

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

S1936

SPONSORS STATEMENT: (Begins on page 8 of original bill) [Yes](#)
Sponsors statement identical to A17

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: No

FLOOR AMENDMENT STATEMENTS: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

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P.L. 1999, CHAPTER 294, *approved December 23, 1999*
Assembly, No. 17
(Corrected Copy)

1 **AN ACT** concerning homicide prosecutions and amending
2 N.J.S.2C:11-3 and P.L.1985, c.249.

3

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

6

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

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

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

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

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

35 b. (1) Murder is a crime of the first degree but a person convicted
36 of murder shall be sentenced, except as provided in subsection c. of
37 this section, by the court to a term of 30 years, during which the
38 person shall not be eligible for parole, or be sentenced to a specific

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 term of years which shall be between 30 years and life imprisonment
2 of which the person shall serve 30 years before being eligible for
3 parole.

4 (2) If the victim was a law enforcement officer and was murdered
5 while performing his official duties or was murdered because of his
6 status as a law enforcement officer, the person convicted of that
7 murder shall be sentenced, except as otherwise provided in subsection
8 c. of this section, by the court to a term of life imprisonment, during
9 which the person shall not be eligible for parole.

10 (3) A person convicted of murder and who is not sentenced to
11 death under this section shall be sentenced to a term of life
12 imprisonment without eligibility for parole if the murder was
13 committed under all of the following circumstances:

14 (a) The victim is less than 14 years old; and

15 (b) The act is committed in the course of the commission, whether
16 alone or with one or more persons, of a violation of N.J.S.2C:14-2 or
17 N.J.S.2C:14-3.

18 The defendant shall not be entitled to a deduction of commutation
19 and work credits from that sentence.

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

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

31 Where the defendant has been tried by a jury, the proceeding shall
32 be conducted by the judge who presided at the trial and before the jury
33 which determined the defendant's guilt, except that, for good cause,
34 the court may discharge that jury and conduct the proceeding before
35 a jury empaneled for the purpose of the proceeding. Where the
36 defendant has entered a plea of guilty or has been tried without a jury,
37 the proceeding shall be conducted by the judge who accepted the
38 defendant's plea or who determined the defendant's guilt and before a
39 jury empaneled for the purpose of the proceeding. On motion of the
40 defendant and with consent of the prosecuting attorney the court may
41 conduct a proceeding without a jury. Nothing in this subsection shall
42 be construed to prevent the participation of an alternate juror in the
43 sentencing proceeding if one of the jurors who rendered the guilty
44 verdict becomes ill or is otherwise unable to proceed before or during
45 the sentencing proceeding.

46 (2) (a) At the proceeding, the State shall have the burden of

1 establishing beyond a reasonable doubt the existence of any
2 aggravating factors set forth in paragraph (4) of this subsection. The
3 defendant shall have the burden of producing evidence of the existence
4 of any mitigating factors set forth in paragraph (5) of this subsection
5 but shall not have a burden with regard to the establishment of a
6 mitigating factor.

7 (b) The admissibility of evidence offered by the State to establish
8 any of the aggravating factors shall be governed by the rules governing
9 the admission of evidence at criminal trials. The defendant may offer,
10 without regard to the rules governing the admission of evidence at
11 criminal trials, reliable evidence relevant to any of the mitigating
12 factors. If the defendant produces evidence in mitigation which would
13 not be admissible under the rules governing the admission of evidence
14 at criminal trials, the State may rebut that evidence without regard to
15 the rules governing the admission of evidence at criminal trials.

16 (c) Evidence admitted at the trial, which is relevant to the
17 aggravating and mitigating factors set forth in paragraphs (4) and (5)
18 of this subsection, shall be considered without the necessity of
19 reintroducing that evidence at the sentencing proceeding; provided
20 that the fact finder at the sentencing proceeding was present as either
21 the fact finder or the judge at the trial.

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

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

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

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

40 (a) If the jury or the court finds that any aggravating factors exist
41 and that all of the aggravating factors outweigh beyond a reasonable
42 doubt all of the mitigating factors, the court shall sentence the
43 defendant to death.

44 (b) If the jury or the court finds that no aggravating factors exist,
45 or that all of the aggravating factors which exist do not outweigh all
46 of the mitigating factors, the court shall sentence the defendant

1 pursuant to subsection b.

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

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

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

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

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

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

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

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

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

27 (h) The defendant murdered a public servant, as defined in
28 N.J.S.2C:27-1, while the victim was engaged in the performance of his
29 official duties, or because of the victim's status as a public servant;

30 (i) The defendant: (i) as a leader of a narcotics trafficking
31 network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
32 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
33 promise solicited the commission of the offense or (ii) committed the
34 offense at the direction of a leader of a narcotics trafficking network
35 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
36 in N.J.S.2C:35-3;

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

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

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

42 (a) The defendant was under the influence of extreme mental or
43 emotional disturbance insufficient to constitute a defense to
44 prosecution;

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

- 1 (c) The age of the defendant at the time of the murder;
- 2 (d) The defendant's capacity to appreciate the wrongfulness of his
3 conduct or to conform his conduct to the requirements of the law was
4 significantly impaired as the result of mental disease or defect or
5 intoxication, but not to a degree sufficient to constitute a defense to
6 prosecution;
- 7 (e) The defendant was under unusual and substantial duress
8 insufficient to constitute a defense to prosecution;
- 9 (f) The defendant has no significant history of prior criminal
10 activity;
- 11 (g) The defendant rendered substantial assistance to the State in
12 the prosecution of another person for the crime of murder; or
- 13 (h) Any other factor which is relevant to the defendant's character
14 or record or to the circumstances of the offense.
- 15 (6) When a defendant at a sentencing proceeding presents evidence
16 of the defendant's character or record pursuant to subparagraph (h)
17 of paragraph (5) of this subsection, the State may present evidence of
18 the murder victim's character and background and of the impact of the
19 murder on the victim's survivors. If the jury finds that the State has
20 proven at least one aggravating factor beyond a reasonable doubt and
21 the jury finds the existence of a mitigating factor pursuant to
22 subparagraph (h) of paragraph (5) of this subsection, the jury may
23 consider the victim and survivor evidence presented by the State
24 pursuant to this paragraph in determining the appropriate weight to
25 give mitigating evidence presented pursuant to subparagraph (h) of
26 paragraph (5) of this subsection. As used in this paragraph "victim
27 and survivor evidence" may include the display of a photograph of the
28 victim taken before the homicide.
- 29 d. The sentencing proceeding set forth in subsection c. of this
30 section shall not be waived by the prosecuting attorney.
- 31 e. Every judgment of conviction which results in a sentence of
32 death under this section shall be appealed, pursuant to the Rules of
33 Court, to the Supreme Court. Upon the request of the defendant, the
34 Supreme Court shall also determine whether the sentence is
35 disproportionate to the penalty imposed in similar cases, considering
36 both the crime and the defendant. Proportionality review under this
37 section shall be limited to a comparison of similar cases in which a
38 sentence of death has been imposed under subsection c. of this section.
39 In any instance in which the defendant fails, or refuses to appeal, the
40 appeal shall be taken by the Office of the Public Defender or other
41 counsel appointed by the Supreme Court for that purpose.
- 42 f. Prior to the jury's sentencing deliberations, the trial court shall
43 inform the jury of the sentences which may be imposed pursuant to
44 subsection b. of this section on the defendant if the defendant is not
45 sentenced to death. The jury shall also be informed that a failure to
46 reach a unanimous verdict shall result in sentencing by the court

1 pursuant to subsection b.

