

ASSEMBLY, No. 1731

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Prohibits release of personal identifying information of violent crime victims and witnesses under State's open public records law.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT prohibiting the public release of personal identifying
2 information of violent crime victims and witnesses, and
3 amending P.L.1995, c.23 and P.L.1963, c.73.
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 1 of P.L.1995, c.23 (C.47:1A-1.1) is amended to
9 read as follows:

10 1. As used in P.L.1963, c.73 (C.47:1A-1 et seq.) as amended
11 and supplemented:

12 "Biotechnology" means any technique that uses living
13 organisms, or parts of living organisms, to make or modify
14 products, to improve plants or animals, or to develop micro-
15 organisms for specific uses; including the industrial use of
16 recombinant DNA, cell fusion, and novel bioprocessing techniques.

17 "Custodian of a government record" or "custodian" means in the
18 case of a municipality, the municipal clerk and in the case of any
19 other public agency, the officer officially designated by formal
20 action of that agency's director or governing body, as the case may
21 be.

22 "Government record" or "record" means any paper, written or
23 printed book, document, drawing, map, plan, photograph,
24 microfilm, data processed or image processed document,
25 information stored or maintained electronically or by sound-
26 recording or in a similar device, or any copy thereof, that has been
27 made, maintained or kept on file in the course of his or its official
28 business by any officer, commission, agency or authority of the
29 State or of any political subdivision thereof, including subordinate
30 boards thereof, or that has been received in the course of his or its
31 official business by any such officer, commission, agency, or
32 authority of the State or of any political subdivision thereof,
33 including subordinate boards thereof. The terms shall not include
34 inter-agency or intra-agency advisory, consultative, or deliberative
35 material.

36 A government record shall not include the following information
37 which is deemed to be confidential for the purposes of P.L.1963,
38 c.73 (C.47:1A-1 et seq.) as amended and supplemented:

39 information received by a member of the Legislature from a
40 constituent or information held by a member of the Legislature
41 concerning a constituent, including but not limited to information in
42 written form or contained in any e-mail or computer data base, or in
43 any telephone record whatsoever, unless it is information the
44 constituent is required by law to transmit;

**EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is
not enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 any memorandum, correspondence, notes, report or other
2 communication prepared by, or for, the specific use of a member of
3 the Legislature in the course of the member's official duties, except
4 that this provision shall not apply to an otherwise publicly-
5 accessible report which is required by law to be submitted to the
6 Legislature or its members;

7 any copy, reproduction or facsimile of any photograph, negative
8 or print, including instant photographs and videotapes of the body,
9 or any portion of the body, of a deceased person, taken by or for the
10 medical examiner at the scene of death or in the course of a post
11 mortem examination or autopsy made by or caused to be made by
12 the medical examiner except:

13 when used in a criminal action or proceeding in this State which
14 relates to the death of that person,

15 for the use as a court of this State permits, by order after good
16 cause has been shown and after written notification of the request
17 for the court order has been served at least five days before the
18 order is made upon the county prosecutor for the county in which
19 the post mortem examination or autopsy occurred,

20 for use in the field of forensic pathology or for use in medical or
21 scientific education or research, or

22 for use by any law enforcement agency in this State or any other
23 state or federal law enforcement agency;

24 criminal investigatory records;

25 victims' records, except that a victim of a crime shall have access
26 to the victim's own records;

27 any written request by a crime victim for a record to which the
28 victim is entitled to access as provided in this section, including,
29 but not limited to, any law enforcement agency report, domestic
30 violence offense report, and temporary or permanent restraining
31 order;

32 personal identifying information of a victim of or witness to a
33 violent crime. For the purposes of this paragraph, personal
34 identifying information shall include, but not be limited to, identity,
35 name, home and work addresses, home and work telephone
36 numbers, home and work fax numbers, social security number,
37 driver's license number, email address, or social media address of a
38 violent crime victim or witness;

