

AMENDED IN ASSEMBLY MARCH 16, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 359**

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**Introduced by Assembly Member Jones-Sawyer**

February 8, 2017

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An act to amend ~~Section~~ *Sections 1127a and 4001.1* of the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 359, as amended, Jones-Sawyer. In-custody informants.

Existing law defines an in-custody informant to mean a person, other than a codefendant, percipient witness, accomplice, or coconspirator whose testimony is based upon statements made by the defendant while both the defendant and the informant are held within a correctional institution. Existing law prohibits a law enforcement or correctional official from giving, offering, or promising to give any monetary payment in excess of \$50 in return for an in-custody informant's testimony in any criminal proceeding, as specified. *Existing law requires the prosecution to file with the court a written statement prior to trial setting out any and all consideration, as defined, promised to, or received by, the in-custody informant when the prosecution calls an in-custody informant as a witness in any criminal trial.*

This bill would revise the *definition of an in-custody informant to refer to a person, other than a codefendant, percipient witness, accomplice, or coconspirator who provides testimony or information for use in the investigation or prosecution of a suspect or defendant based upon statements made by the suspect or defendant while both the suspect or defendant and the informant are housed within a correctional institution. The bill would require the prosecutor, when the prosecution*

*intends to call an in-custody informant as a witness in any criminal trial, to file with the court a written statement no less than 30 days prior to the preliminary hearing setting out the substance of all communications between the informant and any member of the prosecution, or a law enforcement or correctional agency, regarding the informant’s possible testimony or participation in information gathering, and setting out any and all consideration impliedly or expressly offered or promised to, or requested or received by, the in-custody informant. The bill would require the statement to contain specified information, including the informant’s complete criminal history, including pending criminal charges or investigations in which the informant is a suspect, and whether the informant is a substance abuser or has a history of substance abuse. The bill would also revise the definition of consideration for purposes of these provisions.*

*This bill would expand the scope of the prohibition against a law enforcement or correctional official giving, offering, or promising to give a monetary payment by limiting the monetary payment to make it applicable to a member of a prosecutorial entity, among other changes. The bill would also make the provision applicable to property and gifts, among other benefits, and would limit the combined value of those benefits to \$100. The bill would also make technical changes.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1127a of the Penal Code is amended to  
 2     read:  
 3     1127a. (a) As used in this section, an “in-custody informant”  
 4     means a person, other than a codefendant, percipient witness,  
 5     accomplice, or coconspirator ~~whose testimony is~~ *who provides*  
 6     *testimony or information for use in the investigation or prosecution*  
 7     *of a suspect or defendant based upon statements made by the*  
 8     *suspect or defendant while both the suspect or defendant and the*  
 9     *informant are held housed within a correctional institution.*  
 10    (b) In any criminal trial or proceeding in which an in-custody  
 11    informant testifies as a witness, upon the request of a party, the  
 12    court shall instruct the jury as follows:  
 13    “The testimony of an in-custody informant should be viewed  
 14    with caution and close scrutiny. In evaluating such testimony, you

1 should consider the extent to which it may have been influenced  
2 by the receipt of, or expectation of, any benefits from the party  
3 calling that witness. This does not mean that you may arbitrarily  
4 disregard such testimony, but you should give it the weight to  
5 which you find it to be entitled in the light of all the evidence in  
6 the case.”

7 (c) When the prosecution ~~calls~~ *intends to call* an in-custody  
8 informant as a witness in any criminal trial, ~~contemporaneous with~~  
9 ~~the calling of that witness,~~ the prosecution shall file with the court  
10 a written statement setting out *the substance of all communications*  
11 *between the informant and any member of the prosecution, or a*  
12 *law enforcement or correctional agency, regarding the informant’s*  
13 *possible testimony or participation in information gathering, and*  
14 *setting out any and all consideration impliedly or expressly offered*  
15 *or promised to, or requested or received by, the in-custody*  
16 *informant. The statement shall also include all of the following:*

17 (1) *Information regarding any current or previous cases in*  
18 *which the in-custody informant is providing or provided testimony*  
19 *or information to assist in the investigation of a suspect or the*  
20 *prosecution of a defendant, including the substance of all*  
21 *communications between the informant and any member of the*  
22 *prosecution, or a law enforcement or correctional agency*  
23 *regarding the informant’s possible testimony or participation in*  
24 *information gathering, the nature of the information provided in*  
25 *that case, and what consideration was impliedly or expressly*  
26 *offered or promised to, or requested or received by, the in-custody*  
27 *informant.*

28 (2) *Whether at any time in another case in which the informant*  
29 *is providing or provided information or testimony, the informant*  
30 *recanted or modified the testimony or statement given.*

31 (3) *The informant’s complete criminal history, including pending*  
32 *criminal charges or investigations in which the informant is a*  
33 *suspect.*

