

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:

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:

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

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

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

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

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

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

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

32 4. Notwithstanding any contrary provision of law, no prosecuting
33 attorney shall offer a dismissal of or refuse to bring charges for the
34 crimes of murder in the first degree as defined in section 125.27 of the
35 penal law, manslaughter in the first degree as defined in section 125.20
36 of the penal law, rape in the first degree as defined in section 130.35
37 of the penal law, or kidnapping in the first degree pursuant to section
38 135.25 of the penal law, in exchange for the testimony of any witness.

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

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

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

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

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

3 (b) All information required to be collected and maintained pursuant
4 to paragraph (a) of this subdivision shall be transmitted to the commis-
5 sioner of the division of criminal justice services to be maintained in
6 a statewide database.

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

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

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

28 (i) a reduction or dismissal of charges;

29 (ii) a plea bargain;

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

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

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

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

36 (ii) contacting the victim by mail.

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

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