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

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:

Section 1. Section 50.10 of the criminal procedure law is amended to read as follows:

S 50.10 Compulsion of evidence by offer of immunity; definitions of terms.

The following definitions are applicable to this article:

1. "Immunity." [A person who has been a witness in a legal proceeding, and who cannot, except as otherwise provided in this subdivision, be convicted of any offense or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he gave evidence therein, possesses "immunity" from any such conviction, penalty or forfeiture.] (A) A PERSON WHO HAS BEEN A WITNESS IN A LEGAL PROCEEDING, AND NEITHER THE EVIDENCE GIVEN BY THAT WITNESS NOR ANY EVIDENCE DERIVED DIRECTLY OR INDIRECTLY THEREFROM MAY BE USED AGAINST THE WITNESS IN THE SAME OR ANY OTHER CRIMINAL PROCEEDING OR IN THE IMPOSITION OF ANY PENALTY OR FORFEITURE POSSESSES "IMMUNITY".

(B) A person who possesses such immunity may nevertheless be convicted of perjury as a result of having given false testimony in such legal proceeding, and may be convicted of or adjudged in contempt as a result of having contumaciously refused to give evidence therein, AND THE EVIDENCE GIVEN BY THE PERSON AT THE PROCEEDING AT WHICH THE PERSON POSSESSED IMMUNITY MAY BE USED AGAINST SUCH PERSON IN ANY SUCH PROSECUTION 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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2. "Legal proceeding" means a proceeding in or before any court or grand jury, or before any body, agency or person authorized by law to conduct the same and to administer the oath or to cause it to be administered.

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

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

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

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

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

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

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

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

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

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

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

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