39 personal firearms records, except for use by any person
40 authorized by law to have access to these records or for use by any
41 government agency, including any court or law enforcement
42 agency, for purposes of the administration of justice;

43 personal identifying information received by the Division of Fish
44 and Wildlife in the Department of Environmental Protection in
45 connection with the issuance of any license authorizing hunting
46 with a firearm. For the purposes of this paragraph, personal
47 identifying information shall include, but not be limited to, identity,
48 name, address, social security number, telephone number, fax

1 number, driver's license number, email address, or social media
2 address of any applicant or licensee;

3 trade secrets and proprietary commercial or financial information
4 obtained from any source. For the purposes of this paragraph, trade
5 secrets shall include data processing software obtained by a public
6 body under a licensing agreement which prohibits its disclosure;

7 any record within the attorney-client privilege. This paragraph
8 shall not be construed as exempting from access attorney or
9 consultant bills or invoices except that such bills or invoices may be
10 redacted to remove any information protected by the attorney-client
11 privilege;

12 administrative or technical information regarding computer
13 hardware, software and networks which, if disclosed, would
14 jeopardize computer security;

15 emergency or security information or procedures for any
16 buildings or facility which, if disclosed, would jeopardize security
17 of the building or facility or persons therein;

18 security measures and surveillance techniques which, if
19 disclosed, would create a risk to the safety of persons, property,
20 electronic data or software;

21 information which, if disclosed, would give an advantage to
22 competitors or bidders;

23 information generated by or on behalf of public employers or
24 public employees in connection with any sexual harassment
25 complaint filed with a public employer or with any grievance filed
26 by or against an individual or in connection with collective
27 negotiations, including documents and statements of strategy or
28 negotiating position;

29 information which is a communication between a public agency
30 and its insurance carrier, administrative service organization or risk
31 management office;

32 information which is to be kept confidential pursuant to court
33 order;

34 any copy of form DD-214, or that form, issued by the United
35 States Government, or any other certificate of honorable discharge,
36 or copy thereof, from active service or the reserves of a branch of
37 the Armed Forces of the United States, or from service in the
38 organized militia of the State, that has been filed by an individual
39 with a public agency, except that a veteran or the veteran's spouse
40 or surviving spouse shall have access to the veteran's own records;

41 any copy of an oath of allegiance, oath of office or any
42 affirmation taken upon assuming the duties of any public office, or
43 that oath or affirmation, taken by a current or former officer or
44 employee in any public office or position in this State or in any
45 county or municipality of this State, including members of the
46 Legislative Branch, Executive Branch, Judicial Branch, and all law
47 enforcement entities, except that the full name, title, and oath date

1 of that person contained therein shall not be deemed confidential;
2 and

3 that portion of any document which discloses the social security
4 number, credit card number, unlisted telephone number or driver
5 license number of any person; except for use by any government
6 agency, including any court or law enforcement agency, in carrying
7 out its functions, or any private person or entity acting on behalf
8 thereof, or any private person or entity seeking to enforce payment
9 of court-ordered child support; except with respect to the disclosure
10 of driver information by the New Jersey Motor Vehicle
11 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-
12 3.4); and except that a social security number contained in a record
13 required by law to be made, maintained or kept on file by a public
14 agency shall be disclosed when access to the document or
15 disclosure of that information is not otherwise prohibited by State
16 or federal law, regulation or order or by State statute, resolution of
17 either or both houses of the Legislature, Executive Order of the
18 Governor, rule of court or regulation promulgated under the
19 authority of any statute or executive order of the Governor.

