

FACTS AND PROCEDURAL HISTORY

On September 16, criminal defendant J.G. entered a plea of guilty to Accusation No. 92-091288 charging him with third degree aggravated criminal sexual contact of a minor with whom he stood in loco parentis in the household in violation of N.J.S.A. 2C:14-3a. (A-1-2). He was classified as a “low risk” sex offender under Megan’s Law. On April 23, probation was continued as the result of a violation of probation. (A-3-4).

At the time of the crimes, J.G. was married to the victim’s mother and lived in the same house as the victim. The victim is now an adult living in the State of Florida.

J.G. has filed an application to be discharged from the requirements of Megan’s Law pursuant to N.J.S.A. 2C:7-2 (f), which provides:

Except as provided in subsection g. of this section, a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

As a result of J.G. application for termination, his attorney was instructed by Superior Court Criminal Division Judge G.J.F. to contact the victim. The victim was contacted by J.G. attorney but she was unable to obtain the specifics of the application. She thereupon lodged onto the Internet and obtained the information from the Megan’s Law State of New Jersey website. The victim thereupon sent a two page letter of objection to Judge F. (A-5-6).

C.L.W. was sexually molested by J.G. when she was between the ages of 12 and 14. (A-5). Her letter to Judge F. demonstrates the long lasting impact J.G. criminal conduct has had on

her. In her letter to the court, the victim addressed a comment made to her by J.G. attorney that the annual registration at the police department was “inconvenient” to his client.

“He is blessed with 1 hour out of 8,760 in a year to not only remember the mistake he made as to not make the same one again but to pray for me and my family. The ones who have truly been inconvenienced. I wish I could have conveyed every painful experience and ‘inconvenience’ Mr. G. imposed on me and now my husband. I hate my physical body and can’t stand for my own husband to see me naked. It seems to me that a lifetime of one hour a year is nothing compared to, 1) the penalty he could have had and 2) what I and my family face everyday.” (A-5)

In this motion before the court the victim seeks the following:

1. Permitting her written statement of objection previously submitted to Judge F. to be made a part of the record and considered by the court in the registrant’s application for termination from the requirements of Megan’s Law; and
2. Permitting the victim, or, if she cannot attend, her legal counsel to attend the registrant’s hearing for termination.

POINT 1

The Victim has standing in this termination proceeding to provide to the Court her written and oral statement of impact

and objection under the authority of the Crime Victim’s Amendment to the New Jersey Constitution (Article 1, § 22), and the New Jersey Crime Victims’ Bill of Rights, N.J.S.A. 52:4B-36, et seq.

1. The rights of crime victims are independent civil rights.

The rights of crime victims in our state criminal justice system are established by the New Jersey Constitution, state statutes and the judicial decisions of the courts. These rights are civil rights, status rights that are automatically provided to persons when they step into the legal role of “victim,” and they are independent of the facts of the alleged crime, any defense asserted or the conviction of the defendant.¹

The rights of crime victims must be fully considered within the criminal justice process because the State Constitution and statutes mandate that they be recognized and respected.² In New Jersey, victims’ rights are afforded primarily through Article 1, ¶ 22 of the State Constitution (the “Victim’s Rights Amendment”) and the Crime Victim’s Bill of Rights under Title 52 of the New Jersey statutes.³ The Victim’s Rights Amendment provides that “A victim of crime shall be treated with fairness, compassion and respect by the criminal justice system.” This requirement “effects a fundamental change in the criminal justice system. Instead of adopting a two-party *State v. Defendant*, paradigm, this provision requires that the system

¹ Douglas E. Beloof, *Constitutional Implications of Crime Victims as Participants*, 88 CORNELL L. REV. 282, 286 (2003).

² See discussion, *State v. Timmendequas*, 161 N.J. 515, 554-555, 737 A.2d 55, 76-77 (1999).

