

ESSB 5038 - H AMD 475

By Representative Goodman

NOT CONSIDERED 01/05/2018

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

3

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

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

15 (2) "Informant" means any incarcerated individual or any
16 criminal suspect, whether or not he or she is detained or
17 incarcerated, who provides a statement or testimony in exchange for,
18 or in reliance upon, a benefit communicated by the prosecuting
19 attorney in the case in which the individual's statement or
20 testimony will be offered in evidence. "Informant" does not include
21 an expert witness or a victim of the crime being prosecuted.

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

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

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

5 (b) Disclose to the defendant the results of the requests in (a)
6 of this subsection, and any other material and information in
7 subsection (2) of this section that is known or reasonably available
8 to be obtained from a review of material and information internal to
9 the office of the prosecuting attorney.

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

12 (a) The complete criminal history of the informant, including
13 any pending criminal charges or investigations in which the
14 informant is a suspect;

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

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

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

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

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

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

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

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

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

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

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23 NEW SECTION. **Sec. 3.** If the state fails to disclose the
24 materials and information required under section 2 of this act, the
25 court must order the state to immediately disclose the material and
26 information, and may:

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

28 (2) Preclude the informant from testifying or the prior
29 statement from being introduced;

30 (3) Dismiss the action; or

31 (4) Enter such other order as it deems just under the
32 circumstances.

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

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

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

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13 NEW SECTION. **Sec. 6.** If any provision of this act or its
14 application to any person or circumstance is held invalid, the
15 remainder of the act or the application of the provision to other
16 persons or circumstances is not affected."

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18 Correct the title.

EFFECT: Revises the definition of "informant" to mean any incarcerated individual or criminal suspect who provides a statement or testimony in exchange for, or in reliance upon, a benefit communicated by the prosecuting attorney in the case in which the individual's statement or testimony will be offered in evidence.

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:

- 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
- 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.

Provides that nothing in the act requires the disclosure of information that is the subject of a court-issued protective order regarding disclosure or that is otherwise not subject to disclosure under statute or court rule.

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