

# STATE OF NEW YORK

5164

2019-2020 Regular Sessions

## IN ASSEMBLY

February 7, 2019

Introduced by M. of A. MOSLEY, HEASTIE, GOTTFRIED, GANTT, COOK, PERRY, PRETLOW, DINOWITZ, LIFTON, L. ROSENTHAL, CRESPO, WEPRIN, RODRIGUEZ, KIM, PICHARDO, WALKER, BARRON, SEAWRIGHT, JOYNER, BLAKE, HYNDMAN, JAFFEE, JEAN-PIERRE -- read once and referred to the Committee on Codes

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

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Paragraph (d) of subdivision 3 of section 190.25 of the criminal procedure law is amended and a new paragraph (a-1) is added to read as follows:

(a-1) A judge or justice of the superior court;

(d) An interpreter. Upon request of the grand jury or the court, the prosecutor must provide an interpreter to interpret the testimony of any witness who does not speak the English language well enough to be readily understood. Such interpreter must, if he or she has not previously taken the constitutional oath of office, first take an oath before the grand jury that he or she will faithfully interpret the testimony of the witness and that he or she will keep secret all matters before such grand jury within his or her knowledge;

§ 2. Subdivision 4 of section 190.25 of the criminal procedure law is amended by adding six new paragraphs (c), (d), (e), (f), (g) and (h) to read as follows:

(c) In addition to paragraphs (a) and (b) of this subdivision, when, following submission to a grand jury of a criminal charge or charges, the grand jury dismisses all charges presented or directs the district attorney to file in a local criminal court a prosecutor's information charging an offense other than a felony, as provided in subdivision one of section 190.70 of this article, an application may be made to the

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

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1 superior court for disclosure of the following material relating to the  
2 proceedings before such grand jury:

3 (i) the criminal charge or charges submitted;  
4 (ii) the legal instructions provided to the grand jury;  
5 (iii) the testimony of all public servants who testified in an offi-  
6 cial capacity before the grand jury and of all persons who provided  
7 expert testimony; and

8 (iv) the testimony of all other persons who testified before the grand  
9 jury, redacted as necessary to prevent discovery of their names and such  
10 other personal data or information that may reveal or help to reveal  
11 their identities.

12 (d) The application specified in paragraph (c) of this subdivision may  
13 be made by any person, must be in writing and, except where made by the  
14 people, must be upon notice to the people. The court shall direct or  
15 provide notice to any other appropriate person or agency. Where more  
16 than one application is made hereunder in relation to such a dismissal  
17 or direction, the court may consolidate such applications and determine  
18 them together. When no application hereunder is made, the superior court  
19 may order disclosure on its own motion as provided in paragraph (e) of  
20 this subdivision at any time following notice to the people and an  
21 opportunity to be heard and reasonable efforts to notify and provide an  
22 opportunity to be heard to any other appropriate person or agency.

23 (e) Upon an application as provided in paragraph (c) of this subdivi-  
24 sion or on the court's own motion, the court, after providing persons  
25 given notice an opportunity to be heard, shall determine whether:

26 (i) a significant number of members of the general public in the coun-  
27 ty in which the grand jury was drawn and impaneled are likely aware that  
28 a criminal investigation had been conducted in connection with the  
29 subject matter of the grand jury proceeding; and

30 (ii) a significant number of members of the general public in such  
31 county are likely aware of the identity of the subject against whom the  
32 criminal charge specified in paragraph (c) of this subdivision was  
33 submitted to a grand jury, or such subject has consented to such disclo-  
34 sure; and

35 (iii) there is significant public interest in disclosure.

36 Where the court is satisfied that all three of these factors are pres-  
37 ent, and except as provided in paragraph (f) of this subdivision, the  
38 court shall direct the district attorney to promptly disclose the items  
39 specified in paragraph (c) of this subdivision.

40 (f) Notwithstanding any other provisions of this subdivision, on  
41 application of the district attorney or any interested person, or on its  
42 own motion, the court shall limit disclosure of the items specified in  
43 paragraph (c) of this subdivision, in whole or part, where the court  
44 determines there is a reasonable likelihood that such disclosure may  
45 lead to discovery of the identity of a witness who is not a public serv-  
46 ant or expert witness, imperil the health or safety of a grand juror who  
47 participated in the proceeding or a witness who appeared before the  
48 grand jury, jeopardize an identified current or future criminal investi-  
49 gation, create a specific threat to public safety, or despite the inter-  
50 ests reflected by this subdivision is contrary to the interests of  
51 justice.

52 (g) Where a court determines not to direct disclosure, in whole or in  
53 part, pursuant to this subdivision, it shall do so promptly in a written  
54 order that shall explain with specificity, to the extent practicable,  
55 the basis for its determination.

1     (h) Nothing in this paragraph or paragraphs (c), (d), (e), (f) or (g)  
2     of this subdivision shall be interpreted as limiting or restricting any  
3     broaden right of access to grand jury materials under any other law,  
4     common law or court precedent.

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