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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 329 Session of  
2021

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INTRODUCED BY HUGHES, KEARNEY, FONTANA, STREET AND MUTH,  
MARCH 10, 2021

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REFERRED TO JUDICIARY, MARCH 10, 2021

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

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

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

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