

# ASSEMBLY, No. 2064

## STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

**Sponsored by:**

**Assemblyman ANGEL FUENTES**

**District 5 (Camden and Gloucester)**

**Assemblyman THOMAS P. GIBLIN**

**District 34 (Essex and Passaic)**

**Assemblyman CHARLES MAINOR**

**District 31 (Hudson)**

**Assemblyman RALPH R. CAPUTO**

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**Assemblywoman SHEILA Y. OLIVER**

**District 34 (Essex and Passaic)**

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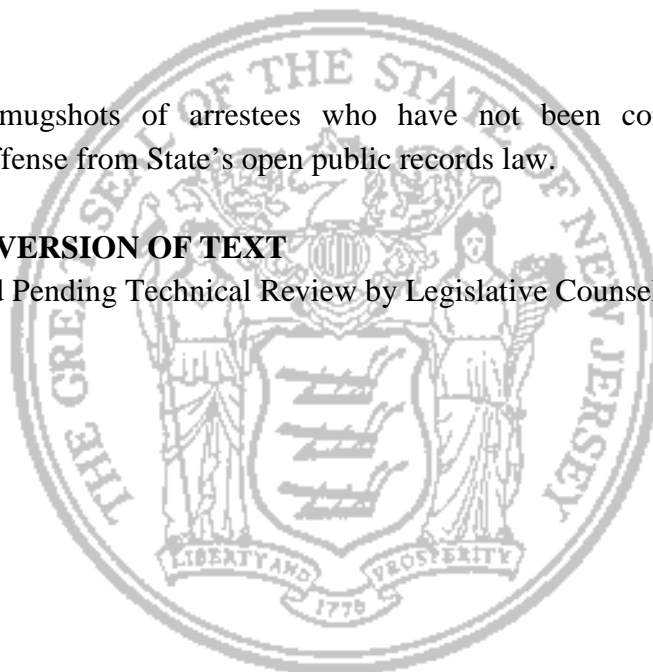
**Assemblywoman Tucker, Assemblyman Egan, Assemblywoman Jasey,  
Assemblymen Diegnan, Singleton, Assemblywomen Spencer, Caride,  
Quijano, Assemblymen Coughlin, Lagana and Wimberly**

**SYNOPSIS**

Exempts mugshots of arrestees who have not been convicted of the underlying offense from State's open public records law.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel



**(Sponsorship Updated As Of: 2/28/2014)**

1 AN ACT concerning certain photographs of non-convicted arrestees  
2 and amending P.L.1995, c.23.

3

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

6

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

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

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

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

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

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

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

44 any memorandum, correspondence, notes, report or other  
45 communication prepared by, or for, the specific use of a member of

**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.

1 the Legislature in the course of the member's official duties, except  
2 that this provision shall not apply to an otherwise publicly-  
3 accessible report which is required by law to be submitted to the  
4 Legislature or its members;  
5 any copy, reproduction or facsimile of any photograph, negative  
6 or print, including instant photographs and videotapes of the body,  
7 or any portion of the body, of a deceased person, taken by or for the  
8 medical examiner at the scene of death or in the course of a post  
9 mortem examination or autopsy made by or caused to be made by  
10 the medical examiner except:  
11 when used in a criminal action or proceeding in this State which  
12 relates to the death of that person,  
13 for the use as a court of this State permits, by order after good  
14 cause has been shown and after written notification of the request  
15 for the court order has been served at least five days before the  
16 order is made upon the county prosecutor for the county in which  
17 the post mortem examination or autopsy occurred,  
18 for use in the field of forensic pathology or for use in medical or  
19 scientific education or research, or  
20 for use by any law enforcement agency in this State or any other  
21 state or federal law enforcement agency;  
22 criminal investigatory records;  
23 victims' records, except that a victim of a crime shall have access  
24 to the victim's own records;  
25 personal firearms records, except for use by any person  
26 authorized by law to have access to these records or for use by any  
27 government agency, including any court or law enforcement  
28 agency, for purposes of the administration of justice;  
29 personal identifying information received by the Division of Fish  
30 and Wildlife in the Department of Environmental Protection in  
31 connection with the issuance of any license authorizing hunting  
32 with a firearm. For the purposes of this paragraph, personal  
33 identifying information shall include, but not be limited to, identity,  
34 name, address, social security number, telephone number, fax  
35 number, driver's license number, email address, or social media  
36 address of any applicant or licensee; trade secrets and  
37 proprietary commercial or financial information obtained from any  
38 source. For the purposes of this paragraph, trade secrets shall  
39 include data processing software obtained by a public body under a  
40 licensing agreement which prohibits its disclosure;  
41 photographs of an arrestee taken by any law enforcement agency  
42 if the arrest has not resulted in a conviction, except for use by any  
43 government agency, including any court or law enforcement  
44 agency, in carrying out its functions;  
45 any record within the attorney-client privilege. This paragraph  
46 shall not be construed as exempting from access attorney or  
47 consultant bills or invoices except that such bills or invoices may be

