

STATE OF NEW YORK

7853

2021-2022 Regular Sessions

IN ASSEMBLY

May 28, 2021

Introduced by M. of A. GANDOLFO -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to protecting the identity of witnesses of hate crimes in discovery proceedings

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

1 Section 1. Paragraphs (c) and (g) of subdivision 1 of section 245.20
2 of the criminal procedure law, as amended by section 2 of part HHH of
3 chapter 56 of the laws of 2020, are amended to read as follows:

4 (c) The names and adequate contact information for all persons other
5 than law enforcement personnel whom the prosecutor knows to have
6 evidence or information relevant to any offense charged or to any poten-
7 tial defense thereto, including a designation by the prosecutor as to
8 which of those persons may be called as witnesses. Nothing in this para-
9 graph shall require the disclosure of physical addresses; provided,
10 however, upon a motion and good cause shown the court may direct the
11 disclosure of a physical address. Information under this subdivision
12 relating to the identity of a 911 caller, the victim or witness of an
13 offense defined under article one hundred thirty or section 230.34 or
14 230.34-a of the penal law, any other victim or witness of a crime where
15 the defendant has substantiated affiliation with a criminal enterprise
16 as defined in subdivision three of section 460.10 of the penal law, or a
17 confidential informant may be withheld, and redacted from discovery
18 materials, without need for a motion pursuant to section 245.70 of this
19 article; but the prosecution shall notify the defendant in writing that
20 such information has not been disclosed, unless the court rules other-
21 wise for good cause shown. Information under this subdivision relating
22 to the identity of a witness of a hate crime, as defined under section
23 485.05 of the penal law, shall be withheld and redacted from discovery
24 materials, without need for a motion pursuant to section 245.70 of this
25 article; but the prosecution shall notify the defendant in writing that

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

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1 such information has not been disclosed, unless the court rules other-
2 wise for good cause shown.

3 (g) All tapes or other electronic recordings, including all electronic
4 recordings of 911 telephone calls made or received in connection with
5 the alleged criminal incident, and a designation by the prosecutor as to
6 which of the recordings under this paragraph the prosecution intends to
7 introduce at trial or a pre-trial hearing. If the discoverable materials
8 under this paragraph exceed ten hours in total length, the prosecution
9 may disclose only the recordings that it intends to introduce at trial
10 or a pre-trial hearing, along with a list of the source and approximate
11 quantity of other recordings and their general subject matter if known,
12 and the defendant shall have the right upon request to obtain recordings
13 not previously disclosed. The prosecution shall disclose the requested
14 materials as soon as practicable and not less than fifteen calendar days
15 after the defendant's request, unless an order is obtained pursuant to
16 section 245.70 of this article. The prosecution may withhold the names
17 and identifying information of any person who contacted 911 without the
18 need for a protective order pursuant to section 245.70 of this article,
19 provided, however, the defendant may move the court for disclosure. The
20 prosecution shall withhold names and identifying information of any
21 person who contacted 911 to report a hate crime, as defined under
22 section 485.05 of the penal law, without the need for a protective order
23 pursuant to section 245.70 of this article, provided, however, the
24 defendant may move the court for disclosure. If the prosecution intends
25 to call such person as a witness at a trial or hearing, the prosecution
26 must disclose the name and contact information of such witness no later
27 than fifteen days before such trial or hearing, or as soon as practica-
28 ble.

29 § 2. This act shall take effect on the first of November next succeed-
30 ing the date upon which it shall have become a law.