

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:

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

4 (a) If no challenge to the panel is made as prescribed by section
5 270.10, or if such challenge is made and disallowed, the court shall
6 direct that the names of not less than twelve members of the panel be
7 drawn and called as prescribed by the judiciary law, EXCEPT AS OTHERWISE
8 REQUIRED BY SECTION 270.17 OF THIS ARTICLE. Such persons shall take
9 their places in the jury box and shall be immediately sworn to answer
10 truthfully questions asked them relative to their qualifications to
11 serve as jurors in the action. In its discretion, the court may require
12 prospective jurors to complete a questionnaire concerning their ability
13 to serve as fair and impartial jurors, including but not limited to
14 place of birth, current address, education, occupation, prior jury
15 service, knowledge of, relationship to, or contact with the court, any
16 party, witness or attorney in the action and any other fact relevant to
17 his or her service on the jury. An official form for such questionnaire
18 shall be developed by the chief administrator of the courts in consulta-
19 tion with the administrative board of the courts. A copy of question-
20 naires completed by the members of the panel shall be given to the court
21 and each attorney prior to examination of prospective jurors.

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23 is REPEALED.

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

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1 S 3. The criminal procedure law is amended by adding a new section
2 270.17 to read as follows:

3 S 270.17 TRIAL JURY; ANONYMOUS PANEL.

4 1. THE PEOPLE MAY MAKE A MOTION FOR AN ORDER PROTECTING THE NAMES AND
5 RESIDENTIAL AND BUSINESS ADDRESSES OF JURORS AND PROSPECTIVE JURORS FROM
6 DISCLOSURE TO ANY PERSON. SUCH A MOTION SHALL BE MADE NO LATER THAN
7 THREE DAYS, EXCLUDING SATURDAYS, SUNDAYS AND HOLIDAYS, PRIOR TO THE
8 COMMENCEMENT OF JURY SELECTION, BUT FOR GOOD CAUSE SHOWN MAY BE MADE
9 THEREAFTER. THE COURT SHALL CONDUCT A HEARING UPON SUCH MOTION AND MAKE
10 FINDINGS OF FACT ESSENTIAL TO THE DETERMINATION THEREOF. ALL PERSONS
11 GIVING FACTUAL INFORMATION AT SUCH HEARING MUST TESTIFY UNDER OATH,
12 EXCEPT THAT UNSWORN EVIDENCE PURSUANT TO SUBDIVISION TWO OF SECTION
13 60.20 OF THIS CHAPTER ALSO MAY BE RECEIVED. UPON SUCH HEARING, HEARSAY
14 EVIDENCE SHALL BE ADMISSIBLE TO ESTABLISH ANY MATERIAL FACT.

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

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

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

32 (C) THE SERIOUSNESS OF THE CHARGES AGAINST DEFENDANT;

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

35 3. IF THE COURT DETERMINES THAT A PROTECTIVE ORDER SHOULD BE ISSUED IT
36 SHALL DIRECT THAT ALL JURORS AND PROSPECTIVE JURORS THEREAFTER SHALL BE
37 IDENTIFIED BY SOME MEANS OTHER THAN THEIR NAMES AND THEIR RESIDENTIAL
38 AND BUSINESS ADDRESSES. THE COURT MAY ENLARGE THE SCOPE AND DURATION OF
39 THE PARTIES' EXAMINATION OF PROSPECTIVE JURORS TO ASSURE THAT THE
40 PARTIES HAVE SUFFICIENT INFORMATION UPON WHICH TO BASE THE EXERCISE OF
41 PEREMPTORY CHALLENGES AND CHALLENGES FOR CAUSE PURSUANT TO SECTIONS
42 270.20 AND 270.25 OF THIS ARTICLE.

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

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