

100TH GENERAL ASSEMBLY**State of Illinois****2017 and 2018****SB1830**

Introduced 2/9/2017, by Sen. Michael E. Hastings

SYNOPSIS AS INTRODUCED:

725 ILCS 5/115-21

Amends the Code of Criminal Procedure of 1963. Provides in cases in which the prosecution attempts to introduce evidence of incriminating statements made by the accused to or overheard by an informant, the prosecution shall disclose at least 30 days prior to any relevant evidentiary hearing or trial (rather than timely disclose in discovery): (1) the complete criminal history of the informant; (2) any deal, promise, inducement, or benefit that the offering party has made or will make in the future to the informant; (3) the statements made by the accused; (4) the time and place of the statements, the time and place of their disclosure to law enforcement officials, and the names of all persons who were present when the statements were made; whether at any time the informant recanted that testimony or statement and, if so, the time and place of the recantation, the nature of the recantation, and the names of the persons who were present at the recantation; (6) other cases in which the informant testified, provided that the existence of such testimony can be ascertained through reasonable inquiry and whether the informant received any promise, inducement, or benefit in exchange for or subsequent to that testimony or statement; and (7) any other information relevant to the informant's credibility. Provides that if, at any time, a law enforcement or prosecutorial official has reason to believe that a previous statement or testimony proffered by an individual acting as an in-custody informant may be untruthful or unreliable, this information shall be disclosed through notification to the defendant, his or her attorney of record or the public defender's office, the prosecutor's office, and the court for all cases in which the informant offered statements or testimony. Provides that this provision applies to any criminal proceeding for 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 (rather than a capital case). Makes other changes.

LRB100 09232 SLF 19388 b

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
15 the Criminal Code of 2012, capital case in which the
16 prosecution attempts to introduce evidence of incriminating
17 statements made by the accused to or overheard by an informant.

18 (c) In any case under this Section, the prosecution shall
19 disclose at least 30 days prior to a relevant evidentiary
20 hearing or trial ~~timely disclose in discovery:~~

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

22 (2) any deal, promise, inducement, or benefit that the
23 offering party has made or will make in the future to the

1 informant;

2 (3) the statements made by the accused;

3 (4) the time and place of the statements, the time and
4 place of their disclosure to law enforcement officials, and
5 the names of all persons who were present when the
6 statements were made;

7 (5) whether at any time the informant recanted that
8 testimony or statement and, if so, the time and place of
9 the recantation, the nature of the recantation, and the
10 names of the persons who were present at the recantation;

11 (6) other cases in which the informant testified,
12 provided that the existence of such testimony can be
13 ascertained through reasonable inquiry and whether the
14 informant received any promise, inducement, or benefit in
15 exchange for or subsequent to that testimony or statement;
16 and

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

19 (d) In any case under this Section, the prosecution shall
20 ~~must~~ timely disclose at least 30 days prior to any relevant
21 evidentiary hearing or trial its intent to introduce the
22 testimony of an informant. The court shall conduct a hearing to
23 determine whether the testimony of the informant is reliable,
24 unless the defendant waives such a hearing. If the prosecution
25 fails to show by a preponderance of the evidence that the
26 informant's testimony is reliable, the court shall not allow

1 the testimony to be heard at trial. At this hearing, the court
2 shall consider the factors enumerated in subsection (c) as well
3 as any other factors relating to reliability.

4 (e) (Blank). ~~A hearing required under subsection (d) does~~
5 ~~not apply to statements covered under subsection (b) that are~~
6 ~~lawfully recorded.~~

7 (e-5) If, at any time, a law enforcement or prosecutorial
8 official has reason to believe that a previous statement or
9 testimony proffered by an individual acting as an in-custody
10 informant may be untruthful or unreliable, this information
11 shall be disclosed through notification to the defendant, his
12 or her attorney of record or the public defender's office, the
13 prosecutor's office, and the court for all cases in which the
14 informant offered statements or testimony. If there is an
15 adverse finding with respect to the reliability of the
16 in-custody informant, the relevant State entity has an
17 obligation to notify the defendant, his or her attorney of
18 record or public defender's office, the prosecutor's office,
19 and the court where the in-custody informant has testified.

20 (f) This Section applies to all criminal ~~death penalty~~
21 prosecutions initiated on or after the effective date of this
22 amendatory Act of the 93rd General Assembly.

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