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

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2011-2012 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. TITUS, AUBRY, MILLMAN, JAFFEE -- Multi-Sponsored by -- M. of A. GLICK, GOTTFRIED, McENENY, TITONE -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to informant testimony

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

Section 1. The criminal procedure law is amended by adding a new section 60.77 to read as follows:

S 60.77 RULES OF EVIDENCE: TESTIMONY OF AN INFORMANT WHO IS NOT AN ACCOMPLICE.

1. DEFINITION. AS USED IN THIS SECTION, AN "INFORMANT" IS A PERSON WHO IS NOT AN ACCOMPLICE AND WHO AGREES TO PROVIDE TESTIMONY OR EVIDENCE ON AN UNDERSTANDING THAT HE OR SHE WILL RECEIVE A FAVORABLE DISPOSITION OR RESOLUTION OF PENDING OR POSSIBLE CRIMINAL CHARGES, FINANCIAL BENEFIT NOT ASSOCIATED WITH USUAL WITNESS APPEARANCE, OR OTHER SUBSTANTIAL BENEFIT FOR HIMSELF OR HERSELF OR ANOTHER PERSON.

2. THE TESTIMONY OF AN INFORMANT AGAINST THE DEFENDANT MAY BE ADMITTED INTO EVIDENCE ONLY IF THE PROSECUTION PRESENTS EVIDENCE INDEPENDENT OF THE INFORMANT'S TESTIMONY THAT TENDS TO CONNECT THE DEFENDANT TO THE COMMISSION OF THE OFFENSE.

3. (A) UNLESS EARLIER DISCLOSURE IS OTHERWISE REQUIRED BY LAW, AT A REASONABLE TIME PRIOR TO TRIAL OR ENTRY OF A GUILTY PLEA, THE PROSECUTION SHALL DISCLOSE TO THE COURT AND THE DEFENSE THE EVIDENCE IT CLAIMS TO BE CORROBORATIVE OF THE INFORMANT'S INFORMATION TENDING TO CONNECT THE DEFENDANT WITH THE OFFENSE. AT A REASONABLE TIME PRIOR TO TRIAL THE COURT SHALL DETERMINE WHETHER, WITHOUT THE INFORMANT'S TESTIMONY, THE PROSECUTOR'S PROPOSED EVIDENCE TENDS TO CONNECT THE DEFENDANT TO THE OFFENSE. IF THE COURT FINDS THAT THE PROPOSED INDEPENDENT EVIDENCE TENDS TO CONNECT THE DEFENDANT TO THE OFFENSE, THE INFORMANT SHALL BE PERMITTED TO GIVE TESTIMONY AT A TRIAL. IF THE PROSECUTION

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

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FAILS TO MAKE THE REQUIRED SHOWING, THE INFORMANT WILL NOT BE PERMITTED TO TESTIFY CONCERNING THE DEFENDANT'S ROLE IN THE OFFENSE.

(B) AT A REASONABLE TIME PRIOR TO TRIAL OR ENTRY OF A GUILTY PLEA, THE PROSECUTOR SHALL INFORM THE DEFENSE OF ANY PROMISE, BENEFIT, OR FAVORABLE DISPOSITION GIVEN TO THE INFORMANT OR SOMEONE ELSE AT THE INFORMANT'S REQUEST AND DELIVER TO THE DEFENSE ANY DOCUMENT, ELECTRONIC RECORD, NOTES OR OTHER RECORD OF THE PROMISE; THE CIRCUMSTANCES IN WHICH THE INFORMANT REVEALED THE INFORMATION; WHETHER THE INFORMANT AT ANY TIME RETRACTED THE INFORMATION AND THE CIRCUMSTANCES OF SUCH RETRACTION; THE INFORMANT'S RECORD OF CRIMINAL CONVICTIONS AND PRIOR CRIMINAL CONDUCT; OTHER MATTERS IN WHICH THE INFORMANT HAS GIVEN AID TO OR TESTIFIED FOR THE PROSECUTION; AND SUCH OTHER INFORMATION AS THE DEFENSE REQUESTS AND THE COURT DEEMS APPROPRIATE UNDER THE CIRCUMSTANCES.

(C) UPON MOTION OF THE PROSECUTOR AND ON A SHOWING THAT DISCLOSURE OF THE INFORMANT'S IDENTITY WOULD ENDANGER THE INFORMANT, THAT THE INFORMANT'S SERVICES TO THE STATE WOULD BE UNDERMINED, OR FOR OTHER REASON FOUND COMPELLING BY THE COURT, THE IDENTITY OF THE INFORMANT MAY BE REDACTED AND REMAIN UNDISCLOSED TO THE DEFENSE UNTIL SUCH TIME AS THE COURT DEEMS APPROPRIATE OR REQUIRED BY LAW.

4. BEFORE THE DEFENDANT ENTERS A GUILTY PLEA THE COURT SHALL ADVISE THE DEFENDANT THAT AT A TRIAL THE INFORMANT COULD BE CROSS-EXAMINED CONCERNING CREDIBILITY AND RELIABILITY AND THAT BY PLEADING GUILTY TO RESOLVE THE CASE, HE OR SHE WAIVES THE RIGHT TO CROSS-EXAMINE THE INFORMANT.

5. (A) IF THE INFORMANT'S TESTIMONY OR EVIDENCE IS ADMITTED AT TRIAL, THE COURT SHALL INSTRUCT THE JURY THAT IT SHOULD REVIEW THE RELIABILITY AND CREDIBILITY OF THE INFORMANT'S TESTIMONY WITH CAUTION, SCRUTINY, AND CARE, THAT THE JURY IS TO CONSIDER WHETHER THE TESTIMONY WAS INFLUENCED BY ANY PROMISE OR BENEFIT TO THE INFORMANT OR SOMEONE AT HIS OR HER REQUEST, AND SUCH OTHER FACTORS AS THE COURT CONSIDERS APPROPRIATE IN THE CIRCUMSTANCES.

(B) IF THE INFORMANT'S TESTIMONY OR EVIDENCE IS ADMITTED AT TRIAL, THE COURT SHALL INSTRUCT THE JURY THAT UNLESS IT FINDS THAT CREDIBLE EVIDENCE INDEPENDENT OF THAT OF THE INFORMANT'S TENDS TO CONNECT THE DEFENDANT TO THE OFFENSE, IT CANNOT CONSIDER THE TESTIMONY OF THE INFORMANT IN MAKING ITS DECISION.

S 2. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to any criminal proceeding commenced on or after such date.