

# SENATE BUDGET AND APPROPRIATIONS COMMITTEE

## STATEMENT TO

[Second Reprint]

**ASSEMBLY, No. 5285**

# **STATE OF NEW JERSEY**

DATED: DECEMBER 21, 2023

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 5285 (2R).

The bill requires copies of certain law enforcement records to be provided, upon request, to victims of domestic violence.

Under the bill, a domestic violence victim, or the victim's legal representative, may request copies of certain records from the law enforcement agency with the primary responsibility for investigating a domestic violence complaint. If the release of the records would jeopardize an ongoing criminal investigation or the safety of any person, the records are required to either be redacted so that release to the victim does not jeopardize an ongoing criminal investigation or the safety of any person, or released pursuant to a protective order. A person who disseminates a copy of a law enforcement record in violation of a protective order issued under the bill may be subject to criminal prosecution.

The following records may be requested:

- photographs taken by a law enforcement officer;
- law enforcement officer body worn camera or dashboard camera footage;
- 9-1-1 transcript or recording; or
- contents of the police report.

The bill clarifies that the right to access records provided under the bill is in addition to the right of a victim to obtain records under current law pursuant to the open public records act (OPRA) or the Rules of Court. The records are to be provided at no charge within 10 calendar days of the request. If the law enforcement agency is unable to produce a copy of a requested record within the 10-day period, the law enforcement agency may request additional time from the court. If granted additional time, the law enforcement agency is to provide a copy of the records to the victim or victim's legal representative within 24 hours after the record becomes available. A record is to be provided in accordance with the request of the victim or victim's representative.

A victim of domestic violence who is seeking to access law enforcement agency records under the bill, but who is not seeking other relief in the Family Part of the Chancery Division of the

Superior Court may enforce their right of access pursuant to OPRA on an expedited basis. The victim shall not be required to complete a formal OPRA request form to access the records.

Under current law, a hearing is to be held in the family part within 10 days of the filing of a domestic violence complaint. If a plaintiff has requested records pursuant to the provisions of the bill but has not received the records as of the date of the original or rescheduled hearing, the law enforcement agency's failure to provide the requested records is to be noted on the record prior to the court making a final determination on the request for restraints. The absence of law enforcement records is not to be a basis to deny relief.

The bill also provides that a party to a domestic violence complaint may request the release or unsealing of expunged records. The records may be provided to either party, the county prosecutor, Criminal Division of the Superior Court, or Attorney General, in relation to a domestic violence temporary or final restraining order, weapons forfeiture complaint, or a temporary or final extreme risk protective order. Under the bill, a final judgment rendered in favor of the State in any criminal proceeding brought pursuant to the "Prevention of Domestic Violence Act of 1991" would estop the defendant from denying the same conduct in any proceeding brought under the bill.

As reported by the committee, Assembly Bill No. 5285 (2R) is identical to the Senate Committee Substitute for Senate Bill No. 3708, which also was reported by the committee on this same date.

FISCAL IMPACT:

The Office of Legislative Services (OLS) anticipates that the State, county, and municipal law enforcement agencies will incur indeterminate additional annual operating expenses from processing an increased number of records requests; assigning personnel on certain information requests which may not be completed in the required 10-day time period to redact records; and potentially incarcerating any offenders who violate a protective order under the bill. In addition, the OLS estimates increased State, county, and municipal revenue because of the potential of increased fines and penalties.

The bill may expand the number of charges related to the dissemination of law enforcement records in violation of protective orders, which may result in convictions for crimes of the third and fourth degree, and disorderly persons offenses. This would increase the workload of the Division of Criminal Justice in the Department of Law and Public Safety, county prosecutor's offices, the Administrative Office of the Courts, Superior Courts, and municipal courts, as additional defendants would be prosecuted and tried for these crimes and offenses.

The OLS notes that crimes of the third and fourth degree are adjudicated by the Superior Court, while disorderly persons offenses

are adjudicated by municipal courts, in most circumstances. A presumption of non-incarceration generally applies to first-time offenders of crimes of the third and fourth degree, and disorderly persons offenses. Repeat offenders, however, could be incarcerated, with the Department of Corrections incurring the cost.