2 g. A juvenile who has been tried as an adult and convicted of
3 murder shall not be sentenced pursuant to the provisions of subsection
4 c. but shall be sentenced pursuant to the provisions of subsection b. of
5 this section.

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

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

11 j. In a sentencing proceeding conducted pursuant to this section,
12 the display of a photograph of the victim taken before the homicide
13 shall be permitted.

14 (cf: P.L.1998, c.25)

15

16 2. Section 3 of P.L.1985, c.249 (C.52:4B-36) is amended to read
17 as follows:

18 3. The Legislature finds and declares that crime victims and
19 witnesses are entitled to the following rights:

20 a. To be treated with dignity and compassion by the criminal justice
21 system;

22 b. To be informed about the criminal justice process;

23 c. To be free from intimidation;

24 d. To have inconveniences associated with participation in the
25 criminal justice process minimized to the fullest extent possible;

26 e. To make at least one telephone call provided the call is
27 reasonable in both length and location called;

28 f. To medical assistance if, in the judgment of the law enforcement
29 agency, medical assistance appears necessary;

30 g. To be notified if presence in court is not needed;

31 h. To be informed about available remedies, financial assistance
32 and social services;

33 i. To be compensated for their loss whenever possible;

34 j. To be provided a secure, but not necessarily separate, waiting
35 area during court proceedings;

36 k. To be advised of case progress and final disposition;

37 l. To the prompt return of property when no longer needed as
38 evidence;

39 m. To submit a written statement about the impact of the crime to
40 a representative of the county prosecutor's office which shall be
41 considered prior to the prosecutor's final decision concerning whether
42 formal criminal charges will be filed; and

43 n. To make, prior to sentencing, an in-person statement directly
44 to the sentencing court concerning the impact of the crime.

45 This statement is to be made in addition to the statement permitted
46 for inclusion in the presentence report by N.J.S.2C:44-6.

1 photograph in homicide cases is a logical extension of any victim's
2 constitutionally protected right to be present at public judicial
3 proceedings.

4

5

6

7

8 _____
9 Permits the victim's survivor in any homicide prosecution to present
a photograph of the victim taken before the homicide at sentencing.

[Corrected Copy]

ASSEMBLY, No. 17

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED MAY 10, 1999

Sponsored by:

Assemblyman JACK COLLINS

District 3 (Salem, Cumberland and Gloucester)

Assemblyman MELVIN COTTRELL

District 30 (Burlington, Monmouth and Ocean)

Co-Sponsored by:

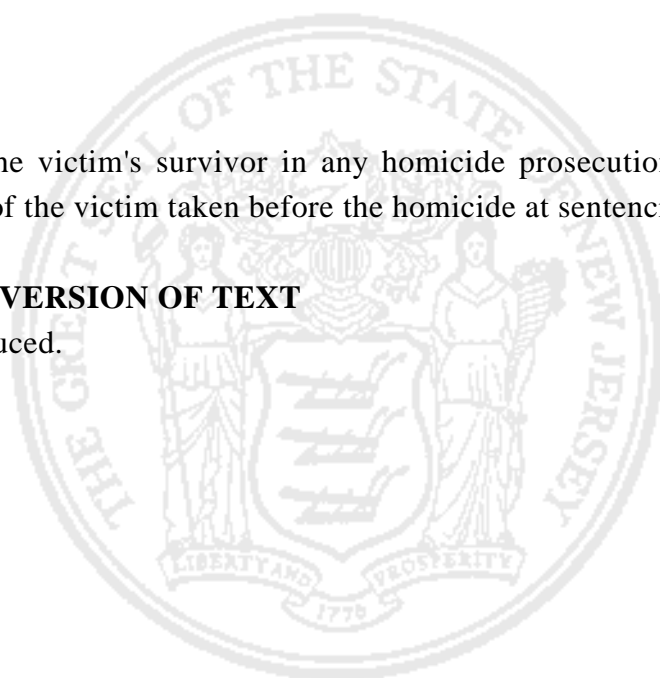
**Assemblymen Asselta, Gibson, Assemblywoman Heck, Assemblymen
LeFevre, Luongo, Malone, Senators Allen, Cardinale, Robertson and
Inverso**

SYNOPSIS

Permits the victim's survivor in any homicide prosecution to present a photograph of the victim taken before the homicide at sentencing.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 11/16/1999)

A17 COLLINS, COTTRELL

2

1 AN ACT concerning homicide prosecutions and amending
2 N.J.S.2C:11-3 and P.L.1985, c.249.

3

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

6

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

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

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

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

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

35 b. (1) Murder is a crime of the first degree but a person convicted
36 of murder shall be sentenced, except as provided in subsection c. of
37 this section, by the court to a term of 30 years, during which the
38 person shall not be eligible for parole, or be sentenced to a specific
39 term of years which shall be between 30 years and life imprisonment
40 of which the person shall serve 30 years before being eligible for
41 parole.

42 (2) If the victim was a law enforcement officer and was murdered
43 while performing his official duties or was murdered because of his

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 status as a law enforcement officer, the person convicted of that
2 murder shall be sentenced, except as otherwise provided in subsection
3 c. of this section, by the court to a term of life imprisonment, during
4 which the person shall not be eligible for parole.

5 (3) A person convicted of murder and who is not sentenced to
6 death under this section shall be sentenced to a term of life
7 imprisonment without eligibility for parole if the murder was
8 committed under all of the following circumstances:

9 (a) The victim is less than 14 years old; and

10 (b) The act is committed in the course of the commission, whether
11 alone or with one or more persons, of a violation of N.J.S.2C:14-2 or
12 N.J.S.2C:14-3.

