

4961

2011-2012 Regular Sessions

I N   A S S E M B L Y

February 9, 2011

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Introduced by M. of A. MAYERSOHN -- 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;  
22    B. ANY GOVERNMENT AGENCY OR ENTITY WHICH PROVIDES COMPENSATION OR  
23    SERVICES TO VICTIMS OR WITNESSES, OR WHICH INVESTIGATES OR ADJUDICATES  
24    CLAIMS FOR SUCH COMPENSATION OR SERVICES;

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

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

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

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

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

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

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

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

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

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

10       S 2. This act shall take effect immediately.