

2015-16 NEW YORK STATE EXECUTIVE BUDGET

**LIMIT IMMUNITY FROM PROSECUTION FOR TESTIMONY
BEFORE A GRAND JURY
ARTICLE VII LEGISLATION**

Legislative Bill Drafting Commission
12577-01-5

S. -----
Senate

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

CRIMIPLA

(Relates to the definition of immu-
nity and motions to dismiss informa-
tion or indictment based upon a
claim of immunity)

CP L. Immunity

AN ACT

to amend the criminal procedure law,
in relation to the definition of
immunity and motions to dismiss
information or indictment based upon
a claim of immunity

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

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship
of this proposal:

s15 Addabbo	s49 Farley	s63 Kennedy	s40 Murphy	s10 Sanders
s46 Amedore	s17 Felder	s34 Klein	s54 Nozzolio	s23 Savino
s11 Avella	s02 Flanagan	s28 Krueger	s58 O'Mara	s41 Serino
s42 Bonacic	s55 Funke	s24 Lanza	s62 Ortt	s29 Serrano
s04 Boyle	s59 Gallivan	s39 Larkin	s60 Panepinto	s51 Seward
s44 Breslin	s12 Gianaris	s37 Latimer	s21 Parker	s09 Skelos
s38 Carlucci	s22 Golden	s01 LaValle	s13 Peralta	s26 Squadron
s14 Comrie	s47 Griffo	s52 Libous	s30 Perkins	s16 Stavisky
s03 Croci	s20 Hamilton	s45 Little	s61 Ranzenhofer	s35 Stewart- Cousins
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s48 Ritchie	s53 Valesky
s32 Diaz	s36 Hassell- Thompson	s43 Marchione	s33 Rivera	s08 Venditto
s18 Dilan		s07 Martins	s56 Robach	s57 Young
s31 Espaillat	s27 Hoylman	s25 Montgomery	s19 Sampson	

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the
multi-sponsorship of this proposal:

a049 Abbate	a045 Cymbrowitz	a135 Johns	a003 Murray	a016 Schimel
a092 Abinanti	a053 Davila	a077 Joyner	a133 Nojay	a140 Schimminger
a084 Arroyo	a034 DenDekker	a020 Kaminsky	a037 Nolan	a076 Seawright
a035 Aubry	a054 Dilan	a094 Katz	a130 Oaks	a087 Sepulveda
a120 Barclay	a081 Dinowitz	a074 Kavanagh	a069 O'Donnell	a065 Silver
a106 Barrett	a147 DiPietro	a142 Kearns	a051 Ortiz	a027 Simanowitz
a060 Barron	a115 Duprey	a040 Kim	a091 Otis	a052 Simon
a082 Benedetto	a004 Englebright	a131 Kolb	a132 Palmesano	a036 Simotas
a042 Bichotte	a109 Fahy	a105 Lalor	a002 Palumbo	a104 Skartados
a079 Blake	a071 Farrell	a013 Lavine	a088 Paulin	a099 Skoufis
a117 Blankenbush	a126 Finch	a134 Lawrence	a141 Peoples- Stokes	a022 Solages
a062 Borelli	a008 Fitzpatrick	a050 Lentol		a114 Stec
a098 Brabenec	a124 Friend	a125 Lifton	a058 Perry	a110 Steck
a026 Braunstein	a095 Galef	a072 Linares	a059 Persaud	a127 Stirpe
a044 Brennan	a137 Gantt	a102 Lopez	a086 Pichardo	a112 Tedisco
a119 Brindisi	a007 Garbarino	a123 Lupardo	a089 Pretlow	a101 Tenney
a138 Bronson	a148 Giglio	a010 Lupinacci	a073 Quart	a001 Thiele
a046 Brook-Krasny	a080 Gjonaj	a121 Magee	a019 Ra	a061 Titone
a093 Buchwald	a066 Glick	a129 Magnarelli	a012 Raia	a031 Titus
a118 Butler	a023 Goldfeder	a064 Malliotakis	a006 Ramos	a055 Walker
a103 Cahill	a150 Goodell	a030 Markey	a078 Rivera	a146 Walter
a043 Camara	a075 Gottfried	a090 Mayer	a128 Roberts	a041 Weinstein
a145 Ceretto	a005 Graf	a108 McDonald	a056 Robinson	a024 Weprin
a033 Clark	a100 Gunther	a014 McDonough	a068 Rodriguez	a113 Woerner
a047 Colton	a139 Hawley	a017 McKeivitt	a067 Rosenthal	a143 Wozniak
a032 Cook	a083 Heastie	a107 McLaughlin	a025 Rozic	a070 Wright
a144 Corwin	a028 Hevesi	a038 Miller	a116 Russell	a096 Zebrowski
a085 Crespo	a048 Hikind	a015 Montesano	a149 Ryan	
a122 Crouch	a018 Hooper	a136 Morelle	a009 Saladino	
a021 Curran	a097 Jaffee	a057 Mosley	a111 Santabarbara	
a063 Cusick	a011 Jean-Pierre	a039 Moya	a029 Scarborough	

1) Single House Bill (introduced and printed separately in either or
both houses). Uni-Bill (introduced simultaneously in both houses and printed
as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2
signed copies of bill and 4 copies of memorandum in support (single house);
or 4 signed copies of bill and 8 copies of memorandum
in support (uni-bill).