13 The defendant shall not be entitled to a deduction of commutation
14 and work credits from that sentence.

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

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

26 Where the defendant has been tried by a jury, the proceeding shall
27 be conducted by the judge who presided at the trial and before the jury
28 which determined the defendant's guilt, except that, for good cause,
29 the court may discharge that jury and conduct the proceeding before
30 a jury empaneled for the purpose of the proceeding. Where the
31 defendant has entered a plea of guilty or has been tried without a jury,
32 the proceeding shall be conducted by the judge who accepted the
33 defendant's plea or who determined the defendant's guilt and before a
34 jury empaneled for the purpose of the proceeding. On motion of the
35 defendant and with consent of the prosecuting attorney the court may
36 conduct a proceeding without a jury. Nothing in this subsection shall
37 be construed to prevent the participation of an alternate juror in the
38 sentencing proceeding if one of the jurors who rendered the guilty
39 verdict becomes ill or is otherwise unable to proceed before or during
40 the sentencing proceeding.

41 (2) (a) At the proceeding, the State shall have the burden of
42 establishing beyond a reasonable doubt the existence of any
43 aggravating factors set forth in paragraph (4) of this subsection. The
44 defendant shall have the burden of producing evidence of the existence
45 of any mitigating factors set forth in paragraph (5) of this subsection
46 but shall not have a burden with regard to the establishment of a

1 mitigating factor.

2 (b) The admissibility of evidence offered by the State to establish
3 any of the aggravating factors shall be governed by the rules governing
4 the admission of evidence at criminal trials. The defendant may offer,
5 without regard to the rules governing the admission of evidence at
6 criminal trials, reliable evidence relevant to any of the mitigating
7 factors. If the defendant produces evidence in mitigation which would
8 not be admissible under the rules governing the admission of evidence
9 at criminal trials, the State may rebut that evidence without regard to
10 the rules governing the admission of evidence at criminal trials.

11 (c) Evidence admitted at the trial, which is relevant to the
12 aggravating and mitigating factors set forth in paragraphs (4) and (5)
13 of this subsection, shall be considered without the necessity of
14 reintroducing that evidence at the sentencing proceeding; provided
15 that the fact finder at the sentencing proceeding was present as either
16 the fact finder or the judge at the trial.

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

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

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

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

35 (a) If the jury or the court finds that any aggravating factors exist
36 and that all of the aggravating factors outweigh beyond a reasonable
37 doubt all of the mitigating factors, the court shall sentence the
38 defendant to death.

39 (b) If the jury or the court finds that no aggravating factors exist,
40 or that all of the aggravating factors which exist do not outweigh all
41 of the mitigating factors, the court shall sentence the defendant
42 pursuant to subsection b.

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

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

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

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

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

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

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

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

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

22 (h) The defendant murdered a public servant, as defined in
23 N.J.S.2C:27-1, while the victim was engaged in the performance of his
24 official duties, or because of the victim's status as a public servant;

25 (i) The defendant: (i) as a leader of a narcotics trafficking
26 network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
27 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
28 promise solicited the commission of the offense or (ii) committed the
29 offense at the direction of a leader of a narcotics trafficking network
30 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
31 in N.J.S.2C:35-3;

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

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

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

37 (a) The defendant was under the influence of extreme mental or
38 emotional disturbance insufficient to constitute a defense to
39 prosecution;

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

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

43 (d) The defendant's capacity to appreciate the wrongfulness of his
44 conduct or to conform his conduct to the requirements of the law was
45 significantly impaired as the result of mental disease or defect or
46 intoxication, but not to a degree sufficient to constitute a defense to

1 prosecution;

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

4 (f) The defendant has no significant history of prior criminal
5 activity;

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

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

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

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

26 e. Every judgment of conviction which results in a sentence of
27 death under this section shall be appealed, pursuant to the Rules of
28 Court, to the Supreme Court. Upon the request of the defendant, the
29 Supreme Court shall also determine whether the sentence is
30 disproportionate to the penalty imposed in similar cases, considering
31 both the crime and the defendant. Proportionality review under this
32 section shall be limited to a comparison of similar cases in which a
33 sentence of death has been imposed under subsection c. of this section.
34 In any instance in which the defendant fails, or refuses to appeal, the
35 appeal shall be taken by the Office of the Public Defender or other
36 counsel appointed by the Supreme Court for that purpose.

37 f. Prior to the jury's sentencing deliberations, the trial court shall
38 inform the jury of the sentences which may be imposed pursuant to
39 subsection b. of this section on the defendant if the defendant is not
40 sentenced to death. The jury shall also be informed that a failure to
41 reach a unanimous verdict shall result in sentencing by the court
42 pursuant to subsection b.

43 g. A juvenile who has been tried as an adult and convicted of
44 murder shall not be sentenced pursuant to the provisions of subsection
45 c. but shall be sentenced pursuant to the provisions of subsection b. of
46 this section.

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

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

6 j. In a sentencing proceeding conducted pursuant to this section,
7 the display of a photograph of the victim taken before the homicide
8 shall be permitted.

9 (cf: P.L.1998, c.25)

10
11 2. Section 3 of P.L.1985, c.249 (C.52:4B-36) is amended to read
12 as follows:

13 3. The Legislature finds and declares that crime victims and
14 witnesses are entitled to the following rights:

15 a. To be treated with dignity and compassion by the criminal justice
16 system;

17 b. To be informed about the criminal justice process;

18 c. To be free from intimidation;

19 d. To have inconveniences associated with participation in the
20 criminal justice process minimized to the fullest extent possible;

21 e. To make at least one telephone call provided the call is
22 reasonable in both length and location called;

23 f. To medical assistance if, in the judgment of the law enforcement
24 agency, medical assistance appears necessary;

25 g. To be notified if presence in court is not needed;

26 h. To be informed about available remedies, financial assistance
27 and social services;

28 i. To be compensated for their loss whenever possible;

29 j. To be provided a secure, but not necessarily separate, waiting
30 area during court proceedings;

31 k. To be advised of case progress and final disposition;

32 l. To the prompt return of property when no longer needed as
33 evidence;

34 m. To submit a written statement about the impact of the crime to
35 a representative of the county prosecutor's office which shall be
36 considered prior to the prosecutor's final decision concerning whether
37 formal criminal charges will be filed; and

38 n. To make, prior to sentencing, an in-person statement directly
39 to the sentencing court concerning the impact of the crime.

40 This statement is to be made in addition to the statement permitted
41 for inclusion in the presentence report by N.J.S.2C:44-6.

42 In any homicide prosecution the victim's survivor may display
43 directly to the sentencing court at the time of this statement a
44 photograph of the victim taken before the homicide.

