SENATE, No. 540

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex and Morris)

SYNOPSIS

Prohibits posting or publishing personal identifying information of a witness, victim, or informant.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.

AN ACT concerning victim and witness intimidation and amending various parts of the statutory law.

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

1. N.J.S.2C:28-5 is amended to read as follows:

2C:28-5. a. Tampering. A person commits an offense if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, he knowingly engages in conduct which a reasonable person would believe would cause a witness, victim, or informant to:

(1) Testify or inform falsely;

(2) Withhold any testimony, information, document or thing;

(3) Elude legal process summoning him to testify or supply evidence;

(4) Absent himself from any proceeding or investigation to which he has been legally summoned; or

(5) Otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

A person commits the offense of tampering if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, he knowingly obtains the personal identifying information of a witness, victim, or informant and posts or publishes the information on the Internet with the purpose to cause a witness, victim, or informant to impede an official proceeding or investigation pursuant to paragraphs (1) through (5) of this subsection.

As used in this section, "personal identifying information" includes, but is not limited to, name, home and work addresses, home, work, and cell telephone numbers, home and work fax numbers, social security number, driver's license number, email address, or social media address.

Witness tampering is a crime of the first degree if the conduct occurs in connection with an official proceeding or investigation involving any crime enumerated in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2) and the actor employs force or threat of force. Witness tampering is a crime of the second degree if the actor employs force or threat of force. Otherwise it is a crime of the third degree. Privileged communications may not be used as evidence in any prosecution for violations of paragraph (2), (3), (4) or (5).

b. Retaliation against witness, victim, or informant. A person commits an offense if he harms another by an unlawful act with purpose to retaliate for or on account of the service of another as a

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.

witness, victim, or informant. The offense is a crime of the second degree if the actor employs force or threat of force. Otherwise it is a crime of the third degree.

c. Witness, victim, or informant taking bribe. A person commits a crime of the third degree if he solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in subsection a. (1) through (5) of this section.

d. Bribery of a witness, victim, or informant. A person commits a crime of the second degree if he directly or indirectly offers, confers or agrees to confer upon a witness, victim, or informant any benefit in consideration of the witness or informant doing any of the things specified in subsection a. (1) through (5) of this section.

e. Notwithstanding the provisions of N.J.S.2C:1-8, N.J.S.2C:44-5 or any other provision of law, a conviction arising under this section shall not merge with a conviction of an offense that was the subject of the official proceeding or investigation and the sentence imposed pursuant to this section shall be ordered to be served consecutively to that imposed for any such conviction.

(cf: P.L.2008, c.81, s.1)

2. Section 1 of P.L.1985, c.250 (C.2C:28-5.1) is amended to read as follows:

1. If a court having jurisdiction under any criminal matter finds that the defendant in that criminal action or any other person connected in any way with the action has violated or is likely to violate N.J.S. 2C:28-5, N.J.S. 2C:29-3 or N.J.S. 2C:29-4 in regard to the pending offense, or that the defendant or other person has injured or intimidated or is threatening to injure or intimidate any witness, victim, or informant in the pending offense or a member of **[**the witness'**]** his family with purpose to affect the testimony of the witness, victim, or informant, the court may issue a protective order providing:

a. That the defendant or other person not violate any provision of N.J.S. 2C:28-5, N.J.S. 2C:29-3, or N.J.S. 2C:29-4;

b. That the defendant or other person maintain a prescribed geographic distance from any specified witness **[**or**]**, victim, or informant;

c. That the defendant or other person have no communication with any specified witness **[**or**]**, victim, or informant, except through an attorney under any reasonable restrictions which the court may impose.

(cf: P.L.1985, c.250, s.1)

3. N.J.S.2C:29-3 is amended to read as follows:

2C:29-3. Hindering Apprehension or Prosecution. a. A person commits an offense if, with purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment

of another for an offense or violation of Title 39 of the Revised Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes he:

(1) Harbors or conceals the other;

(2) Provides or aids in providing a weapon, money, transportation, disguise or other means of avoiding discovery or apprehension or effecting escape;

(3) Suppresses, by way of concealment or destruction, any evidence of the crime, or tampers with a witness, victim, informant, document or other source of information, regardless of its admissibility in evidence, which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

(4) Warns the other of impending discovery or apprehension, except that this paragraph does not apply to a warning given in connection with an effort to bring another into compliance with law;

(5) Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of such person or in the lodging of a charge against him;

(6) Aids such person to protect or expeditiously profit from an advantage derived from such crime; or

(7) Gives false information to a law enforcement officer or a civil State investigator assigned to the Office of the Insurance Fraud Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-16).

