

# STATE OF NEW YORK

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4096

2017-2018 Regular Sessions

## IN ASSEMBLY

February 1, 2017

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Introduced by M. of A. SIMOTAS, COLTON, HOOPER, SIMANOWITZ, MONTESANO --  
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 chapter 516 of the laws of 2014, is amended to read as  
3 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 and such  
17 personnel records under the control of a probation department for indi-  
18 viduals defined as peace officers pursuant to subdivision twenty-four of  
19 section 2.10 of the criminal procedure law shall be considered confiden-  
20 tial and not subject to inspection or review without the express written  
21 consent of such police officer, firefighter, firefighter/paramedic,  
22 correction officer or peace officer within the department of corrections  
23 and community supervision or probation department except as may be  
24 mandated by lawful court order. For purposes of this section, personnel

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

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1 records shall include any report, paper, picture, photograph, court file  
2 or other document, in the custody or possession of any public officer or  
3 employee, which tends to identify by name or image an individual who is  
4 performing or has performed official duties in a covert or undercover  
5 capacity and whose personnel records are otherwise covered by this  
6 subdivision.

7 § 2. Section 60.15 of the criminal procedure law is amended by adding  
8 a new subdivision 3 to read as follows:

9 3. When a public officer or employee, including but not limited to a  
10 police officer as defined in section 1.20 of this part or a peace offi-  
11 cer as defined in section 2.10 of this part, is performing or has  
12 performed official duties in a covert or undercover capacity and is  
13 called as a witness in a criminal proceeding:

14 (a) The people may make a request of the court that the identity of  
15 the witness be protected. There shall be a presumption that the witness  
16 would be endangered or his or her effectiveness compromised if his or  
17 her identity is disclosed and that therefore the people have made a  
18 showing that the witness should be excused from providing his or her  
19 identity. The defendant may thereupon seek to rebut the presumption  
20 and/or demonstrate the materiality of the witness's identity to the  
21 issue of guilt or innocence. If the presumption has not been rebutted,  
22 the court shall then balance the interests and if it determines that the  
23 need of the public officer or employee witness for anonymity exceeds the  
24 defendant's need to obtain the witness's identity for purposes of cross-  
25 examination, the court shall direct that the witness testify under a  
26 pseudonym such as a shield number.

27 (b) If requested by the people, the court shall take such other meas-  
28 ures as are necessary, consistent with rights of the defendant, to safe-  
29 guard the identity of the witness.

30 (c) Upon request of the defendant during a jury trial, the court shall  
31 instruct the jury that the use of a pseudonym or any other additional  
32 measure to protect the identity of the witness is not a factor from  
33 which an inference unfavorable to the defendant may be drawn.

34 § 3. The family court act is amended by adding a new section 343.6 to  
35 read as follows:

36 § 343.6. Rules of evidence; testimony given by a public officer or  
37 employee. When a public officer or employee, including but not limited  
38 to a police officer as defined in section 1.20 of the criminal procedure  
39 law or a peace officer as defined in section 2.10 of such law, is  
40 performing or has performed official duties in a covert or undercover  
41 capacity and is called as a witness in a delinquency proceeding:

42 1. The presentment agency may make a request of the court that the  
43 identity of the witness be protected. There shall be a presumption that  
44 the witness would be endangered or his or her effectiveness compromised  
45 if his or her identity is disclosed and that therefore the presentment  
46 agency has made a showing that the witness should be excused from  
47 providing his or her identity. The respondent may thereupon seek to  
48 rebut the presumption and/or demonstrate the materiality of the  
49 witness's identity to the issue of guilt or innocence. If the presump-  
50 tion has not been rebutted, the court shall then balance the interests  
51 and if it determines that the need of the public officer or employee  
52 witness for anonymity exceeds the respondent's need to obtain the  
53 witness's identity for purposes of cross-examination, the court shall  
54 direct that the witness testify under a pseudonym such as a shield  
55 number.

1 2. If requested by the presentment agency, the court shall take such  
2 other measures as are necessary, consistent with rights of the respond-  
3 ent, to safeguard the identity of the witness.

4 § 4. The civil practice law and rules is amended by adding a new rule  
5 4516-a to read as follows:

6 Rule 4516-a. Testimony by certain public officers and employees. When  
7 a public officer or employee, including but not limited to a police  
8 officer as defined in section 1.20 of the criminal procedure law or a  
9 peace officer as defined in section 2.10 of such law, is performing or  
10 has performed official duties in a covert or undercover capacity and is  
11 called as a witness in a civil enforcement action brought by a govern-  
12 mental entity:

13 (a) Such governmental entity or the public employer of the witness may  
14 make a request of the court that the identity of the witness be  
15 protected. There shall be a presumption that the witness would be endan-  
16 gered or his or her effectiveness compromised if his or her identity is  
17 disclosed and that therefore the government entity has made a showing  
18 that the witness should be excused from providing his or her identity.  
19 The respondent may thereupon seek to rebut the presumption and/or demon-  
20 strate the materiality of the witness's identity to the issue of guilt  
21 or innocence. If the presumption has not been rebutted, the court shall  
22 then balance the interests and if it determines that the need of the  
23 public officer or employee witness for anonymity exceeds the respond-  
24 ent's need to obtain the witness's identity for purposes of cross-exami-  
25 nation, the court shall direct that the witness testify under a pseudo-  
26 nym such as a shield number.

27 (b) If requested by such governmental entity or such public employer,  
28 the court shall take such other measures as are necessary, consistent  
29 with rights of the adverse party, to safeguard the identity of the  
30 witness.

31 (c) During a jury trial, upon request by the party against whom the  
32 action is brought, the court shall instruct the jury that the use of a  
33 pseudonym or any other additional measure to protect the identity of the  
34 witness is not a factor from which an inference unfavorable to such  
35 party may be drawn.

36 (d) Nothing in this section shall be construed to prohibit or other-  
37 wise affect appropriate measures to safeguard the identity of a witness  
38 that may be taken in any civil action that is not within the scope of  
39 this section.

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

46 § 6. This act shall take effect on the thirtieth day after it shall  
47 have become a law.