

4506

2009-2010 Regular Sessions

I N A S S E M B L Y

February 4, 2009

Introduced by M. of A. MAYERSOHN, ESPAILLAT -- Multi-Sponsored by -- M. of A. CANESTRARI, CHRISTENSEN, CLARK, COLTON, CYMBROWITZ, DINOWITZ, GALEF, PHEFFER, SWEENEY -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to confidentiality of victims and witnesses addresses and telephone numbers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The civil rights law is amended by adding a new section
2 50-f to read as follows:
3 S 50-F. CONFIDENTIALITY OF VICTIM AND WITNESS ADDRESSES AND TELEPHONE
4 NUMBERS. 1. THE RESIDENCE AND BUSINESS ADDRESSES AND TELEPHONE NUMBERS
5 OF ANY VICTIM OF OR WITNESS TO A CRIME SHALL BE CONFIDENTIAL. NO REPORT,
6 PAPER, PICTURE, PHOTOGRAPH, COURT FILE, OR OTHER DOCUMENT THAT RELATES
7 TO A CRIME AND CONTAINS THE RESIDENCE OR BUSINESS ADDRESS OR TELEPHONE
8 NUMBER OF A VICTIM OR WITNESS, AND THAT IS IN THE CUSTODY OR POSSESSION
9 OF ANY PUBLIC OFFICER OR EMPLOYEE, INCLUDING THE PROSECUTING ATTORNEY,
10 THE POLICE, AND ANY CLERKS, OFFICIALS, OR EMPLOYEES OF ANY STATE COURT,
11 SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION, UNLESS THE RESIDENCE AND
12 BUSINESS ADDRESSES AND TELEPHONE NUMBERS OF THE VICTIM AND WITNESS HAVE
13 BEEN DELETED. NO SUCH PUBLIC OFFICER OR EMPLOYEE SHALL DISCLOSE THE
14 RESIDENCE OR BUSINESS ADDRESS OR TELEPHONE NUMBER OF SUCH A VICTIM OR
15 WITNESS EXCEPT TO:
16 A. THE PUBLIC OFFICERS AND EMPLOYEES, INCLUDING POLICE, PROSECUTORS,
17 PROBATION AND PRISON OFFICERS AND EMPLOYEES, NOT TO INCLUDE COUNSEL FOR
18 THE DEFENSE, WHO ARE CHARGED WITH THE DUTY OF INVESTIGATING, PROSECUT-
19 ING, OR KEEPING RECORDS RELATING TO THE CRIME OR THE DEFENDANT, OR WITH
20 PERFORMING ANY OTHER ACT WHEN DONE PURSUANT TO THE LAWFUL DISCHARGE OF
21 THEIR DUTIES;

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 B. ANY GOVERNMENT AGENCY OR ENTITY WHICH PROVIDES COMPENSATION OR
2 SERVICES TO VICTIMS OR WITNESSES, OR WHICH INVESTIGATES OR ADJUDICATES
3 CLAIMS FOR SUCH COMPENSATION OR SERVICES;

4 C. ANY PERSON OR AGENCY UPON WRITTEN CONSENT OF THE VICTIM OR WITNESS
5 OR THE PARENTS, SPOUSE, OR OTHER PERSON LEGALLY RESPONSIBLE FOR THE CARE
6 OF THE VICTIM OR WITNESS EXCEPT AS MAY OTHERWISE BE REQUIRED OR PROVIDED
7 BY THE ORDER OF A COURT; OR

8 D. ANY PERSON WHO, EITHER PRIOR TO OR AFTER THE TRIAL OF THE CASE
9 INVOLVING THE VICTIM OR WITNESS, MAKES APPLICATION TO A COURT HAVING
10 JURISDICTION OVER THE ALLEGED CRIME, AND IS AUTHORIZED BY COURT ORDER TO
11 RECEIVE SUCH INFORMATION. THE COURT ORDER SHALL ISSUE ONLY AFTER:

12 (I) THE PERSON MAKING THE APPLICATION DEMONSTRATES TO THE SATISFACTION
13 OF THE COURT THAT GOOD CAUSE EXISTS FOR DISCLOSURE TO THAT PERSON;

14 (II) THE COURT IS REASONABLY ASSURED BY THE PROSECUTING ATTORNEY THAT
15 THE VICTIM OR WITNESS IS KNOWN NOT TO BE AT RISK OF PERSONAL HARM
16 RESULTING FROM THE DISCLOSURE, OR IS ADEQUATELY PROTECTED FROM SUCH
17 RISK; AND

18 (III) NOTICE HAS BEEN GIVEN TO THE VICTIM OR WITNESS AFFECTED BY THE
19 ORDER, OR THE PARENTS, SPOUSE, OR OTHER PERSON LEGALLY RESPONSIBLE FOR
20 THE CARE OF THAT VICTIM OR WITNESS, AND TO THE PROSECUTING ATTORNEY AT
21 LEAST ONE HUNDRED TWENTY HOURS BEFORE THE SIGNING OF SUCH ORDER. THE
22 VICTIM OR WITNESS, OR THE PARENTS, SPOUSE, OR THE PERSON LEGALLY RESPON-
23 SIBLE FOR THE CARE OF THAT VICTIM OR WITNESS, AFFECTED BY THE ORDER MAY
24 APPEAL TO THE APPROPRIATE COURT THE DECISION TO ORDER DISCLOSURE, AND
25 THERE SHALL BE NO DISCLOSURE UNTIL SUCH APPEAL IS HEARD AND DECIDED.

