

ESSB 5038 - S AMD 327

By Senator Padden

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 a witness in
8 exchange for his or her testimony, information, or statement.
9 "Benefit" does not include (a) a court-issued protection order, or
10 (b) 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) "Incentivized hearsay witness" means any individual who, in
14 exchange for or in reliance upon any benefit, provides a statement or
15 testimony in the present case that is based upon statements or
16 communications made by the defendant. "Incentivized hearsay witness"
17 does not include an expert witness or a victim of the crime being
18 prosecuted.

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

21 NEW SECTION. **Sec. 2.** (1) Before the prosecuting attorney may
22 introduce any testimony or statement of an incentivized hearsay
23 witness in a trial or other criminal proceeding, the prosecuting
24 attorney must:

25 (a) Request the material and information in subsection (2) of
26 this section from (i) the investigative agency, and (ii) the
27 incentivized hearsay witness;

28 (b) Review the Washington state courts judicial information
29 system and any regularly available database reflecting criminal
30 charges and convictions to determine the jurisdictions in which the
31 incentivized hearsay witness has a criminal record or pending
32 criminal charges;

1 (c) Request the material and information in subsection (2) of
2 this section from state prosecutors and investigative agencies in
3 Washington state jurisdictions where the judicial information system
4 shows that the incentivized hearsay witness has a criminal record or
5 pending criminal charges;

6 (d) Request the material and information in subsection (2) of
7 this section from both the office of the United States attorney for
8 the eastern district of Washington and the office of the United
9 States attorney for the western district of Washington, when the
10 search required under (b) of this subsection shows that the
11 incentivized hearsay witness has a criminal record or pending
12 criminal charges in either of those jurisdictions; and

13 (e) Disclose to the defendant (i) the product of the requests in
14 (a), (c), and (d) of this subsection, (ii) the prosecutor's
15 determination in (b) of this subsection, and (iii) any other material
16 and information in subsection (2) of this section that is known or
17 reasonably available to be obtained from a review of material and
18 information internal to the office of the prosecuting attorney.

19 (2) The following material and information must be requested and
20 the product of those requests disclosed pursuant to subsection (1) of
21 this section:

22 (a) The complete criminal history of the incentivized hearsay
23 witness, including any pending criminal charges;

24 (b) Any benefit the state has provided or may provide in the
25 future to the incentivized hearsay witness in the present case,
26 including any written agreement related to a benefit, and information
27 related to the incentivized hearsay witness's breach of any
28 conditions contained within the agreement;

29 (c) The substance, time, and place of any statement allegedly
30 given by the defendant to the incentivized hearsay witness, and the
31 substance, time, and place of any statement given by the incentivized
32 hearsay witness to an investigative agency implicating the defendant
33 in the crime charged, including the names of all persons present when
34 any statement was allegedly given by the defendant to the
35 incentivized hearsay witness;

36 (d) Any instance that the incentivized hearsay witness modified
37 or recanted his or her testimony or statement, the time and place of
38 the modification or recantation, the nature of the modification or
39 recantation, and the names of the persons who were present at the
40 modification or recantation;

1 (e) All other state and federal cases in jurisdictions within the
2 state of Washington in which the incentivized hearsay witness
3 provided information or testified for the prosecution in exchange for
4 or in reliance upon a benefit, or in which the incentivized hearsay
5 witness received any benefit as a result of that testimony;

6 (f) All other state and federal cases in jurisdictions outside
7 the state of Washington, that are known or discovered through the
8 prosecuting attorney's ordinary duty to investigate, in which the
9 incentivized hearsay witness testified in exchange for or in reliance
10 upon a benefit, or in which the incentivized hearsay witness received
11 any benefit as a result of that testimony;

12 (g) The relationship between the defendant and the incentivized
13 hearsay witness, including the amount of time they were incarcerated
14 in the same custodial section of the jail or prison;

15 (h) All evidence corroborating the incentivized hearsay witness's
16 testimony or statement implicating the defendant in the crime
17 charged; and

18 (i) Any other material or information in the knowledge,
19 possession, or control of the state that bears on the credibility or
20 reliability of the incentivized hearsay witness or the incentivized
21 hearsay witness's statement.

22 (3)(a) The prosecuting attorney must disclose to the defendant
23 any materials and information obtained under subsections (1) and (2)
24 of this section as soon as practicable after discovery.

25 (b) The prosecuting attorney may not introduce any testimony or
26 statement of an incentivized hearsay witness in a trial or other
27 criminal proceeding unless the materials and information required to
28 be requested and disclosed in subsections (1) and (2) of this section
29 are disclosed in accordance with this subsection (3).

30 (4) Nothing in this chapter precludes the court from ordering the
31 state to request and disclose the materials and information in
32 subsections (1) and (2) of this section related to any witness who
33 provides a statement or testimony in the present case in exchange
34 for, or in reliance upon, a benefit.

35 NEW SECTION. **Sec. 3.** If the prosecuting attorney fails to
36 disclose information received in response to the requests required
37 under section 2 of this act, then the court must order the
38 prosecuting attorney to immediately request and disclose the material
39 and information, and may:

- 1 (1) Grant a continuance, unless waived by the defendant;
2 (2) Preclude the incentivized hearsay witness from testifying or
3 the prior statement from being introduced;
4 (3) Dismiss the action; or
5 (4) Enter such other order as it deems just under the
6 circumstances.

7 NEW SECTION. **Sec. 4.** (1) Nothing in sections 1 through 3 of
8 this act diminishes federal constitutional disclosure obligations to
9 criminal defendants or any related obligations under Washington case
10 law, statutes, or court rules.

11 (2) Nothing in sections 1 through 3 of this act requires the
12 disclosure of information that is the subject of a court-issued
13 protective order regarding disclosure or that is otherwise not
14 subject to disclosure under statute or court rule.

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

17 NEW SECTION. **Sec. 6.** If any provision of this act or its
18 application to any person or circumstance is held invalid, the
19 remainder of the act or the application of the provision to other
20 persons or circumstances is not affected."

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21 On page 1, line 2 of the title, after "testimony;" strike the
22 remainder of the title and insert "and adding new sections to chapter
23 10.58 RCW."

EFFECT: Narrows the required disclosures by changing the
definition from "incentivized witness" to "incentivized hearsay
witness" so that the disclosures apply only to a witness providing
evidence based upon a defendant's statements or communications.

Authorizes court discretion to order the court to seek out and
disclose information regarding other incentivized witnesses.

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