

2139

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. SIMOTAS, COLTON, HOOPER -- read once and referred to the Committee on Codes

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
22 RECORDS SHALL INCLUDE ANY REPORT, PAPER, PICTURE, PHOTOGRAPH, COURT FILE
23 OR OTHER DOCUMENT, IN THE CUSTODY OR POSSESSION OF ANY PUBLIC OFFICER OR

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

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1 EMPLOYEE, WHICH TENDS TO IDENTIFY BY NAME OR IMAGE AN INDIVIDUAL WHO IS
2 PERFORMING OR HAS PERFORMED OFFICIAL DUTIES IN A COVERT OR UNDERCOVER
3 CAPACITY AND WHOSE PERSONNEL RECORDS ARE OTHERWISE COVERED BY THIS
4 SUBDIVISION.

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

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

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

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

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

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

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

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

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

1 S 4. The civil practice law and rules is amended by adding a new Rule
2 4516-a to read as follows:

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

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

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

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

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

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

43 S 6. This act shall take effect immediately.