girgenti, D-Passaic, A-2744/A-2803, sponsored by Girgenti and Assemblyman Walter Kern, R-Bergen, and A-2806, sponsored by Assemblyman Thomas J. Shusted, R-Camden.

A-571 creates the Crime Victims Bill of Rights, recognizing the State's responsibility to enhance and protect the role of crime victims and witnesses in the criminal justice system. It guarantees that victims and witnesses are entitled to be treated with dignity and compassion by the criminal justice system and to be informed about how the system works. It is intended to free victims and witnesses from intimidation and inconvenience and to assure that they receive necessary medical attention, have the ability to make telephone calls, be notified if their presence in court is necessary and to be compensated for loss whenever possible.

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