

SENATE No. 2668

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

SENATE, February 10, 2022.

The committee on the Judiciary, to whom was referred the petition (accompanied by bill, Senate, No. 916) of Joseph A. Boncore for legislation relative to the reliability of testifying informants, reports the accompanying bill (Senate, No. 2668).

For the committee,
James B. Eldridge

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An Act relative to the reliability of testifying informants.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 233 of the General Laws, as appearing in the 2016 Official Edition, is hereby
2 amended by inserting after Section 21B the following:-

3 Section. 21C: Reliability of Testifying Informants

4 (a) Definitions.

5 (1) For purposes of this Chapter, “testifying informant” means someone who is
6 purporting to testify about admissions made to them by the accused.

7 (2) This Chapter applies to any criminal proceeding in which the Commonwealth
8 attempts to introduce evidence of incriminating statements made by the accused to, or overheard
9 by, an informant.

10 (b) Mandatory Documentation and Discovery of Evidence Bearing on Informant
11 Reliability.

(1) The Commonwealth shall create and maintain records documenting: (1) the complete criminal history of any informant, including any alleged criminal conduct that has not yet resulted in criminal charges; (2) any deals, promises, inducements, or benefits that the Commonwealth has made or will make in the future to the informant or their agent(s); and (c) any and all communications with the informant including but not limited to requested or possible deals, promises, inducements or benefits.

(2) In accordance with the pre-trial discovery provisions of the Massachusetts Rules of Criminal Procedure, the Commonwealth shall timely disclose: (1) any alleged criminal conduct by the informant that has not yet resulted in criminal charges; (2) any and all communications between the Commonwealth and the informant or agent of the informant regarding any deal, promise, inducement, or benefit that the offering party has made or will make in the future to the informant, including but not limited any requests made by the informant for a deal, promise, inducement, or benefit; (3) the time and place of any and all incriminating statements purportedly made by the accused to the informant, the time and place of their disclosure by the informant to law enforcement officials, and the names of all persons present when the accused's statements were made; (4) whether at any time the informant gave inconsistent statements regarding the purported incriminating statements by the accused, and if so, the time and place of the inconsistent statements, the nature of the inconsistencies, and the names of the persons who were present for the inconsistent statement; (5) all other cases or investigations in which the informant testified, provided information, or otherwise assisted with a police investigation or prosecution, including cases or investigations in other Massachusetts counties, and whether in those other cases or investigations the informant received any promise, inducement, or benefit in

exchange for or subsequent to that testimony or assistance; (6) any other information relevant to the informant's credibility.

(3) In accordance with the Massachusetts Rules of Criminal Procedure, the judge may at any time order that the discovery or inspection described herein be denied, restricted, or deferred, or make such other order as is appropriate. The judge may, for cause shown grant discovery to a defendant on the condition that the material to be discovered be available only to counsel for the defendant. This provision does not alter the allocation of the burden of proof with regard to the matter at issue, including privilege.

(c) Reliability hearing.

(1) In accordance with the pre-trial discovery provisions of the Massachusetts Rules of Criminal Procedure, the Commonwealth shall timely disclose its intent to introduce the testimony of an informant.

(2) Where such notice is given, the trial court shall conduct a hearing to determine whether the testimony of the informant is reliable, unless the defendant waives such a hearing.

(3) At the hearing, the Commonwealth shall bear the burden of establishing by a preponderance of the evidence that the proposed informant's testimony is reliable and will be substantially more probative than prejudicial. The court shall consider the factors enumerated in subsection 2(b), as well as any other factors relating to reliability.

(4) If the Commonwealth fails to satisfy its burden of establishing the reliability of the proposed informant testimony by a preponderance of the evidence, the court shall not allow the testimony to be heard at trial.