

By: Smithee

H.B. No. 3133

A BILL TO BE ENTITLED

AN ACT

relating to the use of in-custody informant testimony in a criminal trial.

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

SECTION 1. Article 38.075, Code of Criminal Procedure, is amended to read as follows:

Art. 38.075. [~~CORROBORATION OF CERTAIN~~] TESTIMONY OF
IN-CUSTODY INFORMANT WITNESS [~~REQUIRED~~].

Sec. 1. DEFINITIONS. In this article:

(1) "Attorney representing the state" means a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction.

(2) "Benefit" means any deal, payment, leniency, inducement, or other advantage that is offered or provided to an in-custody informant in exchange for testimony, including:

(A) leniency in any criminal case or in a community supervision or parole matter, including a decision not to make an arrest or file charges with respect to an offense, a decision to reduce the number or severity of charges, or a decision to reduce a sentence;

(B) money;

(C) assistance with a change in immigration status;

(D) in-kind benefits such as food, housing, or

1 travel;

2 (E) in-custody benefits such as visiting
3 privileges, transfer to better living conditions, or enhanced
4 access to food, entertainment, or other amenities; and

5 (F) any benefit that is conferred on a third
6 party and that results directly or indirectly from the in-custody
7 informant's testimony.

8 (3) "Correctional facility" has the meaning assigned
9 by Section 1.07, Penal Code.

10 (4) "In-custody informant" means a person to whom a
11 defendant makes a statement against the defendant's interest while
12 the person is imprisoned or confined in the same correctional
13 facility as the defendant.

14 (5) "In-custody informant index" means a centralized
15 index that includes information and records related to in-custody
16 informants who may or may not be used as witnesses in criminal
17 trials.

18 Sec. 2. MAINTAINING AND DISCLOSING IN-CUSTODY INFORMANT
19 INFORMATION. (a) Each attorney representing the state shall adopt
20 and implement a detailed written policy regarding the creation and
21 maintenance of an in-custody informant index.

22 (b) The policy must require that information and records
23 concerning cases in which an in-custody informant testified or
24 offered to testify are maintained in the in-custody informant
25 index, including, at a minimum, the following:

26 (1) a summary of the informant's testimony and, if
27 available, a copy of the testimony;

1 (2) any benefit offered or provided to the informant;

2 (3) whether the informant has at any time changed the
3 informant's statement or testimony regarding a statement allegedly
4 made by the defendant;

5 (4) the complete criminal history of the informant,
6 including:

7 (A) any pending charges or investigations in
8 which the informant is a suspect; and

9 (B) evidence of any prior offense committed by
10 the informant, regardless of whether the offense resulted in
11 conviction; and

12 (5) any other information relevant to the credibility
13 of the informant, including any history of mental illness or drug or
14 alcohol abuse.

15 (c) The policy must require that any information or records
16 maintained under Subsection (b) relating to an in-custody informant
17 in the defendant's case be disclosed to the defendant and the
18 defendant's attorney.

19 Sec. 3. PRETRIAL RELIABILITY HEARING. The testimony of an
20 in-custody informant is not admissible against a defendant in a
21 criminal trial, whether offered in the guilt or innocence phase or
22 the punishment phase of the trial, unless:

23 (1) on or before the 14th day before the date the trial
24 begins, the attorney representing the state:

25 (A) notifies the defendant of:

26 (i) the state's intention to offer the
27 testimony; and

1 (ii) the name of the informant; and

2 (B) provides the defendant with a written summary
3 of the testimony to be offered and a copy of all prior written,
4 oral, or recorded statements of the informant concerning the
5 defendant;

6 (2) the judge finds, in a hearing conducted outside
7 the presence of the jury, that the testimony of the informant is
8 reliable after considering relevant factors, including:

9 (A) any benefit offered or provided to the
10 informant;

11 (B) the time, date, location, and substance of:

12 (i) any statement allegedly made by the
13 defendant to the informant; and

14 (ii) any informant statement that was given
15 to a law enforcement agency and that implicates the defendant in the
16 offense charged;

17 (C) whether the informant has at any time changed
18 the informant's statement or testimony regarding a statement
19 allegedly made by the defendant;

20 (D) the complete criminal history of the
21 informant, including:

22 (i) any pending charges or investigations
23 in which the informant is a suspect; and

24 (ii) evidence of any prior offense
25 committed by the informant, regardless of whether the offense
26 resulted in conviction;

27 (E) previous prosecutions in which the informant

1 testified or offered to testify, and any benefits offered or
2 provided to the informant; and

3 (F) any other information relevant to the
4 credibility of the informant, including any history of mental
5 illness or drug or alcohol abuse; and

6 (3) the testimony is otherwise admissible under the
7 Texas Rules of Evidence.

8 Sec. 4. ADMISSIBILITY OF PRIOR OFFENSES. Notwithstanding
9 Rule 609, Texas Rules of Evidence, if testimony of an in-custody
10 informant is admitted at trial, evidence of prior offenses
11 committed by the informant, regardless of whether the informant was
12 convicted, may be admitted for the purpose of impeachment.

13 Sec. 5. JURY INSTRUCTION. If testimony of an in-custody
14 informant is admitted at trial, on request of the defendant, the
15 court may instruct the jury to:

16 (1) examine and weigh the testimony of the informant
17 with greater care and scrutiny than the testimony of other
18 witnesses; and

19 (2) consider the factors listed in Section 3(2) in
20 assessing the reliability of the testimony.

21 Sec. 6. CORROBORATION REQUIRED. (a) A defendant may not be
22 convicted of an offense on the testimony of an in-custody informant
23 [a person to whom the defendant made a statement against the
24 defendant's interest during a time when the person was imprisoned
25 or confined in the same correctional facility as the defendant]
26 unless the testimony is corroborated by other evidence tending to
27 connect the defendant with the offense committed. [In this

1 ~~subsection, "correctional facility" has the meaning assigned by~~
2 ~~Section 1.07, Penal Code.]~~

3 (b) Corroboration is not sufficient for the purposes of this
4 section ~~[article]~~ if the corroboration only shows that the offense
5 was committed.

6 SECTION 2. The change in law made by this Act applies to the
7 admissibility of evidence in a criminal proceeding that commences
8 on or after the effective date of this Act. The admissibility of
9 evidence in a criminal proceeding that commences before the
10 effective date of this Act is governed by the law in effect on the
11 date the proceeding commenced, and the former law is continued in
12 effect for that purpose.

13 SECTION 3. Each attorney representing the state shall adopt
14 and implement the written policy required by Section 2, Article
15 38.075, Code of Criminal Procedure, as added by this Act, not later
16 than January 1, 2018.

17 SECTION 4. This Act takes effect September 1, 2017.