

STATE OF NEW YORK

8342

IN SENATE

February 15, 2022

Introduced by Sen. GIANARIS -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the executive law, in relation to requiring the prosecution to disclose to the defendant certain information relating to jailhouse informants; and to require prosecutors to notify victims of the informant's crimes in certain circumstances

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

1 Section 1. The criminal procedure law is amended by adding a new
2 section 245.21 to read as follows:

3 § 245.21 Disclosure; jailhouse defendants.

4 1. Definitions. As used in this section, the following terms shall
5 have the following meanings:

6 (a) "Benefit" means any plea bargain, bail or securing order consider-
7 ation, reduction or modification of sentence or any other leniency,
8 immunity, financial payment, reward or amelioration of current or future
9 conditions of incarceration offered or provided to a jailhouse informant
10 or third party in connection with, or in exchange for, testimony that is
11 offered or provided.

12 (b) "Jailhouse informant" means a person who is incarcerated at the
13 time that he or she offers or provides testimony, whether or not it is
14 presented in court proceedings, concerning statements made by a person
15 suspected as a perpetrator of an offense or a defendant.

16 2. In any criminal trial or proceeding in which the prosecution
17 intends to call a jailhouse informant to testify, in addition to any
18 discovery or disclosure obligations required pursuant to the provisions
19 of this article or any other provision of law, the prosecution shall
20 obtain and disclose to the defendant the following information:

21 (a) The complete criminal history of any such jailhouse informant,
22 including any charges pending against such informant and charges that
23 were reduced or dismissed as part of a plea bargain;

24 (b) A summary of all promises, rewards and inducements made by the
25 prosecution or law enforcement personnel to, or in favor of the jail-

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

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1 house informant, as well as requests for consideration by such jailhouse
2 informant, including copies of any cooperation agreement and any and all
3 other documents relevant to any such promise, reward or inducement;

4 (c) The substance, time and place of any statement allegedly given by
5 the defendant to a jailhouse informant, and the substance, time and
6 place of any statement given by a jailhouse informant implicating the
7 defendant in a crime for which the defendant is charged;

8 (d) Whether at any time the jailhouse informant recanted any testimony
9 subject to disclosure pursuant to this section or any other provision of
10 this title and, if so, the time and place of the recantation, the nature
11 of the recantation and the name of any person present at such recanta-
12 tion; and

13 (e) All information concerning any other criminal prosecution in which
14 the jailhouse informant testified, or offered to testify in connection
15 with a separate investigation or proceeding, whether or not such testi-
16 mony was or will be presented in court proceedings, against a person
17 suspected as the perpetrator of an offense or a defendant with whom the
18 jailhouse informant was imprisoned or otherwise confined, including a
19 summary of all promises, rewards and inducements made by the prosecution
20 or law enforcement personnel to, or in favor of the jailhouse informant,
21 as well as requests for consideration by such jailhouse informant, and
22 copies of any cooperation agreement and any and all other documents
23 relevant to any such promise, reward or inducement.

24 3. Counsel for the defendant shall be provided the opportunity to
25 depose the jailhouse informant prior to entering into any plea negoti-
26 ations or commencement of trial or other proceeding.

27 4. Notwithstanding any contrary provision of law, no prosecuting
28 attorney shall offer a dismissal of or refuse to bring charges for the
29 crimes of murder in the first degree as defined in section 125.27 of the
30 penal law, manslaughter in the first degree as defined in section 125.20
31 of the penal law, rape in the first degree as defined in section 130.35
32 of the penal law, or kidnapping in the first degree pursuant to section
33 135.25 of the penal law, in exchange for the testimony of any witness.

34 5. Notwithstanding any contrary provision of law, no prosecutor or law
35 enforcement personnel shall offer or promise any benefit or other reward
36 or inducement to a jailhouse informant with respect to any pending
37 charges or criminal investigations involving such jailhouse informant in
38 exchange for such informant's testimony unless such prosecutor or law
39 enforcement personnel shall have first obtained judicial consent to
40 reduce or dismiss any such pending charge or to reduce the sentence for
41 any such charge in exchange for such jailhouse informant's testimony or
42 other cooperation.

43 6. (a) Every district attorney or other prosecuting agency that uses
44 information provided by a jailhouse informant in any investigation and
45 prosecution of criminal cases shall maintain a record of all such infor-
46 mation, which shall include:

47 (i) The substance of each jailhouse informant's testimony, whether or
48 not it was presented in court proceedings; and

49 (ii) A summary of all promises, rewards and inducements made by the
50 prosecution or law enforcement personnel to, or in favor of the jail-
51 house informant, as well as requests for consideration by such jailhouse
52 informant, and copies of any cooperation agreement and any and all other
53 documents relevant to any such promise, reward or inducement.

54 (b) All information required to be collected and maintained pursuant
55 to paragraph (a) of this subdivision shall be transmitted to the commis-

1 sioner of the division of criminal justice services to be maintained in
2 a statewide database.

3 (c) Except as otherwise provided herein, all information required to
4 be collected and maintained pursuant to paragraph (a) of this subdivi-
5 sion is confidential and shall not be subject to disclosure pursuant to
6 the Freedom of Information Law or otherwise made available to any person
7 or public or private agency except where specifically required or
8 permitted pursuant to this section or other statute or court order. All
9 such information shall be accessible only to the division of criminal
10 justice services, provided, however that division shall provide all
11 information relating to a specific jailhouse informant to any prosecut-
12 ing attorney or defense counsel upon request.

13 § 2. Section 642 of the executive law is amended by adding a new
14 subdivision 2-b to read as follows:

15 2-b. (a) All district attorneys' offices and other prosecuting agen-
16 cies shall make every reasonable effort to notify a victim of a crime
17 committed by a jailhouse informant as defined in paragraph (b) of subdivi-
18 vision one of section 245.21 of the criminal procedure law whenever a
19 prosecutor has promised, offered or provided any of the benefits defined
20 in paragraph (a) of subdivision one of such section to a jailhouse
21 informant in exchange for, or as the result of, such jailhouse
22 informant's offering or providing testimony against a suspect or defend-
23 ant, including:

24 (i) a reduction or dismissal of charges;
25 (ii) a plea bargain;
26 (iii) support for a modification of the amount or conditions of bail
27 or other securing order; or

28 (iv) support for a motion to reduce or modify a sentence.
29 (b) Efforts to notify the victim shall include, in order of priority:
30 (i) contacting the victim or a person designated by the victim by
31 telephone; or

32 (ii) contacting the victim by mail.
33 (c) If a jailhouse informant is in custody at the time of any such
34 promise, offer, or provision of benefits described in subdivision two of
35 this section, such notification attempt shall be made before the jail-
36 house informant is released from custody. Whenever a prosecutor notifies
37 a victim of domestic assault, criminal sexual conduct, or harassment or
38 stalking under this section, the prosecutor shall also inform the victim
39 of the method and benefits of seeking an order or protection and that
40 the victim may seek an order without paying a fee.

41 § 3. This act shall take effect on the ninetieth day after it shall
42 have become a law.