S T A T E O F N E W Y O R K

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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:

Section 1. The civil rights law is amended by adding a new section 50-f to read as follows:

S 50-F. CONFIDENTIALITY OF VICTIM AND WITNESS ADDRESSES AND TELEPHONE NUMBERS. 1. THE RESIDENCE AND BUSINESS ADDRESSES AND TELEPHONE NUMBERS OF ANY VICTIM OF OR WITNESS TO A CRIME SHALL BE CONFIDENTIAL. NO REPORT, PAPER, PICTURE, PHOTOGRAPH, COURT FILE, OR OTHER DOCUMENT THAT RELATES TO A CRIME AND CONTAINS THE RESIDENCE OR BUSINESS ADDRESS OR TELEPHONE NUMBER OF A VICTIM OR WITNESS, AND THAT IS IN THE CUSTODY OR POSSESSION OF ANY PUBLIC OFFICER OR EMPLOYEE, INCLUDING THE PROSECUTING ATTORNEY, THE POLICE, AND ANY CLERKS, OFFICIALS, OR EMPLOYEES OF ANY STATE COURT, SHALL BE MADE AVAILABLE FOR PUBLIC INSPECTION, UNLESS THE RESIDENCE AND BUSINESS ADDRESSES AND TELEPHONE NUMBERS OF THE VICTIM AND WITNESS HAVE BEEN DELETED. NO SUCH PUBLIC OFFICER OR EMPLOYEE SHALL DISCLOSE THE RESIDENCE OR BUSINESS ADDRESS OR TELEPHONE NUMBER OF SUCH A VICTIM OR WITNESS EXCEPT TO:

A. THE PUBLIC OFFICERS AND EMPLOYEES, INCLUDING POLICE, PROSECUTORS, PROBATION AND PRISON OFFICERS AND EMPLOYEES, NOT TO INCLUDE COUNSEL FOR THE DEFENSE, WHO ARE CHARGED WITH THE DUTY OF INVESTIGATING, PROSECUTING, OR KEEPING RECORDS RELATING TO THE CRIME OR THE DEFENDANT, OR WITH PERFORMING ANY OTHER ACT WHEN DONE PURSUANT TO THE LAWFUL DISCHARGE OF THEIR DUTIES;

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

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

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

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

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

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

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

2. PRIOR TO TRIAL, UPON REQUEST OF COUNSEL FOR THE DEFENDANT TO INTERVIEW A VICTIM OR WITNESS, THE PROSECUTING ATTORNEY SHALL ENSURE THAT THE VICTIM OR WITNESS SOUGHT TO BE INTERVIEWED IS INFORMED OF THAT REQUEST AND OF THE RIGHT OF THE VICTIM OR WITNESS TO EITHER GRANT OR REFUSE THAT REQUEST. THE PROSECUTOR SHALL ASK IF THE VICTIM OR WITNESS WILL CONSENT TO SUCH AN INTERVIEW, AND SHALL ENSURE THAT THE DEFENSE COUNSEL IS INFORMED OF THE RESPONSE OF THE VICTIM OR WITNESS. IF THE VICTIM OR WITNESS CONSENTS TO BE INTERVIEWED, THE PROSECUTING ATTORNEY SHALL SO INFORM THE DEFENSE COUNSEL, AND SHALL OFFER TO THE VICTIM OR WITNESS SPACE FOR A MEETING IN THE PROSECUTING ATTORNEY'S OFFICES OR, AT THE OPTION OF THE PROSECUTING ATTORNEY, SOME OTHER APPROPRIATE NEUTRAL SITE. THE PROSECUTING ATTORNEY SHALL NOT BE REQUIRED TO BUT MAY ATTEND THE MEETING. THE VICTIM OR WITNESS SHALL BE FREE TO MAKE OTHER ARRANGEMENTS TO CONTACT OR MEET WITH COUNSEL FOR THE DEFENSE, AND THE PROSECUTION ATTORNEY SHALL NOT INTERFERE WITH NOR IMPEDE ON THOSE ARRANGEMENTS. NOTHING IN THIS SECTION SHALL BE CONSTRUED AS PROHIBITING DEFENSE COUNSEL FROM CONTACTING THE VICTIM OR WITNESS DIRECTLY FOR THE PURPOSES OF INTERVIEWING THE VICTIM OR WITNESS, IF THE DEFENSE COUNSEL HAS OBTAINED LAWFULLY THE ADDRESS OR TELEPHONE NUMBER OF THE VICTIM OR WITNESS FROM A SOURCE OTHER THAN THE PROSECUTOR.

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

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

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

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

S 2. This act shall take effect immediately.