³ N.J.S.A. 52:4B-34, et seq.

consider interests of third parties, specifically crime victims. Unfair practices that deny crime victims fairness, compassion and respect are unconstitutional under the amendment.”⁴

Victims’ rights in the criminal justice system include, *inter alia*, the right to be informed, present, notified and heard, to participate in and receive information about the justice process, to have interests adjudicated, to provide input, to be safe and free from intimidation and to be treated with fairness, compassion, respect and dignity throughout the criminal justice process. While many of these rights are participatory in practice, they are substantive in nature.⁵ Their objective is to give to the victim status recognition, a role, and a voice in the criminal justice system.

2. The historical development of victims’ rights evidences a strong policy for victim inclusion in the criminal justice process.

Victims’ rights in New Jersey and throughout the United States developed and grew from the seed planted by President Ronald Reagan. In 1980, President Reagan called for a national observance to recognize and honor victims and survivors of crime by proclaiming the first annual National Victims of Crime Week to pay tribute to victims of crime. In 1982, he established the President’s Task Force on Victims of Crime and in December of that year the President’s Task Force presented its report with strong recommendations for changes at the federal, state, and local levels. After interviewing and hearing the plight of thousands of crime victims throughout the country, the members of the Task Force were convinced that the criminal justice system was

⁴ State in the Interest of K.P., 311 N.J. Super. 123, 135-136, 709 A.2d 315, 321 (Ch. Div. 1997).

⁵ *Id.*

out of balance. The Task Force reported the following:

Victims have discovered that they are treated as appendages of a system appallingly out of balance. They have learned that somewhere along the way, the system has lost track of the simple truth that it is supposed to be fair and to protect those who obey the law while punishing those who break it. Somewhere along the way, the system began to serve lawyers and judges and defendants, treating the victim with institutionalized disinterest.⁶

In her conclusions to President Reagan on behalf of the Task Force, its Chairperson Lois Haight Herrington noted:

[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.⁷

⁶ President’s Task Force on Victims of Crime; Final Report, vi (Dec. 1982).

⁷ See, *supra* note 17.

In response to the recommendations of the Task Force that called for federal leadership in the area of victims' rights, the U.S. Office for Victims of Crime was established in 1983 within the Department of Justice to address a range of victims' issues. Collaboration between the Department of Justice and Congress and lobbying by victims and victim rights groups resulted in the passage of the Victims of Crime Act (VOCA) of 1984.

In order to implement the objective of VOCA and carry out the mission called for in the Task Force Report, the states were required to create certain structural mechanisms to best achieve the goal of providing direct services to victims in the criminal justice system. In line with the actions of other states, the New Jersey legislative and executive branches of government accomplished the following:

- Enacted the Crime Victim's Bill of Rights.⁸
- Established in the Division of Criminal Justice in the Department of Law and Public Safety an Office of Victim-Witness Advocacy.⁹
- Implemented the Victim and Witness Advocacy Fund (the "Fund") pursuant to rules and regulations promulgated by the Director of the Division of Criminal Justice, to fund the operation of the State Office of Victim and Witness Advocacy, the 21 county offices of Victim and Witness Advocacy, to provide funding to other public entities as deemed appropriate for the implementation of the Attorney General Standards to Ensure the Rights of Crime Victims, and to award grants to qualified

⁸ N.J.S.A. 52:4b-34, *et seq.*

⁹ N.J.S.A. 52:4B-43.

public entities and not-for-profit organizations that provide direct services to victims and witnesses.¹⁰

- Established the “Attorney General Standards to Ensure the Rights of Crime Victims”¹¹ to require that the Office of Victim-Witness Advocacy in the Division of Criminal Justice and each county prosecutor’s office provide direct services for victims and witnesses involved in the prosecution of a case.

The Task Force had also recommended an amendment to the Federal Constitution to establish constitutional rights for victims, and failing same, it encouraged the individual states to amend their constitutions to elevate the rights of victims to constitutional status. The continued exclusion of crime victims from the justice process involving their offenders lead to the grass roots movement in New Jersey in the late 1980’s resulting in the passage of the first human rights amendment to the New Jersey Constitution since 1844. On December 5, 1991, over 1.2 voters approved the Victim’s Rights Amendment to the New Jersey Constitution (Article 1, § 22) that provides:

“A victim of crime shall be treated with fairness, compassion and respect by the criminal justice system. A victim of a crime shall not be denied the right to be present at public judicial proceedings except when, prior to completing testimony, as a witness, the victim is properly sequestered in accordance with law or the Rules Governing the Courts of the State of New Jersey. A victim of a crime shall be entitled to those rights and remedies as may be provided by the Legislature.”