20 A government record shall not include, with regard to any public
21 institution of higher education, the following information which is
22 deemed to be privileged and confidential:

23 pedagogical, scholarly and/or academic research records and/or
24 the specific details of any research project conducted under the
25 auspices of a public higher education institution in New Jersey,
26 including, but not limited to research, development information,
27 testing procedures, or information regarding test participants,
28 related to the development or testing of any pharmaceutical or
29 pharmaceutical delivery system, except that a custodian may not
30 deny inspection of a government record or part thereof that gives
31 the name, title, expenditures, source and amounts of funding and
32 date when the final project summary of any research will be
33 available;

34 test questions, scoring keys and other examination data
35 pertaining to the administration of an examination for employment
36 or academic examination;

37 records of pursuit of charitable contributions or records
38 containing the identity of a donor of a gift if the donor requires non-
39 disclosure of the donor's identity as a condition of making the gift
40 provided that the donor has not received any benefits of or from the
41 institution of higher education in connection with such gift other
42 than a request for memorialization or dedication;

43 valuable or rare collections of books and/or documents obtained
44 by gift, grant, bequest or devise conditioned upon limited public
45 access;

46 information contained on individual admission applications; and

1 information concerning student records or grievance or
2 disciplinary proceedings against a student to the extent disclosure
3 would reveal the identity of the student.

4 "Personal firearms record" means any information contained in a
5 background investigation conducted by the chief of police, the
6 county prosecutor, or the Superintendent of State Police, of any
7 applicant for a permit to purchase a handgun, firearms identification
8 card license, or firearms registration; any application for a permit to
9 purchase a handgun, firearms identification card license, or firearms
10 registration; any document reflecting the issuance or denial of a
11 permit to purchase a handgun, firearms identification card license,
12 or firearms registration; and any permit to purchase a handgun,
13 firearms identification card license, or any firearms license,
14 certification, certificate, form of register, or registration statement.
15 For the purposes of this paragraph, information contained in a
16 background investigation shall include, but not be limited to,
17 identity, name, address, social security number, phone number, fax
18 number, driver's license number, email address, social media
19 address of any applicant, licensee, registrant or permit holder.

20 "Public agency" or "agency" means any of the principal
21 departments in the Executive Branch of State Government, and any
22 division, board, bureau, office, commission or other instrumentality
23 within or created by such department; the Legislature of the State
24 and any office, board, bureau or commission within or created by
25 the Legislative Branch; and any independent State authority,
26 commission, instrumentality or agency. The terms also mean any
27 political subdivision of the State or combination of political
28 subdivisions, and any division, board, bureau, office, commission or
29 other instrumentality within or created by a political subdivision of
30 the State or combination of political subdivisions, and any
31 independent authority, commission, instrumentality or agency
32 created by a political subdivision or combination of political
33 subdivisions.

34 "Law enforcement agency" means a public agency, or part
35 thereof, determined by the Attorney General to have law
36 enforcement responsibilities.

37 "Constituent" means any State resident or other person
38 communicating with a member of the Legislature.

39 "Member of the Legislature" means any person elected or
40 selected to serve in the New Jersey Senate or General Assembly.

41 "Criminal investigatory record" means a record which is not
42 required by law to be made, maintained or kept on file that is held
43 by a law enforcement agency which pertains to any criminal
44 investigation or related civil enforcement proceeding.

45 "Victim's record" means an individually-identifiable file or
46 document held by a victims' rights agency which pertains directly to
47 a victim of a crime except that a victim of a crime shall have access
48 to the victim's own records.

1 "Victim of a crime" means a person who has suffered personal or
2 psychological injury or death or incurs loss of or injury to personal
3 or real property as a result of a crime, or if such a person is
4 deceased or incapacitated, a member of that person's immediate
5 family.

6 "Victims' rights agency" means a public agency, or part thereof,
7 the primary responsibility of which is providing services, including
8 but not limited to food, shelter, or clothing, medical, psychiatric,
9 psychological or legal services or referrals, information and referral
10 services, counseling and support services, or financial services to
11 victims of crimes, including victims of sexual assault, domestic
12 violence, violent crime, child endangerment, child abuse or child
13 neglect, and the Victims of Crime Compensation Board, established
14 pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as
15 the Victims of Crime Compensation Office pursuant to P.L.2007,
16 c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.

17 "Violent crime" means a crime involving force or the threat of
18 force.

