

SENATE BILL NO. 156

INTRODUCED BY R. WEBB

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS REGARDING INCENTIVIZED WITNESS TESTIMONY; REQUIRING NOTICE OF INCENTIVIZED WITNESS TESTIMONY; PROVIDING FOR A HEARING ON RELIABILITY; PROVIDING A JURY INSTRUCTION; PROVIDING DEFINITIONS; AND PROVIDING AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Legislative findings -- purpose.** (1) The legislature finds that incentivized witnesses are a leading contributor to wrongful convictions of innocent Americans.

(2) Testimony from incentivized witnesses is inherently suspect because the promise or expectation of benefits creates a motivation for incentivized witnesses to manufacture or fabricate evidence against the defendant. In addition, when incentivized witnesses receive leniency, the victims of their crimes may be deprived of justice.

(3) The purpose of this act is to safeguard against unreliable incentivized witness testimony leading to wrongful convictions and other threats to public safety.

(4) This act does not apply to confidential informants who do not provide or offer testimony against the defendant, nor does it apply to victims or experts.

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 5], the following definitions apply:

(1) "Benefit" means a deal, payment, promise, leniency, inducement, or other advantage that has been or will be offered by the prosecution to an incentivized witness in connection with the incentivized witness's testimony against the defendant.

(2) (a) "Incentivized witness" means an individual, including a criminal suspect, whether or not the suspect is detained, charged, or incarcerated, who provides testimony in exchange for, in expectation of, or in connection with a benefit.

(b) The term does not include:



- 1 (i) an expert witness;
- 2 (ii) a victim of the crime being prosecuted; or
- 3 (iii) confidential informants who do not provide or offer testimony against a defendant.
- 4 (3) "Statement" means an oral, written, sign language, or nonverbal communication related to the crime
- 5 charged against the defendant or concerning the defendant that is made to law enforcement personnel, to a
- 6 person acting on the prosecution's behalf, or to another person and reported to law enforcement personnel.

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8 **NEW SECTION. Section 3. Timely notice and disclosure of material relating to incentivized**

9 **witness's testimony.** (1) In accordance with 46-15-324 and the Montana Rules of Evidence, within 30 days of

10 the defendant's arraignment, the prosecution must disclose in writing to the court and to the defendant or the

11 defendant's counsel notice of the intent to introduce the testimony of an incentivized witness.

12 (2) In accordance with the disclosure requirements of 46-15-322 and the requirements of the Montana

13 constitution, the prosecution must disclose to the defendant or the defendant's counsel the following information

14 relating to each incentivized witness the prosecution intends to call:

15 (a) the complete criminal history of the incentivized witness, including pending criminal charges or

16 investigations in which the incentivized witness is a suspect;

17 (b) any medical or psychiatric condition or addiction of the incentivized witness that may impair the

18 witness's ability to testify truthfully or accurately. The prosecutor is not required to inquire into a witness's medical,

19 psychiatric, or addiction history or status unless the prosecutor has information that reasonably leads to the belief

20 that an inquiry could reveal a condition that may impair the witness's ability to testify truthfully or accurately.

21 (c) any deals, promises, inducements, or benefits that the offering party has made or might make in the

22 future to the incentivized witness;

23 (d) the substance of the statements made by the defendant to the incentivized witness;

24 (e) the substance of any statements by the incentivized witness to law enforcement personnel implicating

25 the defendant in the crime charged, and any electronic recordings of such statements;

26 (f) the time and place of the statements made by the defendant to the incentivized witness, the time and

27 place of the disclosure of the incentivized witness's statements to law enforcement personnel, and the names

28 of all persons present when the statements by the defendant and the incentivized witness were allegedly made;

29 (g) whether at any time the incentivized witness modified or recanted the testimony or statement and,

30 if so, the time and place of the modification or recantation, the nature of the modification or recantation, and the

1 names of the persons who were present at the modification or recantation;

2 (h) other cases in which the incentivized witness offered or provided testimony for the prosecution in
3 exchange for a benefit, and the nature of the promised benefit, whether or not a benefit was received;

4 (i) the relationship between the defendant and the incentivized witness, including the amount of time the
5 two were incarcerated in the same custodial section of the jail or prison;

6 (j) whether the incentivized witness's statement or prior testimony is corroborated by other evidence that
7 was not offered by the incentivized witness but that seems to connect the defendant with the crime charged; and

8 (k) any other information relevant to the reliability of the incentivized witness, to the reliability of the
9 incentivized witness's testimony, or to the incentivized witness's credibility.

10 (3) The court may permit the prosecution to disclose its intent to introduce the testimony of an informant
11 with shorter notice than the 30-day notice required under subsection (1) if the court finds that the incentivized
12 witness was not known and could not have been discovered or located by the exercise of due diligence by the
13 prosecution prior to the end of the 30-day notice period. Upon good cause shown, the court may set a reasonable
14 notice period or may continue the trial to allow for a reasonable notice period.

15 (4) As provided in 46-15-324, disclosure of the existence of an informant or the identity of an informant
16 who will not be called to testify is not required if:

17 (a) disclosure would result in substantial risk to the informant or to the informant's operational
18 effectiveness; and

19 (b) the failure to disclose will not infringe the constitutional rights of the defendant.

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21 **NEW SECTION. Section 4. Pretrial reliability hearings.** (1) Before a trial or proceeding in which the
22 prosecution intends to introduce the testimony of an incentivized witness, the court must hold a pretrial hearing
23 if requested by the defendant to assess the reliability of the incentivized witness's testimony based on the factors
24 enumerated in [section 3]. The defendant may waive the pretrial hearing.

25 (2) If a pretrial hearing is held and the prosecution fails to show by a preponderance of the evidence that
26 the incentivized witness's testimony is reliable based on the factors provided in [section 3], the court may not
27 allow the testimony to be heard at trial.

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29 **NEW SECTION. Section 5. Jury instruction.** If the court determines that an incentivized witness's
30 testimony is admissible according to the provisions of [section 4], it shall provide the jury with the following

1 instruction:

2 "The testimony of an incentivized witness should be viewed with caution and close scrutiny. In evaluating
3 the testimony, you should consider the extent to which it may have been influenced by the receipt of, or
4 expectation of, any benefits from the party calling that witness. The specific factors that may have influenced the
5 testimony in this case are: [list all applicable factors, including whether the incentivized witness has any prior
6 felony convictions]. This does not mean that you may arbitrarily disregard such testimony, but you should give
7 it the weight to which you find it to be entitled in light of all the evidence in the case."

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9 NEW SECTION. Section 6. Codification instruction. [Sections 1 through 5] are intended to be codified
10 as an integral part of Title 46, chapter 16, part 2, and the provisions of Title 46, chapter 16, part 2, apply to
11 [sections 1 through 5].

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13 NEW SECTION. Section 7. Applicability. [This act] applies to prosecutions commenced on or after
14 [the effective date of this act].

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