

2117

2009-2010 Regular Sessions

I N   S E N A T E

February 11, 2009

---

Introduced by Sens. GOLDEN, MORAHAN -- read twice and ordered printed,  
and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, the criminal procedure law, the  
family court act and the civil practice law and rules, in relation to  
protecting the identity of undercover public officers and employees

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

1     Section 1. Subdivision 1 of section 50-a of the civil rights law, as  
2     amended by chapter 137 of the laws of 2002, is amended to read as  
3     follows:  
4     1. All personnel records, used to evaluate performance toward contin-  
5     ued employment or promotion, under the control of any police agency or  
6     department of the state or any political subdivision thereof including  
7     authorities or agencies maintaining police forces of individuals defined  
8     as police officers in section 1.20 of the criminal procedure law and  
9     such personnel records under the control of a sheriff's department or a  
10    department of correction of individuals employed as correction officers  
11    and such personnel records under the control of a paid fire department  
12    or force of individuals employed as firefighters or  
13    firefighter/paramedics and such personnel records under the control of  
14    the division of parole for individuals defined as peace officers pursu-  
15    ant to subdivisions twenty-three and twenty-three-a of section 2.10 of  
16    the criminal procedure law shall be considered confidential and not  
17    subject to inspection or review without the express written consent of  
18    such police officer, firefighter, firefighter/paramedic, correction  
19    officer or peace officer within the division of parole except as may be  
20    mandated by lawful court order. FOR PURPOSES OF THIS SECTION, PERSONNEL  
21    RECORDS SHALL INCLUDE ANY REPORT, PAPER, PICTURE, PHOTOGRAPH, COURT FILE  
22    OR OTHER DOCUMENT, IN THE CUSTODY OR POSSESSION OF ANY PUBLIC OFFICER OR  
23    EMPLOYEE, WHICH TENDS TO IDENTIFY BY NAME OR IMAGE AN INDIVIDUAL WHO IS  
24    PERFORMING OR HAS PERFORMED OFFICIAL DUTIES IN A COVERT OR UNDERCOVER

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

LBD05712-01-9

1 CAPACITY AND WHOSE PERSONNEL RECORDS ARE OTHERWISE COVERED BY THIS  
2 SUBDIVISION.

3 S 2. Section 60.15 of the criminal procedure law is amended by adding  
4 a new subdivision 3 to read as follows:

5 3. WHEN A PUBLIC OFFICER OR EMPLOYEE, INCLUDING BUT NOT LIMITED TO A  
6 POLICE OFFICER AS DEFINED IN SECTION 1.20 OF THIS PART OR A PEACE OFFI-  
7 CER AS DEFINED IN SECTION 2.10 OF THIS PART, IS PERFORMING OR HAS  
8 PERFORMED OFFICIAL DUTIES IN A COVERT OR UNDERCOVER CAPACITY AND IS  
9 CALLED AS A WITNESS IN A CRIMINAL PROCEEDING:

10 (A) THE PEOPLE MAY MAKE A REQUEST OF THE COURT THAT THE IDENTITY OF  
11 THE WITNESS BE PROTECTED. THERE SHALL BE A PRESUMPTION THAT THE WITNESS  
12 WOULD BE ENDANGERED OR HIS OR HER EFFECTIVENESS COMPROMISED IF HIS OR  
13 HER IDENTITY IS DISCLOSED AND THAT THEREFORE THE PEOPLE HAVE MADE A  
14 SHOWING THAT THE WITNESS SHOULD BE EXCUSED FROM PROVIDING HIS OR HER  
15 IDENTITY. THE DEFENDANT MAY THEREUPON SEEK TO REBUT THE PRESUMPTION  
16 AND/OR DEMONSTRATE THE MATERIALITY OF THE WITNESS'S IDENTITY TO THE  
17 ISSUE OF GUILT OR INNOCENCE. IF THE PRESUMPTION HAS NOT BEEN REBUTTED,  
18 THE COURT SHALL THEN BALANCE THE INTERESTS AND IF IT DETERMINES THAT THE  
19 NEED OF THE PUBLIC OFFICER OR EMPLOYEE WITNESS FOR ANONYMITY EXCEEDS THE  
20 DEFENDANT'S NEED TO OBTAIN THE WITNESS'S IDENTITY FOR PURPOSES OF  
21 CROSS-EXAMINATION, THE COURT SHALL DIRECT THAT THE WITNESS TESTIFY UNDER  
22 A PSEUDONYM SUCH AS A SHIELD NUMBER.