¹⁰ N.J.S.A. 52:4B-43.1.

¹¹ N.J.S.A. 52:4B-44.

The support for the Victim's Rights Amendment in the executive and legislative branches of our state government relied on observations of trial judges who observed attempts to keep victims out of the justice process. In the death penalty trial of James Koedatich, Judge Donald G. Collester refused to exclude the victim's mother from the trial, commenting:

And our courts must be open to members of the public because history teaches that when things go on that are hidden from the public, people tend to think the worst, and history also teaches us that sometimes they are right.¹²

Relying on Judge Collester's comments and observing numerous instances where victims were shut out of the process, Attorney General Robert Del Tufo testified before the Assembly Judiciary Committee in support of the Victim's Rights Amendment as follows:

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.

3. The Constitutional and statutory rights of crime victims extend to all criminal justice proceedings, including those involving Megan's Law.

The rights of crime victims under the New Jersey Constitution and Crime Victims' Bill of Rights must be recognized and respected by "the criminal justice system." They apply at any stage of the criminal justice process including post sentence Megan's Law situations. For example, N.J.S.A. 52:4B-36 (o) which became law in 2001 provides, "No crime victim shall be required to pay the maintenance, support, rehabilitation or other costs arising from the imprisonment or commitment of a victimizer as a result of the crime." This amendment to the statute came about when the defendant, who had sexually assaulted his children who were 8 and

¹² State v. Koedatich (Superior Court of New Jersey, Sussex County 1990) trial transcript provided to Attorney General's office.

10 years old at the time, served his 10 year term in prison and was about to be released when it was determined that he was a danger to society and it was necessary to civilly commit him under Megan's Law. After he was civilly committed to the Hospital, the victims, then 18 and 20 years of age, were given a bill for services from the State of New Jersey for over \$90,000 for the care of their father. Furthermore, they were given no opportunity to challenge this assessment. Represented by the New Jersey Crime Victims' Law Center, the victim's treatment and right to fairness, compassion, respect and dignity were recognized by the State Legislature and N.J.S.A. 52:4B-36 (o) was enacted into law.

The expansiveness of the term "criminal justice system" in recognizing the rights of victims is demonstrated in the cases involving the juvenile justice system. In *State in the Interest of K.P.*,¹³ Judge P.R. held that a victim of sexual assault had standing to oppose the request of the Bergen Record newspaper to give public coverage of the rape trial of her assailant. As a result of Judge R. comprehensive analysis of the law affecting the rights of crime victims in New Jersey, *K.P.* is recognized as one of the most well written opinions nationally on the subject of victim standing in the courts.

In recognizing that both the Bill of Rights and Victim's Rights Amendment give party status to the victim, Judge R. concluded:

It is difficult for the court to imagine that the Legislature intended to give victims these expansive rights, yet specifically intended that they should not be a factor for a court to consider when there is compelling evidence that a detrimental effect upon a victim will occur if the court ignored their request. The State contends that the Legislature specifically identified victims to be considered an interested party with standing to open a proceeding, and, therefore, the court should determine that the ability to open suggests standing to close. The court agrees. The court finds that the legislative intent is more in line with considering the victim's

¹³ 311 N.J. Super. 123, 709 A.2d 315 (Ch. Div. 1997).

position as opposed to ignoring it. The court finds a victim is a constructive equivalent to a party in the case.¹⁴

Prior to the court's decision in *K.P.* in 1997 and the amendment to the Juvenile Justice Code in 1995, that gave crime victims the right to make a victim impact statement in juvenile proceedings,¹⁵ victims of violent crime were often kept out of juvenile justice proceedings.

