



PUBLIC HEARING

before

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY COMMITTEE

ASSEMBLY CONCURRENT RESOLUTION NO. 85 ACS

(Amends the State Constitution to provide that a victim of crime is entitled to due process of law, including the right to be informed of, to be present at, and to be heard at appropriate criminal justice proceedings)

December 17, 1990
State House Annex
Room 418
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Assemblywoman Marlene Lynch Ford, Chairman
Assemblyman Frank M. Pelly, Vice Chairman
Assemblyman Joseph Charles, Jr.

ALSO PRESENT:

Patricia Nagle
Office of Legislative Services
Aide, Assembly Judiciary, Law & Public Safety

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



MARLENE LYNCH FORD
CHAIRMAN

FRANK M. PELLY
VICE-CHAIRMAN

Joseph Charles, Jr.
THOMAS J. SHUSTED
GARY W. STUHLTRAGER

New Jersey State Legislature

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY COMMITTEE

STATE HOUSE ANNEX, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 292-5526

REVISED

NOTICE OF PUBLIC HEARING

The Assembly Judiciary, Law and Public Safety Committee will hold a public hearing on **Monday, December 17, 1990 at 9:30 a.m.** in Room 418, State House Annex, Trenton.

The hearing will be held on the following legislation:

ACR-85 ACS
DeCroce/Ford

Amends the State Constitution to provide that a victim of crime is entitled to due process of law, including the right to be informed of, to be present at, and to be heard at appropriate criminal justice proceedings.

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

Please note new date and time.

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ASSEMBLYWOMAN MARLENE LYNCH FORD (Chairperson):

Okay, I think we're going to get started. It's 9:30 on December 17, 1990. This is a mandatory public hearing on the proposed Constitutional Amendment ACR-85, which would amend our State Constitution to provide for certain rights -- within our State Constitution -- for the victims of crimes. We have several people who are interested in testifying on that this morning, and I would like to invite Attorney General Robert Del Tufo to first address us on this issue.

General, it's nice to have you here.

A T T O R N E Y G E N E R A L R O B E R T D E L T U F O:
Thank you and good morning. It's nice to be here. I wanted to be with you because this is the day set for the public hearing on ACR-85, and essentially, I appreciate the opportunity to reiterate the testimony that I gave before this Committee on October 15, 1990. With your permission I would leave a copy of that testimony, and perhaps have it marked as an exhibit for this public hearing.

ASSEMBLYWOMAN FORD: We'll include your testimony as an exhibit at the end of the transcript.

ATTORNEY GENERAL DEL TUFO: Fine. In essence, I appear here on my behalf, on behalf of Governor Florio, and on behalf of each and every one of the 21 County Prosecutors, in support of the adoption of ACR-85. The past treatment and rights of victims of crime has not been the best in this country. And although New Jersey has both by statute and by Attorney General's directive established a procedure to be followed in this regard, the results of that have not been uniform, and we believe that the enactment of this Constitutional Amendment would go far to state clearly, strongly, that victims of crimes have rights as well as defendants, and those rights should be recognized.

There are a couple of further benefits, I think, besides this recognition which I think is civilized in its own

right: And that is that victims of crime have not been dealt with evenhandedly by the system in terms of being excluded from the courtroom on grounds of possible constitutional prejudice to a defendant. We believe very strongly that everyone, especially victims or the family of victims of a crime, have a right to be in a public forum and to view the proceedings and to be able to absorb the proceedings and, indeed, be able to comment upon it and influence the proceedings. So constitutional recognition that victims of crimes have rights will aid in this regard.

And finally, there has been a negative turn in the reporting of crime, particularly violent crime. It is not beyond the pale to believe that this is in part due to the fact that the system -- at least as perceived by victims of crime or relatives of victims of crime -- does not treat people the way that it should. Indeed, in states that have adopted Constitutional amendments recognizing the rights of victims of crime, the reporting of crime has beneficently increased.

It's our belief that this amendment, this confidence in the system, will bear fruits in this regard as well. So, for all of these reasons-- But I would say particularly because it's the right thing to do: to recognize that people who suffer from the effects of crime should have recognized and established rights.

Again, on behalf of myself, the Governor, and the Prosecutors, I urge enactment of this legislation.

ASSEMBLYWOMAN FORD: Thank you, General.

We have the sponsor, the co-sponsor of the legislation, Assemblyman DeCroce here.

A S S E M B L Y M A N A L E X D E C R O C E: Thank you very much, Assemblywoman. First, let me thank you for going on as a co-prime sponsor of this ACR. Let me also, again, publicly thank the administration, as well as Attorney General Del Tufo and his staff for helping us to put together a program

-- I should say not a program, but an ACR that would be acceptable to all parties concerned, frankly.

As everyone is aware, ACR-85 proposes to amend the New Jersey Constitution in order to provide crime victims with certain constitutionally protected rights. I'd like to limit my remarks and possibly respond to any questions that might be requested.

People are rightfully concerned when an amendment to the Constitution is proposed. Our Constitution is the embodiment of fundamental rights and protections. We must be careful when deciding which rights and protections are worthy of the status. The Constitution spells out and the courts have refined rights and protections for criminal defendants. This has been done so that Americans don't suffer loss of liberty or life because of unfair action by their government. Let me assure you that no one in this room who supports ACR-85 has as their goal the diminishment of these rights and protections.

With crime and criminal defendants, however, come crime victims. Their participation and cooperation is necessary in order to have a functioning criminal justice system. We, in New Jersey, have recognized that crime victims are often treated poorly and in response to this, statutorily established in 1985, the Crime Victims' Bill of Rights. We have seen, however, that the rights established in the statute pale in comparison to those protected by the Constitution.

Constitutional rights will always supercede those in statute. It is time to recognize basic constitutional rights of the victims; mainly, the right of victims to be present at public judicial proceedings, subject to the rules of sequestration adopted by the courts. Some argue that this elevation of victims' rights will jeopardize the defendant's right to a fair trial. Critics imply that somehow their trials will be impossible if judges are forced to balance constitutional interests of defendants and victims.

I find this argument unpersuasive. It is a judge's job to balance the rights and the interests of various parties, and dispense justice in a fair and impartial manner. I have confidence in our judiciary that it will conduct fair trials and at the same time accord victims the access and compassion that they deserve.

Concerns have been raised about the impact of this proposal on the very limited and strained resources of our criminal justice system. These are justifiable concerns. But there are some things in life that we simply must do. Treating crime victims with compassion is a must. As I noted earlier, a functioning criminal justice system requires cooperation and participation of victims. A system which is unresponsive to these people causes disillusionment and ultimately breeds contempt. Such a system is doomed to fail. This, I think we all agree, is not acceptable, nor is it economical.

Again, I'd like to point out the administration is very behind this bill, as well as the Attorney General, and as the chief of law enforcement of this State, he will bear a great deal of responsibility in ensuring that crime victims are treated properly. Obviously, he feels that this proposal is workable and, again, I'd like to thank him for his support. I know there are some people who have questions pertaining to the ACR, but I really do believe it will be helpful to crime victims and all concerned.

I thank you very kindly for hearing me this morning. If you have any questions, I'd be glad to answer.

ASSEMBLYWOMAN FORD: Thank you, Assemblyman.

ASSEMBLYMAN DECROCE: Thank you.

ASSEMBLYWOMAN FORD: Richard Pompelio from Coalition Crime Victims' Rights Organization. Mr. Pompelio, it's nice to have you back.

R I C H A R D D. P O M P E L I O, ESQ.: Thank you very much.

Good morning, it's nice to see you. I have submitted

to you and to each member of the Assembly Judiciary Committee the position paper on behalf of the Coalition, and I hope you've had the opportunity to read it, or if you haven't as yet, you will. I realize it's somewhat voluminous and time-consuming, but it does reflect the position of the Coalition and I do request that it be made a part of this record. Thank you very much.

I would like to say that I've been an attorney for 18 years in the State of New Jersey, and I've represented many criminal defendants. I've been on the prosecutor side, but I can honestly say that I had really no idea what the criminal justice system was like until, unfortunately, my family and I were thrust into it because our son was murdered. We've gone, over the past 22 months, through the criminal justice system as the nonpersons who were the victim's parents. I can only say to you, for this record, that I cannot describe how painful, how difficult the experience is from the beginning up to whenever it ends. And it hasn't ended yet for us.

For so many people, it's important that we, as public servants, recognize that the criminal justice system as it exists today is failing. It's failing society because it has no positive purpose. It will have a positive purpose once this amendment becomes law because I think people will look at the criminal justice system in a different manner, and they will realize that what's all about crime is the victim of a crime and not necessarily the criminal. There are times when people are accused of a crime and convicted and sentenced, and at some point in time that sentence is over and their incarceration is over. For victims of crimes the sentence is never over, and the incarceration is never over.

On behalf of the Coalition I thank you very much for co-sponsoring this bill. I look forward to seeing it on the ballot next November. Thank you.

ASSEMBLYWOMAN FORD: Thank you, Mr. Pompelio. Donna Lamomaco.

D O N N A L A M O N A C O: Good morning.

ASSEMBLYWOMAN FORD: Good morning.

MS. LAMONACO: I thank all of you for allowing me the opportunity to hopefully share with you this morning a few words that could encourage you in the support that we welcome, on your behalf, with this amendment into the Constitution.