45 (cf: P.L.1991, c.44, s.1)

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 17

STATE OF NEW JERSEY

DATED: JUNE 14, 1999

The Assembly Judiciary Committee reports favorably Assembly Bill No. 17.

This bill permits a homicide victim's survivor to display a photograph of the victim taken before the homicide at sentencing. This legislation was prompted by the murder of Nielsa Mason and her family's efforts to obtain judicial permission, efforts which were ultimately unsuccessful, to display her photograph at the sentencing phase of the trial. It is the committee's intent that this legislation, at the request of the sponsors, be known as "Nielsa's Law."

This bill amends the murder statute, N.J.S.A.2C:11-3 to permit in a sentencing proceeding for murder the display of a photograph of the victim taken before the homicide by adding a new subsection j. to apply to all sentencing proceedings. In that same section, the bill amends the paragraph specifically concerning death penalty sentencing. In regard to the victim and survivor evidence presented by the State in determining the appropriate weight to give mitigating evidence presented by the defendant in death penalty cases, the bill would define "victim and survivor evidence" as including the display of a photograph of the victim taken before the homicide.

The bill also amends N.J.S.A.52:4B-36 concerning the right of a victim to make, prior to sentencing, an in-person statement directly to a sentencing court concerning the impact of a crime to include that in any homicide prosecution the victim's survivor may present at this time a photograph of the victim taken before the homicide. Criminal homicide includes murder, manslaughter and death by auto.

Finally the bill leaves to the Supreme Court the matter of issuing court rules pertaining to procedures governing these displays to ensure uniformity including, the size of the photo, the permissible duration of the display and where in the courtroom this display may take place.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 17

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 1999

The Senate Judiciary Committee reports favorably Assembly Bill No. 17.

This bill would permit in the sentencing proceeding conducted after a conviction in a murder case in which the death penalty is sought, the display of a photograph of the victim taken before the murder. The bill defines "victim and survivor evidence" in a death penalty proceeding to include the display of the victim's photograph.

The bill would also amend N.J.S.52:4B-36 which permits a victim to make, prior to sentencing, an in-person statement directly to the sentencing court. This bill would, in cases involving criminal homicide (murder, manslaughter, death by auto), permit the statement of the victim's survivor to include the presentation of a photograph of the victim taken prior to the homicide.

In addition, the bill provides that the Supreme Court may promulgate a court rules pertaining to procedures governing these displays to ensure uniformity including the size of the photo, the permissible duration of the display and where in the courtroom the display may take place.

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1820 and 1936

STATE OF NEW JERSEY
208th LEGISLATURE

ADOPTED NOVEMBER 8, 1999

Sponsored by:

Senator DIANE ALLEN

District 7 (Burlington and Camden)

Senator GERALD CARDINALE

District 39 (Bergen)

Senator RAYMOND J. ZANE

District 3 (Salem, Cumberland and Gloucester)

Co-Sponsored by:

Senators Robertson and Inverso

SYNOPSIS

Permits the victim's survivor in any homicide prosecution to present a photograph of the victim taken before the homicide at sentencing.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate Judiciary Committee.



(Sponsorship Updated As Of: 11/16/1999)

1 **AN ACT** concerning homicide prosecutions and amending
2 N.J.S.2C:11-3 and P.L.1985, c.249.

3

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

6

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 one
16 or more other persons, is engaged in the commission of, or an attempt
17 to commit, or flight after committing or attempting to commit robbery,
18 sexual assault, arson, burglary, kidnapping, carjacking or criminal
19 escape, and in the course of such crime or of immediate flight
20 therefrom, any person causes the death of a person other than one of
21 the participants; except that in any prosecution under this subsection,
22 in which the defendant was not the only participant in the underlying
23 crime, it is an affirmative defense 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 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 by
30 law-abiding persons; and

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

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

36 b. (1) Murder is a crime of the first degree but a person convicted
37 of murder shall be sentenced, except as provided in subsection c. of
38 this section, by the court to a term of 30 years, during which the
39 person shall not be eligible for parole, or be sentenced to a specific
40 term of years which shall be between 30 years and life imprisonment
41 of which the person shall serve 30 years before being eligible for
42 parole.

43 (2) If the victim was a law enforcement officer and was murdered

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 while performing his official duties or was murdered because of his
2 status as a law enforcement officer, the person convicted of that
3 murder shall be sentenced, except as otherwise provided in subsection
4 c. of this section, by the court to a term of life imprisonment, during
5 which the person shall not be eligible for parole.

6 (3) A person convicted of murder and who is not sentenced to
7 death under this section shall be sentenced to a term of life
8 imprisonment without eligibility for parole if the murder was
9 committed under all of the following circumstances:

10 (a) The victim is less than 14 years old; and

11 (b) The act is committed in the course of the commission, whether
12 alone or with one or more persons, of a violation of N.J.S.2C:14-2 or
13 N.J.S.2C:14-3.

14 The defendant shall not be entitled to a deduction of commutation
15 and work credits from that sentence.

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

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

27 Where the defendant has been tried by a jury, the proceeding shall
28 be conducted by the judge who presided at the trial and before the jury
29 which determined the defendant's guilt, except that, for good cause,
30 the court may discharge that jury and conduct the proceeding before
31 a jury empaneled for the purpose of the proceeding. Where the
32 defendant has entered a plea of guilty or has been tried without a jury,
33 the proceeding shall be conducted by the judge who accepted the
34 defendant's plea or who determined the defendant's guilt and before a
35 jury empaneled for the purpose of the proceeding. On motion of the
36 defendant and with consent of the prosecuting attorney the court may
37 conduct a proceeding without a jury. Nothing in this subsection shall
38 be construed to prevent the participation of an alternate juror in the
39 sentencing proceeding if one of the jurors who rendered the guilty
40 verdict becomes ill or is otherwise unable to proceed before or during
41 the sentencing proceeding.

42 (2) (a) At the proceeding, the State shall have the burden of
43 establishing beyond a reasonable doubt the existence of any
44 aggravating factors set forth in paragraph (4) of this subsection. The
45 defendant shall have the burden of producing evidence of the existence
46 of any mitigating factors set forth in paragraph (5) of this subsection

1 but shall not have a burden with regard to the establishment of a
2 mitigating factor.

3 (b) The admissibility of evidence offered by the State to establish
4 any of the aggravating factors shall be governed by the rules governing
5 the admission of evidence at criminal trials. The defendant may offer,
6 without regard to the rules governing the admission of evidence at
7 criminal trials, reliable evidence relevant to any of the mitigating
8 factors. If the defendant produces evidence in mitigation which would
9 not be admissible under the rules governing the admission of evidence
10 at criminal trials, the State may rebut that evidence without regard to
11 the rules governing the admission of evidence at criminal trials.

