ASSEMBLY, No. 1853

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
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District 21 (Morris, Somerset and Union)

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SYNOPSIS

Enhances “Crime Victim’s Bill of Rights"; prohibits defendant from entering crime victim’s home throughout criminal justice process, including in relation to any investigation or discovery.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

(Sponsorship Updated As Of: 3/17/2021)

AN ACT concerning crime victims' rights and amending P.L.1985, c.249.

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

1. Section 3 of P.L.1985, c.249 (C.52:4B-36) is amended to read as follows:

3. The Legislature finds and declares that crime victims and witnesses are entitled to the following rights:

a. To be treated with dignity and compassion by the criminal justice system;

b. To be informed about the criminal justice process;

c. To be free from intimidation, harassment or abuse by any person including the defendant or any other person acting in support of or on behalf of the defendant, due to the involvement of the victim or witness in the criminal justice process;

d. To have inconveniences associated with participation in the criminal justice process minimized to the fullest extent possible;

e. To make at least one telephone call provided the call is reasonable in both length and location called;

f. To medical assistance reasonably related to the incident in accordance with the provisions of the "Criminal Injuries Compensation Act of 1971," P.L.1971, c.317 (C.52:4B-1 et seq.);

g. To be notified in a timely manner, if practicable, if presence in court is not needed or if any scheduled court proceeding has been adjourned or cancelled;

h. To be informed about available remedies, financial assistance and social services;

i. To be compensated for loss sustained by the victim whenever possible;

j. To be provided a secure, but not necessarily separate, waiting area during court proceedings;

k. To be advised of case progress and final disposition and to confer with the prosecutor's representative so that the victim may be kept adequately informed;

l. To the prompt return of property when no longer needed as evidence;

m. To submit a written statement, within a reasonable amount of time, about the impact of the crime to a representative of the prosecuting agency which shall be considered prior to the prosecutor's final decision concerning whether formal criminal charges will be filed, whether the prosecutor will consent to a request by the defendant to enter into a pre-trial program, and whether the prosecutor will make or agree to a negotiated plea;

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 <u>thus</u> is new matter.

n. To make, prior to sentencing, an in-person statement directly to the sentencing court concerning the impact of the crime.

This statement is to be made in addition to the statement permitted for inclusion in the presentence report by N.J.S.2C:44-6;

o. To have the opportunity to consult with the prosecuting authority prior to the conclusion of any plea negotiations, and to have the prosecutor advise the court of the consultation and the victim's position regarding the plea agreement, provided however that nothing herein shall be construed to alter or limit the authority or discretion of the prosecutor to enter into any plea agreement which the prosecutor deems appropriate;

p. To be present at any judicial proceeding involving a crime or any juvenile proceeding involving a criminal offense, except as otherwise provided by Article I, paragraph 22 of the New Jersey Constitution;

q. To be notified of any release or escape of the defendant; and

r. To appear in any court before which a proceeding implicating the rights of the victim is being held, with standing to file a motion or present argument on a motion filed to enforce any right conferred herein or by Article I, paragraph 22 of the New Jersey Constitution, and to receive an adjudicative decision by the court on any such motion.

<u>s. To be free, in accordance with subsections c. and d. of this section, from risk of the defendant entering the victim's home for any purpose, including but not limited to a purpose related to investigation or discovery. However, if the defendant has made a legitimate request to inspect a crime scene that is an alleged victim's home and has articulated a reasonable basis to believe the inspection will lead to relevant evidence on a material issue, then, subject to appropriate time, place, and manner restrictions that will protect the privacy interests of the alleged victim, the court may enter an order permitting defendant's attorney or, if defendant is self-represented, a court-appointed representative to inspect the crime scene.</u>

(cf: P.L.2012, c.27, s.1)

2. The New Jersey Supreme Court may adopt such court rules and procedures as it deems necessary to effectuate the purposes of this act. The State Attorney General may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation and administration of this act.

3. This act shall take effect on the 60th day after the date of enactment.

STATEMENT

This bill would specify that certain privacy rights are encompassed by the "Crime Victim's Bill of Rights," P.L.1985, c.249 (C.52:4B-34 et seq.) and would prohibit a defendant from entering the home of a crime victim during the criminal justice process under any circumstances.

The Victim's Rights Amendment to the New Jersey Constitution, enacted by the voters in 1991 as paragraph 22 of Article I, makes crime victims' rights a constitutional mandate and specifically provides that victims "shall be entitled to those rights and remedies as may be provided by the Legislature."

Pursuant to subsection c. of the Crime Victim's Bill of Rights, enumerated in section 3 of P.L.1985, c.249 (C.52:4B-36), crime victims are to be free from intimidation, harassment, or abuse by any person including the defendant or any other person acting in support of or on behalf of the defendant, due to the involvement of the victim or witness in the criminal justice process. Subsection d. provides that inconveniences to victims associated with participation in the criminal justice process are to be minimized to the fullest extent possible.

In this State, a criminal defendant is entitled to comprehensive discovery, which is defined broadly. Rule 3:13-3(b) of the New Jersey Rules of Court directs, in relevant part, that the prosecutor's discovery for a defendant named in an indictment is to be provided or made available within seven days of the return or unsealing of the indictment. Under Rule 3:13-3(b)(1)(E), discovery includes buildings or places which are within the possession, custody or control of the prosecutor.

When discovery is sought which is not within the possession, custody, or control of the prosecutor and does not fall within the categories permitted by the Rules of Court, such as discovery related to a crime scene that is the victim's home, the court will determine whether the discovery request should be granted. In making its determination, the court will exercise judicial discretion to balance the beneficial effects of the discovery against its disadvantages.

Under current law, when faced with a defendant's request to inspect a crime scene that is an alleged victim's home, and the court has found that the request is legitimate and that the defendant has articulated a reasonable basis to believe the inspection will lead to relevant evidence on a material issue, the New Jersey Supreme Court has held that subject to appropriate time, place, and manner restrictions intended to protect the privacy interests of the alleged victim and her family, the defendant, along with his attorney, may be permitted to inspect the victim's home. See State ex rel. A.B., No. A-74-12 072873, 2014 N.J. LEXIS 909 (N.J. September 24, 2014).

In the sponsor's view, the entry of an order permitting a defendant to enter into the home of a crime victim for any purpose would serve to intimidate, harass or abuse a crime victim in violation of the Crime Victim's Bill of Rights, and does not satisfactorily minimize the inconveniences to the crime victim, as required by the Crime Victim's Bill of Rights.

Under the bill, a defendant's attorney or court-appointed representative may be permitted to inspect a victim's home that is the scene of a crime if the court find's the defendant has demonstrated there is a reasonable basis to believe that a home inspection of limited duration will yield relevant evidence. However the defendant will not be permitted to enter or inspect the victim's home under any circumstances.

The bill would further provide that the New Jersey Supreme Court may adopt such court rules and procedures as it deems necessary to effectuate the purposes of this act, and the State Attorney General may adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), rules and regulations necessary for the implementation and administration of this act.

The bill would take effect on the 60th day after the date of enactment.