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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. 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 express or implied grant, promise, or offer of a reduction in sentence, immunity from prosecution, or other form of leniency or special treatment, made or given to an in-custody informant in exchange for testimony.

(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 the person is confined in the same correctional facility as the defendant.

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

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

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

21           (1) on or before the 21st day before the date the trial  
22 begins, the attorney representing the state notifies the defendant  
23 of the state's intention to offer the testimony; and

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

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

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

3           (C) the value of the testimony is not outweighed  
4 by the danger of causing unfair prejudice to the defendant, causing  
5 unnecessary complication of the issues for the jury, or misleading  
6 the jury.

7           (b) The court shall consider the following factors at the  
8 hearing:

9           (1) any benefit offered or provided to the in-custody  
10 informant;

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

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

14           (B) any informant statement that was given to a  
15 law enforcement agency, attorney representing the state, or other  
16 state official that implicates the defendant in the offense  
17 charged;

18           (3) whether the informant has at any time changed the  
19 informant's statement or testimony regarding a statement allegedly  
20 made by the defendant and, if so, the time, date, and location of  
21 the change in the informant's statement or testimony and the  
22 persons present at that time;

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

26           (5) previous prosecutions in which the informant  
27 testified or offered to testify against a defendant with whom the

1 informant was confined in the same correctional facility, and any  
2 benefits offered or provided to the informant;

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

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

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

10 (A) the practices of the applicable law  
11 enforcement agency or attorney representing the state regarding  
12 in-custody informants;

13 (B) the use of in-custody informant testimony in  
14 similar cases; or

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

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

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

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

22 (a) The attorney representing the state shall provide to the  
23 defendant and the defendant's attorney all information and records  
24 that the state intends to offer at the admissibility hearing,  
25 including the information described by Section 3(b).

26 (b) The attorney representing the state must provide the  
27 information not later than the 10th day before the date the

1 admissibility hearing begins, except for good cause shown.

2 Sec. 5. JURY INSTRUCTION. If testimony of an in-custody  
3 informant is admitted at trial, the court shall instruct the jury to  
4 disregard the informant's testimony unless the jury determines  
5 that:

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

8 (2) the testimony is truthful.

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

16 SECTION 3. This Act takes effect September 1, 2021.