
SUBSTITUTE SENATE BILL 5038

State of Washington 65th Legislature 2017 Regular Session

By Senate Law & Justice (originally sponsored by Senators Padden, Pedersen, Kuderer, Darneille, Frockt, and Angel)

READ FIRST TIME 01/26/17.

1 AN ACT Relating to disclosures regarding incentivized evidence
2 and testimony; and adding new sections to chapter 10.58 RCW.

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

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.

11 (2)(a) "Informant" means the following individuals who provide
12 information or testimony in exchange for, or in expectation of, a
13 benefit:

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

16 (ii) Any incarcerated individual.

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

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

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

4 (a) Request the material and information in subsection (2) of
5 this section from the investigative agency; and

6 (b) Disclose to the defendant the results of that request, and
7 any other material and information in subsection (2) of this section
8 that is known, or reasonably available to be discovered, by the
9 state.

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 any
13 pending criminal charges or investigations in which the informant is
14 a suspect;

15 (b) Any benefit the state has provided or may provide in the
16 future to the informant, including any written agreement related to a
17 benefit, and information related to the informant's breach of any
18 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, and
21 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 or
27 recantation, the nature of the modification or recantation, and the
28 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;

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

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

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

3 (i) Any other material or information in the possession, custody,
4 or control of the state, or that is known or reasonably available to
5 be discovered by the state that bears on the credibility or
6 reliability of the informant or the informant's statement.

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

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

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

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

22 (2) Preclude the informant from testifying or the prior statement
23 from being introduced;

24 (3) Dismiss the action; or

25 (4) Enter such other order as it deems just under the
26 circumstances.

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

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

33 NEW SECTION. **Sec. 6.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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