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**AN ACT REGARDING DISCLOSURE AND REGULATION
OF JAILHOUSE INFORMANT TESTIMONY**

SECTION 1. LEGISLATIVE INTENT

Whereas, the testimony of “jailhouse” informants, who were not at the scene of the crime and who have reason to seek leniency from the criminal justice system, is inherently suspect;

Whereas, truthful jailhouse informant testimony may still be important in solving crimes;

Whereas, there are ways to assess whether or not informant testimony is reliable;

Whereas, a system in which jailhouse informants are rewarded – either tacitly or explicitly – by the State produces dangerous incentives to manufacture or fabricate testimony;

Whereas, video recording statements provided by jailhouse informants is necessary for judges’ and juries’ proper consideration of such evidence;

Whereas, the use of jailhouse informant testimony without a system to properly assess its reliability or corroborate its substance provides fertile ground for obstruction of the fair administration of justice; and

Whereas, a failure to properly educate law enforcement, defense lawyers, prosecutors, judges and other fact finders about the vulnerabilities inherent in jailhouse informant testimony enables



improper consideration of such testimony, which can seriously undermine the integrity of our criminal justice system;

[State] hereby enacts legislation to address the unreliability of jailhouse informant testimony.

SECTION 2. DEFINITIONS

- A. "Informant" means someone who is purporting to have knowledge of admissions made to him by a criminal defendant while incarcerated in a penal institution contemporaneously.
- B. "Electronic recording" or "electronically recorded" means an audio and visual recording that is an authentic, accurate, unaltered record of an informant statement.
- C. "Statement" means an oral, written, sign language or nonverbal communication.

SECTION 3. ELECTRONIC RECORDING OF INFORMANT STATEMENT

- A. All statements made by an informant relating to a crime described in the following sections of the [insert jurisdiction] Criminal and Juvenile Codes shall be electronically recorded: [insert section numbers].
- B. If an audio and visual recording is not practicable, an audio recording is an acceptable alternative to audio and visual recording.
- C. Every electronic recording of a statement by an informant shall be clearly identified and catalogued by law enforcement personnel.
- D. Every electronic recording shall be preserved by law enforcement personnel until all appeals, post-conviction and habeas corpus proceedings connected to that testimony are final and



concluded, or the time within which such proceedings must be brought has expired.

E. Upon motion by the defendant, the court may order that a copy of the recording be preserved for any period beyond the expiration of all appeals.

SECTION 4. TIMELY DISCLOSURE OF MATERIAL RELATING TO INFORMANT TESTIMONY

A. In any case relating to a crime described in the following sections of the [insert jurisdiction] Criminal and Juvenile Codes, the prosecution must disclose in a timely manner its intent to introduce the testimony of an informant.

B. The prosecution shall also in a timely manner disclose in discovery the following factors:

1. The complete criminal history of the informant;
2. Any deals, promises, inducements or benefits that the offering party has made or will make in the future to the informant;
3. The substance of the statements made by the accused to the informant;
4. The time and place of the statements given by the accused to the informant, the time and place of the disclosure of the informant statement to law enforcement officials, and the names of all persons present when the statements by the accused and the informant were made;
5. Whether at any time the informant modified or recanted that testimony or statement and, if so, the time and place of the modification or recantation, the nature of the modification or recantation and the names of the persons who were present at the modification or recantation;
6. Other cases in which the informant testified, provided that the existence of such testimony can be ascertained through reasonable inquiry, and whether the informant received any

promise, inducement or benefit in exchange for or subsequent to that testimony or statement;

7. If known, the relationship between the accused and the informant, including the amount of time they were incarcerated in the same custodial section of the jail or prison; and

8. Any other information relevant to the informant's credibility.

SECTION 5. PRE-TRIAL RELIABILITY AND CORROBORATION HEARINGS

A. Before a trial or proceeding in which the State intends to introduce the testimony of an informant, the court shall hold a pre-trial hearing to assess the reliability and to determine whether the State can corroborate the content of informant testimony relating to a crime (described in the following sections of the [insert jurisdiction] Criminal and Juvenile Codes), unless the defendant waives such a hearing. If the prosecution fails to show by a preponderance of the evidence that the informant's testimony is reliable, the court shall render the testimony inadmissible.

B. At the reliability hearing, the court shall consider all of factors enumerated in Section 4(B) as well as the following factors related to corroboration:

1. Whether the informant statement led to the discovery of new evidence previously unknown to the police; and

2. Whether the informant statement includes an accurate description of the details of the crime that are not easily guessed, have not been reported publicly and can be independently corroborated.

SECTION 6. JURY INSTRUCTIONS

Should the court determine that the informant testimony is reliable and can be corroborated under Section 5, it shall, upon request of the defendant, provide the jury with a cautionary instruction about the general unreliability of informant testimony and the specific factors that may have influenced the testimony in the present case.

SECTION 7. MONITORING REQUIREMENT

A. The Judicial Council [or analogous state law enforcement practice committee] shall create a centralized tracking system to monitor state practice as it relates to the admission of informant testimony evidence.

B. The Judicial Council [or analogous [State] law enforcement practice committee] shall maintain the following information in a central file, which shall be available to the public upon request:

1. Name of each informant that provided testimony in any criminal case;
2. Department of Corrections [or analogous [State] Corrections agency] identifying information for each informant that provided testimony in any criminal case;
3. Specific information describing deals, promises, inducements or benefits, including leniency, sentence or charge reduction, immunity from prosecution and prison benefits, offered to and/or accepted by each informant that provided testimony in each criminal case;
and
4. Information identifying the specific location where the video recording, audio recording, or transcript of the substance of the testimony provided by an informant in any criminal case



is retained.

SECTION 8. TRAINING PROGRAM

A. The Department of Public Safety [or analogous [State] law enforcement training entity] shall create, administer and conduct training programs for law enforcement officers and recruits regarding the fallibility of informant testimony and methods to assess its reliability and corroborate its veracity.

B. The [State] Bar Association shall create, administer and conduct judicial training programs regarding the fallibility of informant testimony and instruction regarding how the court shall determine whether informant testimony is reliable and can be corroborated under Section 5.

SECTION 9. EFFECTIVE DATE

This Act shall take effect on [date].