

By: Ellis

S.B. No. 260

A BILL TO BE ENTITLED

1 AN ACT

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

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

6 SECTION 1. Chapter 36, Code of Criminal Procedure, is
7 amended by adding Article 36.145 to read as follows:

8 Art. 36.145. STATEMENT REGARDING TESTIMONY OF IN-CUSTODY
9 WITNESS. (a) In this article, "in-custody witness" includes:

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

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

15 (b) In any case in which the jury hears the testimony of an
16 in-custody witness, the judge shall include in the court's charge
17 under Article 36.14 a statement that the jury may subject the
18 testimony of an in-custody witness to higher scrutiny with regard
19 to reliability and that, in considering the reliability of the
20 witness, the jury may consider:

21 (1) whether the witness has received or has been
22 promised any inducement in exchange for testimony;

23 (2) whether the witness has ever recanted or otherwise
24 changed the witness's testimony during the investigation or

1 prosecution of the case;

2 (3) the general character of the witness;

3 (4) the nature of the relationship between the
4 defendant and the witness; and

5 (5) whether there is any evidence that tends to
6 independently corroborate the witness's testimony.

7 (c) The judge may not inform the jury that the court held an
8 admissibility hearing under Article 38.074 or that the court made
9 any pretrial determinations regarding the reliability of the
10 witness's testimony.

11 SECTION 2. Chapter 38, Code of Criminal Procedure, is
12 amended by adding Articles 38.061, 38.074, and 38.075 to read as
13 follows:

14 Art. 38.061. DISCLOSURE OF WITNESS INDUCEMENT. (a) Before
15 the trial of a criminal case, the state shall disclose in writing to
16 the defendant and to the defendant's counsel the following
17 information with respect to each witness for the state expected to
18 testify during the trial:

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

22 (2) whether the witness has ever recanted or otherwise
23 changed the witness's testimony during the investigation or
24 prosecution of the case;

25 (3) identifying information regarding any other
26 criminal case in which the witness offered a statement against a
27 defendant but was not called to testify for the state, whether the

1 statement was admitted in the case, and whether the witness
2 received or was promised any inducement in exchange for the
3 statement; and

4 (4) the criminal history of the witness.

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

8 Art. 38.074. ADMISSIBILITY HEARING REGARDING TESTIMONY OF
9 IN-CUSTODY WITNESS. (a) In this article, "in-custody witness" has
10 the meaning assigned by Article 36.145.

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

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

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

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

25 (2) whether the witness has received or has been
26 promised any inducement, including pay, immunity from or leniency
27 in prosecution, and personal advantage, in exchange for the

1 testimony;

2 (3) the criminal history of the witness;

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

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

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

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

15 Art. 38.075. USE OF IN-CUSTODY WITNESS TESTIMONY; POLICIES
16 AND PROCEDURES. (a) In this article, "in-custody witness" has the
17 meaning assigned by Article 36.145.

18 (b) A defendant may not be convicted of an offense on the
19 testimony of an in-custody witness unless the testimony is
20 corroborated by other evidence that tends to independently connect
21 the defendant with the offense committed. Corroboration that shows
22 only the commission of the offense is not sufficient for purposes of
23 this subsection.

24 (c) To ensure the reliability of testimony provided by an
25 in-custody witness, each district attorney, criminal district
26 attorney, or county attorney who represents the state in the
27 prosecution of criminal cases shall establish policies and

1 procedures governing the recording and use of that testimony.

2 SECTION 3. (a) The change in law made by this Act applies
3 only to a criminal case in which the voir dire examination begins on
4 or after the effective date of this Act. A criminal case in which
5 the voir dire examination begins before the effective date of this
6 Act is covered by the law in effect when the examination begins, and
7 the former law is continued in effect for that purpose.

8 (b) Each district attorney, criminal district attorney, or
9 county attorney who represents the state in the prosecution of
10 criminal cases shall establish the policies and procedures required
11 by Article 38.075, Code of Criminal Procedure, as added by this Act,
12 not later than January 1, 2010.

13 SECTION 4. This Act takes effect September 1, 2009.