If I may take this opportunity to deal specifically with one issue that involves not only to be present at, but to be entitled to: In my case, my husband was murdered. He was a New Jersey State Trooper on December 21, nine years ago. Three-and-a-half years after the manhunt to capture the two perpetrators of his murder, a trial began in 1986 where at the time, I had gone through a judicial system that I didn't know really occurred. I didn't realize that I, myself, as a victim of a tragedy that had occurred -- that so many of my wounds would be sliced open because of the pain that I endured not only because of the tragedy, but because of the way this system had endured the defendants' fairness rather than mine. And I find in this amendment, the word "fairness" means so very much to me.

I've also learned that from that trial: One was accused of second-degree murder, robbery, and escape. Well, the jury came in on a hung decision. They were both sent to Massachusetts on Federal charges for two-and-a-half years and sent back to New Jersey. The second accused of my husband's murder, the trigger man, Richard Williams, was supposed to be going through a trial this past year. The last week in August I found out by coincidence that the trial was postponed until January of '91, and it wasn't until a coincidental phone call that I had placed into the prosecuting office that I found out that not only was the trial not even going to come close to January, but possibly April, possibly September of next year.

Also, the fact that last Friday we were supposed to endure a hearing to decide after the State had agreed to pay

for the defense, now they had to have a hearing to decide who in the State is going to pay for his defense. I was ready to go down to that hearing last Friday. As hard as it is for me, I feel it's necessary for me to make people aware that it's not a statistic, it's a human being.

That myself and my three children have endured an open book of pain through the tragedy of the stories we must incur, not only from what happened to Philip, but what's been happening from there on because it hasn't been closed-- I found out as I was getting ready to leave the door, I got a phone call that it was postponed again, until this Friday.

Right now I find this very, very difficult and I hope emotionally I can hold my words, but this Friday happens to be the ninth anniversary of my husband's death, and now I have to endure a hearing to decide to listen to the decision on who in the State of New Jersey is going to pay for his defense. In this whole time I have lost my pension in the State Police, and I'm fighting for that.

So, fairness to me has got to be emphasized. The rights of the victims have got to be heard. There are so many stories out there where we want to follow the footsteps of the judicial system in the right way, but so many times the doors are slammed in our face; not in our back, because we won't turn on it. The issues are important to us. We've learned with the Coalition that if we walk hand in hand upon our strong foundation, we can acquire the proper tools to see that fairness is acquired. I ask your support in enduring this bill, and I thank you for your support.

ASSEMBLYWOMAN FORD: Thank you, Ms. Lamonaco. Mr. O'Brien.

J A M E S O' B R I E N: Madam Chairperson, members of the Committee, you already know my views. I expressed them at the last hearing, so what I would like to do today is just briefly discuss one aspect of the amendment, and that is the objection

or criticism that has been heard that the Constitution is not a document that should be altered to suit special interest groups, no matter how legitimate their grievance is.

I would have to say that we agree wholeheartedly with this; that special interest groups should not be allowed to alter the Constitution. However, I think we take exception to the tag that has been placed upon victims as falling into that category -- that category of special interest groups. I'd like to try to address that a little bit today. I do not like statistics because I think they dehumanize any subject that you're talking about, but I think in this particular case, it's warranted.

In New Jersey, last fall, 14 prospective jurors were placed in a jury box and the judge was asking them questions. One of the questions that the judge asked was, "How many of you had a crime committed against you in your lifetime?" and a staggering -- and I must say saddening -- 10 out of the 14 raised their hands. Now this may be an exaggerated example, but I think it serves to confirm the Justice Department's statistics that one in four families in the United States in 1989 had a crime committed against them. I repeat that: one in four. And that one in four will hold true for 1991, according to predictions.

In New Jersey last year, you had 47,600 violent -- not just crimes, but violent crimes committed against the citizens of the State of New Jersey. If you multiply that by the average members in a family -- four -- you come to the staggering total of almost 200,000 victims and secondary victims in the State of New Jersey in one year. But, I think one of the most staggering statistics that I've heard lately developed into two areas.

When I first came into the victims' rights area four years ago, one of the statistics the Department of Justice put out was that one in twenty black males will die of violent

crime in the United States. And each time that would happen, four, an average of four other people -- his family -- would become victims, and enter the criminal justice system. Last month the Justice Department revised that figure, and it is now down to one in ten will die of violent crime.

But the most staggering statistic that I heard, in November, put out by the Justice Department is that if the present trend continues, five out of six twelve-year-old children in the United States will be a victim of a violent crime in their lifetime: five out of six. And with each one of these children, or when they become adults becoming a victim of a crime, you create three to four more secondary victims.

I believe it's also well to remember that crime does not discriminate against any race, color, or creed. It doesn't discriminate between men and women, against old versus young, rich versus poor, and I may also say Republicans versus Democrats. It's my contention that the term "special interest group" is ill-used in this case to describe; rather, I would like to use the term "the entire population of the State of New Jersey with a special interest."

These critics offer a solution to this problem. The solution is to pass statutes rather than to pass a Constitutional Amendment. That is very praiseworthy, I might say, but unfortunately, it's a course that we have traveled in the past and with totally frustrating results. What could possibly be incorporated into a statute in this State, or a new bill in this State that has not already been tried, already been tested, and unfortunately, already has failed?

To follow this course of action reminds me of the old theory that if you throw enough mud at a wall, some of it is bound to stick. But, unfortunately, during the time that you're throwing the mud, victims are suffering.

Not to recognize these victims in the fundamental law of the State, the Constitution from which all human rights

flow, is paramount to building a house with no foundation, building a bridge with no pilings, and the result is that not only will the statutes crumble, but the house will crumble, and the bridge will crumble. When that happens what we will see is a-- And what we will witness is people like Donna Lamonaco -- whom you have just heard -- who entered the courtroom during the trial of the man accused of killing her State Trooper husband, and found that there was no seat for her to sit in.

We'll also find people like Mary Carter who, after testifying and identifying the man who raped her for three days, opened the front door 18 months later and saw her daughter playing with the rapist. She had never been informed of his parole or his release.

We will find people as we've talked about before, such as Mrs. Hoffman, who sat outside a courtroom and watched the door of the courtroom which was closed for 33 days during the trial of the man accused of killing her daughter, simply because the defense attorney did not want her in the room to gain sympathy for the victim.

Or, in the case of Rich and Ann Pompelio -- which they will not tell you about -- but I will tell you about, where they sat on a park bench huddled together to keep warm from the late autumn winds across from the courthouse, because the Prosecutor could not, or would not, find any space for them to sit during recesses, and they were put out into the park during that time.

I urge the Committee to pass this onto the Assembly, ACR-85, for debate and also for a vote. I would also like, on behalf of the members of the Coalition, to express our appreciation for your patience, your understanding, and your interest in ACR-85, and may all of you have a very happy holiday. Thank you very much.

ASSEMBLYWOMAN FORD: Thank you, Mr. O'Brien. Any questions or comments from the Committee? (no response) This

is a technicality, I guess, that is required in our Constitution, to hold a public hearing on a proposed Constitutional Amendment, and it's a step in the way of submitting this proposal to the Legislature for a full vote. As I had said publicly -- and I know Assemblyman DeCroce shares this strategy -- it's our intent to try to push this through the Legislature and have it on the ballot for the November 1991 approval by the citizens in the State of New Jersey.

You know, I just want to add my comments, as a co-sponsor of the legislation, that I feel honored having been requested to sponsor this legislation.

Mr. O'Brien and I recently had a conversation which I hope you don't mind if we share it with the people here. We were discussing about how crime victims and their families are everywhere. I had made the point to him that -- I almost matter-of-factly made the point -- one of my brothers was brutally attacked, and now carries a scar on his face from a razor blade -- the person who did that has never been apprehended -- but, for some very swift medical work, he, too, would have been another senseless statistic as a crime victim. I thought about all the ways in which this affected just my family, alone. Granted, I have a large family and maybe that just increases the statistical likelihood that we would be impacted. But I can tell you that I have a brother who is a lieutenant on the Belmar Police Force and has many times been out on the front line, and, Mrs. Lamonaco, I share just the fear that every police family has that someone wearing a badge and a uniform is always a target. I know a little bit about what you're feeling.

One of my other brothers was, again, senselessly attacked and was permanently injured. Just senseless violence. Senseless, nameless -- just random violence. I think that unfortunately, I don't feel like part of a special interest group. I feel just typical of the general public out

there. This type of violence has affected probably every family in the State of New Jersey.

I'm pleased that the Governor, the Attorney General's Office, and all the County Prosecutors support this proposal. I hope that with their support and the support of the good people of the State of New Jersey that we will be able to -- for the first time in our history -- incorporate within really the document that determines the rights of New Jersey citizens, that crime victims also have a right to be treated with fairness, decency, and equity in our criminal justice system.

You know, there are two sides of our system. We spend a lot of money defending people in this State, and I support those types of efforts and support the funds are available, efforts to increase that type of appropriation. But there are two sides of the scales of justice, and I think that we have-- I agree that we have for too long been tipping the scales too much in favor on the rights of defendants at the expense of the people who the criminal justice system is designed to protect; the general public.

Seeing no one else-- Well, let me ask: Is there anyone else interested in testifying, who has not told us ahead of time? (affirmative response) Please come forward.

S H E R I F F J A M E S T. P L O U S I S: To save time, I'll just hand this out. I'm President of the New Jersey Sheriffs' Association and we--

ASSEMBLYWOMAN FORD: Could you just state for the record your name and affiliation, and if you have a written statement, we will make it part of the record. But, because this is being recorded, I want the microphone to pick it up.

SHERIFF PLOUSIS: My name is Sheriff James T. Plousis, from Cape May County, President of the New Jersey Sheriffs' Association. I'm here testifying today in both capacities to inform you that the 21 Sheriffs in New Jersey are in full support of this legislation.

