

SSB 5038 - S AMD 25
By Senator Padden

ADOPTED 02/28/2017

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, or in expectation of, a
15 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 and the informant; and

28 (b) Disclose to the defendant the results of the requests in (a)
29 of this subsection, and any other material and information in
30 subsection (2) of this section that is known, or reasonably available
31 to be discovered, by the state. For purposes of this section,

1 material and information is reasonably available to be discovered if
2 it is obtained through: (i) Communication with the informant; (ii)
3 review of material and information internal to the office of the
4 prosecuting attorney; or (iii) requests for material and information
5 from prosecutors and investigative agencies in jurisdictions where
6 the informant has a criminal record or pending criminal charges.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (3) Dismiss the action; or

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

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

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

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

ADOPTED 02/28/2017

1 On page 1, line 2 of the title, after "testimony;" strike the
2 remainder of the title and insert "and adding new sections to chapter
3 10.58 RCW."

EFFECT: Excludes expenses from the definition of "benefit" that are typically paid to facilitate a witness's presence in court.

Directs the prosecutor to provide information and material that is obtained through: Communication with the informant, review of internal material and information in the prosecutor's office, and the prosecutor's request for materials and information from the jurisdictions where the informant has a criminal record or pending charges.

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