100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

SB2479

Introduced 1/30/2018, by Sen. Michael E. Hastings

SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-21

Amends the Code of Criminal Procedure of 1963. Expands the informant testimony provisions from capital cases to first degree murder, intentional homicide of an unborn child, second degree murder, voluntary manslaughter of an unborn child, involuntary manslaughter and reckless homicide, involuntary manslaughter and reckless homicide of an unborn child, drug-induced homicide, aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated arson. Provides that the court may permit the prosecution to disclose its intent to introduce the testimony of an informant with less notice than the 30-day notice period required, if the court finds that the informant was not known prior to the 30-day notice period and could not have been discovered or obtained by the exercise of due diligence by the prosecution prior to the 30-day notice period. Provides that upon good cause shown, the court may set a reasonable notice period under the circumstances or may continue the trial on its own motion to allow for a reasonable notice period, which motion shall toll the speedy trial period for the period of the continuance. Provides that if a lawful recording of an incriminating statement is made of an accused to an informant or of a statement made by an informant to law enforcement or the prosecution, including any deal, promise, inducement, or other benefit offered to the informant, the accused may request a reliability hearing and the prosecution shall be subject to the disclosure requirements. Makes other changes.

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A BILL FOR

1   AN ACT concerning criminal law.

2   **Be it enacted by the People of the State of Illinois,**

3   **represented in the General Assembly:**

4   Section 5. The Code of Criminal Procedure of 1963 is

5   amended by changing Section 115-21 as follows:

6   (725 ILCS 5/115-21)

7   Sec. 115-21. Informant testimony.

8   (a) For the purposes of this Section, "informant" means

9   someone who is purporting to testify about admissions made to

10   him or her by the accused while detained or incarcerated in a

11   penal institution contemporaneously.

12   (b) This Section applies to any criminal proceeding brought

13   under Sections 9-1, 9-1.2, 9-2, 9-2.1, 9-3, 9-3.2, 9-3.3,

14   11-1.30, 11-1.40, or 20-1.1 of the Criminal Code of 1961 or the

15   Criminal Code of 2012, ~~capital case~~ in which the prosecution

16   attempts to introduce evidence of incriminating statements

17   made by the accused to or overheard by an informant.

18   (c) Except as provided in subsection (d-5), in ~~In~~ any case

19   under this Section, the prosecution shall disclose at least 30

20   days prior to a relevant evidentiary hearing or trial ~~timely~~

21   ~~disclose in discovery~~:

22   (1) the complete criminal history of the informant;

23   (2) any deal, promise, inducement, or benefit that the

1   offering party has made or will make in the future to the

2   informant;

3   (3) the statements made by the accused;

4   (4) the time and place of the statements, the time and

5   place of their disclosure to law enforcement officials, and

6   the names of all persons who were present when the

7   statements were made;

8   (5) whether at any time the informant recanted that

9   testimony or statement and, if so, the time and place of

10   the recantation, the nature of the recantation, and the

11   names of the persons who were present at the recantation;

12   (6) other cases in which the informant testified,

13   provided that the existence of such testimony can be

14   ascertained through reasonable inquiry and whether the

15   informant received any promise, inducement, or benefit in

16   exchange for or subsequent to that testimony or statement;

17   and

18   (7) any other information relevant to the informant's

19   credibility.

20   (d) Except as provided in subsection (d-5), in In any case

21 under this Section, the prosecution shall must timely disclose

22 at least 30 days prior to any relevant evidentiary hearing or

23 trial its intent to introduce the testimony of an informant.

24 The court shall conduct a hearing to determine whether the

25 testimony of the informant is reliable, unless the defendant

26 waives such a hearing. If the prosecution fails to show by a

1   preponderance of the evidence that the informant's testimony is

2   reliable, the court shall not allow the testimony to be heard

3   at trial. At this hearing, the court shall consider the factors

4   enumerated in subsection (c) as well as any other factors

5   relating to reliability.

6   (d-5) The court may permit the prosecution to disclose its

7   intent to introduce the testimony of an informant with less

8   notice than the 30-day notice required under subsections (c)

9   and (d) of this Section if the court finds that the informant

10 was not known prior to the 30-day notice period and could not

11 have been discovered or obtained by the exercise of due

12 diligence by the prosecution prior to the 30-day notice period.

13 Upon good cause shown, the court may set a reasonable notice

14 period under the circumstances or may continue the trial on its

15 own motion to allow for a reasonable notice period, which

16 motion shall toll the speedy trial period under Section 103-5

17 of this Code for the period of the continuance.

18   (e) If a lawful recording of an incriminating statement is

19 made of an accused to an informant or made of a statement of an

20 informant to law enforcement or the prosecution, including any

21 deal, promise, inducement, or other benefit offered to the

22 informant, the accused may request a reliability hearing under

23 subsection (d) of this Section and the prosecution shall be

24 subject to the disclosure requirements of subsection (c) of

25 this Section. A hearing required under subsection (d) does not

26 apply to statements covered under subsection (b) that are

1   ~~lawfully recorded.~~

2   (f) <u>(Blank)</u>. ~~This Section applies to all death penalty~~

3   ~~prosecutions initiated on or after the effective date of this~~

4   ~~amendatory Act of the 93rd General Assembly.~~

5   <u>(g) This Section applies to all criminal prosecutions under</u>

6   <u>subsection (b) of this Section on or after the effective date</u>

7   <u>of this amendatory Act of the 100th General Assembly.</u>

8   (Source: P.A. 93-605, eff. 11-19-03.)