The Sheriffs of New Jersey have a vital part in the State's criminal justice system and are fully aware of the rights of the accused in the criminal justice system: those being to counsel, room and board, medical care, transportation to and from court if in custody, and detailed information and notice of their case. We believe that this legislation will balance the scales to help the victims of crimes have similar access to the legal system in matters that have dramatically touched their lives.

For far too long, the criminal justice process has made victims a victim again, in an already painful and stressful situation.

ASSEMBLYWOMAN FORD: Thank you, Sheriff. Just state your name for the record, and your affiliation.

KATHLEEN GARCIA: My name is Kathleen Garcia. I'm President of South Jersey's Survivors of Violent Crimes.

Madam Chairperson and members of the Committee, in 1984 my sister's oldest son was brutally murdered. He was the first born grandchild into our family and I will never, ever forget our joy on receiving the news of his birth. I also will never, ever forget the pain of learning that his life was suddenly ended at the tender age of 21; not because of an accident or an act of God, but solely because of the cruel acts of another human being.

Like so many other victims, my family once believed that we were somehow exempt from such a tragedy, and we also believed that as good citizens, our rights would be protected and justice would prevail through the criminal justice system. Unfortunately, we were wrong on both counts.

On at least three occasions, my family became aware that court proceedings had taken place concerning our case by picking up a newspaper the following day. We were also told at one point that the family would not be permitted into the courtroom during the trial.

For those who have not been exposed to the criminal justice system from our perspective, as the wife of a physician, I would like to make the following analogy: Imagine that your doctor examines your loved one, whether it be your spouse, parent, child or grandchild, and they are diagnosed as suffering from a terminal illness. After going through a series of seemingly endless routine and impersonal tests, you are told that your physician will call you with the results. But, instead, you receive the results by picking up a newspaper one day, or by receiving condolences from someone who had access to that information. If you have ever sat or paced a floor in a small room in a hospital waiting for someone you love to come out of surgery, then you can imagine what it would be like to be barred from the hospital during that time. Your presence has no effect whatsoever on the outcome of the operation, but psychologically, the family needs to be there.

Likewise, the citizens of this State whose lives are horribly altered through no choice of their own but solely because a crime has been committed against them, need to be treated with fairness, dignity, and compassion. And just as our Constitution provides each citizen with basic rights if they are accused of a crime, this amendment will provide each citizen with basic rights if they are the victims of a crime.

On behalf of the victims and survivors that I represent, and for the citizens who are the victims of tomorrow, I respectfully ask you to pass ACR-85 along to the Assembly. Thank you very much.

ASSEMBLYWOMAN FORD: Thank you.

D I C K K R A M E R: Madam Chairperson and members of the Committee, I don't have a prepared statement.

ASSEMBLYWOMAN FORD: Sir, could you tell us your name?

MR. KRAMER: Dick Kramer, I'm from Hackettstown, New Jersey and I'm President of Voices for Victims, Inc., a homicide survivors' group.

My daughter was murdered August 8, 1987 and I went through the same nightmares that all these people have. My wife still goes through the nightmares, and of course, it's Christmas now and I can hardly talk to her because she remembers too much.

I hear "victims' rights." I went through the entire court, through the trial, the pretrial, and then finally, the sentencing. Everything hurt, but the sentencing was probably the worst part for me, when I found out, truly, that victims have no rights, dead or alive. The part that hurt most was the sentencing phase when the killer's family, a man that raped and murdered my daughter -- had a record of bondage which was not allowed to be brought up in the trial -- but he was allowed to have his family up there: his mother, his father, and his friends, saying what a nice boy he was. My wife and I, my daughter's -- my dead daughter's children -- had to sit and listen to this. It was one of the most sickening things I ever heard in my life, and I will never, ever get over it.

We need a Victims' Bill of Rights. We need some rights. And I'm asking this in the name of my daughter, and all the other people that are here today and suffering the same thing throughout the whole United States, if not throughout the whole world. Thank you.

ASSEMBLYWOMAN FORD: Thank you. I don't have anyone else who has registered to testify. If there is anyone else who wishes to add to the record, you're welcome to step forward at this time.

K A R E N S P I N N E R: Good morning. My name is Karen Spinner. I'm Director of Public Education and Policy for the New Jersey Association on Correction.

We would like to concur and support this Constitutional Amendment. Although most of you know that I've been here many times on offenders' issues, we feel very strongly that the victims have a right to have their say in

this process, and we feel that it is unfortunate that it takes a Constitutional Amendment to give them what the Victims' Bill of Rights should have given them several years ago.

However, we encourage you to, at this time, release this and bring it up to the full Assembly with our full support. Thank you.

ASSEMBLYWOMAN FORD: Thank you, Karen. If there's no one else, that concludes our public hearing as is required on this Constitutional Amendment. It has been released from the Assembly Judiciary Committee. It's in a position to be voted on the floor, but for this requirement which we have now satisfied, so this is just another step on the way.

I appreciate everyone coming here this morning, helping us with this process, and sharing your interest in this legislation with Assemblyman DeCroce, me, and the other members of the Committee. Thank you very much.

(HEARING CONCLUDED)

APPENDIX

REMARKS OF ATTORNEY GENERAL ROBERT J. DEL TUFO
BEFORE THE ASSEMBLY JUDICIARY COMMITTEE
ON ACR85 - OCTOBER 15, 1990

SOCIETY HAS, QUITE PROPERLY, LONG RECOGNIZED AND PROTECTED THE RIGHTS OF CRIMINALS. BUT THE TIME HAS COME FOR SOCIETY TO RECOGNIZE AND TO PROTECT THE RIGHTS OF VICTIMS OF CRIME AS WELL. A 1982 PRESIDENTIAL TASK FORCE OBSERVED THAT VICTIMS OF CRIME ARE TREATED WITH SUCH INDIFFERENCE BY THE SYSTEM AS TO CONSTITUTE A NATIONAL DISGRACE. NEW JERSEY HAS DONE BETTER IN STATUTE AND IN DEED. AND ATTORNEY GENERAL STANDARDS AND GUIDELINES, DEVISED AND PROMULGATED IN COOPERATION WITH THE COUNTY PROSECUTORS, ESTABLISH A BILL OF RIGHTS FOR VICTIMS RANGING FROM FAIR, RESPECTFUL TREATMENT TO PRAGMATIC REQUIREMENTS OF NOTICE AND THE LIKE. BUT POSITIVE PERFORMANCE HAS NOT BEEN UNIFORM. AND EVEN ONE DEFAULT IS NOT ACCEPTABLE. MOREOVER, THERE HAVE LATELY BEEN OUTRAGEOUS INCIDENTS IN WHICH CRIME VICTIMS AND/OR THEIR FAMILIES HAVE BEEN EXCLUDED FROM THE COURTROOM ON THE GROUND THAT THEIR PRESENCE WOULD GENERATE SUCH UNDUE SYMPATHY IN THE MINDS OF THE JURORS AS TO PREVENT A FAIR TRIAL FOR THE DEFENDANT. A PUBLIC TRIAL SHOULD MEAN JUST THAT. AND THOSE WHO HAVE HAD THEIR LIVES FOREVER MAIMED AND CHANGED BY VIOLENT ACTS ARE NOT ONLY PART OF THE PUBLIC BUT ALSO HAVE A SPECIAL STANDING TO BE PRESENT AND TO OBSERVE THE SYSTEM AT WORK.

THE PROPOSED CONSTITUTIONAL AMENDMENT WILL EXPRESSLY REQUIRE THAT VICTIMS OF CRIME BE TREATED FAIRLY AND WITH COMPASSION AND RESPECT BY THE CRIMINAL JUSTICE SYSTEM; IT WILL ALSO

HELP TO PREVENT VICTIMS FROM BEING EXCLUDED FROM PROCEEDINGS. ON THE LATTER SCORE, PROTECTION FOR CRIME VICTIMS BY CONSTITUTION RATHER THAN SIMPLY BY STATUTE IS IMPORTANT. THE RIGHTS OF THE ACCUSED ARE SET OUT IN THE CONSTITUTION AND THE RIGHTS OF A VICTIM SHOULD BE GIVEN, IF NOT EQUAL, AT LEAST RECOGNIZABLE CONSTITUTIONAL STATUS. THIS WILL AID VICTIMS IF AND WHEN THEIR EXCLUSION FROM THE COURTROOM IS SOUGHT. IN ADDITION, CONSTITUTIONAL RECOGNITION OF VICTIMS' RIGHTS WILL HAVE A SYMBOLIC VALUE IN HELPING TO ENSURE THAT A NEUTRAL CRIMINAL JUSTICE SYSTEM RECOGNIZES THE RIGHTS AND INTERESTS OF BOTH THE VICTIM OF A CRIME AND THE ACCUSED.

WERE CONSIDERATIONS OF HUMANITY AND COMMON SENSE NOT ENOUGH IN AND OF THEMSELVES, THERE IS A PRAGMATIC VALUE TO THE PROPOSED CONSTITUTIONAL AMENDMENT AS WELL. VICTIMS OF CRIME ARE TELLING US THAT IT JUST IS NOT WORTH THE ADDITIONAL PAIN AND HUMILIATION TO COOPERATE WITH A SYSTEM THAT MAY NOT GIVE PROPER CONSIDERATION TO THE VICTIM'S WORK SCHEDULE; TO THE VICTIM'S INCONVENIENCE; TO THE VICTIM'S VIEW ON CHARGING OR DISMISSAL; OR TO THE VICTIM'S OPPORTUNITY TO DESCRIBE THE IMPACT OF A CRIME ON THEM. THIS LACK OF CONSIDERATION, LACK OF PARTICIPATION, AND LACK OF LEGAL STANDING ACCENTUATE THE FEELING THAT THE CRIMINAL JUSTICE SYSTEM IS UNFAIR.