12 (c) Evidence admitted at the trial, which is relevant to the
13 aggravating and mitigating factors set forth in paragraphs (4) and (5)
14 of this subsection, shall be considered without the necessity of
15 reintroducing that evidence at the sentencing proceeding; provided
16 that the fact finder at the sentencing proceeding was present as either
17 the fact finder or the judge at the trial.

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

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

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

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

36 (a) If the jury or the court finds that any aggravating factors exist
37 and that all of the aggravating factors outweigh beyond a reasonable
38 doubt all of the mitigating factors, the court shall sentence the
39 defendant to death.

40 (b) If the jury or the court finds that no aggravating factors exist,
41 or that all of the aggravating factors which exist do not outweigh all
42 of the mitigating factors, the court shall sentence the defendant
43 pursuant to subsection b.

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

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

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

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

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

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

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

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

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

24 (h) The defendant murdered a public servant, as defined in
25 N.J.S.2C:27-1, while the victim was engaged in the performance of his
26 official duties, or because of the victim's status as a public servant;

27 (i) The defendant: (i) as a leader of a narcotics trafficking
28 network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
29 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
30 promise solicited the commission of the offense or (ii) committed the
31 offense at the direction of a leader of a narcotics trafficking network
32 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
33 in N.J.S.2C:35-3;

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

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

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

39 (a) The defendant was under the influence of extreme mental or
40 emotional disturbance insufficient to constitute a defense to
41 prosecution;

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

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

45 (d) The defendant's capacity to appreciate the wrongfulness of his
46 conduct or to conform his conduct to the requirements of the law was

1 significantly impaired as the result of mental disease or defect or
2 intoxication, but not to a degree sufficient to constitute a defense to
3 prosecution;

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

6 (f) The defendant has no significant history of prior criminal
7 activity;

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

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

12 (6) When a defendant at a sentencing proceeding presents
13 evidence of the defendant's character or record pursuant to
14 subparagraph (h) of paragraph (5) of this subsection, the State may
15 present evidence of the murder victim's character and background and
16 of the impact of the murder on the victim's survivors. If the jury finds
17 that the State has proven at least one aggravating factor beyond a
18 reasonable doubt and the jury finds the existence of a mitigating factor
19 pursuant to subparagraph (h) of paragraph (5) of this subsection, the
20 jury may consider the victim and survivor evidence presented by the
21 State pursuant to this paragraph in determining the appropriate weight
22 to give mitigating evidence presented pursuant to subparagraph (h) of
23 paragraph (5) of this subsection. As used in this paragraph "victim
24 and survivor evidence" may include the display of a photograph of the
25 victim taken before the homicide.

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

28 e. Every judgment of conviction which results in a sentence of
29 death under this section shall be appealed, pursuant to the Rules of
30 Court, to the Supreme Court. Upon the request of the defendant, the
31 Supreme Court shall also determine whether the sentence is
32 disproportionate to the penalty imposed in similar cases, considering
33 both the crime and the defendant. Proportionality review under this
34 section shall be limited to a comparison of similar cases in which a
35 sentence of death has been imposed under subsection c. of this section.
36 In any instance in which the defendant fails, or refuses to appeal, the
37 appeal shall be taken by the Office of the Public Defender or other
38 counsel appointed by the Supreme Court for that purpose.

39 f. Prior to the jury's sentencing deliberations, the trial court shall
40 inform the jury of the sentences which may be imposed pursuant to
41 subsection b. of this section on the defendant if the defendant is not
42 sentenced to death. The jury shall also be informed that a failure to
43 reach a unanimous verdict shall result in sentencing by the court
44 pursuant to subsection b.

45 g. A juvenile who has been tried as an adult and convicted of
46 murder shall not be sentenced pursuant to the provisions of subsection

1 c. but shall be sentenced pursuant to the provisions of subsection b. of
2 this section.

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

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

8 j. In a sentencing proceeding conducted pursuant to this section,
9 the display of a photograph of the victim taken before the homicide
10 shall be permitted.

11 (cf: P.L.1998, c.25)

12

13 2. Section 3 of P.L.1985, c.249 (C.52:4B-36) is amended to read
14 as follows:

15 3. The Legislature finds and declares that crime victims and
16 witnesses are entitled to the following rights:

17 a. To be treated with dignity and compassion by the criminal
18 justice system;

19 b. To be informed about the criminal justice process;

20 c. To be free from intimidation;

21 d. To have inconveniences associated with participation in the
22 criminal justice process minimized to the fullest extent possible;

23 e. To make at least one telephone call provided the call is
24 reasonable in both length and location called;

25 f. To medical assistance if, in the judgment of the law enforcement
26 agency, medical assistance appears necessary;

27 g. To be notified if presence in court is not needed;

28 h. To be informed about available remedies, financial assistance
29 and social services;

30 i. To be compensated for their loss whenever possible;

31 j. To be provided a secure, but not necessarily separate, waiting
32 area during court proceedings;

33 k. To be advised of case progress and final disposition;

34 l. To the prompt return of property when no longer needed as
35 evidence;

36 m. To submit a written statement about the impact of the crime to
37 a representative of the county prosecutor's office which shall be
38 considered prior to the prosecutor's final decision concerning whether
39 formal criminal charges will be filed; and

40 n. To make, prior to sentencing, an in-person statement directly
41 to the sentencing court concerning the impact of the crime.

42 This statement is to be made in addition to the statement permitted
43 for inclusion in the presentence report by N.J.S.2C:44-6.

44 In any homicide prosecution the victim's survivor may display

1 directly to the sentencing court at the time of this statement a
2 photograph of the victim taken before the homicide.

3 (cf: P.L.1991,c.44,s.1)

4

5 3. (New Section) The Supreme Court may adopt court rules
6 pertaining to the display of a photograph of a homicide victim in court
7 as permitted in N.J.S.2C:11-3 concerning murder and in section 3 of
8 P.L.1985, c.249 (C.52:4B-36) concerning other homicide
9 prosecutions. These court rules may include, but shall not be limited
10 to, the following matters to ensure uniformity in all homicide
11 prosecutions:

12 a. the size of the photograph;

13 b. the duration of the display;

14 c. the location of the photograph in the courtroom.

15

16 4. This act shall take effect immediately.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 1820 and 1936

STATE OF NEW JERSEY

DATED: NOVEMBER 8, 1999

The Senate Judiciary Committee reports favorably a committee substitute for Senate Bill Nos. 1820 and 1936.

