

ESSB 5038 - H COMM AMD
By Committee on Judiciary

NOT CONSIDERED 01/05/2018

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The definitions in this section apply
4 throughout this section and sections 2 and 3 of this act unless the
5 context clearly requires otherwise.

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

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

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

18 (ii) Any incarcerated individual.

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

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

23 NEW SECTION. **Sec. 2.** (1) Before the state may introduce any
24 testimony or statement of an informant in a trial or other criminal
25 proceeding, the state must:

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

30 (b) Disclose to the defendant the results of the requests in (a)
31 of this subsection, and any other material and information in

1 subsection (2) of this section that is known or reasonably available
2 to be obtained from a review of material and information internal to
3 the office of the prosecuting attorney.

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

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

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

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

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

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

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

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

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

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

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

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

11 NEW SECTION. **Sec. 3.** If the state fails to disclose the
12 materials and information required under section 2 of this act, the
13 court must order the state to immediately disclose the material and
14 information, and may:

- 15 (1) Grant a continuance, unless waived by the defendant;
16 (2) Preclude the informant from testifying or the prior statement
17 from being introduced;
18 (3) Dismiss the action; or
19 (4) Enter such other order as it deems just under the
20 circumstances.

21 NEW SECTION. **Sec. 4.** Nothing in sections 1 through 3 of this
22 act diminishes federal constitutional disclosure obligations to
23 criminal defendants or any related obligations under Washington case
24 law, statutes, or court rules.

25 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act are each
26 added to chapter 10.58 RCW.

27 NEW SECTION. **Sec. 6.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected."

31 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.

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