UNDERSTANDABLY, VICTIMS OF CRIME REACT NEGATIVELY BY REFUSING TO COOPERATE. SURVEYS AND STUDIES CONDUCTED BY THE DEPARTMENT OF JUSTICE INDICATE MORE THAN FIFTY PERCENT (50%) OF

THE VIOLENT CRIME IN THIS COUNTRY GOES UNREPORTED. THEREFORE, INFORMATION THAT MIGHT HELP ESTABLISH PATTERNS AND THUS SOLVE MORE CRIMES MAY NOT BE AVAILABLE IN THE INFORMATION BANK OF LAW ENFORCEMENT AGENCIES. THE UNREPORTED CRIME MAY BE VIEWED AS A DECLARATION OF "NO CONFIDENCE" IN THE SYSTEM BY CRIME VICTIMS. IF CRIME VICTIMS WERE CONFIDENT THAT THEY WOULD BE TREATED FAIRLY BY THE CRIMINAL JUSTICE SYSTEM, THEY WOULD BE MORE WILLING TO REPORT CRIMES, TO COOPERATE MEANINGFULLY IN CASE PREPARATION AND TO ACT AS WITNESSES. JUSTICE WOULD THUS BE BETTER SERVED AND LAW ENFORCEMENT WOULD BECOME MORE EFFECTIVE.

TOGETHER WITH THE 21 COUNTY PROSECUTORS, I URGE ADOPTION OF THIS RESOLUTION PLACING THE PROPOSED VICTIMS' RIGHTS CONSTITUTIONAL AMENDMENT ON THE BALLOT.

THE NEW JERSEY CONSTITUTIONAL
AMENDMENT RESPECTING THE
RIGHTS OF CRIME VICTIMS

Statement of Position of
the New Jersey Coalition
of Crime Victims' Organizations

James K. O'Brien, Chairman
Richard D. Pompelio, Esq., Legal Counsel

Richard D. Pompelio: On the Brief

Date: December 5, 1990

I. THE CRIMINAL JUSTICE SYSTEM - WHAT PLACE FOR THE VICTIM?

In order to maintain and preserve the social structure in this country, we have established a body of laws which has become dynamic with the ever changing times. A major purpose of law is to achieve order and in furtherance of this purpose, we have created a complex system of justice.¹ Within our society there is perhaps no greater nor more disturbing evil than the unjustifiable infliction of crime upon innocent people. This social problem has become a national nightmare; one which is so painful to confront, yet so cowardous to deny.

The criminal law aims at preventing crime, however, due to the recognition and support of the rights of those brought into our system of criminal justice, this basic objective of criminal law is often subject to principles which may limit its efficiency.² This system is a human system and therefore, there can be no false illusions of perfection or mechanical precision. If we are to sacrifice efficiency in order to give due respect to the rights of individuals, then that minor loss is but a small price to pay for such consideration.

While those, who have never been personally affected by the shattering force of crime and its unending destructive effects, often limit their focus to those precious constitutional protections for the criminally accused, the true and inescapable reality remains; crime is not just about criminals. Crime is also about the innocent and often forgotten victims and their survivors. Many of us would like to restrict our discussions of crime to those

arenas or those forums where the true feeling of the painful impact of crime can be sidestepped. But crime does not take place in the classroom, or within the conference room or the private rooms of the media executives whose decisions impact upon the content of what we read and hear. It takes place on the streets and in people's homes, and when it does, people hurt and people bleed and too often, people die. And these are innocent people. And we must truthfully ask ourselves - where does the crime victim fit in our criminal justice system?

Violent crime devastates one out of every four families in this state and throughout this country. Each minute, three persons are physically injured due to crime, sixty six individuals become crime victims and \$25,000.00 in property is stolen or destroyed during criminal activity. One murder occurs every 26 minutes and every six minutes one American will be forcibly raped. At the current crime rate, it is projected that 83% of all United States citizens will become victims of attempted or completed violent crime in their lifetime.³ These facts become even more significant when we realize that a substantial portion of all serious crimes are never reported to the police. Estimates obtained from the National Crime Survey suggest that less than 50% of all violent crimes are ever reported.⁴

The anguish and the pain of the thousands of people whose lives have been shattered by violent crime have no finality. The sentence does not end; there is no parole. As free people in a democratic society we clearly recognize and we advocate the

constitutional rights of those accused and often convicted of crime. Yet, some of us hesitate when given the opportunity to recognize and declare that victims of violent crimes exist and their rights are worthy of substantive protection.

Our criminal system in this country is one based upon justice. The words "criminal justice system" are not meaningless nor empty. What is justice? Does not the word "justice" refer to a pervasive social concept? Like most of the supremely important things in life, it resists measurement and containment. Does not "justice" refer to the quality of being right, to righteousness and the rightness of things? Implicit within the concept of justice is the sense of impartiality and fairness. While we must always strive to be impartial and fair, we must do so by giving due recognition to what we believe is truly right for society.

Why is it easier to advocate from a respectable distance the firmly established rights of the individual accused of rape and murder, yet we dare not look into the eyes of the rape victim or embrace the mother whose child was viciously murdered? Is it that while we have the security of knowing that we can justifiably distance ourselves from, or that we will never personally know the rapist or the murderer, we are all vulnerable to someday being the parent to the rape victim or the murdered child? While we may personally wish to extricate from our minds our personal fears of our own vulnerability, if we have any involvement in and responsibility for this country's criminal justice system, we cannot so sheepishly remove victims in order to assuage our own

fears. Indeed, crime is painful, but, nevertheless, it is a reality.

Bonnie Garland was a bright, loving, twenty year old student at Yale with her entire future ahead of her. When she was savagely and brutally murdered by Richard Herrin, a fellow student, her parents were forced to face the reality of how individuals in our society too often evaluate the victim and the victim's survivors. As the local social, academic and religious circles rallied around the admitted killer, they pushed aside, and finally negated the existence of this young woman who was the victim. Her value became a casualty in the legal and social process which transformed the murderer into the victim. In characterizing this destruction, and measuring it against our ideas of justice, Dr. Willard Gaylin, a psychoanalyst and expert in the area of human behavior and crime, stated:

The killing of Bonnie Garland was not just the theft of a young girl's birthright, not just an unbearable pain inflicted on her family and friends; it was an assault on the social order that makes human life possible. The killing of Bonnie Garland, first by Richard Herrin and then again by a legal and cultural process, which seemed to forget that she had ever existed, endangers us all. In our compassion for the criminal, we must remain vigilant in defense of the social good, for the sake of those innocents living and yet unborn.

Dr. Gaylin concluded that Bonnie Garland was killed twice: first by Richard Herrin and then again by the judicial process that abandoned her.

The criminal justice system is characterized in terms of its participants. The primary figure is the individual accused of the crime, while the others, the judges, the lawyers, the police and

the correction officials function within the particular parameters of their duties. By the time the accused is brought before the trial judge, the long process known as criminal justice is very nearly half over. And since it is almost half over for the accused, it likewise, is almost half over for the victim; because they started together.

Immediately upon the commission of the criminal act, the rights of the actor are elevated to a status of constitutional recognition and protection. And it is mandatory that along each step of the way, the accused shall be afforded all of these rights, by all of the participants, without the slightest exception.

Where within our concept of justice does the victim fit? Does the victim have a place, and if so, whose obligation is it to recognize the victim? Perhaps, if we understand the following passage from Dr. Gaylin's description of the plight of Bonnie Garland's survivors, then we might understand that there is a reality to the truth of the criminal justice system which must be acknowledged:

"Our mechanisms of identification and empathy are central to our concepts of what is good and what is right. From the day of the killing, (the accused) attracted a host of concerned and compassionate defenders. When one person kills another, there is immediate revulsion at the nature of the crime. But in a time so short as to seem indecent to the members of the personal family, the dead person ceases to exist as an identifiable figure. To those individuals in the community of good will and empathy, warmth and compassion, only one of the key actors in the drama remains with whom to commiserate--and that is always the criminal. The dead person ceases to be a part of everyday reality, ceases to exist. She is only a figure in a historic event. We inevitably turn away from the past, toward the ongoing reality. And the ongoing reality is the criminal;

trapped, anxious, now helpless, isolated, often badgered and bewildered. He usurps the compassion that is justly his victim's due. He will steal his victim's moral constituency along with her life.⁷

Many of the individuals in this state who have been labelled as crime victim advocates have themselves been victims of crimes, however, most of them have already been through the criminal justice system. It is too late for them to correct the indignities and harsh realities of their own personal experiences in the criminal justice system, however, it is not too late to help the many others who will be thrust innocently and blindly into the process. When you have been a victim of a crime you understand what it is like for someone else to be a victim, and that is why the so many thousands of individuals who have been victims of crime demand that there be a change in the criminal justice system.

