

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 716 Session of 2023

INTRODUCED BY HUGHES, FONTANA, KEARNEY, CAPPELLETTI, SCHWANK,
KANE, COSTA AND STREET, JUNE 2, 2023

REFERRED TO JUDICIARY, JUNE 2, 2023

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in depositions and
3 witnesses, providing for informant testimony.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 42 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 5919.1. Informant testimony.

9 (a) Use of informant testimony.--Except as provided under
10 subsection (c), in any criminal proceeding or capital case in
11 which the prosecution attempts to introduce evidence of
12 incriminating statements made by the accused to or overheard by
13 an informant, the prosecution shall, at least 30 days prior to a
14 relevant evidentiary hearing or trial, timely disclose in
15 discovery:

16 (1) All names, known aliases, inmate identification
17 numbers and date of birth of the informant.

18 (2) The complete criminal history of the informant,

1 including any charges pending or charges which were reduced
2 or dismissed as part of a plea agreement.

3 (3) The informant's cooperation agreement with the
4 prosecution, including any deal, promise, inducement or
5 benefit that the offering party has made or may make to the
6 informant in the future.

7 (4) All statements, including inconsistent and
8 inculpatory, allegedly made by the accused to the informant.

9 (5) The time and place of the alleged statements, the
10 time and place of the disclosure to law enforcement officials
11 and the names of all individuals who were present when the
12 alleged statements were made.

13 (6) Whether at any time the informant recanted the
14 testimony or statement and, if so, the time and place of the
15 recantation, the nature of the recantation and the names of
16 the individuals who were present at the recantation.

17 (7) Other cases in which the informant testified,
18 provided that the existence of the testimony can be
19 ascertained through reasonable inquiry and whether the
20 informant received any promise, inducement or benefit in
21 exchange for or subsequent to the testimony or statement.

22 (8) Any lawful audio or audio-visual recording made of a
23 statement by an informant to law enforcement officials,
24 including any deal, promise, inducement or other benefit
25 offered to the informant.

26 (9) Any other information relevant to the informant's
27 credibility.

28 (b) Reliability hearing.--Except as provided under
29 subsection (c), in any case under subsection (a), the
30 prosecution shall disclose at least 30 days prior to any

1 relevant evidentiary hearing or trial the prosecution's intent
2 to introduce the testimony of an informant. The following shall
3 apply:

4 (1) The court shall conduct a hearing to determine
5 whether the testimony of the informant is reliable and
6 admissible, unless the defendant waives the hearing.

7 (2) If the prosecution fails to show by a preponderance
8 of the evidence that the informant's testimony is reliable,
9 the court may not allow the testimony to be heard at trial.

10 (3) Inclusive of the disclosures under subsection (a),
11 the court shall consider the following factors:

12 (i) the extent to which the informant's testimony is
13 confirmed by other evidence;

14 (ii) the specificity of the testimony;

15 (iii) the extent to which the testimony contains
16 details known only by the perpetrator of the alleged
17 offense;

18 (iv) the extent to which the details of the
19 testimony could be obtained from a source other than the
20 defendant; and

21 (v) the circumstances under which the informant
22 initially provided information supporting the testimony
23 to a law enforcement officer.

24 (c) Exception to notice requirement.--The court may permit
25 the prosecution to disclose the prosecution's intent to
26 introduce the testimony of an informant with less notice than
27 the 30 days required under subsections (a) and (b) if the court
28 finds that the informant was not known prior to the 30-day
29 period and could not have been discovered or obtained by the
30 exercise of due diligence by the prosecution prior to the 30-day

1 period. Upon good cause shown, the court may set a reasonable
2 notice period under the circumstances or may continue the trial
3 on the court's own motion to allow for a reasonable notice
4 period, which motion shall toll the prompt trial period under
5 Pa.R.Crim.P. No. 600 (relating to prompt trial) for the period
6 of the continuance.

7 (d) Victim notification.--

8 (1) A prosecutor shall make reasonable efforts to notify
9 a victim if the prosecutor has decided to offer or provide
10 any of the following benefits to an informant in exchange
11 for, or as a result of, the informant offering or providing
12 testimony against a suspect or defendant:

13 (i) Reduction or dismissal of charges.

14 (ii) A plea bargain.

15 (iii) Support for a modification of the amount or
16 conditions of bail.

17 (iv) Support for a motion to reduce or modify a
18 sentence.

19 (2) If the informant is still in custody, the prosecutor
20 shall attempt to give notice before an informant is released
21 from custody. Efforts to notify a victim should include, in
22 order of priority:

23 (i) Contacting the victim or a person designated by
24 the victim by telephone.

25 (ii) Contacting the victim by mail.

26 (3) If a prosecutor notifies a victim of domestic
27 violence, any criminal sex offense or harassment or stalking
28 under 18 Pa.C.S. (relating to crimes and offenses), the
29 prosecutor shall also inform the victim of the method and
30 benefits of seeking an order for protection from abuse

1 pursuant to 23 Pa.C.S. Ch. 61 (relating to protection from
2 abuse).

3 (4) The notification under this subsection shall be in
4 addition to the notification requirements and rights provided
5 for under the act of November 24, 1998 (P.L.882, No.111),
6 known as the Crime Victims Act.

7 (e) Internal records.--

8 (1) Each prosecuting entity's office shall maintain
9 records of informants in an internal database for a period of
10 20 years from the date that the informant's information was
11 entered into the internal database. Informant information
12 shall be recorded and maintained regardless of whether the
13 informant testified, or the testimony was presented at trial.
14 The information to be collected shall include the following:

15 (i) The docket number of the case in which the
16 informant testified or planned to testify.

17 (ii) The name of the informant, including any known
18 aliases or alternative spellings.

19 (iii) The date of birth of the informant.

20 (iv) The substance and use of any testimony of an
21 informant.

22 (v) The informant's cooperation agreement with the
23 prosecution and any benefit the prosecution has offered
24 or may offer in the future to the informant in connection
25 with the testimony.

26 (2) Information collected and records maintained under
27 this subsection are confidential and exempt from access under
28 the act of February 14, 2008 (P.L.6, No.3), known as the
29 Right-to-Know Law. Only the prosecuting entity may access
30 internal records but may provide information on a specific

1 informant to another prosecuting entity upon request, and as
2 required by this section when disclosing discoverable
3 evidence.

4 (f) Definitions.--As used in this section, the following
5 words and phrases shall have the meanings given to them in this
6 subsection unless the context clearly indicates otherwise:

7 "Benefit." Any plea agreement, bail consideration, reduction
8 or modification of sentence or any other leniency, immunity,
9 financial payment, reward or amelioration of current or future
10 conditions of incarceration offered or provided in connection
11 with, or in exchange for, testimony that is offered or provided
12 by an informant.

13 "Informant." An individual who is purporting to testify
14 about admissions made to the individual by the accused while
15 detained or incarcerated in a penal institution
16 contemporaneously. The term does not include a codefendant or
17 confidential informant who does not provide testimony against a
18 suspect or defendant.

19 "Prosecuting entity." A county district attorney's office or
20 the Office of Attorney General.

21 Section 2. This act shall take effect in 60 days.