

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 873 Session of
2019

INTRODUCED BY HUGHES, FARNESE, COSTA, LEACH, KEARNEY AND MUTH,
OCTOBER 15, 2019

REFERRED TO JUDICIARY, OCTOBER 15, 2019

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

relevant evidentiary hearing or trial its intent to introduce
the testimony of an informant. The following shall apply:

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

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

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

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

(ii) the specificity of the testimony;

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

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

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

(c) Exception to notice requirement.--The court may permit
the prosecution to disclose its intent to introduce the
testimony of an informant with less notice than the 30 days
required under subsections (a) and (b) if the court finds that
the informant was not known prior to the 30-day period and could
not have been discovered or obtained by the exercise of due
diligence by the prosecution prior to the 30-day period. Upon
good cause shown, the court may set a reasonable notice period

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

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

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

14 "Informant." An individual who is purporting to testify
15 about admissions made to the individual by the accused while
16 detained or incarcerated in a penal institution
17 contemporaneously.

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