Those who advocate the rights of crime victims and recognize that the only way such rights can be substantive in value and, therefore, judicially cognizable⁷ know that an amendment to the state constitution is absolutely necessary. The statutory approach in this state has been ineffective at best in addressing the problem.⁸

Those who advocate the rights of crime victims do so out of a sense of understanding, compassion and respect. To suggest for one moment that anyone, who calls for a constitutional amendment supporting the rights of crime victims, does so out of revenge or such other similar motive is to approach the issue from an unenlightened standpoint, and perhaps, a too firmly implanted root of prejudice. As stated by Kenneth Eikenberry, Attorney General of

the State of Washington and Member of President Reagan's 1982 Task Force on the Victims of Crimes:

"I thought my life's experiences had prepared me for the effect of testimony by the dozens of victims of crime willing to come before the Presidential Task Force on Victims of Crime and relive their tragedy so that others might learn from it. Not true, I was shocked! Perhaps the most important lesson I learned from my Task Force experience is that a discussion of victims' rights should not occur until the discussants⁹ have first shared the experience of crime victims." (Emphasis added.)

The strength of this country is, for the most part, based upon the integrity and power of principle of those who believed in its future and refused to compromise in the pursuit of democracy. One of these individuals was Patrick Henry, who in his uncompromising advocacy of the rights of man stated:

"Are we disposed to be of the number of those, who having eyes, see not, or having ears, hear not those things which so nearly concern their temporal salvation: For my part, I wish to know the worst; to know the whole truth, and to provide for it."¹⁰

Perhaps, in order to properly serve in our role as legislators and judges and lawyers we must step back for a moment and as humans observe with our eyes, hear with our ears and feel within our hearts the whole truth of what crime is all about and in doing so we will realize that the worst thing about crime is to be its victim. It is with hope that each person who as a representative and public servant of the people of this State can, with a sense of true justice say that he or she is "willing to know the whole truth; to know the worst, and to provide for it."¹¹ And to provide for it is to recognize in a substantive manner, the rights of victims of crime.

II. THE CRIMINAL JUSTICE SYSTEM AND CRIME VICTIMS - AN HISTORICAL PERSPECTIVE.

Prior to the time of the American Revolution, the system of criminal justice in the colonies was based upon the English legal tradition which emphasized the process of private prosecution by the victims of crimes. ¹²

In the latter half of the eighteenth century the American system of criminal justice, as we know it today, began to develop and the practice of private prosecution gradually gave way to the procedure of public prosecution. ¹³ No longer were crimes considered to be an offense against the person but were now deemed to be acts against society in general.

The role of the Attorney General substantially increased during these times and eventually, the scope of his authority extended to that of being the chief law enforcement officer who determined and supervised the arrest, and prosecution of individuals charged with crimes. As this public process of criminal prosecution evolved, the victims of crime were gradually excluded from meaningful participation in the criminal justice system and eventually their function was reduced to simply being the reporters of the crimes committed upon them and where needed, serving as witnesses when the public prosecutor decided to bring the matter to trial.

At the time of the adoption of the Bill of Rights, there was no reason to afford constitutional protections to the victims of crime because they were often the prosecutors. There was a need, however, to give judicially recognizable rights to those accused of

crime because there was a substantial imbalance in the criminal process against the accused in favor of the accuser.¹⁴

The old common law practice of utilizing a private prosecutor has survived and does exist in some other states.¹⁵ This practice is not authorized by statute in New Jersey and without such legislation, it is doubtful that it would be permitted by the Courts. It is noted that no victims' rights advocates in this State have called for the use of private prosecutors,¹⁶ despite the fact that on many occasions, the interests of the prosecutor and those of the victim are not the same.

Over the past two hundred years our American system of criminal justice has developed into a substantial body of laws wherein the rights of the accused, as an individual, were balanced against the rights of society, as a whole. The battles were forged in the courtrooms between the defendant on one side, armed with the protective shields of his Bill of Rights, and the prosecutor, on the other, charged with the sometime overwhelming task of catching and prosecuting criminals, within the rules and without infringing upon the defendant's constitutional protections.¹⁷

The criminal justice system in our country is a truly adversarial system. It is prosecutor versus defendant, and irrespective of which side you choose to sit on, it is usually perceived from the perspective of good guy versus bad guy. The victim has been, over the years, squeezed out of this adversarial contest. He has no constitutional rights, therefore, he cannot rise to the level of the defendant. He can only impede the mechanical efficiency of the

continuous processing of criminal cases; therefore, except for being a witness, the victim is not needed by the prosecutor.

The evolutionary process of the criminal justice system has reached the point where crime victims have been excluded and so routinely rejected that they have become alienated by the bureaucracy of the system and indifferent to the individuals employed by it. This has led to what is commonly described as a double victimization and has prompted one authority on the subject to comment:

"[T]he victims of crime are truly the forgotten people in the American Criminal Justice System and are all too often victimized twice - first by the crime and then by the system."¹⁸

The fact that most crime victims find it so difficult an experience when thrown into a process where they perceive themselves as having no purpose or importance has naturally resulted in the substantial non reporting of crimes and refusal to cooperate by many crime victims.¹⁹ Who does the criminal justice system truly serve? Certainly not the innocent individuals who have and will suffer the often irrevocable effects of crime.

In the 1970's, as the crime rate continued on its rise, the frustration and disenchantment with the criminal justice system increased on the part of many Americans, as its failures became more evident through feelings of rejection on the part of victims, higher recidivism rates, and a disenchantment with the increased financial costs to society in supporting this system.²⁰ People became more aware that the criminal justice system was not serving the individuals whom it was designed to protect, that it had lost a

truly positive purpose in society, and was deemed by many to be failing the taxpayers who supported it.

On April 23, 1982 President Reagan established A Task Force on Victims of Crime and in December of that year the Task Force produced its final report which concluded that in the interests of justice and fairness to the victims of crime, an amendment to the Constitution of the United States was required to ensure that the operation of the criminal justice system grants appropriate recognition to the rights of a victim.²¹ The Task Force recommended the addition of the following sentence to the Sixth Amendment of the United State Constitution:

"Likewise, the victim, in every criminal prosecution shall have the right to be present and to be heard at all critical stages of judicial proceedings."²²

The Task Force in recommending that the most appropriate means of achieving recognition for the rights of victims is an amendment to the Federal Constitution, rather than any lesser form of legislation, stated that:

"the fundamental rights of innocent citizens cannot adequately be preserved by any less decisive action."²³

Due to the length of time and basic uncertainty involved in accomplishing an amendment to the Federal Constitution, it was suggested that the individual states take the initiative and amend their state constitutions accordingly to recognize the rights of victims of crime.

The next few years witnessed the birth of victim assistance programs at state and local levels, the passage of legislation in Congress and victim rights legislation in 44 states.²⁴ At present,

there are over 6000 victims assistance organizations operating throughout the country.²⁵ The 1986 follow up report on the recommendations of the President's Task Force indicated that while considerable progress in the 1980's has been made in the area of victims rights legislation and programs, the only realistically effective manner in which the rights of crime victims can be determined to have substance and rise to the level as being judicially cognizable is through the passage of an amendment to each of the states' constitutions.²⁶

Since the Task Force's Final Report was produced, constitutional amendments giving recognition to victims' rights have become law in Arizona, California, Florida, Michigan, Rhode Island, Texas and Washington. In addition to New Jersey, fifteen other states are engaged in the process of amending their constitutions for this purpose.²⁷

It is not the intention of victims' rights advocates to in any way diminish the magnitude of the Bill of Rights, nor compromise the rights of anyone accused of a crime.²⁸ It is not the intention of victims' rights advocates to impede nor frustrate those engaged in the prosecution of individuals accused of crime. It is their intention, however, to require most people to realize that, in the criminal justice system we are all responsible to each other and it is not necessarily incongruous to respect the rights of all of those individuals involved in the criminal act which is being tried before the Court.

It may be difficult for those who represent the rights of criminal defendants to understand that most crime victims' advocates strongly support the Constitutional protections afforded those accused of crime through the Bill of Rights and their state counterparts. These are individual rights which are not taken for granted. These are individual rights which, under our Constitution, cannot be compromised. And without the protection of the Constitution, they would have been meaningless. If nothing else, history has taught us that much.

III. THE RIGHTS OF CRIME VICTIMS - A CONSTITUTIONAL NECESSITY

There are those who will question and criticize the necessity for amending the State Constitution to recognize the rights of crime victims. The objections usually fall under one of the following proffered arguments:

- A. To amend the Federal or State Constitution is too drastic a measure;
- B. Even if amending the State Constitution were acceptable, it is not necessary to elevate the status of crime victims to the level of Federal or State Constitutional protection; and
- C. A Constitutional Amendment would in some manner negatively impact upon the rights of defendants and the effective administration of justice as it now exists.

Each of these three areas of concern is certainly valid. A subject of this importance and impact upon society must be discussed intelligently and without any prejudgments. The respect and deference which are paid to the accuser, must likewise, be granted the accused. As the critic is dignified, with the presumption of good faith intentions, so also must the defender be given the same opportunity.

A. Amending the Constitution:

Much has been written about the issues of Constitutional reform and Constitutional amendments. Throughout the course of our history, while most discussions have centered around various changes to the Federal Constitution, the principles and reasoning

behind such discussions obviously apply to the state constitutions as well.

There are those who feel that, like the Ten Commandments, the Bill of Rights and their state counterparts²⁹ are etched in granite and must not be tampered with in any way. While there may have been an intention to limit the number of commandments to ten, there was never any such intention on the part of the mere mortals who were involved in the drafting of our Constitution.

The simple beauty of our Constitution is that it does not belong to any one individual nor group of individuals. As so appropriately stated by Thomas Paine, over 200 years ago:

"A constitution₃₀ is the property of a nation, and not those who govern."

As the Constitution exists not for just defendants, but for all people, individually and collectively, there is only one true way in which the people of this State can have a direct hand in changing their laws to keep pace with the progress of the human mind and the changing times. That way is through the public process of amending the Constitution.

