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

7194

2015-2016 Regular Sessions

I N A S S E M B L Y

April 27, 2015

Introduced by M. of A. LENTOL -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to grand juries

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

Section 1. Subdivision 3 of section 190.25 of the criminal procedure law is amended by adding a new closing paragraph to read as follows:

NOTWITHSTANDING THE FOREGOING, AND EXCEPT DURING THE DELIBERATIONS AND VOTING OF A GRAND JURY, A SUPERIOR COURT JUDGE MUST BE PRESENT DURING ANY PROCEEDINGS BEFORE A GRAND JURY THAT INVOLVE SUBMISSION OF A CRIMINAL CHARGE AGAINST A POLICE OFFICER FOR A FELONY OFFENSE SPECIFIED IN ARTICLE ONE HUNDRED TWENTY, ONE HUNDRED TWENTY-ONE OR ONE HUNDRED TWENTY-FIVE OF THE PENAL LAW COMMITTED WHILE ACTING IN THE COURSE OF HIS OR HER OFFICIAL DUTIES. WHILE PRESENT, THE JUDGE SHALL EXERCISE POWERS AND DUTIES THAT ARE APPROPRIATE TO THE JUDGE'S SUPERVISORY AUTHORITY OVER PROCEEDINGS BEFORE THE GRAND JURY AND THAT OTHERWISE WILL ASSIST IT IN DISCHARGE OF ITS FUNCTIONS, INCLUDING BUT NOT LIMITED TO RULING ON LEGAL ISSUES AND DETERMINING THE ADMISSIBILITY OF EVIDENCE. THE JUDGE MAY ALSO ADVISE THE GRAND JURORS, WHERE APPROPRIATE, THAT ADDITIONAL WITNESSES MAY BE CALLED TO TESTIFY BEFORE THEM. AT THE CLOSE OF THE PRESENTATION OF EVIDENCE, THE DISTRICT ATTORNEY SHALL FURNISH THE COURT WITH THE CHARGES TO BE SUBMITTED TO THE GRAND JURY AND THE COURT SHALL INSTRUCT THE GRAND JURY IN ACCORDANCE WITH SUBDIVISION SIX OF THIS SECTION AS TO ANY SUCH CHARGES SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE FOR WHICH AN INDICTMENT IS AUTHORIZED UNDER SECTION 190.65 OF THIS ARTICLE; PROVIDED, HOWEVER, THAT WHERE A CHARGE IS NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE BUT THE EVIDENCE IS LEGALLY SUFFICIENT TO SUPPORT A LESSER INCLUDED OFFENSE, THE COURT, AT THE REQUEST OF THE DISTRICT ATTORNEY, SHALL INSTRUCT THE GRAND JURY ON THE MOST SERIOUS LESSER INCLUDED OFFENSE WITH RESPECT TO WHICH THE EVIDENCE BEFORE THE GRAND JURY IS SUFFICIENT.

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

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S 2. Section 190.25 of the criminal procedure law is amended by adding a new subdivision 4-a to read as follows:

4-A. (A) NOTWITHSTANDING THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION, WHEN, FOLLOWING SUBMISSION TO A GRAND JURY OF A CRIMINAL CHARGE OR CHARGES THE GRAND JURY DISMISSES ALL CHARGES PRESENTED, AN APPLICATION MAY BE MADE TO THE SUPERIOR COURT FOR DISCLOSURE OF THE FOLLOWING MATERIAL RELATING TO THE PROCEEDINGS BEFORE SUCH GRAND JURY:

(I) THE CRIMINAL CHARGE OR CHARGES SUBMITTED;

(II) THE LEGAL INSTRUCTIONS PROVIDED TO THE GRAND JURY;

(III) THE TESTIMONY OF ALL PUBLIC SERVANTS WHO TESTIFIED BEFORE THE GRAND JURY AND OF ALL PERSONS WHO PROVIDED EXPERT TESTIMONY; AND

(IV) THE TESTIMONY OF ALL OTHER PERSONS WHO TESTIFIED BEFORE THE GRAND JURY, REDACTED TO PREVENT DISCOVERY OF THEIR NAMES AND SUCH OTHER PERSONAL DATA OR INFORMATION THAT MAY REVEAL OR HELP TO REVEAL THEIR IDENTITIES.