23 (B) IF REQUESTED BY THE PEOPLE, THE COURT SHALL TAKE SUCH OTHER MEAS-  
24 URES AS ARE NECESSARY, CONSISTENT WITH RIGHTS OF THE DEFENDANT, TO SAFE-  
25 GUARD THE IDENTITY OF THE WITNESS.

26 (C) UPON REQUEST OF THE DEFENDANT DURING A JURY TRIAL, THE COURT SHALL  
27 INSTRUCT THE JURY THAT THE USE OF A PSEUDONYM OR ANY OTHER ADDITIONAL  
28 MEASURE TO PROTECT THE IDENTITY OF THE WITNESS IS NOT A FACTOR FROM  
29 WHICH AN INFERENCE UNFAVORABLE TO THE DEFENDANT MAY BE DRAWN.

30 S 3. The family court act is amended by adding a new section 343.6 to  
31 read as follows:

32 S 343.6. RULES OF EVIDENCE; TESTIMONY GIVEN BY A PUBLIC OFFICER OR  
33 EMPLOYEE. WHEN A PUBLIC OFFICER OR EMPLOYEE, INCLUDING BUT NOT LIMITED  
34 TO A POLICE OFFICER AS DEFINED IN SECTION 1.20 OF THE CRIMINAL PROCEDURE  
35 LAW OR A PEACE OFFICER AS DEFINED IN SECTION 2.10 OF SUCH LAW, IS  
36 PERFORMING OR HAS PERFORMED OFFICIAL DUTIES IN A COVERT OR UNDERCOVER  
37 CAPACITY AND IS CALLED AS A WITNESS IN A DELINQUENCY PROCEEDING:

38 1. THE PRESENTMENT AGENCY MAY MAKE A REQUEST OF THE COURT THAT THE  
39 IDENTITY OF THE WITNESS BE PROTECTED. THERE SHALL BE A PRESUMPTION THAT  
40 THE WITNESS WOULD BE ENDANGERED OR HIS OR HER EFFECTIVENESS COMPROMISED  
41 IF HIS OR HER IDENTITY IS DISCLOSED AND THAT THEREFORE THE PRESENTMENT  
42 AGENCY HAS MADE A SHOWING THAT THE WITNESS SHOULD BE EXCUSED FROM  
43 PROVIDING HIS OR HER IDENTITY. THE RESPONDENT MAY THEREUPON SEEK TO  
44 REBUT THE PRESUMPTION AND/OR DEMONSTRATE THE MATERIALITY OF THE  
45 WITNESS'S IDENTITY TO THE ISSUE OF GUILT OR INNOCENCE. IF THE PRESUMP-  
46 TION HAS NOT BEEN REBUTTED, THE COURT SHALL THEN BALANCE THE INTERESTS  
47 AND IF IT DETERMINES THAT THE NEED OF THE PUBLIC OFFICER OR EMPLOYEE  
48 WITNESS FOR ANONYMITY EXCEEDS THE RESPONDENT'S NEED TO OBTAIN THE  
49 WITNESS'S IDENTITY FOR PURPOSES OF CROSS-EXAMINATION, THE COURT SHALL  
50 DIRECT THAT THE WITNESS TESTIFY UNDER A PSEUDONYM SUCH AS A SHIELD  
51 NUMBER.

52 2. IF REQUESTED BY THE PRESENTMENT AGENCY, THE COURT SHALL TAKE SUCH  
53 OTHER MEASURES AS ARE NECESSARY, CONSISTENT WITH RIGHTS OF THE RESPOND-  
54 ENT, TO SAFEGUARD THE IDENTITY OF THE WITNESS.

