

S. 2012

A. 3012

S E N A T E - A S S E M B L Y

January 21, 2015

IN SENATE -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

IN ASSEMBLY -- A BUDGET BILL, submitted by the Governor pursuant to article seven of the Constitution -- read once and referred to the Committee on Ways and Means

AN ACT to amend the criminal procedure law, in relation to the definition of immunity and motions to dismiss information or indictment based upon a claim of immunity

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 50.10 of the criminal procedure law is amended to  
2     read as follows:  
3     S 50.10 Compulsion of evidence by offer of immunity; definitions of  
4     terms.  
5     The following definitions are applicable to this article:  
6     1. "Immunity." [A person who has been a witness in a legal proceed-  
7     ing, and who cannot, except as otherwise provided in this subdivision,  
8     be convicted of any offense or subjected to any penalty or forfeiture  
9     for or on account of any transaction, matter or thing concerning which  
10    he gave evidence therein, possesses "immunity" from any such conviction,  
11    penalty or forfeiture.] (A) A PERSON WHO HAS BEEN A WITNESS IN A LEGAL  
12    PROCEEDING, AND NEITHER THE EVIDENCE GIVEN BY THAT WITNESS NOR ANY  
13    EVIDENCE DERIVED DIRECTLY OR INDIRECTLY THEREFROM MAY BE USED AGAINST  
14    THE WITNESS IN THE SAME OR ANY OTHER CRIMINAL PROCEEDING OR IN THE IMPO-  
15    SITION OF ANY PENALTY OR FORFEITURE POSSESSES "IMMUNITY".  
16    (B) A person who possesses such immunity may nevertheless be convicted  
17    of perjury as a result of having given false testimony in such legal  
18    proceeding, and may be convicted of or adjudged in contempt as a result  
19    of having contumaciously refused to give evidence therein, AND THE  
20    EVIDENCE GIVEN BY THE PERSON AT THE PROCEEDING AT WHICH THE PERSON  
21    POSSESSED IMMUNITY MAY BE USED AGAINST SUCH PERSON IN ANY SUCH PROSE-  
22    CUTION FOR PERJURY OR PROSECUTION OR JUDGMENT FOR CONTEMPT.

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

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1 2. "Legal proceeding" means a proceeding in or before any court or  
2 grand jury, or before any body, agency or person authorized by law to  
3 conduct the same and to administer the oath or to cause it to be admin-  
4 istered.

5 3. "Give evidence" means to testify or produce physical evidence.

6 S 2. Section 170.30 of the criminal procedure law is amended by adding  
7 a new subdivision 5 to read as follows:

8 5. WHERE THE DEFENDANT ESTABLISHES IN HIS OR HER MOTION THAT IMMUNITY  
9 HAS BEEN CONFERRED UPON HIM OR HER, THE PEOPLE MUST THEN ESTABLISH, BY A  
10 PREPONDERANCE OF THE EVIDENCE, THAT SUCH EVIDENCE WAS NOT DERIVED,  
11 DIRECTLY OR INDIRECTLY, FROM THE EVIDENCE AS TO WHICH SUCH IMMUNITY WAS  
12 CONFERRED.

13 S 3. Section 210.35 of the criminal procedure law is amended by adding  
14 a new subdivision 4-a to read as follows:

15 4-A. EVIDENCE PROTECTED BY IMMUNITY WAS USED TO OBTAIN THE INDICTMENT;  
16 OR

17 S 4. The opening paragraph and subdivisions 6 and 7 of section 710.20  
18 of the criminal procedure law, the opening paragraph and subdivision 6  
19 as amended by chapter 8 of the laws of 1976, subdivision 7 as added by  
20 chapter 744 of the laws of 1988, and subdivision 6 as renumbered by  
21 chapter 481 of the laws of 1983, are amended and a new subdivision 8 is  
22 added to read as follows:

23 Upon motion of a defendant who (a) is aggrieved by unlawful or improp-  
24 er acquisition of evidence and has reasonable cause to believe that such  
25 may be offered against him in a criminal action, or (b) claims that  
26 improper identification testimony may be offered against him in a crimi-  
27 nal action, OR (C) CLAIMS THAT EVIDENCE AS TO THE USE OF WHICH HE OR SHE  
28 POSSESSES IMMUNITY, MAY BE OFFERED AGAINST HIM IN A CRIMINAL ACTION, a  
29 court may, under circumstances prescribed in this article, order that  
30 such evidence be suppressed or excluded upon the ground that it:

31 6. Consists of potential testimony regarding an observation of the  
32 defendant either at the time or place of the commission of the offense  
33 or upon some other occasion relevant to the case, which potential testi-  
34 mony would not be admissible upon the prospective trial of such charge  
35 owing to an improperly made previous identification of the defendant by  
36 the prospective witness[.]; OR

37 7. Consists of information obtained by means of a pen register or trap  
38 and trace device installed or used in violation of the provisions of  
39 article seven hundred five of this chapter[.]; OR

40 8. CONSISTS OF POTENTIAL EVIDENCE AS TO THE USE OF WHICH THE DEFENDANT  
41 POSSESSES IMMUNITY. WHERE THE DEFENDANT ESTABLISHES THAT USE IMMUNITY  
42 HAS BEEN CONFERRED UPON HIM OR HER, THE PEOPLE MUST THEN ESTABLISH, BY A  
43 PREPONDERANCE OF THE EVIDENCE, THAT SUCH EVIDENCE WAS NOT DERIVED,  
44 DIRECTLY OR INDIRECTLY, FROM THE EVIDENCE AS TO WHICH SUCH IMMUNITY WAS  
45 CONFERRED.

46 S 5. Severability. If any clause, sentence, paragraph, section or part  
47 of this act shall be adjudged by any court of competent jurisdiction to  
48 be invalid, such judgment shall not affect, impair, or invalidate the  
49 remainder thereof, but shall be confined in its operation to the clause,  
50 sentence, paragraph, section or part thereof directly involved in the  
51 controversy in which such judgment shall have been rendered.

52 S 6. This act shall take effect on the thirtieth day after it shall  
53 have become a law and shall only apply to acts committed on or after  
54 such date.