19 (cf: P.L.2015, c.59, s.1)
20

21 2. Section 3 of P.L.1963, c.73 (C.47:1A-3) is amended to read
22 as follows:

23 3. a. Notwithstanding the provisions of P.L.1963, c.73
24 (C.47:1A-1 et seq.) as amended and supplemented, where it shall
25 appear that the record or records which are sought to be inspected,
26 copied, or examined shall pertain to an investigation in progress by
27 any public agency, the right of access provided for in P.L.1963,
28 c.73 (C.47:1A-1 et seq.) as amended and supplemented may be
29 denied if the inspection, copying or examination of such record or
30 records shall be inimical to the public interest; provided, however,
31 that this provision shall not be construed to allow any public agency
32 to prohibit access to a record of that agency that was open for
33 public inspection, examination, or copying before the investigation
34 commenced. Whenever a public agency, during the course of an
35 investigation, obtains from another public agency a government
36 record that was open for public inspection, examination or copying
37 before the investigation commenced, the investigating agency shall
38 provide the other agency with sufficient access to the record to
39 allow the other agency to comply with requests made pursuant to
40 P.L.1963, c.73 (C.47:1A-1 et seq.).

41 b. Notwithstanding the provisions of P.L.1963, c.73 (C.47:1A-
42 1 et seq.), as amended and supplemented, the following information
43 concerning a criminal investigation shall be available to the public
44 within 24 hours or as soon as practicable, of a request for such
45 information:

46 where a crime has been reported but no arrest yet made,
47 information as to the type of crime, time, location and type of
48 weapon, if any;

1 if an arrest has been made, information as to the name, address
2 and age of any victims unless [there has not been sufficient
3 opportunity for notification of next of kin of any victims of injury
4 and/or death to any such victim] the crime was a violent crime or
5 [where] the release of the names of any victim would be contrary
6 to existing law or court rule. In deciding on the release of
7 information as to the identity of a victim, the safety of the victim
8 and the victim's family, and the integrity of any ongoing
9 investigation, shall be considered;

10 if an arrest has been made, information as to the defendant's
11 name, age, residence, occupation, marital status and similar
12 background information and, the identity of the complaining party
13 unless the release of such information is contrary to existing law or
14 court rule;

15 information as to the text of any charges such as the complaint,
16 accusation and indictment unless sealed by the court or unless the
17 release of such information is contrary to existing law or court rule;

18 information as to the identity of the investigating and arresting
19 personnel and agency and the length of the investigation;

20 information of the circumstances immediately surrounding the
21 arrest, including but not limited to the time and place of the arrest,
22 resistance, if any, pursuit, possession and nature and use of
23 weapons and ammunition by the suspect and by the police; and

24 information as to circumstances surrounding bail, whether it was
25 posted and the amount thereof.

26 Notwithstanding any other provision of this subsection, where it
27 shall appear that the information requested or to be examined will
28 jeopardize the safety of any person or jeopardize any investigation
29 in progress or may be otherwise inappropriate to release, such
30 information may be withheld. This exception shall be narrowly
31 construed to prevent disclosure of information that would be
32 harmful to a bona fide law enforcement purpose or the public
33 safety. Whenever a law enforcement official determines that it is
34 necessary to withhold information, the official shall issue a brief
35 statement explaining the decision.

36 (cf: P.L.2001, c.404, s.5)

37
38 3. This act shall take effect immediately.
39
40

41 STATEMENT

42
43 This bill would prohibit the release of any personal identifying
44 information of violent crime victims and witnesses under P.L.1963,
45 c.73 (C.47:1A-1 et seq.), commonly known as the "Open Public
46 Records Act." Current law specifically provides that the name,
47 address, and age of any victims of crime are public record. This bill
48 would delete that provision and clarify that all manner of personal

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- 1 identifying information of violent crime victims and witnesses are
- 2 confidential for purposes of public records requests to bolster the
- 3 safety and privacy of violent crime victims and witnesses.