

**SENATE . . . . . No. 916**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Joseph A. Boncore***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the reliability of testifying informants.

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PETITION OF:

NAME:

*Joseph A. Boncore*

DISTRICT/ADDRESS:

*First Suffolk and Middlesex*

**SENATE . . . . . No. 916**

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By Mr. Boncore, a petition (accompanied by bill, Senate, No. 916) of Joseph A. Boncore for legislation relative to the reliability of testifying informants. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 832 OF 2019-2020.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-Second General Court  
(2021-2022)**  
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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 SECTION 1. Chapter 233 of the General Laws, as appearing in the 2016 Official Edition,  
2 is hereby 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 and who has requested or  
7 received or may in the future receive a benefit in connection with such testimony.

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

11           (3) For the purposes of this Chapter, “benefit” means any plea bargain, bail consideration,  
12 reduction or modification of sentence, or any other leniency, immunity, financial payment,  
13 reward, or amelioration of current or future conditions of incarceration that has been requested  
14 by the testifying informant or that has been offered or may be offered in the future to the  
15 testifying informant in connection with his or her testimony in the criminal proceeding in which  
16 the prosecutor intends to call him or her as a witness.

17           (b) Mandatory Documentation and Discovery of Evidence Bearing on Testifying  
18 Informant Reliability.

19           (1) In all cases in which a statement from a testifying informant is sought out, given, or  
20 otherwise procured at any stage, each district attorney’s office and the Attorney General’s Office  
21 shall create and maintain a centralized record documenting: (1) the complete criminal history of  
22 any testifying informant, including any alleged criminal conduct that has not yet resulted in  
23 criminal charges; (2) any deals, promises, inducements, or benefits that the Commonwealth has  
24 made or will make in the future to the testifying informant or their agent(s); and (3) any and all  
25 communications with the testifying informant including but not limited to requested or possible  
26 deals, promises, inducements or benefits. The record shall be collected from each district  
27 attorney’s office and the Attorney General’s Office by the Executive Office of Public Safety and  
28 Security and shall be made available to prosecutors statewide. Such records shall not be subject  
29 to the public records act.

30           (2) In accordance with the pre-trial discovery provisions of the Massachusetts Rules of  
31 Criminal Procedure, the Commonwealth shall timely disclose: (1) any alleged criminal conduct  
32 by the testifying informant that has not yet resulted in criminal charges; (2) any and all  
33 communications between the Commonwealth and the testifying informant or agent of the  
34 testifying informant regarding any deal, promise, inducement, or benefit that the offering party  
35 has made or will make in the future to the testifying informant, including but not limited any  
36 requests made by the testifying informant for a deal, promise, inducement, or benefit; (3) the  
37 time and place of any and all incriminating statements purportedly made by the accused to the  
38 testifying informant, the time and place of their disclosure by the testifying informant to law  
39 enforcement officials, and the names of all persons present when the accused's statements were  
40 made; (4) whether at any time the testifying informant gave inconsistent statements regarding the  
41 purported incriminating statements by the accused, and if so, the time and place of the  
42 inconsistent statements, the nature of the inconsistencies, and the names of the persons who were  
43 present for the inconsistent statement; (5) all other cases or investigations in which the testifying  
44 informant testified, provided information, or otherwise assisted with a police investigation or  
45 prosecution, including cases or investigations in other Massachusetts counties, and whether in  
46 those other cases or investigations the testifying informant received any promise, inducement, or  
47 benefit in exchange for or subsequent to that testimony or assistance; (6) any other information  
48 relevant to the testifying informant's credibility.

49           (3) In accordance with the Massachusetts Rules of Criminal Procedure, the judge may at  
50 any time order that the discovery or inspection described herein be denied, restricted, or deferred,  
51 or make such other order as is appropriate. The judge may, for cause shown grant discovery to a  
52 defendant on the condition that the material to be discovered be available only to counsel for the

53 defendant. This provision does not alter the allocation of the burden of proof with regard to the  
54 matter at issue, including privilege.

55 (c) Reliability hearing.

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

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

61 (3) At the hearing, the Commonwealth shall bear the burden of establishing by a  
62 preponderance of the evidence that the proposed informant's testimony reliable. The court shall  
63 consider the factors enumerated in subsection 2(b), as well as any other factors relating to  
64 reliability.

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

68 (5) If a testifying informant receives leniency related to a pending charge, conviction, or a  
69 sentence for a crime against a victim in connection with offering or providing testimony against  
70 a suspect or defendant, the prosecutor shall notify such victim.