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**HOUSE BILL 2654**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Orwall, Shea, Walkinshaw, Zeiger, Springer, Moscoso, Farrell, Muri, Riccelli, Goodman, Kagi, Stokesbary, Haler, Kilduff, and Appleton

AN ACT Relating to the reliability of incentivized evidence and testimony; adding new sections to chapter 10.58 RCW; adding a new section to chapter 10.73 RCW; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that evidence and testimony from accomplices and criminal informants are inherently suspect because a system in which accomplices and criminal informants are rewarded by the state produces dangerous incentives to manufacture or fabricate evidence. The purpose of this act is to prevent unreliable accomplice and informant testimony from being admitted as evidence in the courts of our state by informing the court, to the maximum extent possible, of the circumstances surrounding such evidence and testimony before the court determines its admissibility.

NEW SECTION. **Sec.**  A new section is added to chapter 10.58 RCW to read as follows:

For the purposes of this section and sections 3 and 4 of this act, the following definitions apply:

(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.

(2) "Informant" means any criminal suspect or suspected accomplice, whether or not he or she is detained or incarcerated, who provides information or testimony in exchange for, or in expectation of, a benefit. An informant does not include an expert 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.**  A new section is added to chapter 10.58 RCW to read as follows:

(1) Unless waived by the defense, before the state may introduce any live or prior testimony of an informant in a trial or other criminal proceeding, the court must assess the informant's statement to determine whether the time and place, substance, and circumstances provide sufficient indicia of reliability to be considered by the jury. The court must make this determination outside the presence of the jury by considering the following nonexclusive factors:

(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;

(c) The substance of any statement allegedly given by the defendant to the informant and the substance of any informant statement to law enforcement implicating the defendant in the crime charged;

(d) The time and place of the statement allegedly given by the defendant to the informant, the time and place of the disclosure of the informant's statement to law enforcement officials, and the names of all persons present when the statement was allegedly given by the defendant to the informant;

(e) Whether at any time the informant modified or recanted his or her testimony or statement and, if so, 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;

(f) Other cases in which the informant offered to provide information to or testify for the state in exchange for a benefit, whether or not a benefit was received;

(g) Other cases in which the informant testified, including those in which the informant received any benefit in exchange for or as a result of that testimony;

(h) If known, 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;

(i) Whether the informant's statement or prior testimony is corroborated by other evidence not offered by an informant tending to connect the defendant with the crime charged; and

(j) Any other information the court considers relevant to the reliability of the informant or the informant's testimony.

(2) After considering the factors set forth in subsection (1) of this section, the court shall exclude the informant's testimony unless the court finds sufficient indicia of its reliability. The court shall state on the record the basis for its decision.

NEW SECTION. **Sec.**  A new section is added to chapter 10.73 RCW to read as follows:

If the trial court did not make a reliability determination required in section 3 of this act and the defendant shows by newly discovered evidence that an informant's trial testimony included a false material statement that potentially affected the outcome of the trial, the court shall make an assessment based on the factors provided in section 3(1) of this act. If the court determines that the trial testimony of the informant was unreliable, the court shall order a new trial.

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