S T A T E O F N E W Y O R K

893

2009-2010 Regular Sessions

I N S E N A T E

January 21, 2009

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

AN ACT to amend the criminal procedure law, in relation to the exercise of peremptory challenges

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

Section 1. Subdivision 1 of section 270.25 of the criminal procedure law is amended to read as follows:

1. A peremptory challenge is an objection to a prospective juror for which no reason need be assigned, EXCEPT AS PROVIDED IN SUBDIVISION ONE-A OF THIS SECTION. Upon any LAWFUL peremptory challenge, the court must exclude the person challenged from service.

S 2. Section 270.25 of the criminal procedure law is amended by adding a new subdivision 1-a to read as follows:

1-A. (A) AT ANY TIME AFTER JURY SELECTION HAS BEGUN AND BEFORE THE OPENING STATEMENT IS MADE BY THE PROSECUTOR, EITHER PARTY MAY, OUTSIDE OF THE HEARING OF BOTH PROSPECTIVE AND SWORN JURORS, MAKE A MOTION IN WRITING OR ORALLY UPON THE RECORD FOR AN ORDER DISCHARGING THE JURY PANEL OR FOR OTHER APPROPRIATE RELIEF UPON THE GROUNDS THAT THE OTHER PARTY HAS PURPOSEFULLY DISCRIMINATED ON THE BASIS OF RACE, SEX, RELIGION, OR NATIONAL ORIGIN IN THE EXERCISE OF PEREMPTORY CHALLENGES.

(B) WHERE, AFTER ACCORDING EACH PARTY AN OPPORTUNITY TO BE HEARD, THE COURT FINDS THAT A PRIMA FACIE CASE HAS BEEN ESTABLISHED THAT A PARTY HAS PURPOSEFULLY DISCRIMINATED IN THE EXERCISE OF PEREMPTORY CHALLENGES TO STRIKE PROSPECTIVE JURORS ON ACCOUNT OF THE RACE, RELIGION, SEX OR NATIONAL ORIGIN OF SUCH PROSPECTIVE JURORS, THE COURT SHALL MAKE INQUIRY OF THE PARTY EXERCISING THE PEREMPTORY CHALLENGES.

(C) AFTER THE PARTY OF WHOM INQUIRY WAS MADE HAS RESPONDED, THE COURT SHALL EVALUATE, IN LIGHT OF THE CLAIMS MADE, THE REASONS GIVEN FOR THE EXERCISE OF PEREMPTORY CHALLENGES AND DETERMINE WHETHER THE MOVING PARTY HAS ESTABLISHED SUCH PURPOSEFUL DISCRIMINATION.

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

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(D) WHERE THE COURT DETERMINES THAT A PARTY HAS ENGAGED IN PURPOSEFUL DISCRIMINATION AGAINST PROSPECTIVE JURORS IN THE EXERCISE OF PEREMPTORY CHALLENGES, IT SHALL SEAT THE JUROR, DISCHARGE THE JURY PANEL OR FASHION ANY OTHER APPROPRIATE REMEDY.

S 3. This act shall take effect on the first of November next succeeding the date on which it shall have become a law and shall apply to all jury selections commenced on or after such date.