§ 460.60 Enterprise corruption; consent to prosecute.

1. For purposes of this section, when a grand jury proceeding concerns a possible charge of enterprise corruption, or when an accusatory instrument includes a count charging a person with enterprise corruption, the affected district attorneys are the district attorneys otherwise empowered to prosecute any of the underlying acts of criminal activity in a county with jurisdiction over the offense of enterprise corruption pursuant to section 460.40 of this article, in which:

(a) there has been substantial and significant activity by the particular enterprise; or

(b) conduct occurred constituting a criminal act specifically included in the pattern of criminal activity charged in the accusatory instrument and not previously prosecuted; or

(c) the particular enterprise has its principal place of business.

2. A grand jury proceeding concerning a possible charge of enterprise corruption may be instituted only with the consent of the affected district attorneys. Should the possibility of such a charge develop after a grand jury proceeding has been instituted, the consent of the affected district attorneys shall be sought as soon as is practical, and an indictment charging a person with enterprise corruption may not be voted upon by the grand jury without such consent.

3. A person may be charged in an accusatory instrument with enterprise corruption only with the consent of the affected district attorneys. When it is impractical to obtain the consent specified in subdivision two of this section prior to the filing of the accusatory instrument, then that consent must be secured within twenty days thereafter.

4. When the prosecutor is the deputy attorney general in charge of the statewide organized crime task force, the consent required by subdivisions two and three of this section shall be in addition to that required by subdivision seven of section seventy-a of the executive law.

5. Within fifteen days after the arraignment of any person on an indictment charging a person with the crime of enterprise corruption the

prosecutor shall provide a copy of the indictment to those district attorneys whose consent was required pursuant to subdivision three of this section, and shall notify the court and defendant of those district attorneys whose consent the prosecutor has secured. The court shall then review the indictment and the grand jury minutes, notify any district attorney whose consent under subdivision one of this section should have been but was not obtained, direct that the prosecutor provide that district attorney with the portion of the indictment and grand jury minutes that are relevant to a determination whether that district attorney is an "affected district attorney" within the meaning of subdivision one of this section.

6. The failure to obtain from any district attorney the consent required by subdivision two or three of this section shall not be grounds for dismissal of the accusatory instrument or for any other relief upon motion of a defendant in the criminal action.

Upon motion of a district attorney whose consent, pursuant to subdivision three of this section, the court determines was required but not obtained, the court may not dismiss the accusatory instrument or any count thereof but may grant any appropriate relief. Such relief may include, but is not limited to:

(a) ordering that any money forfeited by a defendant in the criminal action, or the proceeds from the sale of any other property forfeited in the criminal action by a defendant, which would have been paid to the county of that district attorney pursuant to section thirteen hundred forty-nine of the civil practice law and rules had the forfeiture action been prosecuted in the county of that district attorney, be paid in whole or in part to the county of that district attorney; or

(b) upon consent of the defendant, ordering the transfer of the prosecution, or any part thereof, to that district attorney or to any other prosecutor with jurisdiction over the prosecution, of the part thereof to be transferred. However, prior to ordering any transfer of the prosecution, the court shall provide to those district attorneys who have previously consented to the prosecution an opportunity to intervene and be heard concerning such transfer.

7. A district attorney whose consent, pursuant to subdivision three of this section, the court determines was required but not obtained may seek the relief described in subdivision six of this section exclusively by a pre-trial motion in the criminal action based on the indictment charging the crime of enterprise corruption. Such relief must be sought within forty-five days of the receipt of notice from the court pursuant to subdivision five of this section.