55 S 4. The civil practice law and rules is amended by adding a new  
56 section 4516-a to read as follows:

1 S 4516-A. TESTIMONY BY CERTAIN PUBLIC OFFICERS AND EMPLOYEES. WHEN A  
2 PUBLIC OFFICER OR EMPLOYEE, INCLUDING BUT NOT LIMITED TO A POLICE OFFI-  
3 CER AS DEFINED IN SECTION 1.20 OF THE CRIMINAL PROCEDURE LAW OR A PEACE  
4 OFFICER AS DEFINED IN SECTION 2.10 OF SUCH LAW, IS PERFORMING OR HAS  
5 PERFORMED OFFICIAL DUTIES IN A COVERT OR UNDERCOVER CAPACITY AND IS  
6 CALLED AS A WITNESS IN A CIVIL ENFORCEMENT ACTION BROUGHT BY A GOVERN-  
7 MENTAL ENTITY:

8 (A) SUCH GOVERNMENTAL ENTITY OR THE PUBLIC EMPLOYER OF THE WITNESS MAY  
9 MAKE A REQUEST OF THE COURT THAT THE IDENTITY OF THE WITNESS BE  
10 PROTECTED. THERE SHALL BE A PRESUMPTION THAT THE WITNESS WOULD BE ENDAN-  
11 GERED OR HIS OR HER EFFECTIVENESS COMPROMISED IF HIS OR HER IDENTITY IS  
12 DISCLOSED AND THAT THEREFORE THE GOVERNMENT ENTITY HAS MADE A SHOWING  
13 THAT THE WITNESS SHOULD BE EXCUSED FROM PROVIDING HIS OR HER IDENTITY.  
14 THE RESPONDENT MAY THEREUPON SEEK TO REBUT THE PRESUMPTION AND/OR DEMON-  
15 STRATE THE MATERIALITY OF THE WITNESS'S IDENTITY TO THE ISSUE OF GUILT  
16 OR INNOCENCE. IF THE PRESUMPTION HAS NOT BEEN REBUTTED, THE COURT SHALL  
17 THEN BALANCE THE INTERESTS AND IF IT DETERMINES THAT THE NEED OF THE  
18 PUBLIC OFFICER OR EMPLOYEE WITNESS FOR ANONYMITY EXCEEDS THE RESPOND-  
19 ENT'S NEED TO OBTAIN THE WITNESS'S IDENTIFY FOR PURPOSES OF CROSS-EXAMI-  
20 NATION, THE COURT SHALL DIRECT THAT THE WITNESS TESTIFY UNDER A PSEUDO-  
21 NYM SUCH AS A SHIELD NUMBER.

22 (B) IF REQUESTED BY SUCH GOVERNMENTAL ENTITY OR SUCH PUBLIC EMPLOYER,  
23 THE COURT SHALL TAKE SUCH OTHER MEASURES AS ARE NECESSARY, CONSISTENT  
24 WITH RIGHTS OF THE ADVERSE PARTY, TO SAFEGUARD THE IDENTITY OF THE  
25 WITNESS.

26 (C) DURING A JURY TRIAL, UPON REQUEST BY THE PARTY AGAINST WHOM THE  
27 ACTION IS BROUGHT, THE COURT SHALL INSTRUCT THE JURY THAT THE USE OF A  
28 PSEUDONYM OR ANY OTHER ADDITIONAL MEASURE TO PROTECT THE IDENTITY OF THE  
29 WITNESS IS NOT A FACTOR FROM WHICH AN INFERENCE UNFAVORABLE TO SUCH  
30 PARTY MAY BE DRAWN.

31 (D) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT OR OTHER-  
32 WISE AFFECT APPROPRIATE MEASURES TO SAFEGUARD THE IDENTITY OF A WITNESS  
33 THAT MAY BE TAKEN IN ANY CIVIL ACTION THAT IS NOT WITHIN THE SCOPE OF  
34 THIS SECTION.

35 S 5. Severability. If any clause, sentence, paragraph, section or part  
36 of this act shall be adjudged by any court of competent jurisdiction to  
37 be invalid, the judgment shall not affect, impair or invalidate the  
38 remainder thereof, but shall be confined in its operation to the clause,  
39 sentence, paragraph, section of part thereof directly involved in the  
40 controversy in which the judgment shall have been rendered.

41 S 6. This act shall take effect immediately.