STATE OF NEW YORK

2773

2023-2024 Regular Sessions

IN ASSEMBLY

January 27, 2023

Introduced by M. of A. GANDOLFO, DeSTEFANO, GALLAHAN, DURSO, SMULLEN, MANKTELOW, K. BROWN, REILLY, ANGELINO, RA -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to protecting the identity of witnesses of hate crimes in discovery proceedings

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

Section 1. Paragraphs (c) and (g) of subdivision 1 of section 245.20 of the criminal procedure law, as amended by section 2 of part HHH of chapter 56 of the laws of 2020, are amended to read as follows:

(c) The names and adequate contact information for all persons other than law enforcement personnel whom the prosecutor knows to have evidence or information relevant to any offense charged or to any potential defense thereto, including a designation by the prosecutor as to which of those persons may be called as witnesses. Nothing in this paragraph shall require the disclosure of physical addresses; provided, however, upon a motion and good cause shown the court may direct the disclosure of a physical address. Information under this subdivision relating to the identity of a 911 caller, the victim or witness of an offense defined under article one hundred thirty or section 230.34 or 230.34-a of the penal law, any other victim or witness of a crime where the defendant has substantiated affiliation with a criminal enterprise as defined in subdivision three of section 460.10 of the penal law, or a confidential informant may be withheld, and redacted from discovery materials, without need for a motion pursuant to section 245.70 of this article; but the prosecution shall notify the defendant in writing that such information has not been disclosed, unless the court rules otherwise for good cause shown. **Information under this subdivision relating to the identity of a witness of a hate crime, as defined under section 485.05 of the penal law, shall be withheld and redacted from discovery materials, without need for a motion pursuant to section 245.70 of this**

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

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article; but the prosecution shall notify the defendant in writing that such information has not been disclosed, unless the court rules otherwise for good cause shown.

(g) All tapes or other electronic recordings, including all electronic recordings of 911 telephone calls made or received in connection with the alleged criminal incident, and a designation by the prosecutor as to which of the recordings under this paragraph the prosecution intends to introduce at trial or a pre-trial hearing. If the discoverable materials under this paragraph exceed ten hours in total length, the prosecution may disclose only the recordings that it intends to introduce at trial or a pre-trial hearing, along with a list of the source and approximate quantity of other recordings and their general subject matter if known, and the defendant shall have the right upon request to obtain recordings not previously disclosed. The prosecution shall disclose the requested materials as soon as practicable and not less than fifteen calendar days after the defendant's request, unless an order is obtained pursuant to section 245.70 of this article. The prosecution may withhold the names and identifying information of any person who contacted 911 without the need for a protective order pursuant to section 245.70 of this article, provided, however, the defendant may move the court for disclosure. **The prosecution shall withhold names and identifying information of any person who contacted 911 to report a hate crime, as defined under section 485.05 of the penal law, without the need for a protective order pursuant to section 245.70 of this article, provided, however, the defendant may move the court for disclosure.** If the prosecution intends to call such person as a witness at a trial or hearing, the prosecution must disclose the name and contact information of such witness no later than fifteen days before such trial or hearing, or as soon as practicable.

§ 2. This act shall take effect on the first of November next succeeding the date upon which it shall have become a law.