

Disclosure of Identity of Child Victims in Sexual Assault, Endangering the Welfare, or Child Abuse/Neglect Cases

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Administrative Director

Effective February 11, 1990, L. 1989, c.336, codified at *N.J.S.A. 2A:82-46*, requires that all court documents which state the name, address and identity of a child victim in certain sexual assault, endangering the welfare and abuse and neglect cases shall be confidential. Although the statute reads in terms of "the name, address and (emphasis added) **identity**," pending further instructions, if any one of the three is present, court personnel shall treat the document as confidential since that appears to be the intent of the Legislature. Such documents shall not be disclosed to the public unless a judge authorizes such disclosure for good cause after notice is given to all interested parties and a hearing is conducted on the matter. The Act also provides that the name of the victim shall not appear in any public record; rather, initials or a fictitious name shall appear. The offenses covered by the Act include aggravated sexual assault, sexual assault, aggravated criminal sexual contact, criminal sexual contact, endangering the welfare of children under *N.J.S.A. 2C:24-4*, and any action alleging an abused or neglected child under *N.J.S.A. 9:6-8.21, et seq.* Any person who purposefully discloses to the public a document in violation of the statute shall be guilty of a disorderly persons offense.

Two recent decisions by the Supreme Court, *Application of V Pub. Corp.*, 120 *N.J.* 508 (1990), and *Div. of Youth & Fam. Serv. v. J.B.*, 120 *N.J.* 112 (1990), have provided guidance concerning the confidentiality sought by the statute. In order to implement the protections encompassed by the statute, the following interim case management procedures are established, effective immediately.

1. Impoundment of Case Files

In all prosecutions or other actions coming under the statute, the indictment, complaint and other public records as defined in P.L. 1963, c.73 (C. 47:1A-1, *et seq.*) are required to utilize initials or fictitious names in place of the name, address and identity of any victim under age 18. Use of such initials or fictitious names on filed papers should serve as a flag for court personnel that a particular case might come within the purview of the statute. The records in all cases fitting the statutory parameters shall be impounded by the trial court, with such impoundment continuing through the appellate courts.

In situations where court personnel have identified cases as falling within the confidentiality provisions of the Act - and notwithstanding that the initial case filings may have failed to comply with the statutory provisions regarding the use of initials and fictitious names - court personnel shall impound the records.

2. Transcripts

Court reporters and other transcribers should continue to produce the court proceedings in covered cases verbatim. Such verbatim transcripts shall be available for normal use by the court and the parties. However, any transcript that identifies, by name, address or otherwise, a child victim of an offense covered by the statute shall not be released to or inspected by the public unless the court authorizes release of the transcript following a hearing as provided in the statute. If the court decides to release such a transcript, it shall make provision for protection of the child victim's identity as the

court deems appropriate.

3. Control of Files

There is a need to ensure strict control of files to prevent inadvertent dissemination of child victim information in violation of the statute. On occasion, trial court files are informally reviewed in the courtroom by attorneys and others, including members of the media. In addition, files are often circulated to judges who make duplicate copies of part or all of the file. In cases coming under the statute, any and all requests for documents, except for requests by parties, their attorneys, or judges involved in deciding the case, shall be directed to a centrally-designated court office that will have responsibility for maintaining procedures to ensure compliance with the statute. Unless the presiding judge of a division designates an alternate procedure, in each division such central court office shall be the division manager's office, and the division manager will coordinate the response to a request with the county clerk and other court personnel.

4. Retroactivity

It is not clear whether the statute was intended to be applied to cases filed before its effective date. However, whenever anyone asks to see any file in the custody of court personnel, the file should be reviewed to see if it should be impounded pursuant to the statute.

5. Judicial Considerations

Judges are reminded that under *D.Y.F.S. v. J.B.*, 120 N.J. 112 (1990), the Supreme Court held that the compelling state interest in protecting victims of child abuse from the embarrassment of testifying in an open courtroom justifies a presumption that proceedings initiated under Title 9 (child abuse) will be closed to the public. The Court concluded that

... any allegation of physical or psychological abuse or of serious neglect should weigh heavily, if not conclusively, in favor of the closure. The age and maturity of the child also should be considered. Children who must face their peers in school might be subject to special pressures of which the court should be aware. The possibility that a child might be adversely affected by future revelation of embarrassing facts also should weigh heavily in the court's determination.

It should be noted that in *D.Y.F.S. v. J.B.*, *supra*, the Supreme Court indicates that the presumption of closure would apply not only to Title 9 cases but to Title 30 cases as well.

In conducting trials involving prosecutions or other actions coming under L. 1989, c.336, judges may wish to employ the following procedures as a matter of course:

- a. closing all DYFS proceedings under Title 9 and Title 30 unless the defendant is able to rebut the presumption of closure in these types of cases.
- b. In other cases involving child victims where closure is not warranted, condition the admittance of the media and public upon their agreement not to disclose the identities of the child victims.

6. Opinions

The apparent intent of the statute suggests that an opinion that is a public record, involving a case coming under P.L. 1989, c.336, should be drafted so as not to reveal either the name, address or identity of the child victim. It would thus appear that the statute may require, in some circumstances, protecting the identity of the perpetrator so as not to divulge the identity of the child victim. In fact, the Supreme Court recently

captioned and otherwise drafted a decision in a manner that concealed the identity of the perpetrator in order to protect the identity of the incestuously offended child victim.

EDITOR'S NOTE

The second paragraph has been modified to delete all reference to the Proposed Child Victim Committee Report which had been attached to the original issuance of this directive so as to elicit comments.

In numbered paragraph 5, the reported citation for *D.Y.F.S. v. J.B.*, 120 *N.J.* 112 (1990), has been added.