**5038-S.E AMH JUDI H2498.1 - NOT FOR FLOOR USE**

**ESSB 5038** - H COMM AMD

By Committee on Judiciary

**NOT CONSIDERED 01/05/2018**

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec.**  The definitions in this section apply throughout this section and sections 2 and 3 of this act unless the context clearly requires otherwise.

(1) "Benefit" means any deal, payment, promise, leniency, inducement, or other advantage offered by the state to an informant in exchange for his or her testimony, information, or statement, but excludes a court-issued protection order. "Benefit" also excludes assistance that is ordinarily provided to both a prosecution and defense witness to facilitate his or her presence in court including, but not limited to, lodging, meals, travel expenses, or parking fees.

(2)(a) "Informant" means the following individuals who provide information or testimony in exchange for a benefit or in reliance on a communicated benefit:

(i) Any criminal suspect, whether or not he or she is detained or incarcerated; and

(ii) Any incarcerated individual.

(b) An informant does not include an expert witness or a victim of the crime being prosecuted.

(3) "Statement" means an oral, written, or nonverbal communication related to the crime charged.

NEW SECTION. **Sec.**  (1) Before the state may introduce any testimony or statement of an informant in a trial or other criminal proceeding, the state must:

(a) Request the material and information in subsection (2) of this section from the investigative agency, the informant, and prosecutors and investigative agencies in jurisdictions where the informant has a criminal record or pending criminal charges; and

(b) Disclose to the defendant the results of the requests in (a) of this subsection, and any other material and information in subsection (2) of this section that is known or reasonably available to be obtained from a review of material and information internal to the office of the prosecuting attorney.

(2) The following material and information must be disclosed pursuant to subsection (1) of this section:

(a) The complete criminal history of the informant, including any pending criminal charges or investigations in which the informant is a suspect;

(b) Any benefit the state has provided or may provide in the future to the informant in the present case, including any written agreement related to a benefit, and information related to the informant's breach of any conditions contained within the agreement;

(c) The substance, time, and place of any statement allegedly given by the defendant to the informant, and the substance, time, and place of any statement given by the informant to law enforcement implicating the defendant in the crime charged, including the names of all persons present when any statement was allegedly given by the defendant to the informant;

(d) Any instance that the informant modified or recanted his or her testimony or statement, the time and place of the modification or recantation, the nature of the modification or recantation, and the names of the persons who were present at the modification or recantation;

(e) All other cases in which the informant offered to provide information to or testify for the state in exchange for a deal, payment, promise, leniency, inducement, or other advantage, whether or not a deal, payment, promise, leniency, inducement, or other advantage was offered or received;

(f) All other cases in which the informant testified for the state in exchange for a benefit, or in which the informant received any benefit as a result of that testimony;

(g) The relationship between the defendant and the informant, including the amount of time they were incarcerated in the same custodial section of the jail or prison;

(h) All evidence corroborating the informant's testimony or statement implicating the defendant in the crime charged; and

(i) Any other material or information in the possession, custody, or control of the state that bears on the credibility or reliability of the informant or the informant's statement.

(3)(a) The state must disclose to the defendant the materials and information required under subsections (1) and (2) of this section as soon as practicable after discovery but no later than fourteen days before the testimony or statement is introduced in a trial or other criminal proceeding.

(b) The state may not introduce any testimony or statement of an informant in a trial or other criminal proceeding unless the materials and information required to be disclosed in subsections (1) and (2) of this section are disclosed in accordance with this subsection (3).

NEW SECTION. **Sec.**  If the state fails to disclose the materials and information required under section 2 of this act, the court must order the state to immediately disclose the material and information, and may:

(1) Grant a continuance, unless waived by the defendant;

(2) Preclude the informant from testifying or the prior statement from being introduced;

(3) Dismiss the action; or

(4) Enter such other order as it deems just under the circumstances.

NEW SECTION. **Sec.**  Nothing in sections 1 through 3 of this act diminishes federal constitutional disclosure obligations to criminal defendants or any related obligations under Washington case law, statutes, or court rules.

NEW SECTION. **Sec.**  Sections 1 through 4 of this act are each added to chapter 10.58 RCW.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

Correct the title.

EFFECT: Revises the definition of "informant" to mean any criminal suspect or incarcerated person who provides information or testimony in exchange for a benefit or in reliance on a communicated benefit (rather than "in exchange for, or in expectation of, a benefit").

Removes language requiring a prosecutor to disclose material and information reasonably available to be discovered by the state and language providing that material is reasonably available to be discovered if it is obtained through: Communication with the informant; review of material and information internal to the prosecutor's office; or requests from prosecutors and investigative agencies in other jurisdictions where the informant has a criminal record or pending criminal charges.

Provides instead that the prosecutor must:

(1) Request material and information from the investigative agency, the informant, and prosecutors and investigative agencies in other jurisdictions where the informant has a criminal record or pending criminal charges; and

(2) Disclose the results of the requests and any other material and information that is known or reasonably available to be obtained from a review of material and information internal to the office of the prosecuting attorney.