

ONE HUNDRED SIXTH LEGISLATURE - FIRST SESSION - 2019
COMMITTEE STATEMENT
LB352

Hearing Date: Wednesday March 06, 2019
Committee On: Judiciary
Introducer: Morfeld
One Liner: Provide requirements relating to the use of jailhouse informants

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye:	6	Senators Brandt, Chambers, Lathrop, Morfeld, Pansing Brooks, Wayne
Nay:		
Absent:	1	Senator DeBoer
Present Not Voting:	1	Senator Slama

Oral Testimony:

Proponents:

Senator Adam Morfeld
Michelle Feldman
Christy Sheppard
Rebecca Murray
Timothy Noerrlinger
Mark Sundermeier

Representing:

Introducer
Innocence Project
self
self
Nebraska Criminal Defense Attorneys Association
Nebraska Innocence Project

Opponents:

John Alagaban
Corey O'Brien

Representing:

Nebraska County Attorneys Association
Nebraska Attorney General's Office

Neutral:

Kellee Kucera Moreno

Representing:

self

Summary of purpose and/or changes:

LB 352 makes findings by the Legislature and provides definitions and procedures on the use of jailhouse informants. The procedures include necessary disclosures by prosecutors to the defense including benefits requested by the informant, time frames for disclosure, and possibility of hearings to determine reliability. The bill also provides for remedies for improper disclosure and jury instructions.

Section 1 Findings The Interests of justice can be thwarted by unreliable testimony. Providing safeguards when reliability of testimony may be compromised through inducements is a compelling state interest. Also that jailhouse informants are unreliable and due to inducements is presumed to be unreliable.

Section 2 Definitions Benefit Plea bargain, modification of sentence, leniency, reward etc., which has or may be offered to informant for testimony in a criminal proceeding.

Jailhouse informant Offers testimony about statements by suspect or defendant while in jail together and has requested or received a benefit for the testimony.

Section 3 Sections 1 to 8 apply when suspect or defendant is charged with a felony.

Section 4 County Attorney's maintain records of: cases where a jailhouse informant is offered or provided and benefits requested.

Section 5 If prosecution uses jailhouse informant, must disclose to defense: criminal history of the informant, benefits requested, statements allegedly made by defendant or time, place, and manner of disclosures, cases and other information where informant testified or intended to testify including benefits offered or received and situations where the informant recanted.

These disclosures re made as soon as possible but no later than 30 days prior to trial. If after that date court may allow disclosure at that time if could not have been discovered by prosecutor earlier.

If court finds (clear and convincing standard) possibility of harm to informant, can permit redaction.

If after deadline prosecutor discovers additional information that should be disclosed, notifies the court immediately and provides to defense.

Section 6 If prosecutor intends to use jailhouse informant testimony, court hearing is held to determine if testimony is reliable unless waived by defendant. Prosecution must show by preponderance of evidence that testimony is reliable or it is disallowed.

Section 7 If brought to the attention of the court during the proceeding that the prosecution has not provided the notice in section 5, the court can: order the prosecution disclose, grant a continuance, prohibit the prosecution from calling a witness or introducing evidence not disclosed, or enter an order the court deems just.

Section 8 If the testimony of a jailhouse informant is admitted, the jury is instructed (language is included in the section): that jailhouse informant testimony is weighed with greater care, that informant may receive benefits, and reliability factors shall be considered when evaluating the testimony.

Section 9 Amends section 29-1912, addressing witnesses in general to strike current language regarding jailhouse informants. Adds language that the section does not apply to jailhouse informants and sections 1 to 8 of the bill apply to jailhouse informants.

Section 10 Repeals original sections.

Explanation of amendments:

Committee Amendment AM 761 strikes a portion of the findings contained in section 1 (subsection 2) of LB 352 and also strikes section 8 of the bill which contained jury instructions regarding the testimony of a jailhouse informant.

The amendment also inserts two new sections. A new section 6 provides that if a jailhouse informant receives leniency relating to a pending charge against a victim, prosecutors must notify the victim and if a plea deal is part of the leniency the prosecutor must consult or make an effort to consult with the victim.

A new section 7 provides for a hearing upon a defendant's motion regarding admissibility of a jailhouse informant's testimony. The burden of proof is on the state. If the court finds by a preponderance of evidence that the testimony is not reliable, the court shall not allow the testimony or statement. Factors the court may consider include: the relationship between the informant and defendant, and the substance, time, place and manner of statements made between the defendant and informant and between the informant and law enforcement.

Steve Lathrop, Chairperson