

STATE OF NEW YORK

3314--A

2021-2022 Regular Sessions

IN SENATE

January 28, 2021

Introduced by Sens. BAILEY, BENJAMIN, COMRIE, HOYLMAN, PARKER, SEPULVEDA
-- read twice and ordered printed, and when printed to be committed to
the Committee on Codes -- committee discharged, bill amended, ordered
reprinted as amended and recommitted to said committee

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 Assem-
bly, do enact as follows:

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

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

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

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

16 (c) In addition to paragraphs (a) and (b) of this subdivision, when,
17 following submission to a grand jury of a criminal charge or charges,
18 the grand jury dismisses all charges presented or directs the district
19 attorney to file in a local criminal court a prosecutor's information
20 charging an offense other than a felony, as provided in subdivision one
21 of section 190.70 of this article, an application may be made to the
22 superior court for disclosure of the following material relating to the
23 proceedings before such grand jury:

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

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

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

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

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

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

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

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

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

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

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

54 (h) Where an application pursuant to paragraph (c) of this subdivision
55 has been denied, in whole or in part, the applicant may appeal as of
56 right from such order to the appellate division in the department in

1 which such order was entered, in accordance with article four hundred
2 sixty of this chapter.

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

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