The committee substitute would permit in the sentencing proceeding conducted after a conviction in a murder case in which the death penalty is sought, the display of a photograph of the victim taken before the murder. The substitute defines "victim and survivor evidence" in a death penalty proceeding to include the display of the victim's photograph.

The substitute would also amend N.J.S.52:4B-36 which permits victim to make, prior to sentencing, an in-person statement directly to the sentencing court. The substitute would, permit in cases involving criminal homicide (murder, manslaughter, death by auto), permit the statement of the victim's survivor to include the presentation of a photograph of the victim taken prior to the homicide.

In addition, the committee substitute would provide that the Supreme Court may promulgate court rules pertaining to procedures governing these displays to ensure uniformity including the size of the photo, the permissible duration of the display and where in the courtroom the display may take place.

SENATE, No. 1936

STATE OF NEW JERSEY
208th LEGISLATURE

INTRODUCED JUNE 7, 1999

Sponsored by:

Senator RAYMOND J. ZANE

District 3 (Salem, Cumberland and Gloucester)

SYNOPSIS

Permits the victim's survivor in any homicide prosecution to present a photograph of the victim taken before the homicide at sentencing.

CURRENT VERSION OF TEXT

As introduced.



S1936 ZANE

2

1 AN ACT concerning homicide prosecutions and amending
2 N.J.S.2C:11-3 and P.L.1985, c.249.

3

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

6

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

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

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

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

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

35 b. (1) Murder is a crime of the first degree but a person convicted
36 of murder shall be sentenced, except as provided in subsection c. of
37 this section, by the court to a term of 30 years, during which the
38 person shall not be eligible for parole, or be sentenced to a specific
39 term of years which shall be between 30 years and life imprisonment
40 of which the person shall serve 30 years before being eligible for
41 parole.

42 (2) If the victim was a law enforcement officer and was murdered
43 while performing his official duties or was murdered because of his

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 status as a law enforcement officer, the person convicted of that
2 murder shall be sentenced, except as otherwise provided in subsection
3 c. of this section, by the court to a term of life imprisonment, during
4 which the person shall not be eligible for parole.

5 (3) A person convicted of murder and who is not sentenced to
6 death under this section shall be sentenced to a term of life
7 imprisonment without eligibility for parole if the murder was
8 committed under all of the following circumstances:

9 (a) The victim is less than 14 years old; and

10 (b) The act is committed in the course of the commission, whether
11 alone or with one or more persons, of a violation of N.J.S.2C:14-2 or
12 N.J.S.2C:14-3.

13 The defendant shall not be entitled to a deduction of commutation
14 and work credits from that sentence.

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

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

26 Where the defendant has been tried by a jury, the proceeding shall
27 be conducted by the judge who presided at the trial and before the jury
28 which determined the defendant's guilt, except that, for good cause,
29 the court may discharge that jury and conduct the proceeding before
30 a jury empaneled for the purpose of the proceeding. Where the
31 defendant has entered a plea of guilty or has been tried without a jury,
32 the proceeding shall be conducted by the judge who accepted the
33 defendant's plea or who determined the defendant's guilt and before a
34 jury empaneled for the purpose of the proceeding. On motion of the
35 defendant and with consent of the prosecuting attorney the court may
36 conduct a proceeding without a jury. Nothing in this subsection shall
37 be construed to prevent the participation of an alternate juror in the
38 sentencing proceeding if one of the jurors who rendered the guilty
39 verdict becomes ill or is otherwise unable to proceed before or during
40 the sentencing proceeding.

41 (2) (a) At the proceeding, the State shall have the burden of
42 establishing beyond a reasonable doubt the existence of any
43 aggravating factors set forth in paragraph (4) of this subsection. The
44 defendant shall have the burden of producing evidence of the existence
45 of any mitigating factors set forth in paragraph (5) of this subsection
46 but shall not have a burden with regard to the establishment of a

1 mitigating factor.

2 (b) The admissibility of evidence offered by the State to establish
3 any of the aggravating factors shall be governed by the rules governing
4 the admission of evidence at criminal trials. The defendant may offer,
5 without regard to the rules governing the admission of evidence at
6 criminal trials, reliable evidence relevant to any of the mitigating
7 factors. If the defendant produces evidence in mitigation which would
8 not be admissible under the rules governing the admission of evidence
9 at criminal trials, the State may rebut that evidence without regard to
10 the rules governing the admission of evidence at criminal trials.

11 (c) Evidence admitted at the trial, which is relevant to the
12 aggravating and mitigating factors set forth in paragraphs (4) and (5)
13 of this subsection, shall be considered without the necessity of
14 reintroducing that evidence at the sentencing proceeding; provided
15 that the fact finder at the sentencing proceeding was present as either
16 the fact finder or the judge at the trial.

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

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

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

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

35 (a) If the jury or the court finds that any aggravating factors exist
36 and that all of the aggravating factors outweigh beyond a reasonable
37 doubt all of the mitigating factors, the court shall sentence the
38 defendant to death.

39 (b) If the jury or the court finds that no aggravating factors exist,
40 or that all of the aggravating factors which exist do not outweigh all
41 of the mitigating factors, the court shall sentence the defendant
42 pursuant to subsection b.

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

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

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

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

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

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

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

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

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

22 (h) The defendant murdered a public servant, as defined in
23 N.J.S.2C:27-1, while the victim was engaged in the performance of his
24 official duties, or because of the victim's status as a public servant;

25 (i) The defendant: (i) as a leader of a narcotics trafficking
26 network as defined in N.J.S.2C:35-3 and in furtherance of a conspiracy
27 enumerated in N.J.S.2C:35-3, committed, commanded or by threat or
28 promise solicited the commission of the offense or (ii) committed the
29 offense at the direction of a leader of a narcotics trafficking network
30 as defined in N.J.S.2C:35-3 in furtherance of a conspiracy enumerated
31 in N.J.S.2C:35-3;

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

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

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

37 (a) The defendant was under the influence of extreme mental or
38 emotional disturbance insufficient to constitute a defense to
39 prosecution;

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

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

43 (d) The defendant's capacity to appreciate the wrongfulness of his
44 conduct or to conform his conduct to the requirements of the law was
45 significantly impaired as the result of mental disease or defect or
46 intoxication, but not to a degree sufficient to constitute a defense to

1 prosecution;

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

4 (f) The defendant has no significant history of prior criminal
5 activity;

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

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

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

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

26 e. Every judgment of conviction which results in a sentence of
27 death under this section shall be appealed, pursuant to the Rules of
28 Court, to the Supreme Court. Upon the request of the defendant, the
29 Supreme Court shall also determine whether the sentence is
30 disproportionate to the penalty imposed in similar cases, considering
31 both the crime and the defendant. Proportionality review under this
32 section shall be limited to a comparison of similar cases in which a
33 sentence of death has been imposed under subsection c. of this section.
34 In any instance in which the defendant fails, or refuses to appeal, the
35 appeal shall be taken by the Office of the Public Defender or other
36 counsel appointed by the Supreme Court for that purpose.

