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

947

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sens. MARCELLINO, LARKIN -- 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 anonymous juries and to repeal subdivision 1-a of section 270.15 of such law relating thereto

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

Section 1. Paragraph (a) of subdivision 1 of section 270.15 of the criminal procedure law, as amended by chapter 467 of the laws of 1985, is amended to read as follows:

(a) If no challenge to the panel is made as prescribed by section 270.10, or if such challenge is made and disallowed, the court shall direct that the names of not less than twelve members of the panel be drawn and called as prescribed by the judiciary law, EXCEPT AS OTHERWISE REQUIRED BY SECTION 270.17 OF THIS ARTICLE. Such persons shall take their places in the jury box and shall be immediately sworn to answer truthfully questions asked them relative to their qualifications to serve as jurors in the action. In its discretion, the court may require prospective jurors to complete a questionnaire concerning their ability to serve as fair and impartial jurors, including but not limited to place of birth, current address, education, occupation, prior jury service, knowledge of, relationship to, or contact with the court, any party, witness or attorney in the action and any other fact relevant to his or her service on the jury. An official form for such questionnaire shall be developed by the chief administrator of the courts in consultation with the administrative board of the courts. A copy of questionnaires completed by the members of the panel shall be given to the court and each attorney prior to examination of prospective jurors.

S 2. Subdivision 1-a of section 270.15 of the criminal procedure law is REPEALED.

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

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S 3. The criminal procedure law is amended by adding a new section 270.17 to read as follows:

S 270.17 TRIAL JURY; ANONYMOUS PANEL.

1. THE PEOPLE MAY MAKE A MOTION FOR AN ORDER PROTECTING THE NAMES AND RESIDENTIAL AND BUSINESS ADDRESSES OF JURORS AND PROSPECTIVE JURORS FROM DISCLOSURE TO ANY PERSON. SUCH A MOTION SHALL BE MADE NO LATER THAN THREE DAYS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS, PRIOR TO THE COMMENCEMENT OF JURY SELECTION, BUT FOR GOOD CAUSE SHOWN MAY BE MADE THEREAFTER. THE COURT SHALL CONDUCT A HEARING UPON SUCH MOTION AND MAKE FINDINGS OF FACT ESSENTIAL TO THE DETERMINATION THEREOF. ALL PERSONS GIVING FACTUAL INFORMATION AT SUCH HEARING MUST TESTIFY UNDER OATH, EXCEPT THAT UNSWORN EVIDENCE PURSUANT TO SUBDIVISION TWO OF SECTION 60.20 OF THIS CHAPTER ALSO MAY BE RECEIVED. UPON SUCH HEARING, HEARSAY EVIDENCE SHALL BE ADMISSIBLE TO ESTABLISH ANY MATERIAL FACT.

2. AT THE HEARING, THE PEOPLE SHALL BEAR THE BURDEN OF PROVING BY CLEAR AND CONVINCING EVIDENCE THAT A PROTECTIVE ORDER IS NECESSARY TO PROTECT AGAINST THE LIKELIHOOD OF BRIBERY, JURY TAMPERING OR PHYSICAL INJURY TO OR HARASSMENT OF THE JURORS OR PROSPECTIVE JURORS. IN DETERMINING WHETHER THE PEOPLE HAVE SUSTAINED THIS BURDEN, THE COURT MAY CONSIDER ANY RELEVANT FACTORS, INCLUDING:

(A) WHETHER DEFENDANT OR PERSONS ACTING ON DEFENDANT'S BEHALF HAVE BRIBED, TAMPERED WITH, OR CAUSED OR ATTEMPTED TO CAUSE PHYSICAL INJURY TO OR HARASSMENT OF A JUROR OR PROSPECTIVE JUROR, OR A WITNESS OR PROSPECTIVE WITNESS, IN ANOTHER CRIMINAL ACTION OR PROCEEDING OR IN THE INSTANT CRIMINAL ACTION OR PROCEEDING;

(B) WHETHER DEFENDANT IS A MEMBER OF AN ENTERPRISE, AS DEFINED IN SUBDIVISION TWO OF SECTION 460.10 OF THE PENAL LAW, THAT BY ITSELF OR THROUGH ANY OF ITS MEMBERS HAS MANIFESTED AN INTENTION TO BRIBE, TAMPER WITH, OR CAUSE OR ATTEMPT TO CAUSE PHYSICAL INJURY TO OR HARASSMENT OF A JUROR OR PROSPECTIVE JUROR, OR A WITNESS OR PROSPECTIVE WITNESS, IN THE INSTANT CRIMINAL ACTION OR PROCEEDING;

(C) THE SERIOUSNESS OF THE CHARGES AGAINST DEFENDANT;

(D) THE EXTENT OF PRETRIAL PUBLICITY CONCERNING THE CRIMINAL ACTION OR PROCEEDING.

3. IF THE COURT DETERMINES THAT A PROTECTIVE ORDER SHOULD BE ISSUED IT SHALL DIRECT THAT ALL JURORS AND PROSPECTIVE JURORS THEREAFTER SHALL BE IDENTIFIED BY SOME MEANS OTHER THAN THEIR NAMES AND THEIR RESIDENTIAL AND BUSINESS ADDRESSES. THE COURT MAY ENLARGE THE SCOPE AND DURATION OF THE PARTIES' EXAMINATION OF PROSPECTIVE JURORS TO ASSURE THAT THE PARTIES HAVE SUFFICIENT INFORMATION UPON WHICH TO BASE THE EXERCISE OF PEREMPTORY CHALLENGES AND CHALLENGES FOR CAUSE PURSUANT TO SECTIONS 270.20 AND 270.25 OF THIS ARTICLE.

4. UPON REQUEST BY A DEFENDANT, BUT NOT OTHERWISE, THE COURT SHALL INSTRUCT THE JURY THAT THE FACT THAT THE JURY WAS SELECTED ON AN ANONYMOUS BASIS IS NOT A FACTOR FROM WHICH ANY INFERENCE UNFAVORABLE TO THE DEFENDANT MAY BE DRAWN.

S 4. This act shall take effect on the thirtieth day after it shall have become a law.