

HOUSE No. 1649

The Commonwealth of Massachusetts

PRESENTED BY:

Jay D. Livingstone

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the reliability of testifying informants “testifying informant legislation”.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/19/2023</i>

HOUSE No. 1649

By Representative Livingstone of Boston, a petition (accompanied by bill, House, No. 1649) of Jay D. Livingstone relative to the reliability of testifying informants. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act relative to the reliability of testifying informants “testifying informant legislation”.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 233 of the General Laws, as appearing in the 2016 Official Edition,
2 is hereby amended by inserting after Section 21B the following: -

3 Section. 21C: Reliability of Testifying Informants

4 (a) Definitions.

5 (1) For purposes of this Chapter, “testifying informant” means someone who is
6 purporting to testify about admissions made to them by the accused and who has requested or
7 received or may in the future receive a benefit in connection with such testimony.

8 (2) This Chapter applies to any criminal proceeding in which the Commonwealth
9 attempts to introduce evidence of incriminating statements made by the accused to, or overheard
10 by, a testifying informant.

11 (3) For the purposes of this Chapter, “benefit” means any plea bargain, bail consideration,
12 reduction or modification of sentence, or any other leniency, immunity, financial payment,
13 reward, or amelioration of current or future conditions of incarceration that has been requested
14 by the testifying informant or that has been offered or may be offered in the future to the
15 testifying informant in connection with his or her testimony in the criminal proceeding in which
16 the prosecutor intends to call him or her as a witness.

17 (b) Mandatory Documentation and Discovery of Evidence Bearing on Testifying
18 Informant Reliability.

19 (1) In all cases in which a statement from a testifying informant is sought out, given, or
20 otherwise procured at any stage, each district attorney’s office and the Attorney General’s Office
21 shall create and maintain a centralized record documenting: (1) the complete criminal history of
22 any testifying informant, including any alleged criminal conduct that has not yet resulted in
23 criminal charges; (2) any deals, promises, inducements, or benefits that the Commonwealth has
24 made or will make in the future to the testifying informant or their agent(s); and (3) any and all
25 communications with the testifying informant including but not limited to requested or possible
26 deals, promises, inducements or benefits. The record shall be collected from each district
27 attorney’s office and the Attorney General’s Office by the Executive Office of Public Safety and
28 Security and shall be made available to prosecutors statewide. Such records shall not be subject
29 to the public records act.

30 (2) In accordance with the pre-trial discovery provisions of the Massachusetts Rules of
31 Criminal Procedure, the Commonwealth shall timely disclose: (1) any alleged criminal conduct
32 by the testifying informant that has not yet resulted in criminal charges; (2) any and all

33 communications between the Commonwealth and the testifying informant or agent of the
34 testifying informant regarding any deal, promise, inducement, or benefit that the offering party
35 has made or will make in the future to the testifying informant, including but not limited any
36 requests made by the testifying informant for a deal, promise, inducement, or benefit; (3) the
37 time and place of any and all incriminating statements purportedly made by the accused to the
38 testifying informant, the time and place of their disclosure by the testifying informant to law
39 enforcement officials, and the names of all persons present when the accused's statements were
40 made; (4) whether at any time the testifying informant gave inconsistent statements regarding the
41 purported incriminating statements by the accused, and if so, the time and place of the
42 inconsistent statements, the nature of the inconsistencies, and the names of the persons who were
43 present for the inconsistent statement; (5) all other cases or investigations in which the testifying
44 informant testified, provided information, or otherwise assisted with a police investigation or
45 prosecution, including cases or investigations in other Massachusetts counties, and whether in
46 those other cases or investigations the testifying informant received any promise, inducement, or
47 benefit in exchange for or subsequent to that testimony or assistance; (6) any other information
48 relevant to the testifying informant's credibility.

49 (3) In accordance with the Massachusetts Rules of Criminal Procedure, the judge may at
50 any time order that the discovery or inspection described herein be denied, restricted, or deferred,
51 or make such other order as is appropriate. The judge may, for cause shown grant discovery to a
52 defendant on the condition that the material to be discovered be available only to counsel for the
53 defendant. This provision does not alter the allocation of the burden of proof with regard to the
54 matter at issue, including privilege.

55 (c) Reliability hearing.

56 (1) In accordance with the pre-trial discovery provisions of the Massachusetts Rules of
57 Criminal Procedure, the Commonwealth shall timely disclose its intent to introduce the
58 testimony of a testifying informant.

59 (2) Where such notice is given, the trial court shall conduct a hearing to determine
60 whether the testimony of the informant is reliable, unless the defendant waives such a hearing.

61 (3) At the hearing, the Commonwealth shall bear the burden of establishing by a
62 preponderance of the evidence that the proposed informant's testimony reliable. The court shall
63 consider the factors enumerated in subsection 2(b), as well as any other factors relating to
64 reliability.

65 (4) If the Commonwealth fails to satisfy its burden of establishing the reliability of the
66 proposed informant testimony by a preponderance of the evidence, the court shall not allow the
67 testimony to be heard at trial.

68 (5) If a testifying informant receives leniency related to a pending charge, conviction, or a
69 sentence for a crime against a victim in connection with offering or providing testimony against
70 a suspect or defendant, the prosecutor shall notify such victim.