

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

4872--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 8, 2011

Introduced by M. of A. SIMOTAS, COLTON, HOOPER -- read once and referred to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 1 of section 50-a of the civil rights law, as
2 amended by section 53 of subpart B of part C of chapter 62 of the laws
3 of 2011, is amended to read as follows:
4 1. All personnel records used to evaluate performance toward continued
5 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 department of corrections and community supervision for individuals
15 defined as peace officers pursuant to subdivisions twenty-three and
16 twenty-three-a of section 2.10 of the criminal procedure law shall be
17 considered confidential and not subject to inspection or review without
18 the express written consent of such police officer, firefighter,
19 firefighter/paramedic, correction officer or peace officer within the
20 department of corrections and community supervision except as may be
21 mandated by lawful court order. FOR PURPOSES OF THIS SECTION, PERSONNEL

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

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1 RECORDS SHALL INCLUDE ANY REPORT, PAPER, PICTURE, PHOTOGRAPH, COURT FILE
2 OR OTHER DOCUMENT, IN THE CUSTODY OR POSSESSION OF ANY PUBLIC OFFICER OR
3 EMPLOYEE, WHICH TENDS TO IDENTIFY BY NAME OR IMAGE AN INDIVIDUAL WHO IS
4 PERFORMING OR HAS PERFORMED OFFICIAL DUTIES IN A COVERT OR UNDERCOVER
5 CAPACITY AND WHOSE PERSONNEL RECORDS ARE OTHERWISE COVERED BY THIS
6 SUBDIVISION.

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

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

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

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

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

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

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

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

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

4 S 4. The civil practice law and rules is amended by adding a new Rule
5 4516-a to read as follows:

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

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

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

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

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

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

46 S 6. This act shall take effect immediately.