

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Section A. Section 491.065, RSMo, is repealed and one new  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.**

(b) Is being detained by or in the custody of law enforcement; or

(c) Provides testimony in exchange for any benefit.

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

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

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

(1) **The identity of the informant;**

(2) **The substance of the testimony;**

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

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

[(3)] (5) The substance, time, and place of any statement allegedly given by the defendant to the informant, and the substance, time, and place of any statement given by 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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