
SENATE BILL 5038

State of Washington 65th Legislature 2017 Regular Session

By Senators Padden, Pedersen, Kuderer, Darneille, Frockt, and Angel

Read first time 01/11/17. Referred to Committee on Law & Justice.

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.

10 (2) "Informant" means any individual, whether or not he or she is
11 detained or incarcerated, who provides information or testimony in
12 exchange for, or in expectation of, a benefit. An informant does not
13 include an expert or a victim of the crime being prosecuted.

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

16 NEW SECTION. **Sec. 2.** (1) Before the state may introduce any
17 testimony or statement of an informant in a trial or other criminal
18 proceeding, the state must disclose to the defendant the following
19 material and information that is known by the state or reasonably
20 available to be discovered by the state:

1 (a) The complete criminal history of the informant, including any
2 pending criminal charges or investigations in which the informant is
3 a suspect;

4 (b) Any benefit the state has provided or may provide in the
5 future to the informant, including any written agreement related to a
6 benefit, and information related to the informant's breach of any
7 conditions contained within the agreement;

8 (c) The substance, time, and place of any statement allegedly
9 given by the defendant to the informant, and the substance, time, and
10 place of any statement given by the informant to law enforcement
11 implicating the defendant in the crime charged, including the names
12 of all persons present when any statement was allegedly given by the
13 defendant to the informant;

14 (d) Any instance that the informant modified or recanted his or
15 her testimony or statement, the time and place of the modification or
16 recantation, the nature of the modification or recantation, and the
17 names of the persons who were present at the modification or
18 recantation;

19 (e) All other cases in which the informant offered to provide
20 information to or testify for the state in exchange for a benefit,
21 whether or not a benefit was offered or received;

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

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

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

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

34 (2)(a) The state must disclose to the defendant the materials and
35 information required under subsection (1) of this section as soon as
36 practicable after discovery but no later than (i) the omnibus hearing
37 or (ii) fourteen days before the testimony or statement is introduced
38 in a trial or other criminal proceeding, whichever is earlier in
39 time.

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

5 NEW SECTION. **Sec. 3.** (1) If the state fails to disclose the
6 materials and information required under section 2 of this act, the
7 court must order the state to immediately disclose the material and
8 information, and may:

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

10 (b) Preclude the informant from testifying or the prior statement
11 from being introduced;

12 (c) Dismiss the action; or

13 (d) Enter such other order as it deems just under the
14 circumstances.

15 (2) An attorney who willfully violates section 2 of this act or
16 an order issued pursuant to this section is subject to appropriate
17 sanctions by the court.

18 NEW SECTION. **Sec. 4.** Sections 1 through 3 of this act are each
19 added to chapter 10.58 RCW.

20 NEW SECTION. **Sec. 5.** If any provision of this act or its
21 application to any person or circumstance is held invalid, the
22 remainder of the act or the application of the provision to other
23 persons or circumstances is not affected.

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