

HOUSE BILL NO. 6356

August 17, 2022, Introduced by Rep. Steven Johnson and referred to the Committee on Judiciary.

A bill to amend 1927 PA 175, entitled
"The code of criminal procedure,"
(MCL 760.1 to 777.69) by adding sections 36a, 36b, 36c, 36d, 36e,
36f, 36g, and 36h to chapter VIII.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 CHAPTER VIII
2 Sec. 36a. As used in sections 36b to 36h of this chapter:
3 (a) "Benefit" means any plea bargain, bail consideration,
4 reduction or modification of sentence, or any other leniency,

1 immunity, financial payment, reward, or amelioration of current or
2 future conditions of incarceration in return for, or in connection
3 with, an in-custody informant's participation in any information-
4 gathering activity, investigation, or operation, or in return for,
5 or in connection with, the in-custody informant's testimony in a
6 criminal proceeding in which the prosecuting attorney intends to
7 call the in-custody informant as a witness.

8 (b) "In-custody informant" means an individual, other than a
9 codefendant, percipient witness, accomplice, or co-conspirator, who
10 provides testimony or information for use in the investigation or
11 prosecution of a defendant based upon statements made by the
12 defendant while the defendant and the in-custody informant were
13 housed in the same correctional facility, county jail, local
14 lockup, or other custodial facility.

15 Sec. 36b. (1) Each county prosecuting attorney's office shall
16 track and maintain a record of the following information:

17 (a) The use of testimony or information provided to the
18 prosecuting attorney's office by an in-custody informant against a
19 defendant's interest.

20 (b) Any benefit offered or provided to an in-custody informant
21 in exchange for testimony or information about a defendant.

22 (2) Each county prosecuting attorney's office shall provide
23 the information described under subsection (1) to the department of
24 the attorney general.

25 (3) The department of the attorney general shall maintain a
26 statewide record of the information collected under subsection (1).

27 (4) The information collected under subsection (1) is
28 confidential and is not subject to disclosure under the freedom of
29 information act, 1976 PA 442, MCL 15.231 to 15.246.

1 Sec. 36c. A prosecuting attorney shall disclose to the defense
2 in a timely manner before any evidentiary hearing or trial any
3 information in the possession, custody, or control of the
4 prosecution that is relevant to an in-custody informant's
5 credibility, including, but not limited to, all of the following:

6 (a) Benefits that the prosecuting attorney has extended or
7 will extend in the future to the in-custody informant.

8 (b) The substance, time, and place of any statement allegedly
9 given by the defendant to the in-custody informant.

10 (c) The substance, time, and place of any statement given by
11 the in-custody informant to law enforcement implicating the
12 defendant in the crime charged.

13 (d) The complete criminal history of the in-custody informant.

14 (e) If the in-custody informant has previously testified or
15 provided information in exchange for a benefit, the specific
16 benefit previously offered or received.

17 (f) Whether or not the in-custody informant modified or
18 recanted the in-custody informant's testimony at any time.

19 Sec. 36d. A prosecuting attorney shall timely disclose the
20 prosecution's intent to introduce the testimony of an in-custody
21 informant. The same procedure for introducing the testimony of
22 other fact witnesses that are applicable in this state applies to
23 an in-custody informant's testimony.

24 Sec. 36e. If an in-custody informant testifies, the
25 prosecuting attorney or defense counsel may elicit the information
26 described under section 36c of this chapter during direct or cross-
27 examination, respectively. If a written statement from the in-
28 custody informant is admitted for any reason, including, but not
29 limited to, the unavailability of the in-custody informant, the

1 information described under section 36c of this chapter must be
2 included with the written statement.

3 Sec. 36f. If an in-custody informant receives a benefit
4 related to a pending charge, a conviction, or a sentence in
5 connection with offering or providing testimony against a
6 defendant, the prosecuting attorney shall notify any victim in the
7 in-custody informant's case of the benefit.

8 Sec. 36g. (1) Unless the defendant waives the hearing required
9 under this section, before a trial commences during which the
10 prosecuting attorney intends to introduce the testimony of an in-
11 custody informant, the court shall hold a hearing to assess the
12 reliability of the informant and to determine if the prosecuting
13 attorney can introduce evidence to corroborate the content of the
14 in-custody informant's testimony relating to a crime.

15 (2) At a hearing conducted under this section, the court shall
16 consider all of the information described under section 36c of this
17 chapter.

18 (3) If the prosecution fails to show by a preponderance of the
19 evidence that the in-custody informant's testimony is reliable, the
20 court shall render the testimony inadmissible.

21 Sec. 36h. If the in-custody informant's testimony is admitted
22 into evidence, a cautionary instruction must be provided to the
23 jury. The jury instruction must include all of the following:

24 (a) The testimony of an in-custody informant who provides
25 evidence against a defendant must be examined and weighed with
26 greater care than the testimony of an ordinary witness.

27 (b) The in-custody informant may expect, and in practice often
28 receive, a benefit that has not been formally promised to the in-
29 custody informant before trial.

1 (c) The reliability factors enumerated in section 36c of this
2 chapter must be considered when determining whether the testimony
3 of the in-custody informant has been influenced by interest in a
4 benefit or prejudice against the defendant.