The Constitutional Convention took place in Philadelphia in 1787. Looking back at his work and the work of the Convention, 28 years afterward, Gouverneur Lewis Morris stated:

"Nothing human can be perfect, ...surrounded by difficulties, we did the best we could, leaving it with those who should come after us to take counsel from experience, and exercise prudently the power of Amendment, which we had provided."³¹

Gouverneur Morris was praised as one of the founding fathers who contributed most to the "style and arrangement" of the

Constitution. His respect for the necessity of the power of amendment was in full agreement with that of another founding father, James Madison, who has been characterized as one who had contributed most to the "substance"³² of the Constitution stating:

"I am not one of the number, if there be such, who think the Constitution lately adopted a faultless work."³³

When discussing the subject of constitutional reform or constitutional amendment, the argument of maintaining the status quo is often presented. Those who are unreceptive to change, state that if something is working reasonably well, one should not try to improve it as that may sometimes make things worse.³⁴ Our system of criminal justice, however, is dynamic and ever changing and in response to those who would advise against change, it is countered:

"Yet that counsel is too negative. Its message is that breakdown must be awaited, not averted. Moreover, breakdown is not usually an absolute but a matter of degree. Weaknesses in a governmental system can debilitate and devitalize a government, short of outright collapse. Should a partial breakdown, reflected in simple inefficiency and ineffectiveness, be tolerated on the supposition that the cure will be worse than the ailment? After all, most of the world's great inventions, in technology and social affairs alike, have sprung from somebody's urge to make better what, at the time, most of the people undoubtedly considered good."³⁵

The Constitution of this State was established to serve and protect all of its people.³⁶ It is an agreement of the people, in their individual capacities, reduced to writing, establishing and fixing certain principles for the government of themselves.³⁷ On matters of great importance, such as the rights of crime victims, the people must have the opportunity to decide if somewhere in Article I of the New Jersey State Constitution, where eight out of

the first fourteen amendments address the rights of those accused of crime, there may be some room for the victim.³⁸

B. Amending the Constitution to Establish the Rights of Crime Victims:

As set forth in the summary of Task Force Chairperson, Lois Haight Herrington:

"[Y]our Task Force concluded that the treatment of crime victims in America was a national disgrace. Ignored, mistreated, or blamed, the innocent victims had been handled like photographs or fingerprints--mere evidence to be manipulated at the criminal justice system's convenience. By the end of the ordeal, many victims vowed that they would never again become embroiled in the system, and that they would tell their friends and loved ones to stay away from the courts. Just as a pebble dropped in a pool causes rippling all across the water, the mistreatment of victims spread resentment and distrust of the justice system throughout entire communities. We saw that this insensitivity toward victims was not only unjust, it was unwise. The criminal justice system is absolutely dependent upon the cooperation of crime victims to report and testify. Without their help, the system cannot hold criminals accountable and stem the tide of future crime."³⁹
(Emphasis supplied)

The conclusions and recommendations of the Task Force and the substantial drive throughout this country for state constitutional amendments are clear indications that the pendulum in American law is finally beginning to swing back toward crime victims. Crime victims are regaining their rightful positions in the criminal justice system, which for too long has ignored their importance.⁴⁰ Furthermore, the ultimate goal, that of elevating the rights of crime victims and their survivors to their proper status in our system of justice is being approached with a rapidity that few

would have predicted with any great degree of confidence only two decades ago.

In a forum where the rules are founded upon and revolve around the various Federal and State Constitutional rights of the defendant, the victim has none. All of these rights, four of the ten initial amendments to the Federal Constitution and as stated, eight of the first fourteen amendments to the State Constitution in the Rights and Privileges Section were procedural concerns elevated to substantive protection because it was necessary, as the Supreme Court of the United States noted, to remove them from:

"the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts."⁴¹

The necessary realignment of our criminal justice system to establish the judicially cognizable rights of crime victims is not merely an adjustment or correction to a procedural flaw in the system, but is a substantive declaration of such rights. The system, as it presently functions, exists for whom? Are those who purportedly serve it in essence the only ones who are actually served by it? If our criminal justice system is to have any positive purpose in our society then it must respect and attend to the needs of crime victims on an effective level in a forceful and meaningful manner.

The amendment to Article I of the New Jersey Constitution provides:

A victim of a crime shall be treated with fairness compassion and respect by the criminal justice system, shall not be denied the right to be present at public

judicial proceedings except when properly sequestered in accordance with law or Court Rule prior to completing his or her testimony as a witness, and shall be entitled to those rights and remedies as may be provided by the Legislature. For the purposes of this paragraph, the phrase "victim of a crime" shall mean:

a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and

b) the spouse, parent, legal guardian, grandparent, child or sibling of ⁴²the decedent in a case of criminal homicide.

The primary aim of the proposed amendment to the New Jersey Constitution is to strengthen the rights of victims in public judicial proceedings to be present at appropriate criminal justice proceedings. The right to be present naturally implies the right to be adequately informed. Such proceedings would include preliminary hearings, motions, as well as a criminal trial itself and sentencing. These rights could, to some extent, be provided by a statute rather than a constitutional amendment, as is addressed by N.J.S.A. 52:4B-34. However, it is a long-standing and fundamental premise of constitutional law that the recognition of rights in a Constitution confers a greater level of protection than the creation of such rights by statute, because all statutes and other subordinate legislation must conform to the Constitution.⁴³ Furthermore, and perhaps most important, is the fact that a constitutional amendment reflects the will of the people and it cannot be so easily disregarded, ignored nor repealed.

The words "fairness, compassion and respect" are of extreme significance and foundation and, while they may be words of art to those who do not understand the import of their meaning, to those who have felt the brunt of being a victim in this system, they rise to the level of substantive judicial protection.

The provisions of N.J.S.A. 52:4B-34 (the so called Crime Victims Bill of Rights) and 52:4B-44 (the Standards to Insure Rights of Crime Victims) are too often ignored by prosecutors and their staff. It makes no difference whatsoever to the Prosecutor if these standards are violated because the victim has no legal status in the criminal process. Since the victim has no judicially recognizable right in the criminal justice system, he is unimportant and often ignored. It is only when the victim rises to the level of importance in the criminal justice system that his rights are recognized and, therefore, must be acknowledged and addressed, will the thinking of those who presently run the system be changed.

There is only one true way that the level of social consciousness can be raised concerning the place of victims in our criminal justice system, and that is through the public process of amending the Constitution. Nothing short of this clear and resounding message will suffice. Then and only then, as we approach the next century can we take comfort in our democratic principles and can we clearly say that our laws truly exist for all the people, and not just a select few.

C. The Impact of a Constitutional Amendment

There are those who may be quick to conclude that the passage of the Constitutional Amendment recognizing the rights of crime victims will, in some way, lead to the demise of our present criminal justice system. Perhaps there is a fear that the rights of crime victims could be so outrageously expanded by the legislative and judiciary branches of our government that justice for crime defendants will be compromised.

In 1982, against the objections of many, the New Jersey Death Penalty Statute was passed.⁴⁴ This legislation created an obvious concern among many who feared that a weakening of defendants' rights would occur. An examination of what has transpired in this State in less than a decade leads us to the inescapable conclusion that the Courts of this State will not compromise the rights of defendants under any circumstances.⁴⁵

If we view the history to the fourth, fifth, sixth and eighth amendments to the Federal Constitution, can we imagine that the original framers envisioned interpretations of these provisions as we have seen over the past 40 years? If not, does that mean that the Courts have been improperly extending the rights of persons accused of crime far beyond that which was originally contemplated? Absolutely not. As our country has developed, our institutions and our values have changed. Our system of democracy has survived not because we suppressed human rights but because we recognized them, and on many occasions, have been required to balance competing rights.

The epidemic of crime throughout this country has become pervasive and ever threatening. The President's Task Force, the various National and State organizations, the passage of victims' rights legislation and the more recent concentration of efforts on the Constitutional Amendment process are all clear and definite statements that the system must be changed, not just procedurally but also philosophically. To recognize the realities of crime we must be prepared to confront the ravages of crime.

In those states in which the Constitutional Amendment has passed by a substantial majority of the voters, the results have been very positive with no claims of negative impact upon criminal defendants. In the state of Florida where the constitutional amendment was "passed overwhelmingly" by the voters, in November of 1988, the State Attorney has reported:

"No problems have been brought to my attention regarding the implementation of the constitutional amendment. ..."The constitutional amendment on victims' rights is easy to argue for because it is the right thing to do."⁴⁶

In praising the impact of the constitutional amendment which was passed in the State of Michigan, John D. O'Hair, President of the Prosecuting Attorneys Association of Michigan stated:

"Ensuring victim's rights ensures a crime victim's cooperation and participation in our criminal justice system. Without their active participation, our criminal justice system breaks down. By restoring their faith in the process, the criminal justice system becomes more efficient and produces more just results."⁴⁷

Commenting upon the positive impact of the constitutional amendment approved by the voters in the State of Washington in November of 1988, the State Attorney General stated:

"Elevating the status of victims' rights to a constitutional level sends a powerful message. The amendment's passage signifies the intent of the populace to accord victims basic rights and due dignity that shall not be diminished by legislature or judicial action. Consequently, the participants in the criminal justice system--attorneys, judges and law enforcement officials--likely will accord victims these rights."⁴⁸

In a recent murder trial in the Superior Court of this State, the parents of the murder victim sat alone during jury deliberations. They sat on a park bench because the County Prosecutor's office had never provided any other place for them to sit. They had not spoken with the Prosecutor in over a year, and had been informed of court proceedings by various members of the media, not the Prosecutor's staff. While the Victim Witness Coordinator had been present during trial, she had not spoken to them in weeks. The victim's family had been treated without fairness, compassion and respect during the trial proceedings and throughout the many months which preceded the trial.

