

# SENATE LAW AND PUBLIC SAFETY COMMITTEE

## STATEMENT TO

### SENATE COMMITTEE SUBSTITUTE FOR SENATE, No. 3708

# STATE OF NEW JERSEY

DATED: MAY 18, 2023

The Senate Law and Public Safety Committee reports favorably Senate Bill No. 3708 SCS.

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

COMMITTEE SUBSTITUTE:

The committee substitute made the following changes to:

(1) clarify that the provisions of the bill regarding access of records are in addition to rights to access records under current law and pursuant to the Rules of Court;

(2) clarify that a law enforcement agency that is unable to produce a copy of a requested record within the 10-day-period, upon the request of the victim, is required to make at least one of the officers primarily responsible for investigating the complaint available for the hearing, provided the court does not reschedule the hearing to be conducted pursuant to the "Prevention of Domestic Violence Act of 1991";

(3) clarify that if the release of the records under the bill 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;

(4) provide that in issuing a protective order under the bill, the court may set terms and conditions authorizing or limiting the disclosure or use of information to the extent warranted;

(5) provide that 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;

(6) clarify that a request may be made under the bill for a copy of any records related to the alleged act of domestic violence which is the subject of a complaint filed pursuant to the "Prevention of Domestic Violence Act of 1991," or an act of domestic violence relating to a previous complaint filed pursuant to the "Prevention of Domestic Violence Act of 1991" involving both parties;

(7) provide that 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 prevent the defendant from denying the same conduct in any proceeding brought under the bill;

(8) provide that the court is to grant a law enforcement agency's request for additional time to produce records, unless the court finds good cause to deny the request;

(9) remove the provision that provides that the court may grant a plaintiff's request for an adjournment of up to 14 calendar days to provide plaintiff additional time seek production of records from a law enforcement agency; and

(10) make technical corrections to the bill.