(B) THE APPLICATION SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION MAY BE MADE BY ANY PERSON, MUST BE IN WRITING AND, EXCEPT WHERE MADE BY THE PEOPLE, MUST BE UPON NOTICE TO THE PEOPLE. EXCEPT FOR GOOD CAUSE OTHERWISE SHOWN, THE APPLICATION MUST BE MADE WITHIN ONE YEAR OF THE CLOSE OF THE TERM OF THE GRAND JURY WHICH DISMISSED SUCH CHARGES. WHERE MORE THAN ONE APPLICATION IS MADE HEREUNDER IN RELATION TO SUCH A DISMISSAL, THE COURT MAY CONSOLIDATE THEM AND DETERMINE THEM TOGETHER. WHERE NO APPLICATION HEREUNDER IS MADE, THE SUPERIOR COURT MAY ORDER DISCLOSURE ON ITS OWN MOTION AS PROVIDED IN PARAGRAPH (C) OF THIS SUBDIVISION AT ANY TIME FOLLOWING NOTICE TO THE PEOPLE AND AN OPPORTUNITY TO BE HEARD.

(C) UPON AN APPLICATION AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION OR ON ITS OWN MOTION, THE COURT SHALL DETERMINE WHETHER:

(I) THE GENERAL PUBLIC IN THE COUNTY IN WHICH THE GRAND JURY WAS DRAWN AND IMPANELED LIKELY IS AWARE THAT A CRIMINAL INVESTIGATION HAD BEEN CONDUCTED IN CONNECTION WITH THE SUBJECT MATTER OF THE GRAND JURY PROCEEDING; AND

(II) THE IDENTITY OF THE SUBJECT AGAINST WHOM THE CRIMINAL CHARGE SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION WAS SUBMITTED TO A GRAND JURY HAS ALREADY BEEN DISCLOSED PUBLICLY OR SUCH SUBJECT HAS CONSENTED TO SUCH DISCLOSURE; AND

(III) THERE IS SIGNIFICANT PUBLIC INTEREST IN DISCLOSURE.

WHERE THE COURT IS SATISFIED THAT ALL THREE OF THESE FACTORS HAVE BEEN ESTABLISHED, AND EXCEPT AS PROVIDED IN PARAGRAPH (D) OF THIS SUBDIVISION, THE COURT SHALL DIRECT THE DISTRICT ATTORNEY TO PROVIDE DISCLOSURE OF THE ITEMS SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION.

(D) NOTWITHSTANDING THE OTHER PROVISIONS OF THIS SUBDIVISION, ON APPLICATION OF THE DISTRICT ATTORNEY OR ANY INTERESTED PERSON, OR ON ITS OWN MOTION, THE COURT SHALL LIMIT DISCLOSURE OF THE ITEMS SPECIFIED IN PARAGRAPH (A) OF THIS SUBDIVISION, IN WHOLE OR PART, WHERE THE COURT DETERMINES THERE IS A REASONABLE LIKELIHOOD THAT THE DISCLOSURE MAY LEAD TO DISCOVERY OF THE IDENTITY OF A WITNESS WHO IS NOT A PUBLIC SERVANT OR EXPERT WITNESS, IMPERIL THE HEALTH OR SAFETY OF ANY GRAND JUROR OR WITNESS APPEARING BEFORE THE GRAND JURY, JEOPARDIZE ANY CURRENT OR FUTURE CRIMINAL INVESTIGATION, THREATEN PUBLIC SAFETY OR IS OTHERWISE AGAINST THE INTEREST OF JUSTICE.

(E) WHERE A COURT DETERMINES NOT TO DIRECT DISCLOSURE PURSUANT TO THIS SUBDIVISION, IT SHALL DO SO IN A WRITTEN ORDER DISMISSING THE APPLICATION THEREFOR THAT SHALL, TO THE EXTENT PRACTICABLE, EXPLAIN THE BASIS FOR ITS DETERMINATION.

S 3. The opening paragraph of subdivision 1 of section 210.20 of the criminal procedure law is amended to read as follows:

After arraignment upon an indictment, AND NOTWITHSTANDING SUBDIVISION THREE OF SECTION 190.25, the superior court may, upon motion of the defendant, dismiss such indictment or any count thereof upon the ground that:

S 4. This act shall take effect immediately.