# STATE OF NEW YORK

166

2023-2024 Regular Sessions

# IN SENATE

(Prefiled)

January 4, 2023

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:

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

§ 245.21 Disclosure; jailhouse defendants.

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

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

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

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

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

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

(b) A summary of all promises, rewards and inducements made by the prosecution or law enforcement personnel to, or in favor of the jailhouse informant, as well as requests for consideration by such jailhouse informant, including copies of any cooperation agreement and any and all other documents relevant to any such promise, reward or inducement;

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

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

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

3. Counsel for the defendant shall be provided the opportunity to depose the jailhouse informant prior to entering into any plea negotiations or commencement of trial or other proceeding.

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

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

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

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

(ii) A summary of all promises, rewards and inducements made by the prosecution or law enforcement personnel to, or in favor of the jailhouse informant, as well as requests for consideration by such jailhouse

informant, and copies of any cooperation agreement and any and all other documents relevant to any such promise, reward or inducement.

(b) All information required to be collected and maintained pursuant to paragraph (a) of this subdivision shall be transmitted to the commissioner of the division of criminal justice services to be maintained in a statewide database.

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

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

2-b. (a) All district attorneys' offices and other prosecuting agencies shall make every reasonable effort to notify a victim of a crime committed by a jailhouse informant as defined in paragraph (b) of subdivision one of section 245.21 of the criminal procedure law whenever a prosecutor has promised, offered or provided any of the benefits defined in paragraph (a) of subdivision one of such section to a jailhouse informant in exchange for, or as the result of, such jailhouse informant's offering or providing testimony against a suspect or defendant, including:

(i) a reduction or dismissal of charges;

(ii) a plea bargain;

(iii) support for a modification of the amount or conditions of bail or other securing order; or

(iv) support for a motion to reduce or modify a sentence.

(b) Efforts to notify the victim shall include, in order of priority:

(i) contacting the victim or a person designated by the victim by telephone; or

(ii) contacting the victim by mail.

(c) If a jailhouse informant is in custody at the time of any such promise, offer, or provision of benefits described in subdivision two of this section, such notification attempt shall be made before the jailhouse informant is released from custody. Whenever a prosecutor notifies a victim of domestic assault, criminal sexual conduct, or harassment or stalking under this section, the prosecutor shall also inform the victim of the method and benefits of seeking an order or protection and that the victim may seek an order without paying a fee.

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