

3609

2011-2012 Regular Sessions

I N A S S E M B L Y

January 26, 2011

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The criminal procedure law is amended by adding a new
2 section 60.77 to read as follows:
3 S 60.77 RULES OF EVIDENCE: TESTIMONY OF AN INFORMANT WHO IS NOT AN
4 ACCOMPLICE.
5 1. DEFINITION. AS USED IN THIS SECTION, AN "INFORMANT" IS A PERSON WHO
6 IS NOT AN ACCOMPLICE AND WHO AGREES TO PROVIDE TESTIMONY OR EVIDENCE ON
7 AN UNDERSTANDING THAT HE OR SHE WILL RECEIVE A FAVORABLE DISPOSITION OR
8 RESOLUTION OF PENDING OR POSSIBLE CRIMINAL CHARGES, FINANCIAL BENEFIT
9 NOT ASSOCIATED WITH USUAL WITNESS APPEARANCE, OR OTHER SUBSTANTIAL BENE-
10 FIT FOR HIMSELF OR HERSELF OR ANOTHER PERSON.
11 2. THE TESTIMONY OF AN INFORMANT AGAINST THE DEFENDANT MAY BE ADMITTED
12 INTO EVIDENCE ONLY IF THE PROSECUTION PRESENTS EVIDENCE INDEPENDENT OF
13 THE INFORMANT'S TESTIMONY THAT TENDS TO CONNECT THE DEFENDANT TO THE
14 COMMISSION OF THE OFFENSE.
15 3. (A) UNLESS EARLIER DISCLOSURE IS OTHERWISE REQUIRED BY LAW, AT A
16 REASONABLE TIME PRIOR TO TRIAL OR ENTRY OF A GUILTY PLEA, THE PROSE-
17 CUTION SHALL DISCLOSE TO THE COURT AND THE DEFENSE THE EVIDENCE IT
18 CLAIMS TO BE CORROBORATIVE OF THE INFORMANT'S INFORMATION TENDING TO
19 CONNECT THE DEFENDANT WITH THE OFFENSE. AT A REASONABLE TIME PRIOR TO
20 TRIAL THE COURT SHALL DETERMINE WHETHER, WITHOUT THE INFORMANT'S TESTI-
21 MONY, THE PROSECUTOR'S PROPOSED EVIDENCE TENDS TO CONNECT THE DEFENDANT
22 TO THE OFFENSE. IF THE COURT FINDS THAT THE PROPOSED INDEPENDENT
23 EVIDENCE TENDS TO CONNECT THE DEFENDANT TO THE OFFENSE, THE INFORMANT
24 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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1 FAILS TO MAKE THE REQUIRED SHOWING, THE INFORMANT WILL NOT BE PERMITTED
2 TO TESTIFY CONCERNING THE DEFENDANT'S ROLE IN THE OFFENSE.

3 (B) AT A REASONABLE TIME PRIOR TO TRIAL OR ENTRY OF A GUILTY PLEA, THE
4 PROSECUTOR SHALL INFORM THE DEFENSE OF ANY PROMISE, BENEFIT, OR FAVORA-
5 BLE DISPOSITION GIVEN TO THE INFORMANT OR SOMEONE ELSE AT THE
6 INFORMANT'S REQUEST AND DELIVER TO THE DEFENSE ANY DOCUMENT, ELECTRONIC
7 RECORD, NOTES OR OTHER RECORD OF THE PROMISE; THE CIRCUMSTANCES IN WHICH
8 THE INFORMANT REVEALED THE INFORMATION; WHETHER THE INFORMANT AT ANY
9 TIME RETRACTED THE INFORMATION AND THE CIRCUMSTANCES OF SUCH RETRACTION;
10 THE INFORMANT'S RECORD OF CRIMINAL CONVICTIONS AND PRIOR CRIMINAL
11 CONDUCT; OTHER MATTERS IN WHICH THE INFORMANT HAS GIVEN AID TO OR TESTI-
12 FIED FOR THE PROSECUTION; AND SUCH OTHER INFORMATION AS THE DEFENSE
13 REQUESTS AND THE COURT DEEMS APPROPRIATE UNDER THE CIRCUMSTANCES.

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

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

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

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

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