In 1993, in a case of first impression, Judge Jose L. Fuentes ruled that the civil rights afforded to crime victims under the Bill of Rights apply equally to victims in the juvenile justice and the adult court systems.¹⁶ While the court did not separately rule on the issue of victims standing, by recognizing the rights of the victim, Judge Fuentes effectively confirmed the standing of the victim to assert their rights. At the time, there was no provision in the juvenile justice code that permitted a victim in a juvenile proceeding to give an impact statement at sentencing. Finding that "divine legislative intent is the most fundamental of all canons of statutory construction,"¹⁷ Judge Fuentes concluded:

This court can find no principled reason to distinguish between victims of crime based on the age of the perpetrators who commit it. The focus of the legislation being construed is on the rights of victims. There are no punitive implications to the granting of these rights. There is no danger that the rehabilitative goals which distinguish juvenile court from criminal court would be endangered by the exercise of these rights by the victims of the juvenile's offenses. In fact, it might in fact enhance the rehabilitation of some juvenile offenders to be forced to hear how their actions have affected the lives of their victims.¹⁸

¹⁴ *Id.* at 135-136, 320.

¹⁵ N.J.S.A. 2A:4A-60, *et seq.*

¹⁶ State in Interest of O.G., 274 N.J. Super. 182, 643 A.2d 654 (Ch. Div. 1993).

¹⁷ *Id.* at 186, 656.

¹⁸ *Id.* at 188-189, 658.

Subsequently, in two unreported cases in 1995 & 1996¹⁹ in Essex County, the New Jersey Crime Victims Law Center successfully pursued emergent appeals to the Appellate Division to permit homicide survivors to be present during the juvenile court proceedings where the lower court concluded that the rights of crime victims did not apply.

4. The victim's right to be informed would be meaningless without the opportunity to provide input into the justice process.

Victims have the right to be informed about the criminal justice process.²⁰ The Bill of Rights encourages the prosecutor to be forthcoming and open with the victim. For example, the victim has the right to “be *advised* of case progress,” and “submit a written statement about the impact of the crime to a representative of the county prosecutor’s office which shall be considered *prior* to the prosecutor’s final decision concerning whether formal criminal charges will be filed.”²¹

The right to be advised of case progress must include the right of the victim to provide input, otherwise, the “statutory protections” afforded to crime victims “would be meaningless.”²² In *State v. Faunce*, the defendant pled guilty to death by auto and the sentencing judge permitted the plea to be non-evidential in a subsequent civil proceeding under the authority of *N.J.S.A.* 2C:11-5c. The victim’s family was not notified in advance of the defendant’s request and therefore, they did not have the opportunity to state their position to the prosecutor on the matter. The Appellate Division reversed and remanded the matter giving the victim the right to be heard on the issue of whether the plea should be non-evidential in a civil proceeding. The court held that the victim’s right to case progress under *N.J.S.A.* 52:4B-36(k) was violated stating:

¹⁹ State of New Jersey in the Matter of M.G., (Docket No. FJ-07-851-96) and State of New Jersey in the Matter of T.R., (Docket No. FJ-07-1554-97)

²⁰ N.J.S.A. 52:4B-36 (b).

²¹ N.J.S.A. 52:4B-36 (m). The same right exists under the Attorney General’s Standards N.J.S.A. 52:4B-44(b)(15).

²² *State v. Faunce*, 244 N.J. Super. 499, 502, 582 A.2d 1268, 1270 (App.Div.1990).

The State, therefore, could not contact the victim's family and determine its wishes, even though the request directly affected them. These statutory protections would be meaningless in a death-by-auto case unless due notice is given of a request to have the guilty plea made civilly non-evidential.²³

Under the rationale of the Appellate Division's holding in *Faunce*, a violation of any of the enumerated rights of the crime victim under the Bill of Rights which impact the victim's right to provide input or otherwise be heard should *a fortiori* require a reversal of the court's action in order to permit the victim to provide input into the case.

