Victim Impact Evidence, State by State

(by Dean Sanderford of the Colorado Capital Habeas Unit, 2012)

The Eighth Amendment permits victim impact evidence to describe the characteristics of the victim and the effect of the victim's death on family members, but it prohibits the inclusion of sentence recommendations or characterizations of the crime or defendant. See Payne v. Tennessee, 501 U.S. 808, 827, 830 n.2 (1991); Hain v. Gibson, 287 F.3d 1224, 1238-39 (10 Cir. 2002). Below is a summary th of the state law, as it relates to this constitutional mandate, in each death-penalty state.

1. Twenty-nine states limit victim impact evidence to characteristics of the victim and the effects of the crime, either by statute or by case law.

Alabama Ex parte McWilliams, 640 So.2d 1015, 1017 (Ala. 1993)
Arizona State v. Prince, 250 P.3d 1145, 1163-64 (Ariz. 2011)
Arkansas Greene v. State, 37 S.W.3d 579, 586 (Ark. 2001)
California People v. Smith, 30 Cal. 4th 581, 622 (Cal. 2003)
Colorado Colo. Rev. Stat. § 24-4.1-302.5(g)
Delaware Del. Code Ann. § 11-4331(e)
Florida Fla. Stat. § 921.141(7)
Georgia Bryant v. State, 708 S.E.2d 362, 382-83 (Ga. 2011)
Idaho State v. Payne, 199 P.3d 123, 148 (Idaho 2008)
Illinois 725 Ill. Comp. Stat. § 120/6(a)
Indiana Bivins v. State, 642 N.E.2d 928, 956-57 (Ind. 1994)
Louisiana La. Rev. Stat. § 46:1844K.(2)
Maryland Md. Code Ann., Crim. P., § 11-402(e)
Missouri State v. Worthington, 8 S.W.3d 83, 89 n.2 (Mo. 1999)
Nebraska State v. Vela, 777 N.W.2d 266, 314-15 (Neb. 2010)
Nevada Kaczmarek v. State, 91 P.3d 16, 32-33 (Nev. 2004)
New Hampshire N.H. Rev. Stat. § 21-M:8-k.II-a.(b)
North Carolina N.C. Gen. Stat. § 15A-833(a)
Ohio State v. Goodwin, 703 N.E.2d 1251, 1262 (Ohio 1999)
Oregon Or. Rev. Stat. § 163.150(1)(a)
Pennsylvania Pa. Cons. Stat. § 42-9711(a)(2)
South Carolina Van Dohlen v. State, 602 S.E.2d 738, 745 (S.C. 2004)
South Dakota State v. Rhines, 548 N.W.2d 415, 446-47 (S.D. 1996)
Tennessee State v. McKinney, 2001 WL 298636, at * 14 (Tenn. Crim. App. 2001)
Texas Tex. Code Crim. Proc. Ann. art. 56.03(b)
Utah Utah Code Ann. § 64-13-20(5)(b)
Virginia Va. Code Ann. §§ 19.2-264.5, 19.2-299.1
Washington State v. Gregory, 147 P.3d 1201, 1249-50 (Wash. 2006)
Wyoming Harlow v. State, 70 P.3d 179, 193-94 (Wyo. 2003)

2. Four states have neither statute nor case law specifically addressing the scope of victim impact evidence in capital cases. Two of those states, however, have a generally applicable victim impact statute – that is, statutes not specific to capital cases – that define victim impact evidence to include content that is constitutionally proscribed in capital cases.

Kansas
Kentucky Ky. Rev. Stat. § 421.520(2)
Mississippi Miss. Code Ann. § 99-10-155(b)
Montana

3. One state expressly allows constitutionally proscribed content in capital cases.

Oklahoma Lockett v. State, 53 P.3d 418, 427 (Okla. Crim. App. 2002)