
ENGROSSED 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. "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 including,
13 but not limited to, lodging, meals, travel expenses, or parking fees.

14 (2)(a) "Informant" means the following individuals who provide
15 information or testimony in exchange for, or in expectation of, a
16 benefit:

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

19 (ii) Any incarcerated individual.

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

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

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

6 (a) Request the material and information in subsection (2) of
7 this section from the investigative agency and the informant; and

8 (b) Disclose to the defendant the results of the requests in (a)
9 of this subsection, and any other material and information in
10 subsection (2) of this section that is known, or reasonably available
11 to be discovered, by the state. For purposes of this section,
12 material and information is reasonably available to be discovered if
13 it is obtained through: (i) Communication with the informant; (ii)
14 review of material and information internal to the office of the
15 prosecuting attorney; or (iii) requests for material and information
16 from prosecutors and investigative agencies in jurisdictions where
17 the informant has a criminal record or pending criminal charges.

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

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 in the present case, including any written
25 agreement related to a benefit, and information related to the
26 informant's breach of any conditions contained within the agreement;

27 (c) The substance, time, and place of any statement allegedly
28 given by the defendant to the informant, and the substance, time, and
29 place of any statement given by the informant to law enforcement
30 implicating the defendant in the crime charged, including the names
31 of all persons present when any statement was allegedly given by the
32 defendant to the informant;

33 (d) Any instance that the informant modified or recanted his or
34 her testimony or statement, the time and place of the modification or
35 recantation, the nature of the modification or recantation, and the
36 names of the persons who were present at the modification or
37 recantation;

38 (e) All other cases in which the informant offered to provide
39 information to or testify for the state in exchange for a deal,

1 payment, promise, leniency, inducement, or other advantage, whether
2 or not a deal, payment, promise, leniency, inducement, or other
3 advantage was offered or received;

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

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

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

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

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

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

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

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

30 (2) Preclude the informant from testifying or the prior statement
31 from being introduced;

32 (3) Dismiss the action; or

33 (4) Enter such other order as it deems just under the
34 circumstances.

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

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

3 NEW SECTION. **Sec. 6.** If any provision of this act or its
4 application to any person or circumstance is held invalid, the
5 remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

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