5. Victims' rights have been recognized as applicable in civil cases where related criminal matters are involved.

Megan's Law is exclusively a criminal justice matter in which the rights of victims are mandated by constitution and statute. Where criminal justice proceedings are tangentially involved, victims' rights have been recognized in civil proceedings. For example, in a criminal prosecution involving the existence of a tape of a 911 call by the victim, the civil court may consider the victims' rights in denying an Open Public Records Act (OPRA) lawsuit by the media to obtain a copy of the 911 tape. In determining that the release of the tape would impact the victim's right to privacy, Judge S., in the 2004 case of *Asbury Park Press v. Ocean County Prosecutor*,²⁴ also relied on the victims' rights laws in determining the legislative intent of OPRA:

In addition to the clear awareness of the privacy issue as reflected by these excerpts, it can be presumed that the legislators were well aware of the provisions of *N.J. Const. art. I, ¶ 22 . . .*

²³ *Id.* at 502-503, 582 A.2d at 1270.

²⁴ 374 N.J.Super. 312, 864 A.2d 446 (Law Div. 2004).

Additionally, even before the passage of the constitutional amendment, the Legislature had sought to provide victim protection by the enactment of the Crime Victim's Bill of Rights. N.J.S.A. 52:4B-34 to -49.²⁵

6. Victims' rights are evident in post sentencing matters involving the criminal justice system.

The rights of crime victims do not stop with the conviction and sentencing of an offender. They continue as long as the offender is subject to the jurisdiction of the State as it relates to the original crime he committed. For example, the rights of crime victims in the parole system have paralleled the developments in the pretrial and trial stages that began in New Jersey in the late 1980's. The State Parole Board has established a Victim Assistance Unit. It addresses the questions of victims and provides assistance whenever requested. It advises victims that "[b]y making themselves heard through their confidential testimony, crime victims help ensure the State Parole Board will understand and acknowledge their concerns while making public safety decisions."²⁶ The policies and practices of the Parole Board toward crime victims provide for written and oral testimony input as well as continued notification throughout the parole process.²⁷

The New Jersey Department of Corrections likewise has established an Office of Victim Services which "is devoted to protecting the rights of victims of crime and assisting them in obtaining meaningful services and locating appropriate resources throughout the community while being sensitive to the needs of victims. . . . and. . . provid[ing] timely information and services aimed at enhancing and improving the victim's knowledge of New Jersey's correctional system."²⁸

²⁵ Id at 328-329, 864 A.2d 446. See also, *The Media v. the Rights of the Media*, *Victim Voice*, Fall 2007, available at <http://www.njcvlc.org/reference/victims-voice/index.php>.

²⁶ <http://www.njcvlc.org/reference/victims-voice/index.php>

²⁷ See e.g., N.J.S.A. 30:4-123.55;²⁷ N.J.S.A. 30:4-123.54

²⁸ New Jersey Department of Corrections website, available at <http://www.state.nj.us/corrections/OVS/index.html>.

In addition, under the authority of N.J.S.A. 30:4-91.8, enacted in 1998, the prosecutor and victim are required to be notified by the Department of Corrections if an individual convicted of a violent crime is being considered for a change in status “which may result in participation in any residential community release program, . . .” Under the statute “the victim or the victim's nearest relative, as the case may be, shall have 10 working days in which to submit comments.”²⁹ The practice of the Department of Corrections is to permit victim input, including legal argument by the victim’s attorney, to oppose the release of the offender to a halfway house under the similar standard as Megan’s Law, i.e., “undue risk to public safety.”³⁰

Point II

The Victim’s Input should be fully considered by the court as an important factor in determining whether the offender should be terminated from the requirements of Megan’s Law.

Megan’s Law is exclusively part of the criminal justice system. The legal authority pertaining to the arrest, trial, conviction, sentencing and post sentencing of sex offenders and the administration of Megan’s Law lies with the New Jersey Code of criminal Justice, Title 2C.³¹ In The area of Megan’s law the field has been preempted by title 2C.³² As a part of the criminal justice process preempted by the state criminal code, the obligation of the criminal justice system, and accordingly all those who work in it, to provide fairness, compassion, respect and dignity to crime victims and not exclude them from the process are constitutionally and statutorily mandated.

²⁹ Id.

³⁰ N.J.S.A. 30:4-91.9

³¹ Cf, N.J.S.A.2C:7-2.