1 redacted to remove any information protected by the attorney-client  
2 privilege;  
3 administrative or technical information regarding computer  
4 hardware, software and networks which, if disclosed, would  
5 jeopardize computer security;  
6 emergency or security information or procedures for any  
7 buildings or facility which, if disclosed, would jeopardize security  
8 of the building or facility or persons therein;  
9 security measures and surveillance techniques which, if  
10 disclosed, would create a risk to the safety of persons, property,  
11 electronic data or software;  
12 information which, if disclosed, would give an advantage to  
13 competitors or bidders;  
14 information generated by or on behalf of public employers or  
15 public employees in connection with any sexual harassment  
16 complaint filed with a public employer or with any grievance filed  
17 by or against an individual or in connection with collective  
18 negotiations, including documents and statements of strategy or  
19 negotiating position;  
20 information which is a communication between a public agency  
21 and its insurance carrier, administrative service organization or risk  
22 management office;  
23 information which is to be kept confidential pursuant to court  
24 order;  
25 any copy of form DD-214, or that form, issued by the United  
26 States Government, or any other certificate of honorable discharge,  
27 or copy thereof, from active service or the reserves of a branch of  
28 the Armed Forces of the United States, or from service in the  
29 organized militia of the State, that has been filed by an individual  
30 with a public agency, except that a veteran or the veteran's spouse  
31 or surviving spouse shall have access to the veteran's own records;  
32 and  
33 that portion of any document which discloses the social security  
34 number, credit card number, unlisted telephone number or driver  
35 license number of any person; except for use by any government  
36 agency, including any court or law enforcement agency, in carrying  
37 out its functions, or any private person or entity acting on behalf  
38 thereof, or any private person or entity seeking to enforce payment  
39 of court-ordered child support; except with respect to the disclosure  
40 of driver information by the New Jersey Motor Vehicle  
41 Commission as permitted by section 2 of P.L.1997, c.188 (C.39:2-  
42 3.4); and except that a social security number contained in a record  
43 required by law to be made, maintained or kept on file by a public  
44 agency shall be disclosed when access to the document or  
45 disclosure of that information is not otherwise prohibited by State  
46 or federal law, regulation or order or by State statute, resolution of  
47 either or both houses of the Legislature, Executive Order of the

1 Governor, rule of court or regulation promulgated under the  
2 authority of any statute or executive order of the Governor.

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

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

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

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

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

29 information contained on individual admission applications; and  
30 information concerning student records or grievance or  
31 disciplinary proceedings against a student to the extent disclosure  
32 would reveal the identity of the student.

33 "Personal firearms record" means any information contained in a  
34 background investigation conducted by the chief of police, the  
35 county prosecutor, or the Superintendent of State Police, of any  
36 applicant for a permit to purchase a handgun, firearms identification  
37 card license, or firearms registration; any application for a permit to  
38 purchase a handgun, firearms identification card license, or firearms  
39 registration; any document reflecting the issuance or denial of a  
40 permit to purchase a handgun, firearms identification card license,  
41 or firearms registration; and any permit to purchase a handgun,  
42 firearms identification card license, or any firearms license,  
43 certification, certificate, form of register, or registration statement.  
44 For the purposes of this paragraph, information contained in a  
45 background investigation shall include, but not be limited to,  
46 identity, name, address, social security number, phone number, fax

1 number, driver's license number, email address, social media  
2 address of any applicant, licensee, registrant or permit holder.

3 "Public agency" or "agency" means any of the principal  
4 departments in the Executive Branch of State Government, and any  
5 division, board, bureau, office, commission or other instrumentality  
6 within or created by such department; the Legislature of the State  
7 and any office, board, bureau or commission within or created by  
8 the Legislative Branch; and any independent State authority,  
9 commission, instrumentality or agency. The terms also mean any  
10 political subdivision of the State or combination of political  
11 subdivisions, and any division, board, bureau, office, commission or  
12 other instrumentality within or created by a political subdivision of  
13 the State or combination of political subdivisions, and any  
14 independent authority, commission, instrumentality or agency  
15 created by a political subdivision or combination of political  
16 subdivisions.

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

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

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

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

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

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

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

46 (cf: P.L.2013, c.116, s.1)

1       2. This act shall take effect immediately.

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STATEMENT

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6       This bill exempts from the State's open public records law any  
7 photographs of an arrestee taken by a law enforcement agency when  
8 the arrest has not resulted in a conviction.

9       Under the bill, the reputations of arrestees who are not  
10 subsequently found guilty of the crimes they allegedly committed  
11 would be protected by eliminating ready public access to their mug  
12 shots. This access enables publication of mug shots, which can  
13 unfairly damage or ruin the relationships and professional prospects  
14 of people who were not even found to have committed the  
15 wrongdoing charged, particularly if the mug shots are posted on the  
16 Internet. The harm these people face also may be compounded by  
17 exploitative websites which indiscriminately post mug shots and  
18 charge exorbitant fees for their removal. This bill helps to restore  
19 the presumption of innocence to which people who are not  
20 convicted of wrongdoing are entitled.

21       Under the bill, government agencies could still release mug shots  
22 to news media and others for law enforcement purposes, such as  
23 public warnings.