STATE OF NEW YORK

4096

2017-2018 Regular Sessions

IN ASSEMBLY

February 1, 2017

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:

Section 1. Subdivision 1 of section 50-a of the civil rights law, as amended by chapter 516 of the laws of 2014, is amended to read as follows:

1. All personnel records used to evaluate performance toward continued employment or promotion, under the control of any police agency or department of the state or any political subdivision thereof including authorities or agencies maintaining police forces of individuals defined as police officers in section 1.20 of the criminal procedure law and such personnel records under the control of a sheriff's department or a department of correction of individuals employed as correction officers and such personnel records under the control of a paid fire department or force of individuals employed as firefighters or firefighter/paramedics and such personnel records under the control of the department of corrections and community supervision for individuals defined as peace officers pursuant to subdivisions twenty-three and twenty-three-a of section 2.10 of the criminal procedure law and such personnel records under the control of a probation department for individuals defined as peace officers pursuant to subdivision twenty-four of section 2.10 of the criminal procedure law shall be considered confidential and not subject to inspection or review without the express written consent of such police officer, firefighter, firefighter/paramedic, correction officer or peace officer within the department of corrections and community supervision or probation department except as may be 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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records shall include any report, paper, picture, photograph, court file or other document, in the custody or possession of any public officer or employee, which tends to identify by name or image an individual who is performing or has performed official duties in a covert or undercover capacity and whose personnel records are otherwise covered by this subdivision.

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

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

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

(b) If requested by the people, the court shall take such other measures as are necessary, consistent with rights of the defendant, to safeguard the identity of the witness.

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

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

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

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

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

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

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

(a) Such governmental entity or the public employer of the witness may make a request of the court that the identity of the witness be protected. There shall be a presumption that the witness would be endangered or his or her effectiveness compromised if his or her identity is disclosed and that therefore the government entity has made a showing that the witness should be excused from providing his or her identity. The respondent may thereupon seek to rebut the presumption and/or demonstrate the materiality of the witness's identity to the issue of guilt or innocence. If the presumption has not been rebutted, the court shall then balance the interests and if it determines that the need of the public officer or employee witness for anonymity exceeds the respondent's need to obtain the witness's identity for purposes of cross-examination, the court shall direct that the witness testify under a pseudonym such as a shield number.

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

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

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

§ 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, the 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 the judgment shall have been rendered.

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