³² See G.H. v. Township of Galloway, 401 N.J. Super. 392 (App. Div. 2008), certif. granted, 197 N.J. 475).

Megan's Law was passed to provide knowledge as a measure of self-defense to help protect those most vulnerable in the community.³³ It does not seek to retry an offender for a crime for which he or she has already been convicted and punished. Although it is the prior conviction which triggers the Act, no notification is made without a current individualized assessment of the comparative risk of re-offense. This assessment does include considerations of prior conduct in which “[p]revious instances of violent behavior are an important indicator of future violent tendencies”³⁴

In the instant matter, J.G. can only receive a termination from the requirements of Megan’s Law if he is “*not likely to pose a threat to the safety of others.*” As with the tier classification process based on risk assessment, the standard of the threat by the offender to the safety to others is a paramount consideration. The determination by the court of whether the offender should be totally released from the minimal requirements of Megan’s Law is no less important in addressing the potential risk of safety to others. Accordingly, the input of the victim, the one individual who has most experienced the dangerous conduct of the offender, on the issue of potential danger is not only material, it is absolutely necessary.

The importance of protecting the rights of the crime victim to fairness, compassion, respect and dignity and to be free from intimidation is evidenced in the decisions of the New Jersey Courts involving matters apposite to the case at bar.³⁵ In *Matter of Registrant C.A.*,³⁶ the court commented:

“Only the victim and the registrant were privy to the details of the crime. Their statements . . . are in direct conflict. This conflict can

³³ See discussion, *Alan A. v. Verneiro*, 970 F. Supp.1153, vacated 135 F.3d 763 (1997).

³⁴ *Id.* at 1177. (Citations omitted).

³⁵ *Id.*

³⁶ 285 N.J.Super. 343, 350, 666 A.2d 1375 (App. Div. 1995).

only be resolved at a hearing where both sides may present such evidence, documentary and live, that is material to the issues. The only caveat to this rule is that neither side may serve process on the victim or seek to compel testimony from the victim without leave of court, which shall be granted only upon a clear and convincing demonstration of a compelling need for that witnesses' testimony.”³⁷

In affirming the Appellate Division in *C.A.*, the Supreme Court emphasized the protection of the victim in Megan’s Law hearings:

We also agree with the Appellate Division that neither side may compel the victim's testimony without leave of the court. The State often avoids a trial, particularly in a sex offense case, so that the victim will not be forced to testify. We are therefore reluctant to compel a victim to testify unless it is absolutely necessary. The trial courts should only seek to compel such testimony when there is a real need for the testimony that cannot be met in an alternative manner. We expect that only in the rarest of cases will a court compel the testimony of a victim. In those cases, we suggest that, when possible, the trial court itself conduct all questioning of the victim.³⁸

C.L.W., the victim in this matter, has requested the right to provide relevant input to the court in its determination of whether J.G. is likely to pose a threat to the safety of others. To exclude her would deny her rights to fairness, compassion, respect and dignity, along with the right to be apprised of the status of the justice process involving her offender under the State Constitution and Crime Victims’ Bill of Rights. The following passage from the letter of the victim is compelling as it directly goes to the heart of the issue before this court and demonstrates that without hearing from the victim, the justice sought to be attained in this Megan’s Law proceeding would be greatly diminished.

As for me, your Honor, I forgive him but to say that he is safe for the general public would be a lie. The last encounter I had with Mr. G his eyes went directly to my chest and the lust was quite apparent. He may not have gotten in any trouble over the past 15

³⁷ Id. at 350, 1378-1379.

³⁸ 146 N.J. 71, 97-98, 679 A.2d 1153 (1996).

years, but it is because he is not stupid and I truly believe that Megan's Law has prevented any other offense. (A-6).

CONCLUSION

Based on the foregoing and for the reasons aforesaid, the undersigned attorney for the victim, C.L.W. respectfully requests that the relief requested by the victim be granted.

Respectfully submitted,

NEW JERSEY CRIME VICTIMS'
LAW CENTER
ATTORNEYS FOR VICTIM, C.L.W.

By _____

RICHARD D. POMPELIO, ESQ.

Dated: April 6