34 (4) *Whether the informant is a substance abuser or has a history*  
35 *of substance abuse.*

36 (5) *Any known or readily available information about the*  
37 *informant’s mental health.*

38 (6) *Any other information relevant to the informant’s credibility.*

39 ~~The~~

1 (d) *The statement filed with the court shall not expand or limit*  
2 *the defendant’s right to discover information that is otherwise*  
3 *provided by law. The statement shall be provided to the defendant*  
4 *or the defendant’s attorney no less than 30 days prior to ~~trial~~ the*  
5 *preliminary hearing and the information contained in the statement*  
6 *shall be subject to rules of evidence.*

7 ~~(d)~~

8 (e) For purposes of subdivision (c), “consideration” means any  
9 plea bargain, bail consideration, reduction or modification of  
10 sentence, or any other leniency, benefit, immunity, financial  
11 assistance, reward, or amelioration of current or future conditions  
12 of incarceration in return for, or in connection with, the informant’s  
13 *participation in any information-gathering activity, investigation,*  
14 *or operation, or in return for, or in connection with, the informant’s*  
15 *testimony in the criminal proceeding in which the prosecutor*  
16 *intends to call him or her as a witness.*

17 **SECTION 1.**

18 **SEC. 2.** Section 4001.1 of the Penal Code is amended to read:

19 4001.1. (a) *A member of a prosecutorial entity or a law*  
20 *enforcement or correctional ~~official~~ agency shall not give, offer,*  
21 *or promise to give any monetary ~~payment~~ payments, property,*  
22 *gifts, financial assistance, benefits, rewards, or amelioration of*  
23 *current or future conditions of incarceration with a combined*  
24 *value in excess of one hundred dollars (\$100) in return for or in*  
25 *connection with an in-custody informant’s testimony in a criminal*  
26 ~~*proceeding.*~~ *proceeding or participation in any*  
27 *information-gathering activity, investigation, or operation, or both*  
28 *that testimony and participation. If a person receives benefits not*  
29 *routinely provided to other persons housed in the correctional*  
30 *institution and offers testimony or participates in an*  
31 *information-gathering activity, the documentation requirements*  
32 *of subdivision (c) and the disclosure requirements of subdivision*  
33 *(c) of Section 1127a shall apply. This section does not prohibit*  
34 *payments incidental to the informant’s testimony necessary to*  
35 *secure the informant’s presence at trial, such as expenses incurred*  
36 *for witness or immediate family relocation, lodging, housing,*  
37 *meals, ~~phone~~ telephone calls, travel, or witness fees authorized by*  
38 *law, provided those payments are supported by appropriate*  
39 *documentation demonstrating that the money was used for the*  
40 *purposes for which it was given. This subdivision does not prohibit*

1 *the prosecutor from giving or offering any plea bargain, bail*  
2 *consideration, reduction or modification of sentence, or immunity*  
3 *in consideration for an in-custody informant's testimony or*  
4 *participation in an information-gathering activity, investigation,*  
5 *or operation, and these types of consideration shall not be included*  
6 *in the consideration that is subject to the one-hundred-dollar*  
7 *(\$100) limit, but shall be documented pursuant to subdivision (c)*  
8 *and disclosed as required pursuant to subdivision (c) of Section*  
9 *1127a.*

10 (b) A law enforcement agency or an in-custody informant acting  
11 as an agent for the agency shall not take action, beyond merely  
12 listening to statements of a defendant, that is deliberately designed  
13 to elicit incriminating remarks.

14 (c) Any member of the prosecution, or a law enforcement or  
15 correctional agency who gives, expressly or impliedly offers, or  
16 promises consideration to, or receives a request for consideration  
17 from, an in-custody informant shall document in writing the  
18 substance of all communications regarding the informant's possible  
19 testimony or participation in information gathering, and the  
20 consideration requested, given, expressly or impliedly offered, or  
21 promised. Any documentation required to be kept under this  
22 subdivision shall be transmitted to the district attorney of the  
23 county in which the in-custody informant was or is held no less  
24 frequently than once a week and shall be made discoverable. If  
25 information or testimony from the in-custody informant is used in  
26 a prosecution in a county other than the county where the  
27 informant was held when the informant gathered the information,  
28 the documentation shall additionally be transmitted to the district  
29 attorney of the county where the case is prosecuted. The district  
30 attorney shall maintain a searchable electronic record of all  
31 documentation required under this subdivision in a format that  
32 allows for all information regarding a particular informant to be  
33 readily retrieved.

34 (e)

35 (d) As used in this section, ~~an~~ the following definitions apply:

36 (1) "Consideration" has the meaning set forth in Section 1127a.

37 (2) An "in-custody informant" means a person described in  
38 subdivision (a) of Section 1127a.

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