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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

Read first time 01/18/16. Referred to Committee on Judiciary.

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

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

5 NEW SECTION. **Sec. 1.** The legislature finds that evidence and  
6 testimony from accomplices and criminal informants are inherently  
7 suspect because a system in which accomplices and criminal informants  
8 are rewarded by the state produces dangerous incentives to  
9 manufacture or fabricate evidence. The purpose of this act is to  
10 prevent unreliable accomplice and informant testimony from being  
11 admitted as evidence in the courts of our state by informing the  
12 court, to the maximum extent possible, of the circumstances  
13 surrounding such evidence and testimony before the court determines  
14 its admissibility.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 10.58  
16 RCW to read as follows:

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

1 (1) "Benefit" means any deal, payment, promise, leniency,  
2 inducement, or other advantage offered by the state to an informant  
3 in exchange for his or her testimony.

4 (2) "Informant" means any criminal suspect or suspected  
5 accomplice, whether or not he or she is detained or incarcerated, who  
6 provides information or testimony in exchange for, or in expectation  
7 of, a benefit. An informant does not include an expert or a victim of  
8 the crime being prosecuted.

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

11 NEW SECTION. **Sec. 3.** A new section is added to chapter 10.58  
12 RCW to read as follows:

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

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

23 (b) Any benefit the state has provided or may provide in the  
24 future to the informant;

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

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

34 (e) Whether at any time the informant modified or recanted his or  
35 her testimony or statement and, if so, the time and place of the  
36 modification or recantation, the nature of the modification or  
37 recantation, and the names of the persons who were present at the  
38 modification or recantation;

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

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

7 (h) If known, the relationship between the defendant and the  
8 informant, including the amount of time they were incarcerated in the  
9 same custodial section of the jail or prison;

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

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

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

19 NEW SECTION. **Sec. 4.** A new section is added to chapter 10.73  
20 RCW to read as follows:

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

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