

By: Ellis

S.B. No. 659

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the disclosure of certain information regarding, and
3 the admissibility of testimony by, a witness for the state in a
4 criminal case.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Chapter 38, Code of Criminal Procedure, is
7 amended by adding Articles 38.061 and 38.074 to read as follows:

8 Art. 38.061. DISCLOSURE OF WITNESS INDUCEMENT. (a) Before
9 the trial of a criminal case, the state shall disclose in writing to
10 the defendant and to the defendant's counsel the following
11 information with respect to each witness for the state expected to
12 testify during the trial:

13 (1) whether the witness has received or has been
14 promised any inducement, including pay, immunity from or leniency
15 in prosecution, and personal advantage, in exchange for testimony;

16 (2) whether the witness has ever recanted or otherwise
17 changed the witness's testimony during the investigation or
18 prosecution of the case;

19 (3) identifying information regarding any other
20 criminal case in which the witness offered a statement against a
21 defendant but was not called to testify for the state, whether the
22 statement was admitted in the case, and whether the witness
23 received or was promised any inducement in exchange for the
24 statement; and

1 (4) the criminal history of the witness.

2 (b) The state shall supplement its written disclosure under
3 this section as necessary to include witnesses added to the witness
4 list of the state after the trial begins.

5 Art. 38.074. ADMISSIBILITY HEARING REGARDING TESTIMONY OF
6 IN-CUSTODY WITNESS. (a) In this article, "in-custody witness"
7 includes:

8 (1) a person detained by a peace officer or law
9 enforcement agency for the purposes of custodial interrogation; and

10 (2) a person confined in a correctional facility, as
11 defined by Section 1.07, Penal Code, after being arrested for,
12 charged with, or convicted of an offense.

13 (b) If the prosecuting attorney will offer testimony by an
14 in-custody witness in a criminal case, before the trial of the case
15 except as provided by Subsection (e) the judge shall hold a hearing
16 to determine the reliability and admissibility, at the guilt or
17 innocence phase or the sentencing phase of the trial or both, of the
18 testimony.

19 (c) At the hearing, the prosecuting attorney must prove by a
20 preponderance of the evidence that the testimony of the in-custody
21 witness is reliable.

22 (d) The judge may consider the following factors in
23 determining the reliability of an in-custody witness:

24 (1) the alleged statements to which the witness will
25 testify and the date, time, place, and other circumstances
26 surrounding the statements;

27 (2) whether the witness has received or has been

1 promised any inducement, including pay, immunity from or leniency
2 in prosecution, and personal advantage, in exchange for the
3 testimony;

4 (3) the criminal history of the witness;

5 (4) whether the witness has ever recanted or otherwise
6 changed the witness's testimony during the investigation or
7 prosecution of the case;

8 (5) any other criminal case in which the witness
9 testified to alleged confessions or statements by others; and

10 (6) any other evidence that may attest to or diminish
11 the reliability of the witness, including the presence or absence
12 of any relationship between the defendant and the witness.

13 (e) If an in-custody witness is added to the witness list of
14 the state after the date the trial begins, the judge shall hold the
15 hearing required by this article as soon as practicable after the
16 date the witness is added.

17 SECTION 2. The change in law made by this Act applies only
18 to a criminal case in which the voir dire examination begins on or
19 after the effective date of this Act. A criminal case in which the
20 voir dire examination begins before the effective date of this Act
21 is covered by the law in effect when the examination begins, and the
22 former law is continued in effect for that purpose.

23 SECTION 3. This Act takes effect September 1, 2005.