The Constitutional Amendment recognizing the rights of crime victims is not unreasonable nor radical. It is a function of understanding, compassion and empathy. It is fairness and it is justice. And as stated by Supreme Court Justice Benjamin N. Cardozo:

"Justice, though due to the accused, is due the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true."⁴⁹

CONCLUSION

Perhaps, in two hundred years there will be a third counsel table at a criminal trial. Perhaps the significant impact of crime on our society may cause as many changes in our criminal justice system as we have seen take place in the past two hundred years. We can only hope that the wisdom of the people who succeed us will rise to the level of those who have preceded us. If we truly believe in our democratic system of justice, then we must have confidence in its ability to rise to the test when the needs of the people so require.

FOOTNOTES

1. GAYLIN, THE KILLING OF BONNIE GARLAND, A QUESTION OF JUSTICE, 343 (1982).
2. DWORKIN, TAKING RIGHTS SERIOUSLY, 8 (1977).
3. OFFICE OF THE COUNTY PROSECUTOR VICTIM WITNESS ADVOCACY, UNION COUNTY, NEW JERSEY, PRESS RELEASE, April 12, 1990.
4. BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE, REPORT TO THE NATION ON CRIME AND JUSTICE, 25 (1983).
5. See, GAYLIN, supra at 348.
6. Id. at 11.
7. See Linda R.S. v. Richard D., 410 U.S. 614, (1973). This case is frequently cited for the proposition that a victim has no standing in a criminal proceeding wherein the Court noted "A private citizen lacks a judicially cognizable interest in the prosecution or non-prosecution of another." Id.
8. The Crime Victims' Bill of Rights, N.J.S.A. 52:4B-34 and The Standards To Insure Rights of Crime Victims, N.J.S.A. 52:4B-44 are seldom followed and victims have no recourse for the continuous disregard of these statutes. This "legislation is designed to enhance and protect the necessary role of crime victims", but it does nothing to afford them the necessary recognition which is required to give to crime victims a purpose beyond that of solely a witness for the State. See Matter of L.Q., 227 N.J. Super, 41, 49 (App. Div. 1988).
9. Eikenberry, Victims of Crime/Victims of Justice, 34 Wayne L. Rev.. 29 (1987).
10. PATRICK HENRY, GIVE ME LIBERTY OR GIVE ME DEATH (1775) SPEECH, delivered on March 23, 1775 before the Second Revolutionary Convention of Virginia, in the old church in Richmond.
11. Id.
12. See, e.g., C. BECCARIA, ESSAYS ON CRIMES AND PUNISHMENTS (1764); GITTLER, EXPANDING THE ROLE OF THE VICTIM IN A CRIMINAL ACTION: AN OVERVIEW OF ISSUES AND PROBLEMS, 11 Pepperdine L. Rev. 117 (1984); See also, EIKENBERRY, The Elevation of Victims' Rights in Washington State: Constitutional Status, 17 Pepperdine L. Rev. 19, 21-22 (1989).
13. Id.; See also, EIKENBERRY, Victims of Crime/Victims of Justice, 34 Wayne L. Rev. 29, 34 (1987).

14. Id.
15. Comment, Private Prosecution; A Remedy for District Attorneys' Unwarranted Inaction, 65 Yale L. J. 209 (1955) (30 jurisdictions have allowed private prosecutors to assist public prosecutors while only three have not). See also, Eikenberry, 34 Wayne L. Rev. supra at 35-36.
16. There are presently no laws in the State of New Jersey which elevate the status of a crime victim to the level of having a "judicially cognizable right" and thus, no authority to request a private prosecutor. It is not the intention of the New Jersey Coalition of Crime Victims' Organizations nor their supporters to become involved in the prosecution of a criminal case, just the opportunity to be present at all public proceedings. See also, Eikenberry, Id. at 36-39.
17. See generally, Eikenberry, supra note 12.
18. Gittler, supra note 12 at 117.
19. See Eikenberry, supra note 12.
20. Id. at 23.
21. PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME; FINAL REPORT, vi (Dec. 1982).
22. Id. at 114.
23. Id. at 115.
24. See discussion, CARRINGTON AND NICHOLSON, The Victims' Movement: An Idea Whose Time Has Come, 11 Pepperdine L. Rev. 1-4 (1984).
25. Id.
26. OFFICE OF JUSTICE PROGRAMS, U.S. DEP'T OF JUSTICE, FOUR YEARS LATER: A REPORT ON THE PRESIDENT'S TASK FORCE ON VICTIMS OF CRIME ii (1986).
27. Data compiled and information published by VICTIMS' CONSTITUTIONAL AMENDMENT NETWORK (commonly referred to as CAN) formed in February 1987 to promote passage of State, and ultimately, Federal Constitutional Amendments.
28. The New Jersey Coalition of Crime Victims' Organizations and the various organizations which join it in advocating the rights of crime victims have consistently taken this position.
29. Constitution of New Jersey, 1947, Article 1.

30. Thomas Paine, COMMON SENSE, (1776).
31. Letter to W. H. Wells, February 24, 1815, The Records of the Federal Convention of 1787, 421-22 (Yale University Press 1966).
32. SUNDQUIST, CONSTITUTIONAL REFORM AND EFFECTIVE GOVERNMENT, (1986).
33. Letter to G. L. Turberville, November 2, 1788, See supra note 31 at 354.
34. Sundquist, supra note 32 at 4.
35. Id.
36. Kervick v. Bontempo, 29 N.J. 469 (1959).
37. State v. Parkhurst, 9 N.J.L. 427 (1828).
38. See supra note 29.
39. See supra note 26.
40. See Eikenberry, supra note 12 at 19.
41. West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624, 638 (1943).
42. The Constitutional Amendment was introduced into the Assembly of the New Jersey State Legislature as ACR 85 by Assemblyman Alex DeCroce. It was subsequently co-sponsored by Assemblywoman and Chairperson of the Assembly Judiciary Committee, Marlene Lynch Ford. It was given the support of the Governor, James Florio and State Attorney General, Robert DelTufo at a press conference on October 15, 1990. The amendment was supported by the Governor and Attorney General, only, after careful and prolonged analysis, evaluation and consideration.
43. Maybury v. Madison, 5 U.S. (1 Cranch) 137, 180 (1803) ("the Constitution of the United States confirms and strengthens the principal, supposed to be essential to all written Constitutions, that a law repugnant to the Constitution is void"). Vanhorne's Lessee v. Dorrance, 2 U.S. (2 Dall.) 303, 308 (1795) ("[A Constitution] is the form of government, delineated by the mighty hand of the people in which certain first principles of fundamental law are established ... [it] is the supreme law of the land. ... [the] Constitution is the sun of the political system, around which all legislative, executive and judicial bodies must revolve.".)

44. N.J.S.A. 2C:49-1, L. 1983, C. 245, eff. July 5, 1983.
45. Since the enactment of the death penalty legislation twenty five cases have been brought before the New Jersey Supreme Court on appeal of death convictions. Each of these convictions has been overturned for one reason or another. In the spring and summer of 1990 the writer witnessed the death penalty trial of James Koedatich whose conviction had been overturned by the N.J. Supreme Court, (112 N.J. 225 (1988)). The trial involved the conviction of the defendant for the brutal kidnapping, aggravated sexual assault and murder of seventeen year old Amy Hoffman. She was the second of his three murder victims. The jury voted against the death penalty (11 to 1).

The defendant's attorney objected to the presence of the victim's mother at the trial and argued for her exclusion from not only the courtroom, but also the courthouse, the area near the courthouse and from the entire Town of Newton where the courthouse was located. In characterizing the victim's mother, Florence Hoffman, the defense attorney stated:

"She is a walking, living victim impact statement. The State, I believe, is deliberately calling her for whatever emotional baggage it can milk from that - that evidence".

46. Letter of Norman R. Wolfinger, State Attorney to Roberta Roper, Maryland Coalition for a Constitutional Amendment.
47. Letter to James K. O'Brien, Chairman, New Jersey Coalition of Crime Victims' Organizations.
48. Eikenberry, supra note 12 at 32.
49. Snyder v. Mass, 291 U.S. 97, 122 (1934).



SHERIFFS' ASSOCIATION OF NEW JERSEY

INCORPORATED MARCH 11, 1929

MORRIS COUNTY COURTHOUSE

P.O. BOX 900

MORRISTOWN, NEW JERSEY 07963-0900 • 201-285-6600



The Sheriff is the highest and only law enforcement official elected by you, the people of New Jersey.

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SECRETARY-TREASURER
John M. Fox

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Thomas J. D'Alessio

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WARREN COUNTY
Edward G. Bullock

*Past President

TO : Assembly Judiciary Committee

FROM: Sheriff James T. Plousis

My name is Sheriff James T. Plousis of Cape May County and President of the New Jersey Sheriffs' Association. I am testifying today in both capacities and to inform you that the 21 Sheriffs in New Jersey are in full support of this legislation.

The Sheriffs of New Jersey have a vital part in the states Criminal Justice System and are fully aware of the rights of the accused in the Criminal Justice process, that being legal counsel, room, board, medical care, transportation to and from court if in custody and detailed information and notice of their case. We believe that this legislation will balance the scales to help the victims of crimes have similar access to the legal system in matters that have dramatically touched their lives.

