

PROSECUTORS' GUIDELINES FOR DESIGNATION OF HOMICIDE CASES  
FOR CAPITAL PROSECUTION

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**PREAMBLE**

The legislature has determined that some homicide cases are so egregious that a term of imprisonment is insufficient to properly address societal concerns. These cases have been designated as "Capital" cases.

The decision to file a statutory notice of aggravating factors (s) and thereby commence a capital punishment prosecution is one of the most important charging functions to be performed by a County Prosecutor. It is through this decision making process that a prosecutor commits the entire resources of the criminal justice system.

Because of the significance of the concerns of the legislature for the victims of these egregious crimes and also as to the penalty involved, the prosecutor must establish guidelines which ensure a rational procedure for the designation of a capital case. Because there are twenty-one county prosecutors, each must screen the homicide cases occurring within his respective jurisdiction and decide whether or not the statutory notice of aggravating factors (s) should be filed in a particular case. It is through this charging process that each prosecutor implements the intent of the legislature and ultimately that of the people of the State. It is neither desirable nor acceptable to have a capital charging standard dependent upon individual attitudes.

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All homicide cases and all defendants are different. Therefore, no set of guidelines can possibly anticipate every circumstance. The decision as to whether or not a case will be designated a capital prosecution shall be made by each County Prosecutor by applying these guidelines in a realistic and reasonable fashion to each case.

The twenty-one County Prosecutors in the State of New Jersey reaffirm the fact that race, sex, social or economic religion and/or national origin of a defendant or victim has not in the past, nor will in the future be considered in any fashion to determine whether or not a case warrants capital prosecution.

In addition, it has been and continues to be the position of all prosecutors that economic or other resource constraints of their respective offices shall not be a factor in determining whether or not the case warrants capital prosecution nor shall it in any specific case play any role whatsoever in the capital designation decision making process.

These guidelines are not intended to, do not, and may not be relied upon to create any substantive or procedural rights, enforceable at law by any party in any matter, civil or criminal. The guidelines do not place any limitation upon the otherwise lawful prosecutorial prerogatives of the Office of the County Prosecutor.

## **GUIDELINES FOR THE DESIGNATION FOR CAPITAL PROSECUTIONS**

### **GUIDELINES**

#### **GUIDELINE NO. 1**

Each county prosecutor shall establish within his office a committee to review every homicide case pursuant to the statute and guidelines, to assist the prosecutor in the prosecutor's determination as to death eligibility.

#### **GUIDELINE NO. 2**

The prosecutor, in determining whether or not a case is death eligible, must be satisfied that there is proof beyond a reasonable doubt that the defendant, by his own conduct, actively and directly participated in causing the death of the victim, or procured the commission of the homicide by payment or promise of payment of anything of pecuniary value.

#### **GUIDELINE NO. 3**

The prosecutor, in determining whether or not a case is death eligible, must be satisfied that there is proof beyond a reasonable doubt that the defendant acted purposely in that it was his conscious object, or knowingly in that he was aware it was practically certain that his conduct would cause the death of the victim.

#### **GUIDELINE NO. 4**

The prosecutor must be satisfied that there is proof beyond a reasonable doubt of the existence of at least one statutory aggravating factor.

#### **GUIDELINE NO. 5**

The prosecutor shall consider all known information tending to establish mitigating factors in the case in determining whether or not a case warrants death penalty prosecution.

**GUIDELINE NO. 6**

If after such review the Prosecutor is satisfied that the State will be able to prove beyond a reasonable doubt that the aggravating factor(s) outweigh the mitigating factor(s) then the case shall be designated a Capital Case.

**GUIDELINE NO. 7**

After a case has been designated a Capital Case, nothing contained herein shall prevent the prosecutor, prior to conviction, from reconsidering his initial decision to file the statutory notice of aggravating factors based upon a subsequent change in the factual or legal circumstances of the case. If there is a change in factual or legal circumstances of the case, the prosecutor may move to withdraw the Statutory Notice. Any reconsideration by the prosecutor of his initial charging decision shall be made in accordance with these Guidelines.