STATE OF NEW YORK

5845

2021-2022 Regular Sessions

IN ASSEMBLY

February 26, 2021

Introduced by M. of A. O'DONNELL -- 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 seven new paragraphs (c), (d), (e), (f), (g), (h) and (i) 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 superior court for disclosure of the following material relating to the proceedings before such grand jury:

(i) the criminal charge or charges submitted;

(ii) the legal instructions provided to the grand jury;

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

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(iii) the testimony of all public servants who testified in an official capacity before the grand jury and of all persons who provided expert testimony; and

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

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

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

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

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

(iii) there is significant public interest in disclosure.

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

(f) Notwithstanding any other provisions of this subdivision, on application of the district attorney or any interested person, or on its own motion, the court shall limit disclosure of the items specified in paragraph (c) of this subdivision, in whole or part, where the court determines there is a reasonable likelihood that such disclosure may lead to discovery of the identity of a witness who is not a public servant or expert witness, imperil the health or safety of a grand juror who participated in the proceeding or a witness who appeared before the grand jury, jeopardize an identified current or future criminal investigation, create a specific threat to public safety, or despite the interests reflected by this subdivision is contrary to the interests of justice.

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

(h) Where an application pursuant to paragraph (c) of this subdivision has been denied, in whole or in part, the applicant may appeal as of right from such order to the appellate division in the department in which such order was entered, in accordance with article four hundred sixty of this chapter.

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

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