37 f. Prior to the jury's sentencing deliberations, the trial court shall
38 inform the jury of the sentences which may be imposed pursuant to
39 subsection b. of this section on the defendant if the defendant is not
40 sentenced to death. The jury shall also be informed that a failure to
41 reach a unanimous verdict shall result in sentencing by the court
42 pursuant to subsection b.

43 g. A juvenile who has been tried as an adult and convicted of
44 murder shall not be sentenced pursuant to the provisions of subsection
45 c. but shall be sentenced pursuant to the provisions of subsection b. of
46 this section.

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

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

6 j. In a sentencing proceeding conducted pursuant to this section,
7 the display of a photograph of the victim taken before the homicide
8 shall be permitted.

9 (cf: P.L.1998, c.25)

10
11 2. Section 3 of P.L.1985, c.249 (C.52:4B-36) is amended to read
12 as follows:

13 3. The Legislature finds and declares that crime victims and
14 witnesses are entitled to the following rights:

15 a. To be treated with dignity and compassion by the criminal justice
16 system;

17 b. To be informed about the criminal justice process;

18 c. To be free from intimidation;

19 d. To have inconveniences associated with participation in the
20 criminal justice process minimized to the fullest extent possible;

21 e. To make at least one telephone call provided the call is
22 reasonable in both length and location called;

23 f. To medical assistance if, in the judgment of the law enforcement
24 agency, medical assistance appears necessary;

25 g. To be notified if presence in court is not needed;

26 h. To be informed about available remedies, financial assistance
27 and social services;

28 i. To be compensated for their loss whenever possible;

29 j. To be provided a secure, but not necessarily separate, waiting
30 area during court proceedings;

31 k. To be advised of case progress and final disposition;

32 l. To the prompt return of property when no longer needed as
33 evidence;

34 m. To submit a written statement about the impact of the crime to
35 a representative of the county prosecutor's office which shall be
36 considered prior to the prosecutor's final decision concerning whether
37 formal criminal charges will be filed; and

38 n. To make, prior to sentencing, an in-person statement directly
39 to the sentencing court concerning the impact of the crime.

40 This statement is to be made in addition to the statement permitted
41 for inclusion in the presentence report by N.J.S.2C:44-6.

42 In any homicide prosecution the victim's survivor may display
43 directly to the sentencing court at the time of this statement a
44 photograph of the victim taken before the homicide.

45 (cf: P.L.1991, c.44, s.1)

1 3. (New section) The Supreme Court may adopt court rules
2 pertaining to the display of a photograph of a homicide victim in court
3 as permitted in N.J.S.2C:11-3 concerning murder and in section 3 of
4 P.L.1985, c.249 (C.52:4B-36) concerning other homicide
5 prosecutions. These court rules may include, but shall not be limited
6 to, the following matters to ensure uniformity in all homicide
7 prosecutions:

- 8 a. the size of the photograph;
9 b. the duration of the display;
10 c. the location of the photograph in the courtroom.

11
12 4. This act shall take effect immediately.
13
14

15 STATEMENT
16

17 This bill permits a homicide victim's survivor to display a
18 photograph of the victim taken before the homicide at sentencing.

19 This bill amends the murder statute, N.J.S.A.2C:11-3 to permit in
20 a sentencing proceeding for murder the display of a photograph of the
21 victim taken before the homicide by adding a new subsection j. to
22 apply to all sentencing proceedings. In that same section, the bill
23 amends the paragraph specifically concerning death penalty sentencing.
24 In regard to the victim and survivor evidence presented by the State
25 in determining the appropriate weight to give mitigating evidence
26 presented by the defendant in death penalty cases, the bill would define
27 "victim and survivor evidence" as including the display of a
28 photograph of the victim taken before the homicide.

29 The bill also amends N.J.S.A.52:4B-36 concerning the right of a
30 victim to make, prior to sentencing, an in-person statement directly to
31 a sentencing court concerning the impact of a crime to include that in
32 any homicide prosecution the victim's survivor may present at this time
33 a photograph of the victim taken before the homicide. Criminal
34 homicide includes murder, manslaughter and death by auto.

35 Finally the bill leaves to the Supreme Court the matter of issuing
36 court rules pertaining to procedures governing these displays to ensure
37 uniformity including, the size of the photo, the permissible duration of
38 the display and where in the courtroom this display may take place.

39 The sponsor believes that permitting such a photo display will show
40 the victim as a unique individual in those cases in which, by definition,
41 the victim is unable to appear in court. Permitting the display of a
42 photograph in homicide cases is a logical extension of any victim's
43 constitutionally protected right to be present at public judicial
44 proceedings.

Office of the Governor
NEWS RELEASE

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Governor Signs Bill Protecting Senior Citizens from Fraud And Murder Victims' Rights, Among Other Legislation

Governor Christie Whitman today signed "Nielsa's Law" which amends the murder statute in New Jersey to permit the display of a photograph of a murder victim at the sentencing portion of the murder trial. The Governor also signed the Senior Citizens Fraudulent Claims Act that seeks to amend the New Jersey Consumer Fraud Act to impose heightened penalties against individuals who defraud senior citizens.

Neilsa's Law

"The passage of Nielsa's Law doesn't bring back Nielsa Mason or ease the tremendous pain and suffering of the Mason family, but I believe the bill will ensure that murder victims, who obviously can't be present at trial, are represented in a dignified matter," said Gov. Whitman. "It's something the Mason family wanted at the trial on their murdered daughter's behalf - and we listened to their pleas to make the system more accommodating for survivors."

This bill amends the murder statute to permit the display of a photograph of a murder victim at the sentencing portion of the murder trial, in capital and non-capital murders. It would authorize such a photograph to be shown to a jury during the death penalty phase of a capital case, as well as to a judge during the sentencing portion of a non-capital case.

It also amends the law that permits crime victims to make "victim impact" statements to the sentencing court - authorizing victims to display photographs as part of their victim impact statements to the court in homicide cases.

Under previous law, victims could make victim impact statements to the sentencing court and to the penalty phase jury in a death penalty case. The law was silent as to whether photographs could be displayed and, as a result, some courts permitted such displays while others prohibited them in the absence of statutory guidance on this subject. Nielsa's Law authorizes the Supreme Court to issue court rules governing these displays to ensure uniformity regarding the photo's size, the permissible duration of the display and where in the courtroom the display may take place.

