

6341

2009-2010 Regular Sessions

I N S E N A T E

December 16, 2009

Introduced by Sen. DUANE -- read twice and ordered printed, and when
printed to be committed to the Committee on Rules

AN ACT to amend the criminal procedure law, in relation to the regu-
lation of the use of informants

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The criminal procedure law is amended by adding a new
2 section 60.77 to read as follows:
3 S 60.77 RULES OF EVIDENCE; USE OF CONFIDENTIAL INFORMANTS.
4 1. WHENEVER A PROSECUTING ATTORNEY PLANS TO USE AN INFORMANT TO TESTI-
5 FY AGAINST A DEFENDANT, THE ATTORNEY FOR SUCH DEFENDANT SHALL BE
6 SUPPLIED WITH:
7 A. THE COMPLETE CRIMINAL RECORD OF THE INFORMANT;
8 B. ANY TESTIMONY OR INFORMATION THE INFORMANT HAS PROVIDED OR HAS
9 PROMISED TO PROVIDE FOR ANY LEGAL ACTION;
10 C. ALL STATEMENTS MADE BY THE INFORMANT ABOUT THE SPECIFIC LEGAL
11 ACTION IN QUESTION; AND
12 D. ALL PROMISES, COMPROMISES, OR PROTECTIONS OFFERED BY THE PROSECUT-
13 ING ATTORNEY TO THE INFORMANT IN EXCHANGE FOR HIS OR HER TESTIMONY. THIS
14 SHALL ALSO INCLUDE ANY INFORMATION ABOUT CRIMES COMMITTED BY THE INFOR-
15 MANT FOR WHICH CHARGES WILL NOT BE BROUGHT IN EXCHANGE FOR HIS OR HER
16 TESTIMONY.
17 2. THE ATTORNEY FOR THE DEFENDANT SHALL BE GIVEN THE OPPORTUNITY TO
18 DEPOSE THE INFORMANT PRIOR TO ENTERING INTO ANY PLEA NEGOTIATIONS OR
19 GOING TO TRIAL.
20 3. UPON THE REQUEST OF THE ATTORNEY FOR THE DEFENDANT, THE JUDGE SHALL
21 GRANT A RELIABILITY HEARING, WHICH SHALL BE USED TO DETERMINE THE CREDI-
22 BILITY OF THE INFORMANT'S TESTIMONY. BOTH THE PROSECUTION AND THE ATTOR-
23 NEY FOR THE DEFENDANT SHALL BE ENTITLED TO OFFER EVIDENCE RELATING TO
24 THE INFORMANT'S RELIABILITY. THE JUDGE, IN HIS OR HER OWN DISCRETION,
25 SHALL WEIGH THE EVIDENCE AND DETERMINE IF THE INFORMANT IS A RELIABLE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 WITNESS. IF THE INFORMANT IS FOUND TO BE UNRELIABLE, HE OR SHE SHALL BE
2 PROHIBITED FROM TESTIFYING AGAINST THE DEFENDANT.

3 4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW RELATING TO THE PLEA
4 BARGAINS, NO PROSECUTING ATTORNEY SHALL OFFER A DISMISSAL OF OR REFUSE
5 TO BRING CHARGES FOR THE CRIMES OF MURDER, MANSLAUGHTER, RAPE, OR
6 KIDNAPPING IN EXCHANGE FOR THE TESTIMONY OF A PERSON.

7 5. IF A PERSON HAS COMMITTED A CRIME THAT, IF CONVICTED, WOULD RESULT
8 IN A CONVICTION OF A CLASS A MISDEMEANOR OR ANY CLASS OF FELONY, LAW
9 ENFORCEMENT OFFICERS OR THE PROSECUTING ATTORNEY MUST RECEIVE JUDICIAL
10 CONSENT BEFORE USING SUCH CHARGE AS A PLEA OFFER IN EXCHANGE FOR THE
11 TESTIMONY OF THE PERSON.

12 6. COMMENCING JANUARY FIRST IN THE YEAR FOLLOWING THE EFFECTIVE DATE
13 OF THIS SECTION, AND EVERY JANUARY FIRST THEREAFTER, ALL LAW ENFORCEMENT
14 PERSONNEL WHO USE INFORMANTS SHALL FILE A REPORT WITH THE DEPARTMENT OF
15 STATE. THE REPORT SHALL BE AVAILABLE TO PUBLIC INSPECTION AND MAY BE
16 MADE AVAILABLE ON THE DEPARTMENT OF STATE WEBSITE OR IN OTHER ELECTRONIC
17 FORMATS. THE REPORT SHALL INCLUDE:

18 A. THE EXACT NUMBER OF INFORMANTS CREATED AND SUSTAINED BY EACH
19 DEPARTMENT OR OFFICE;

20 B. THE NUMBER OF OCCURRENCES WHEN A SUSPECT BECOMES AN INFORMANT WITH-
21 OUT EVER BEING OFFICIALLY CHARGED WITH A CRIME;

22 C. THE NUMBER OF OCCURRENCES WHEN A SUSPECT HAS CHARGES DROPPED AFTER
23 AGREEING TO BECOME AN INFORMANT;

24 D. THE SPECIFIC OFFENSES THAT HAVE BEEN DROPPED AS THE RESULT OF AN
25 INDIVIDUAL BECOMING AN INFORMANT;

26 E. THE NUMBER OF ARRESTS THAT ARE THE DIRECT OR INDIRECT RESULT OF THE
27 USE OF AN INFORMANT AND THE ROLE PLAYED BY THE INFORMANT FOR EACH SUCH
28 ARREST;

29 F. THE NUMBER OF CONVICTIONS THAT ARE THE DIRECT OR INDIRECT RESULT OF
30 THE USE OF AN INFORMANT AND THE ROLE PLAYED BY THE INFORMANT FOR EACH
31 SUCH CONVICTION; AND

32 G. THE AGE, RACE, GENDER, AND NEIGHBORHOOD OF RESIDENCE OF EACH INFOR-
33 MANT.

34 S 2. This act shall take effect on the first of September next
35 succeeding the date on which it shall have become a law.