26 2. PRIOR TO TRIAL, UPON REQUEST OF COUNSEL FOR THE DEFENDANT TO INTER-
27 VIEW A VICTIM OR WITNESS, THE PROSECUTING ATTORNEY SHALL ENSURE THAT THE
28 VICTIM OR WITNESS SOUGHT TO BE INTERVIEWED IS INFORMED OF THAT REQUEST
29 AND OF THE RIGHT OF THE VICTIM OR WITNESS TO EITHER GRANT OR REFUSE THAT
30 REQUEST. THE PROSECUTOR SHALL ASK IF THE VICTIM OR WITNESS WILL CONSENT
31 TO SUCH AN INTERVIEW, AND SHALL ENSURE THAT THE DEFENSE COUNSEL IS
32 INFORMED OF THE RESPONSE OF THE VICTIM OR WITNESS. IF THE VICTIM OR
33 WITNESS CONSENTS TO BE INTERVIEWED, THE PROSECUTING ATTORNEY SHALL SO
34 INFORM THE DEFENSE COUNSEL, AND SHALL OFFER TO THE VICTIM OR WITNESS
35 SPACE FOR A MEETING IN THE PROSECUTING ATTORNEY'S OFFICES OR, AT THE
36 OPTION OF THE PROSECUTING ATTORNEY, SOME OTHER APPROPRIATE NEUTRAL SITE.
37 THE PROSECUTING ATTORNEY SHALL NOT BE REQUIRED TO BUT MAY ATTEND THE
38 MEETING. THE VICTIM OR WITNESS SHALL BE FREE TO MAKE OTHER ARRANGEMENTS
39 TO CONTACT OR MEET WITH COUNSEL FOR THE DEFENSE, AND THE PROSECUTION
40 ATTORNEY SHALL NOT INTERFERE WITH NOR IMPEDE ON THOSE ARRANGEMENTS.
41 NOTHING IN THIS SECTION SHALL BE CONSTRUED AS PROHIBITING DEFENSE COUN-
42 SEL FROM CONTACTING THE VICTIM OR WITNESS DIRECTLY FOR THE PURPOSES OF
43 INTERVIEWING THE VICTIM OR WITNESS, IF THE DEFENSE COUNSEL HAS OBTAINED
44 LAWFULLY THE ADDRESS OR TELEPHONE NUMBER OF THE VICTIM OR WITNESS FROM A
45 SOURCE OTHER THAN THE PROSECUTOR.

46 3. DURING A TRIAL OR HEARING RELATED TO A CRIMINAL PROSECUTION, THE
47 COURT SHALL REQUIRE THAT THE RESIDENCE AND BUSINESS ADDRESSES AND TELE-
48 PHONE NUMBERS OF ANY VICTIM OF OR WITNESS TO THE CRIME SHALL NOT BE
49 DISCLOSED IN OPEN COURT, AND THAT A VICTIM OR WITNESS SHALL NOT BE
50 REQUIRED TO PROVIDE THE ADDRESSES OR TELEPHONE NUMBERS OF THE VICTIM OR
51 WITNESS IN RESPONSE TO DEFENSE OR PROSECUTION QUESTIONING, UNLESS THE
52 COURT DETERMINES THAT THERE IS A CLEAR NEED FOR SUCH DISCLOSURE BECAUSE
53 THE INFORMATION IS NECESSARY AND RELEVANT TO THE FACTS OF THE CASE OR TO
54 THE CREDIBILITY OF THE WITNESS. THE BURDEN TO ESTABLISH THE NEED AND
55 RELEVANCE FOR DISCLOSURE SHALL BE ON THE DEFENSE OR THE PARTY SEEKING
56 DISCLOSURE. PRIOR TO ORDERING DISCLOSURE, THE COURT ALSO SHALL BE

1 REASONABLY ASSURED THAT THE VICTIM OR WITNESS IS KNOWN NOT TO BE AT RISK
2 OF PERSONAL HARM RESULTING FROM THE DISCLOSURE, OR IS ADEQUATELY
3 PROTECTED FROM SUCH RISK.

4 4. THE COURT HAVING JURISDICTION OVER THE ALLEGED CRIME MAY ORDER ANY
5 RESTRICTIONS UPON DISCLOSURES AUTHORIZED IN THIS SECTION AS IT DEEMS
6 NECESSARY AND PROPER TO PRESERVE THE CONFIDENTIALITY OF THE RESIDENCE OR
7 BUSINESS ADDRESS OR TELEPHONE NUMBER OF THE VICTIM OR WITNESS.

8 5. NOTHING CONTAINED IN THIS SECTION SHALL BE CONSTRUED TO REQUIRE THE
9 COURT TO EXCLUDE THE PUBLIC FROM ANY STAGE OF THE CRIMINAL PROCEEDING OR
10 OTHERWISE INTERFERE WITH A DEFENDANT'S DISCOVERY RIGHTS, THE PUBLIC'S
11 RIGHT OF ACCESS TO GOVERNMENTAL RECORDS, OR THE RIGHT OF NEWS MEDIA TO
12 REPORT INFORMATION LAWFULLY OBTAINED.

13 S 2. This act shall take effect immediately.