Nielsa's Law, **A-17**, was sponsored by Assembly Members Jack Collins (R-Salem/Cumberland/Gloucester) and Melvin Cottrell (R-Burlington/Monmouth/Ocean) and Senators Diane B. Allen (R-Burlington/Camden), Dr. Gerald Cardinale (R-Bergen) and Raymond J. Zane (D-Salem/Cumberland/Gloucester).

Senior Citizens Fraudulent Claims Act

Referring to her passage of the Senior Citizens Fraudulent Claims Act, Gov. Whitman said "We need to protect the many faces in our New Jersey family - and that includes our elderly family members. Our state has one of the largest senior citizen populations in the nation - and it's growing. That's why I applaud this Act and its goal of protecting our seniors from fraud."

Introduced following a Feb.1997 report by the Division of Consumer Affairs' Elder Fraud Task Force, the Senior Citizens Fraudulent Claims Act applies to seniors over 60 years old and aims to amend the New Jersey Consumer Fraud Act through enhanced penalties for fraud.

If the Attorney General's Office were to successfully bring an action to enforce the Consumer Fraud Act on behalf of a senior citizen, the courts will now have to order restitution at twice the amount wrongfully acquired from the senior citizen. Also, any person who fails to make such a court-ordered restitution is subject to punishment for criminal contempt. The bill amends the Consumer Fraud Act to clarify that any penalties imposed under the Act are to be exclusive of (and in addition to) any monies or property that are ordered to be paid or restored.

The Senior Citizens Fraudulent Claims Act legislation, **A- 1512**, was sponsored by Assembly Members Joseph R. Malone (R-Burlington/Monmouth/Ocean) and Melvin Cottrell (R-Burlington/Monmouth/Ocean) and Senator Norman M. Robertson (R- Essex/Passaic).

In addition, Gov. Whitman signed today these pieces of legislation:

S-1235, sponsored by Senators Dr. Gerald Cardinale (R-Bergen) and Leonard T. Connors (R-Atlantic/Burlington/Ocean) and Assemblyman John V. Kelly (R-Bergen/Essex/Passaic), clarifies the 30-year rent control exemption for certain rental multiple dwelling units constructed without initial mortgage financing. The bill's purpose is to increase the availability of newly constructed rental housing for New Jersey residents and clarify the original intent of the Legislature in providing this exemption when it was enacted in 1987.

S-1808, sponsored by Senator Dr. Gerald Cardinale (R-Bergen) and Assembly Members Jeffrey W. Moran (R-Atlantic/Burlington/Ocean) and Anthony Impreveduto (D-Bergen/Hudson), exempts fair market value commercial leases and terminal rental adjustment clause (TRAC) leases from the provisions of the "Consumer Protection Leasing Act." The initiative is designed to increase leasing opportunities for State businesses as it recognizes that the consumer protections in the Act are not needed for businesses that establish "bargained-for" contracts. Most other states, including New York and California, exempt commercial leases from their leasing statutes.

ACS, A-1352 and A-200, sponsored by Assembly Members Carol J. Murphy (R-Essex/Morris/Passaic), Alan M. Augustine (R-Middlesex/Morris/Somerset/Union), George F. Geist (R-Camden/Gloucester), Nicholas Asselta (R-Cape May/Atlantic/Cumberland) and Charles K. Zisa (D-Bergen) and Senator John J. Matheussen (R-Camden/Gloucester), clarifies the crime of hindering a prosecution. Hindering is a crime of the third or fourth degree, or a disorderly persons offense, depending on the underlying circumstances. The bill amends the statute to say that hindering: 1) is when a person provides false information to a police officer regardless of whether the information is volunteered or is in response to an inquiry; (2) applies when false information is provided to hinder

detention or investigation of a criminal defense; and (3) includes false information given to a police officer connected with a violation of the motor vehicle laws and a civil State investigator in connection with the violation of the Fraud Prevention Act.

SCS, A-1793, sponsored by Assemblyman Paul DiGaetano (R-Bergen/Essex/Passaic), authorizes the creation of a non-lapsing recreation trust fund by counties and municipalities that have not established a board of recreation commissioners. The fund is to be used to offset the costs of operating county or municipal recreational programs. Currently, only counties or municipalities with an established board of recreation commissioners can create a dedicated fund for recreational purposes. The bill gives flexibility to those who do not wish to establish a full board of commissioners.

A-1172, sponsored by Assemblywoman Connie Myers (R-Warren/Hunterdon/Mercer) and Senators Diane B. Allen (R-Burlington/Camden) and William E. Schluter (R-Warren/Hunterdon/Mercer), creates procedures for the takeover of certain small sewer companies. The bill allows the Department of Environmental Protection and the Board of Public Utilities to order the takeover of a small sewer company where there is a record of significant, unresolved environmental violations. Currently, the BPU can order the takeover of a small water company by another public or private entity, if it determines that the former can't adequately serve its customers.

This legislation authorizes the DEP and BPU to order the acquisition of both a small water company and a small sewer company if either company has a record of significant, unresolved violations, provided both companies serve a common residential development, were established by a developer to service that development and are under common control and ownership.

Entities taking over a small water sewer company will not be held liable for prior environmental liabilities, including penalties or levies against the previous owner. Public entities will be given expedited access to capital financing provided by the Environmental Infrastructure Trust for upgrades necessary for the proper operation of the small sewer of water company.

A-2395, sponsored by Assembly Members David C. Russo (R-Bergen/Passaic) and John S. Wisniewski (D-Middlesex) and Senator Joseph A. Palaia (R-Monmouth), provides certain protections for dismissed non-tenured, certified school employees whose names are required to be maintained on a list. The list, maintained by the State Board of Examiners, contains the names and Social Security numbers of these employees, and the reason for dismissal.

The bill clarifies existing law by providing that a name will only be placed on the list if the employee is dismissed prior to the end of the year for just cause as a result of misconduct in office. If a disciplinary grievance arbitration is conducted, an employee's name can only be placed on the list if just cause due to misconduct is found by the arbitrator.

Also, an employee must be notified if his or her name is placed on the list and must be told when a chief school administrator seeks such information. The bill limits those who can obtain information from this list and says that a person may petition their name being included on the list to the Commissioner of Education. Finally, upon application a person's name will be removed if it has been on the list for at least three years.

Governor Whitman conditionally vetoed this legislation in June of this year. The Governor's recommendations were met and the legislation now clarifies the role of the Commissioner of Education. Specifically, the Commissioner can rule on whether a name is properly on a list, however it does not expand his jurisdiction in determining misconduct.