An offense under paragraph (5) of subsection a. of this section is a crime of the second degree, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child to the person aided who is the victim of the offense, in which case the offense is a crime of the fourth degree. An offense under paragraph (3) or (7) of subsection a. of this section is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against another person would constitute leaving the scene of a motor vehicle accident that results in the death of another person in violation of section 1 of P.L.1997, c.111 (C.2C:11-5.1). Notwithstanding the presumption of non-imprisonment for certain offenders set forth in subsection e. of N.J.S.2C:44-1, the actor shall serve a term of imprisonment, which shall be fixed at not less than one year, during which the actor shall not be eligible for parole. Otherwise, the offense under subsection a. of this section is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against the person aided would constitute a crime of the second degree or greater, unless the actor is a spouse, domestic partner, partner in a civil union, parent or child of the person aided, in which case the offense is a crime of the fourth degree. The offense is a crime of the fourth degree if such

conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

b. A person commits an offense if, with purpose to hinder his own detention, apprehension, investigation, prosecution, conviction or punishment for an offense or violation of Title 39 of the Revised Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes, he:

(1) Suppresses, by way of concealment or destruction, any evidence of the crime or tampers with a document or other source of information, regardless of its admissibility in evidence, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(2) Prevents or obstructs by means of force or intimidation anyone from performing an act which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(3) Prevents or obstructs by means of force, intimidation or deception any witness<u>, victim,</u> or informant from providing testimony or information, regardless of its admissibility, which might aid in his discovery or apprehension or in the lodging of a charge against him; or

(4) Gives false information to a law enforcement officer or a civil State investigator assigned to the Office of the Insurance Fraud Prosecutor established by section 32 of P.L.1998, c.21 (C.17:33A-16).

An offense under paragraph (3) of subsection b. of this section is a crime of the second degree. An offense under paragraph (1) or (4) of subsection b. of this section is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute leaving the scene of a motor vehicle accident that results in the death of another person in violation of section 1 of P.L.1997, c.111 (C.2C:11-5.1). Notwithstanding the presumption of non-imprisonment for certain offenders set forth in subsection e. of N.J.S.2C:44-1, the actor shall serve a term of imprisonment which shall be fixed at not less than one year, during which the actor shall not be eligible for parole.

Otherwise, the offense under subsection b. of this section is a crime of the third degree if the conduct which the actor knows has been charged or is liable to be charged against him would constitute a crime of the second degree or greater. The offense is a crime of the fourth degree if such conduct would constitute a crime of the third degree. Otherwise it is a disorderly persons offense.

(cf: P.L.2015, c.265, s.1)

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

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

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

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

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

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

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

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

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

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

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

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

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

criminal investigatory records;

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

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

personal identifying information of a witness, victim, or informant in a criminal proceeding involving a violation of N.J.S. 2C:28-5, N.J.S.2C:29-3, or N.J.S.2C:29-4. For the purposes of this section, "personal identifying information" shall include, but not be limited to, name, home and work addresses, home, work, and cell telephone numbers, home and work fax numbers, social security number, driver’s license number, email address, or social media address;

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

personal identifying information received by the Division of Fish and Wildlife in the Department of Environmental Protection in connection with the issuance of any license authorizing hunting with a firearm. For the purposes of this paragraph, personal identifying information shall include, but not be limited to, identity, name, address, social security number, telephone number, fax number, driver's license number, email address, or social media address of any applicant or licensee;

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

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

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

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

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

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

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

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

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

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

any copy of an oath of allegiance, oath of office or any affirmation taken upon assuming the duties of any public office, or that oath or affirmation, taken by a current or former officer or employee in any public office or position in this State or in any county or municipality of this State, including members of the Legislative Branch, Executive Branch, Judicial Branch, and all law enforcement entities, except that the full name, title, and oath date of that person contained therein shall not be deemed confidential; and

that portion of any document which discloses the social security number, credit card number, unlisted telephone number or driver license number of any person; except for use by any government agency, including any court or law enforcement agency, in carrying out its functions, or any private person or entity acting on behalf thereof, or any private person or entity seeking to enforce payment of court-ordered child support; except with respect to the disclosure of driver information by the New Jersey Motor Vehicle Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-3.4); and except that a social security number contained in a record

required by law to be made, maintained or kept on file by a public agency shall be disclosed when access to the document or disclosure of that information is not otherwise prohibited by State or federal law, regulation or order or by State statute, resolution of either or both houses of the Legislature, Executive Order of the Governor, rule of court or regulation promulgated under the authority of any statute or executive order of the Governor.

