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

3910

2011-2012 Regular Sessions

I N A S S E M B L Y

January 28, 2011

Introduced by M. of A. PERRY -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to the defendant's right to a hearing to present exculpatory evidence regarding involvement in criminal activity

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 210.17 to read as follows:

S 210.17 HEARING TO PRESENT EXCULPATORY EVIDENCE REGARDING INVOLVEMENT IN CRIMINAL ACTIVITY.

1. UPON THE DEFENDANT'S ARRAIGNMENT BEFORE A SUPERIOR COURT UPON AN INDICTMENT, THE COURT SHALL IMMEDIATELY INFORM HIM OR HER, OR CAUSE HIM OR HER TO BE INFORMED IN ITS PRESENCE, OF THE RIGHT TO A HEARING TO PRESENT EXCULPATORY EVIDENCE, INCLUDING WITNESS TESTIMONY IF THE FOLLOWING CIRCUMSTANCES EXIST:

A. THE DEFENDANT WAS ARRESTED AS A RESULT OF A POLICE SWEEP OR RAID OF A PREMISES DURING WHICH A COLLECTIVE GROUP OF SUSPECTS WERE ARRESTED; AND

B. THE COLLECTIVE GROUP OF ARRESTED SUSPECTS, INCLUDING THE DEFENDANT, HAVE BEEN CHARGED WITH THE SAME CRIME.

2. DURING SUCH HEARING, THE PROSECUTOR MUST PROFFER LEGALLY SUFFICIENT EVIDENCE OF THE DEFENDANT'S INVOLVEMENT, WHETHER DIRECT OR INDIRECT, IN THE OFFENSE OR OFFENSES WITH WHICH THE DEFENDANT IS CHARGED.

3. DURING SUCH HEARING, A DEFENDANT MAY OFFER PROOF THAT HE OR SHE WAS NOT INVOLVED IN ANY CRIMINAL ACTIVITY, BUT WAS IN THE WRONG PLACE AT THE WRONG TIME, AND THAT THE DEFENDANT HAD NO INVOLVEMENT IN THE OFFENSE OR OFFENSES WITH WHICH HE OR SHE IS CHARGED.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.

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

LBD08353-01-1