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H.B. No. 2631

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. This Act may be cited as the John Nolley Act.

SECTION 2. Chapter 38, Code of Criminal Procedure, is amended by adding Article 38.0751 to read as follows:

Art. 38.0751. TESTIMONY OF IN-CUSTODY INFORMANT

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 of the following that are offered to or requested by an in-custody informant in exchange for testimony or that the informant could reasonably expect to receive in exchange for testimony:

(A) a reduction in sentence;

(B) immunity from prosecution; or

(C) any other form of leniency or special treatment.

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

(4) "In-custody informant" means a person to whom a defendant makes a statement against the defendant's interest while

1 the person is confined in the same correctional facility as the
2 defendant.

3 Sec. 2. APPLICABILITY. This article applies to a
4 proceeding in the prosecution of an offense under any of the
5 following provisions of the Penal Code:

- 6 (1) Section 19.02 (Murder);
- 7 (2) Section 19.03 (Capital Murder);
- 8 (3) Section 20.03 (Kidnapping);
- 9 (4) Section 20.04 (Aggravated Kidnapping);
- 10 (5) Section 21.02 (Continuous Sexual Abuse of Young
11 Child or Children);
- 12 (6) Section 21.11 (Indecency with a Child);
- 13 (7) Section 22.011 (Sexual Assault);
- 14 (8) Section 22.02 (Aggravated Assault);
- 15 (9) Section 22.021 (Aggravated Sexual Assault);
- 16 (10) Section 22.04 (Injury to a Child, Elderly
17 Individual, or Disabled Individual);
- 18 (11) Section 28.02 (Arson);
- 19 (12) Section 29.02 (Robbery);
- 20 (13) Section 29.03 (Aggravated Robbery); or
- 21 (14) Section 30.02 (Burglary).

22 Sec. 3. PRETRIAL ADMISSIBILITY HEARING. (a) The testimony
23 of an in-custody informant is not admissible against a defendant in
24 a criminal trial, whether offered in the guilt or innocence phase or
25 the punishment phase of the trial, unless:

- 26 (1) on or before the 21st day before the date the trial
27 begins, the attorney representing the state notifies the defendant

1 of the state's intention to offer the testimony; and

2 (2) in a hearing conducted outside the presence of the
3 jury, the judge finds by clear and convincing evidence that:

4 (A) any benefit offered to the informant was not
5 of a type that would unduly influence the informant's testimony;

6 (B) the informant could be found by a rational
7 juror to be reliable and credible; and

8 (C) the value of the testimony is not outweighed
9 by the danger of causing unfair prejudice to the defendant, causing
10 unnecessary complication of the issues for the jury, or misleading
11 the jury.

12 (b) The court shall consider the following factors at the
13 hearing:

14 (1) any benefit offered or provided to the in-custody
15 informant;

16 (2) the time, date, location, and substance of:

17 (A) any statement allegedly made by the defendant
18 to the informant; and

19 (B) any informant statement that was given to a
20 law enforcement agency, attorney representing the state, or other
21 state official that implicates the defendant in the offense
22 charged;

23 (3) whether the informant has at any time changed the
24 informant's statement or testimony regarding a statement allegedly
25 made by the defendant and, if so, the time, date, and location of
26 the change in the informant's statement or testimony and the
27 persons present at that time;

1 (4) the complete criminal history of the informant,
2 including any charges that were dismissed or reduced as part of a
3 plea bargain;

4 (5) previous prosecutions in which the informant
5 testified or offered to testify against a defendant with whom the
6 informant was confined in the same correctional facility, and any
7 benefits offered or provided to the informant;

8 (6) any information relevant to the credibility of the
9 informant and the credibility of the informant's statement;

10 (7) any information relevant to the informant's
11 character relating to truthfulness or untruthfulness; and

12 (8) expert testimony the court considers useful to
13 make the finding required by Subsection (a)(2), including testimony
14 regarding:

15 (A) the practices of the applicable law
16 enforcement agency or attorney representing the state regarding
17 in-custody informants;

18 (B) the use of in-custody informant testimony in
19 similar cases; or

20 (C) any risk factors associated with
21 characteristics particular to the informant or the case.

22 (c) The judge may not inform the jury of the judge's ruling
23 at the admissibility hearing.

24 (d) The defendant has the right to call the in-custody
25 informant as a witness at the admissibility hearing.

26 Sec. 4. REQUIREMENT TO PROVIDE INFORMATION AND RECORDS.

27 (a) The attorney representing the state shall provide to the

1 defendant and the defendant's attorney all information and records
2 that the state intends to offer at the admissibility hearing,
3 including the information described by Section 3(b).

4 (b) The attorney representing the state must provide the
5 information not later than the 10th day before the date the
6 admissibility hearing begins, unless an extension of time has been
7 granted under Section 5 of this article.

8 Sec. 5. CONTINUANCE. (a) The court shall, for sufficient
9 cause shown, extend the time by which the attorney representing the
10 state is required to provide notice under Section 3(a)(1) or
11 provide information under Section 4(b).

12 (b) The court shall, for sufficient cause shown, continue an
13 admissibility hearing under this article or continue the
14 defendant's trial in accordance with Article 29.03 if the defendant
15 or the attorney representing the state needs additional time to
16 prepare for the admissibility hearing.

17 (c) An extension of time under Subsection (a) constitutes
18 sufficient cause shown for continuing the admissibility hearing or
19 the trial as described by Subsection (b) if the continuance is
20 requested by the defendant.

21 Sec. 6. JURY INSTRUCTION. If testimony of an in-custody
22 informant is admitted at trial, the court shall instruct the jury to
23 disregard the informant's testimony unless the jury determines
24 that:

25 (1) any benefit granted, promised, or offered to the
26 informant did not unduly influence the testimony; and

27 (2) the testimony is truthful.

1 SECTION 3. The change in law made by this Act applies to the
2 admissibility of evidence in a criminal proceeding that commences
3 on or after the effective date of this Act. The admissibility of
4 evidence in a criminal proceeding that commences before the
5 effective date of this Act is governed by the law in effect on the
6 date the proceeding commenced, and the former law is continued in
7 effect for that purpose.

8 SECTION 4. This Act takes effect September 1, 2021.