For far too long the Criminal Justice process has made victims a victim again in already painful and stressful situations.



NEW JERSEY
STATE BAR ASSOCIATION

NEW JERSEY LAW CENTER, ONE CONSTITUTION SQUARE
NEW BRUNSWICK, NJ 08901-1500
(908) 249-5000

December 26, 1990

FAX: (908) 249-2815

Honorable Alex DeCroce
101 Gibraltar Drive, Suite 2-D
Morris Plains, NJ 07950

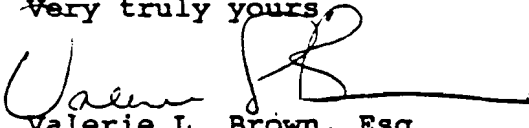
RE: Crime Victims Legislation

Dear Assemblyman DeCroce:

On behalf of the New Jersey State Bar Association, let me acknowledge your leadership on ACR 85 concerning a proposed constitutional amendment entitling crime victims to due process of law, which you have sponsored and support your thoughtful efforts to champion the rights of crime victims.

However, I am advised that the Commissioners on Uniform State Law is presently examining this issue and will release in the near future the Uniform Victims of Crime Act. Given the Commissioner's actions, state legislation may be premature. I respectfully urge you to await the Commissioner's action so that New Jersey may act in unison with other states in the nation.

Thank you for your consideration.

Very truly yours,

Valerie L. Brown, Esq.
Legislative Counsel

VLB/pg

cc: Joseph A. Bottitta, Esq.
Henry F. Furst, Esq.
Alan A. Rockoff, Esq.
Bradley J. Ferencz, Esq.
Eric Neisser, Esq.
Richard E. Shapiro, Esq.
Theodosia A. Tamborlane, Esq.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY CONCURRENT RESOLUTION, No. 85

STATE OF NEW JERSEY

ADOPTED OCTOBER 15, 1990

Sponsored by Assemblyman DeCROCE, Assemblywoman FORD,
Assemblymen Pelly, Shusted, and Stuhltrager

1 A *CONCURRENT RESOLUTION* proposing to amend Article I of
2 the Constitution of the State of New Jersey by adding a new
3 paragraph 22 thereto.

4

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

7

8

PROPOSED AMENDMENT

9 1. Amend Article I by adding a new paragraph 22 to read as
10 follows:

11 22. A victim of a crime shall be treated with fairness,
12 compassion and respect by the criminal justice system. A victim
13 of a crime shall not be denied the right to be present at public
14 judicial proceedings except when, prior to completing testimony
15 as a witness, the victim is properly sequestered in accordance
16 with law or the Rules Governing the Courts of the State of New
17 Jersey. A victim of a crime shall be entitled to those rights and
18 remedies as may be provided by the Legislature. For the
19 purposes of this paragraph, "victim of a crime" means: a) a
20 person who has suffered physical or psychological injury or has
21 incurred loss of or damage to personal or real property as a result
22 of a crime or an incident involving another person operating a
23 motor vehicle while under the influence of drugs or alcohol, and
24 b) the spouse, parent, legal guardian, grandparent, child or
25 sibling of the decedent in the case of a criminal homicide.

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

34 3. This proposed amendment to the Constitution shall be
35 submitted to the people at that election in the following manner
36 and form:

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

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

41 If you favor the proposition printed below make a cross (X),

1 plus (+) or check (✓) in the square opposite the word "Yes." If you
 2 are opposed thereto make a cross (X), plus (+) or check (✓) in the
 3 square opposite the word "No."

4 b. In every municipality the following question:

<p>5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21</p>	<p>YES.</p>	<p>CONSTITUTIONAL AMENDMENT TO ENTITLE CRIME VICTIMS TO FAIRNESS, COMPASSION AND RESPECT BY THE CRIMINAL JUSTICE SYSTEM.</p> <p>Shall the amendment to Article I of the Constitution, agreed to by the Legislature, entitling a victim of crime to be treated with fairness, compassion and respect by the criminal justice system, to be present at public judicial proceedings when not sequestered and authorizing the Legislature to define rights and remedies for victims of crime, be approved?</p>
<p>22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44</p>	<p>NO.</p>	<p>INTERPRETIVE STATEMENT</p> <p>This constitutional amendment would entitle a victim of crime to be treated with fairness, dignity and respect by the criminal justice system. It would entitle a victim to be present at public judicial proceedings when not sequestered. It would also authorize the Legislature to define these rights and to expressly provide for any appropriate statutory remedies for victims of crime. "Victim of a crime" means: a) a person who has suffered physical or psychological injury or has incurred loss of or damage to personal or real property as a result of a crime or an incident involving another person operating a motor vehicle while under the influence of drugs or alcohol, and b) the spouse, parent, legal guardian, grandparent, child or sibling of the decedent in the case of a criminal homicide.</p>

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STATEMENT

The proposed constitutional amendment provides that a victim
 of crime is entitled to be treated with fairness, compassion and
 respect by the criminal justice system, and to such other
 substantive or procedural rights as may be provided by statute. It
 would entitle a victim to be present at public judicial hearings
 when not sequestered. Although this amendment is not intended
 in any way to deny or infringe upon the constitutional rights of
 any person accused of a crime, it is designed to place victims on
 an equal footing by guaranteeing certain fundamental rights as a

1 matter of State constitutional imperative.

2 This provision would ensure, for example, that no victim could
3 be prevented from attending a public trial or other public judicial
4 proceeding unless he or she were subject to being called or
5 recalled as a witness at the proceeding. In other words, a court
6 could only "sequester" a victim prior to the victim completing his
7 or her testimony as a witness. If a victim is not a witness, or
8 once any testimony has been given and the victim is no longer
9 subject to being recalled as a witness, he or she could not
10 thereafter be denied the right to attend the public judicial
11 proceeding, unless, of course, the person's conduct was so
12 disruptive as to warrant exclusion on the grounds of contempt of
13 court. This provision is intended to preclude the abuse by defense
14 counsel of the witness sequestration practice. It is also intended
15 that the right established in this amendment to be present at
16 public judicial proceedings necessarily includes the right to be
17 notified of such proceedings, as is required under current law.

18 This proposed constitutional amendment defines a "victim of a
19 crime" to mean any person who has suffered physical or
20 psychological injury, or has incurred loss or damage to property,
21 as a result of the commission of a crime or a motor vehicle
22 incident in which another person was driving while under the
23 influence of drugs or alcohol. The definition of a victim for the
24 purposes of this constitutional amendment includes the surviving
25 spouse, parent, legal guardian, grandparent, child or sibling of the
26 victim of a criminal homicide. Nothing in this constitutional
27 amendment is intended to preclude the Legislature from
28 extending similar rights to the next of kin of persons
29 incapacitated as the result of a crime.

30 This constitutional amendment would authorize the Legislature
31 to provide by statute for any appropriate remedies.
32 Consequently, although this amendment establishes certain
33 constitutional rights, and authorizes the Legislature to enlarge
34 upon those rights, this provision is not intended and does not
35 establish any cause of action for monetary damages. Rather, it is
36 intended that any such cause of action could only be sustained if
37 specifically authorized by a statute.

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CRIMINAL JUSTICE

41

42 Amends the New Jersey Constitution to provide certain victims
43 or crimes constitutionally guaranteed rights.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY CONCURRENT RESOLUTION No. 85

STATE OF NEW JERSEY

DATED: OCTOBER 15, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably an Assembly Committee Substitute for Assembly Concurrent Resolution No. 85.

The proposed constitutional amendment provides that a victim of crime is entitled to be treated with fairness, compassion and respect by the criminal justice system, and to such other substantive or procedural rights as may be provided by statute. It would entitle a victim to be present at public judicial hearings when not sequestered. Although this amendment is not intended in any way to deny or infringe upon the constitutional rights of any person accused of a crime, it is designed to place victims on an equal footing by guaranteeing certain fundamental rights as a matter of State constitutional imperative.

This provision would ensure, for example, that no victim could be prevented from attending a public trial or other public judicial proceeding unless he or she were subject to being called or recalled as a witness at the proceeding. In other words, a court could only "sequester" a victim prior to the victim completing his or her testimony as a witness. If a victim is not a witness, or once any testimony has been given and the victim is no longer subject to being recalled as a witness, he or she could not thereafter be denied the right to attend the public judicial proceeding, unless, of course, the person's conduct was so disruptive as to warrant exclusion on the grounds of contempt of court. This provision is intended to preclude the abuse by defense counsel of the witness sequestration practice. It is also intended that the right established in this amendment to be present at public judicial proceedings necessarily includes the right to be notified of such proceedings, as is required under current law.

This proposed constitutional amendment defines a "victim of a crime" to mean any person who has suffered physical or psychological injury, or has incurred loss or damage to property, as a result of the commission of a crime or a motor vehicle incident in which another person was driving while under the influence of drugs or alcohol. The definition of a victim for the purposes of this constitutional amendment includes the surviving spouse, parent, legal guardian, grandparent, child or sibling of the

victim of a criminal homicide. Nothing in this constitutional amendment is intended to preclude the Legislature from extending similar rights to the next of kin of persons incapacitated as the result of a crime.

This constitutional amendment would authorize the Legislature to provide by statute for any appropriate remedies. Consequently, although this amendment establishes certain constitutional rights, and authorizes the Legislature to enlarge upon those rights, this provision is not intended and does not establish any cause of action for monetary damages. Rather, it is intended that any such cause of action could only be sustained if specifically authorized by a statute.

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