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

25

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sen. ESPAILLAT -- 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 the regulation of the use of informants

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 60.77 to read as follows:

S 60.77 RULES OF EVIDENCE; USE OF CONFIDENTIAL INFORMANTS.

1. WHENEVER A PROSECUTING ATTORNEY PLANS TO USE AN INFORMANT TO TESTIFY AGAINST A DEFENDANT, THE ATTORNEY FOR SUCH DEFENDANT SHALL BE SUPPLIED WITH:

A. THE COMPLETE CRIMINAL RECORD OF THE INFORMANT;

B. ANY TESTIMONY OR INFORMATION THE INFORMANT HAS PROVIDED OR HAS PROMISED TO PROVIDE FOR ANY LEGAL ACTION;

C. ALL STATEMENTS MADE BY THE INFORMANT ABOUT THE SPECIFIC LEGAL ACTION IN QUESTION; AND

D. ALL PROMISES, COMPROMISES, OR PROTECTIONS OFFERED BY THE PROSECUTING ATTORNEY TO THE INFORMANT IN EXCHANGE FOR HIS OR HER TESTIMONY. THIS SHALL ALSO INCLUDE ANY INFORMATION ABOUT CRIMES COMMITTED BY THE INFORMANT FOR WHICH CHARGES WILL NOT BE BROUGHT IN EXCHANGE FOR HIS OR HER TESTIMONY.

2. THE ATTORNEY FOR THE DEFENDANT SHALL BE GIVEN THE OPPORTUNITY TO DEPOSE THE INFORMANT PRIOR TO ENTERING INTO ANY PLEA NEGOTIATIONS OR GOING TO TRIAL.

3. UPON THE REQUEST OF THE ATTORNEY FOR THE DEFENDANT, THE JUDGE SHALL GRANT A RELIABILITY HEARING, WHICH SHALL BE USED TO DETERMINE THE CREDIBILITY OF THE INFORMANT'S TESTIMONY. BOTH THE PROSECUTION AND THE ATTORNEY FOR THE DEFENDANT SHALL BE ENTITLED TO OFFER EVIDENCE RELATING TO THE INFORMANT'S RELIABILITY. THE JUDGE, IN HIS OR HER OWN DISCRETION,

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

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SHALL WEIGH THE EVIDENCE AND DETERMINE IF THE INFORMANT IS A RELIABLE WITNESS. IF THE INFORMANT IS FOUND TO BE UNRELIABLE, HE OR SHE SHALL BE PROHIBITED FROM TESTIFYING AGAINST THE DEFENDANT.

4. NOTWITHSTANDING ANY OTHER PROVISION OF LAW RELATING TO THE PLEA BARGAINS, NO PROSECUTING ATTORNEY SHALL OFFER A DISMISSAL OF OR REFUSE TO BRING CHARGES FOR THE CRIMES OF MURDER, MANSLAUGHTER, RAPE, OR KIDNAPPING IN EXCHANGE FOR THE TESTIMONY OF A PERSON.

5. IF A PERSON HAS COMMITTED A CRIME THAT, IF CONVICTED, WOULD RESULT IN A CONVICTION OF A CLASS A MISDEMEANOR OR ANY CLASS OF FELONY, LAW ENFORCEMENT OFFICERS OR THE PROSECUTING ATTORNEY MUST RECEIVE JUDICIAL CONSENT BEFORE USING SUCH CHARGE AS A PLEA OFFER IN EXCHANGE FOR THE TESTIMONY OF THE PERSON.

6. COMMENCING JANUARY FIRST IN THE YEAR FOLLOWING THE EFFECTIVE DATE OF THIS SECTION, AND EVERY JANUARY FIRST THEREAFTER, ALL LAW ENFORCEMENT PERSONNEL WHO USE INFORMANTS SHALL FILE A REPORT WITH THE DEPARTMENT OF STATE. THE REPORT SHALL BE AVAILABLE TO PUBLIC INSPECTION AND MAY BE MADE AVAILABLE ON THE DEPARTMENT OF STATE WEBSITE OR IN OTHER ELECTRONIC FORMATS. THE REPORT SHALL INCLUDE:

A. THE EXACT NUMBER OF INFORMANTS CREATED AND SUSTAINED BY EACH DEPARTMENT OR OFFICE;

B. THE NUMBER OF OCCURRENCES WHEN A SUSPECT BECOMES AN INFORMANT WITHOUT EVER BEING OFFICIALLY CHARGED WITH A CRIME;

C. THE NUMBER OF OCCURRENCES WHEN A SUSPECT HAS CHARGES DROPPED AFTER AGREEING TO BECOME AN INFORMANT;

D. THE SPECIFIC OFFENSES THAT HAVE BEEN DROPPED AS THE RESULT OF AN INDIVIDUAL BECOMING AN INFORMANT;

E. THE NUMBER OF ARRESTS THAT ARE THE DIRECT OR INDIRECT RESULT OF THE USE OF AN INFORMANT AND THE ROLE PLAYED BY THE INFORMANT FOR EACH SUCH ARREST;

F. THE NUMBER OF CONVICTIONS THAT ARE THE DIRECT OR INDIRECT RESULT OF THE USE OF AN INFORMANT AND THE ROLE PLAYED BY THE INFORMANT FOR EACH SUCH CONVICTION; AND

G. THE AGE, RACE, GENDER, AND NEIGHBORHOOD OF RESIDENCE OF EACH INFORMANT.

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