1 Section 1. Section 50.10 of the criminal procedure law is amended to
2 read as follows:

3 § 50.10 Compulsion of evidence by offer of immunity; definitions of
4 terms.

5 The following definitions are applicable to this article:

6 1. "Immunity." [A person who has been a witness in a legal proceed-
7 ing, and who cannot, except as otherwise provided in this subdivision,
8 be convicted of any offense or subjected to any penalty or forfeiture
9 for or on account of any transaction, matter or thing concerning which
10 he gave evidence therein, possesses "immunity" from any such conviction,
11 penalty or forfeiture.] (a) A person who has been a witness in a legal
12 proceeding, and neither the evidence given by that witness nor any
13 evidence derived directly or indirectly therefrom may be used against
14 the witness in the same or any other criminal proceeding or in the impo-
15 sition of any penalty or forfeiture possesses "immunity".

16 (b) A person who possesses such immunity may nevertheless be convicted
17 of perjury as a result of having given false testimony in such legal
18 proceeding, and may be convicted of or adjudged in contempt as a result
19 of having contumaciously refused to give evidence therein, and the
20 evidence given by the person at the proceeding at which the person
21 possessed immunity may be used against such person in any such prose-
22 cution for perjury or prosecution or judgment for contempt.

23 2. "Legal proceeding" means a proceeding in or before any court or
24 grand jury, or before any body, agency or person authorized by law to
25 conduct the same and to administer the oath or to cause it to be admin-
26 istered.

27 3. "Give evidence" means to testify or produce physical evidence.

1 § 2. Section 170.30 of the criminal procedure law is amended by adding
2 a new subdivision 5 to read as follows:

3 5. Where the defendant establishes in his or her motion that immunity
4 has been conferred upon him or her, the people must then establish, by a
5 preponderance of the evidence, that such evidence was not derived,
6 directly or indirectly, from the evidence as to which such immunity was
7 conferred.

8 § 3. Section 210.35 of the criminal procedure law is amended by adding
9 a new subdivision 4-a to read as follows:

10 4-a. Evidence protected by immunity was used to obtain the indictment;
11 or

12 § 4. The opening paragraph and subdivisions 6 and 7 of section 710.20
13 of the criminal procedure law, the opening paragraph and subdivision 6
14 as amended by chapter 8 of the laws of 1976, subdivision 7 as added by
15 chapter 744 of the laws of 1988, and subdivision 6 as renumbered by
16 chapter 481 of the laws of 1983, are amended and a new subdivision 8 is
17 added to read as follows:

18 Upon motion of a defendant who (a) is aggrieved by unlawful or improv-
19 er acquisition of evidence and has reasonable cause to believe that such
20 may be offered against him in a criminal action, or (b) claims that
21 improper identification testimony may be offered against him in a crimi-
22 nal action, or (c) claims that evidence as to the use of which he or she
23 possesses immunity, may be offered against him in a criminal action, a
24 court may, under circumstances prescribed in this article, order that
25 such evidence be suppressed or excluded upon the ground that it:

26 6. Consists of potential testimony regarding an observation of the
27 defendant either at the time or place of the commission of the offense
28 or upon some other occasion relevant to the case, which potential testi-

1 mony would not be admissible upon the prospective trial of such charge
2 owing to an improperly made previous identification of the defendant by
3 the prospective witness[.]; or

4 7. Consists of information obtained by means of a pen register or trap
5 and trace device installed or used in violation of the provisions of
6 article seven hundred five of this chapter[.]; or

7 8. Consists of potential evidence as to the use of which the defendant
8 possesses immunity. Where the defendant establishes that use immunity
9 has been conferred upon him or her, the people must then establish, by a
10 preponderance of the evidence, that such evidence was not derived,
11 directly or indirectly, from the evidence as to which such immunity was
12 conferred.

13 § 5. Severability. If any clause, sentence, paragraph, section or part
14 of this act shall be adjudged by any court of competent jurisdiction to
15 be invalid, such judgment shall not affect, impair, or invalidate the
16 remainder thereof, but shall be confined in its operation to the clause,
17 sentence, paragraph, section or part thereof directly involved in the
18 controversy in which such judgment shall have been rendered.

19 § 6. This act shall take effect on the thirtieth day after it shall
20 have become a law and shall only apply to acts committed on or after
21 such date.