

# SENATE BILL NO. 914

June 12, 2024, Introduced by Senators SHINK, GEISS, BAYER and SANTANA and referred to the Committee on Civil Rights, Judiciary, and Public Safety.

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, and 36g to chapter VIII.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1  
2  
3  
4

CHAPTER VIII

Sec. 36a. As used in this section and sections 36b to 36g of this chapter:

(a) "Benefit" means any plea bargain, bail consideration,

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

9 (b) "In-custody informant" means an individual, other than a  
10 codefendant, percipient witness, accomplice, or co-conspirator, who  
11 provides testimony or information for use in the investigation or  
12 prosecution of a defendant based upon statements made by the  
13 defendant under 1 of the following circumstances:

14 (i) While the defendant and the in-custody informant were  
15 housed in the same correctional facility, county jail, local  
16 lockup, or other custodial facility, regardless of location.

17 (ii) While the defendant and the in-custody informant were not  
18 in custody and in the same location, and the in-custody informant  
19 is subsequently housed in a correctional facility, county jail,  
20 local lockup, or other custodial facility, regardless of location,  
21 because of the in-custody informants own charges.

22 (c) "Official" means an individual acting on behalf of the  
23 government during an investigation or prosecution of a misdemeanor  
24 or felony, including, but not limited to, a prosecuting attorney or  
25 a law enforcement officer.

26 (d) "Prosecuting attorney's office" includes the office of a  
27 county prosecuting attorney and the department of the attorney  
28 general.

29 Sec. 36b. (1) Each prosecuting attorney's office shall track

1 and, as provided under subsection (2), submit a record of the  
2 following information:

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

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

8 (2) Each county prosecuting attorney's office shall provide  
9 the information described under subsection (1) to the department of  
10 corrections and the department of state police. If a prosecuting  
11 attorney's office fails to provide the information described under  
12 subsection (1), the information is precluded from use in criminal  
13 prosecution until the prosecuting attorney's office complies with  
14 this section.

15 (3) The department of corrections and the department of state  
16 police shall maintain a statewide record of the information  
17 collected under subsection (1).

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

21 Sec. 36c. A prosecuting attorney shall disclose to the  
22 defense, during the course of discovery, no later than 21 days  
23 before trial or any pretrial hearing at which the in-custody  
24 informant's statements or testimony will be introduced, any  
25 information in the possession, custody, or control of the  
26 prosecution that is relevant to an in-custody informant's  
27 credibility, including, but not limited to, all of the following:

28 (a) A benefit that any official has extended or will extend in  
29 the future to the in-custody informant. This includes, but is not

1 limited to, a cooperation agreement with any official.

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

4 (c) The substance, time, and place of any statement given by  
5 the in-custody informant to any official implicating the defendant  
6 in the crime charged.

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

8 (e) If the in-custody informant has previously testified or  
9 provided information in exchange for a benefit, all other cases in  
10 which the in-custody informant has done so, the content of the  
11 statements and testimony of the in-custody informant in those  
12 cases, and the specific benefit previously offered or received.

13 (f) Whether or not the in-custody informant modified or  
14 recanted the in-custody informant's testimony at any time and, if  
15 so, the time and place of the recantation or modification, the  
16 nature of the recantation or modification, and the name of any  
17 individual present at the recantation or modification.

18 Sec. 36d. A prosecuting attorney shall disclose no later than  
19 21 days before trial or any pretrial hearing at which the in-  
20 custody informant's statements or testimony will be introduced the  
21 prosecution's intent to introduce the testimony of an in-custody  
22 informant. The same procedure for introducing the testimony of  
23 other fact witnesses that are applicable in this state applies to  
24 an in-custody informant's testimony.

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

1 limited to, the unavailability of the in-custody informant, the  
2 information described under section 36c of this chapter must be  
3 included with the written statement.

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

9       Sec. 36g. If the in-custody informant's testimony is admitted  
10 into evidence, a cautionary instruction must be provided to the  
11 jury. The jury instruction must include all of the following  
12 provisions:

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

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

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