

SECOND REGULAR SESSION

SENATE BILL NO. 1566

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR BURGER.

6434S.02I

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 491.065, RSMo, and to enact in lieu thereof one new section relating to informants in criminal cases.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 491.065, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 491.065,
3 to read as follows:

491.065. 1. As used in this section, unless the
2 context otherwise requires, the following terms mean:
3 (1) "Benefit", any plea bargain, bail consideration,
4 reduction or modification of sentence, or any other
5 leniency, immunity, financial payment, reward, or
6 amelioration of current or future conditions of
7 incarceration that has been requested or that has been or
8 may, at a future date, be offered or provided in connection
9 with or in exchange for the testimony of an informant who
10 was endorsed **or proposed as a witness** by the state;

11 (2) "Informant", a witness who provides testimony that
12 offers allegedly self-incriminating statements or activities
13 of another person who is under investigation or being
14 charged with an offense, and the witness:

15 (a) Is or was incarcerated with the suspect or
16 defendant;

**EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted
and is intended to be omitted in the law.**

17 (b) Is being detained by or in the custody of law
18 enforcement; or
19 (c) Provides testimony in exchange for any benefit.

20 The term informant shall not refer to or include a
21 [codefendant or] victim involved in the case.

22 2. Beginning January 1, 2026, and thereafter, each
23 prosecuting or circuit attorney shall send the information
24 described under subdivision (4) of subsection 2 of section
25 56.750 to the Missouri office of prosecution services to be
26 included in the summary report as defined in subsection 2 of
27 section 56.750.

28 3. If a prosecuting or circuit attorney endorses a
29 witness to testify as an informant, **in a felony or**
30 **misdemeanor case**, the following material and information
31 shall be disclosed to all attorneys of record within
32 fourteen days of the endorsement by the prosecuting or
33 circuit attorney:

34 (1) The identity of the informant;

35 (2) The substance of the testimony;

36 [(1)] (3) The complete criminal history of the
37 informant, including any charges that are pending or were
38 reduced, amended, or dismissed as part of a plea bargain;

39 [(2)] (4) The informant cooperation agreement and a
40 copy of any deal, promise, inducement, or benefit that has
41 been requested or that has been or may, at a future date, be
42 offered or provided to the informant in connection with
43 testimony against the defendant's interest;

44 [(3)] (5) The substance, time, and place of any
45 statement allegedly given by the defendant to the informant,
46 and the substance, time, and place of any statement given by
47 the informant to a law enforcement agency **or to the**

48 **prosecuting or circuit attorney** implicating the defendant in
49 the offense charged;

50 **[(4)] (6)** Whether the informant recanted that
51 testimony or statement and, if so, the time and place of the
52 recantation, the nature of the recantation, and the names of
53 the persons who were present at the recantation; and

54 **[(5)] (7)** Information concerning other criminal cases
55 in any county in which the informant was endorsed by the
56 state to testify against a defendant, including the
57 following:

58 (a) The case name and number;
59 (b) The substance of the testimony;
60 (c) Any cooperation agreement, deal, promise,
61 inducement, or benefit that was requested, offered, or
62 provided to the informant in connection with the informant's
63 testimony; and

64 (d) Any other information that is requested to be
65 disclosed under the Constitution of the United States, the
66 Constitution of Missouri, and the Missouri supreme court
67 rules of criminal procedure[.];

68 **(8) All written communications with informants.**

69 **4. All communications by law enforcement or**
70 **prosecution personnel with informants by phone or in person**
71 **shall be recorded by video or audio and made available to**
72 **the defense.**

73 **5. Upon the motion of a defendant, the court shall**
74 **conduct a pretrial hearing to determine whether the**
75 **informant's testimony exhibits reliability and is admissible**
76 **based on the following factors:**

77 (1) **The extent to which the statement is confirmed;**
78 (2) **The specificity of the alleged statement;**

79 (3) The extent to which the statement contains details
80 or leads to the discovery of evidence known only to the
81 perpetrator;

82 (4) The extent to which the statement contains details
83 or leads which could reasonably be accessed by the in-
84 custody informant, other than through inculpatory statements
85 by the accused;

86 (5) The informant's general character, which may be
87 evidenced by his or her criminal record or other
88 disreputable or dishonest conduct known to the authorities;

89 (6) Any request the informant has made for benefits or
90 special treatment, whether or not agreed to, and any
91 promises which may have been made or discussed with the
92 informant by a person in authority in connection with the
93 provision of the statement or an agreement to testify;

94 (7) Whether the informant has, in the past, given
95 reliable information to the authorities;

96 (8) Whether the informant has previously claimed to
97 have received statements while in custody;

98 (9) Whether the informant has previously testified in
99 any court proceeding, whether as a witness for the
100 prosecution or the defense or on his or her behalf, and any
101 findings in relation to the accuracy and reliability of that
102 evidence, if known;

103 (10) Whether the informant made some written or other
104 record of the words allegedly spoken by the accused and, if
105 so, whether the record was made contemporaneous to the
106 alleged statement of the accused;

107 (11) The circumstances under which the informant's
108 report of the alleged statement was taken;

109 (12) The manner in which the report of the statement
110 was taken by the police;

111 (13) Any other known evidence that may attest to or
112 diminish the credibility of the informant, including the
113 presence or absence of any relationship between the accused
114 and the informant;

115 (14) Any relevant information contained in any
116 available registry of informants.

117 6. If a prosecuting attorney fails to show by
118 preponderance of the evidence that an informant's testimony
119 is reliable, the court shall exclude the testimony at trial.

120 7. When an informant's testimony is used at trial, the
121 court shall instruct the jurors to assess the informant's
122 testimony with greater scrutiny and shall detail reliability
123 facts that the juror should consider, including benefits
124 offered or expected in exchange for the testimony, the
125 criminal history, other cases in which the informant
126 testified in exchange for benefits, and whether the
127 informant has recanted his or her statements at any time.

128 8. If it is determined that the prosecuting attorney
129 has failed to provide the required information to the
130 defendant, in a case which the prosecuting attorney has used
131 an informant as a witness:

132 (1) Such failure shall be considered a violation of
133 due process rights pursuant to *Brady v. Maryland*, 373 U.S.
134 83 (1963), entitling the defendant to a new trial or
135 vacation of this conviction; and

136 (2) Such violation shall also entitle the defendant to
137 the right to seek compensation in a civil action from non-
138 immune persons relating to the wrongful conviction. In
139 claims filed by the defendant for a new trial or for
140 compensation, the harmless error rule shall not apply.

141 9. In the event it is determined that an informant
142 testified falsely at a trial, the prosecuting attorney

143 having jurisdiction in the city or county where the trial
144 occurred may charge and prosecute the informant with perjury
145 pursuant to section 575.040.

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