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

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

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

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

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

information contained on individual admission applications; and

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

"Personal firearms record" means any information contained in a background investigation conducted by the chief of police, the county prosecutor, or the Superintendent of State Police, of any applicant for a permit to purchase a handgun, firearms identification card license, or firearms registration; any application for a permit to purchase a handgun, firearms identification card license, or firearms registration; any document reflecting the issuance or denial of a permit to purchase a handgun, firearms identification card license, or firearms registration; and any permit to purchase a handgun, firearms identification card license, or any firearms license, certification, certificate, form of register, or registration statement.

For the purposes of this paragraph, information contained in a background investigation shall include, but not be limited to, identity, name, address, social security number, phone number, fax number, driver's license number, email address, social media address of any applicant, licensee, registrant or permit holder.

"Public agency" or "agency" means any of the principal departments in the Executive Branch of State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department; the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch; and any independent State authority, commission, instrumentality or agency. The terms also mean any political subdivision of the State or combination of political subdivisions, and any division, board, bureau, office, commission or other instrumentality within or created by a political subdivision of the State or combination of political subdivisions, and any independent authority, commission, instrumentality or agency created by a political subdivision or combination of political subdivisions.

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

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

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

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

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

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

"Victims' rights agency" means a public agency, or part thereof, the primary responsibility of which is providing services, including but not limited to food, shelter, or clothing, medical, psychiatric, psychological or legal services or referrals, information and referral services, counseling and support services, or financial services to victims of crimes, including victims of sexual assault, domestic violence, violent crime, child endangerment, child abuse or child neglect, and the Victims of Crime Compensation Board, established pursuant to P.L.1971, c.317 (C.52:4B-1 et seq.) and continued as

the Victims of Crime Compensation Office pursuant to P.L.2007, c.95 (C.52:4B-3.2 et al.) and Reorganization Plan No. 001-2008.
(cf: P.L.2015, c.59, s.1)

5. This act shall take effect immediately.

STATEMENT

Currently, N.J.S.2C:28-5 provides that a person commits the crime of witness tampering if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, he knowingly engages in conduct that a reasonable person would believe would cause a witness or informant to provide false testimony, withhold testimony or evidence, avoid testifying or supplying evidence, or otherwise obstruct, delay, prevent or impede an official proceeding or investigation.

This bill would amend the witness tampering statute to include victims. In addition, the bill would expand witness tampering to include posting, publishing, or otherwise distributing the personal information of any witness, victim, or informant under certain circumstances.

Under the bill, a person commits an offense of tampering if, believing that an official proceeding or investigation is pending or about to be instituted or has been instituted, he knowingly obtains any personal identifying information pertaining to a witness, victim, or informant and posts or publishes the personal identifying information on the Internet or otherwise distributes such information with the purpose to cause a witness, victim, or informant to impede an official proceeding or investigation. "Personal identifying information" would include, but not be limited to, name, home and work addresses, home, work, and cell telephone numbers, home and work fax numbers, social security number, driver's license number, email address, or social media address.

Witness tampering is a crime of the first degree if the actor employs force or threat of force and the conduct occurs in connection with an official proceeding or investigation involving a "No Early Release Act" (NERA) crime as set forth in subsection d. of section 2 of P.L.1997, c.117 (C.2C:43-7.2), such as murder, aggravated assault, carjacking, kidnapping, sexual assault, or robbery. Witness tampering is a crime of the second degree if the actor employs threat or force. Otherwise, it is a crime of the third degree. A crime of the first degree is punishable by a term of imprisonment of 10 to 20 years, a fine of up to $200,000, or both. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to $150,000, or both.

A crime of the third degree is punishable by a term of imprisonment of three to five years, a fine of up to $15,000, or both.

In addition, the bill amends P.L.1995, c. 23 (C.47:1A-1), the open public records law, to prohibit the release of the personal identifying information of a witness, victim, or informant. Currently under this statute criminal investigatory records and victim records are confidential. This bill would add the personal identifying information of a witness, victim, or informant.