

SECOND REGULAR SESSION

# HOUSE BILL NO. 2061

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SAULS.

3967H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To amend chapter 590, RSMo, by adding thereto one new section relating to confidential informants, with a penalty provision.

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

Section A. Chapter 590, RSMo, is amended by adding thereto one new section, to be known as section 590.725, to read as follows:

**590.725. 1. This section shall be known and may be cited as "Noelle's Law".**

**2. A law enforcement agency that uses confidential informants shall:**

**(1) Adopt policies and procedures that provide reasonable protective measures for confidential informants when a law enforcement agency knows or should have known of a risk or threat of harm to a person serving as a confidential informant and the risk or threat of harm is a result of his or her service to the law enforcement agency; and**

**(2) Refer prospective and current confidential informants who are known to be substance abusers or to be at risk for substance abuse to prevention or treatment services.**

**3. A law enforcement agency that uses confidential informants shall establish policies and procedures addressing the recruitment, control, and use of confidential informants. The policies and procedures shall state the:**

**(1) Information that the law enforcement agency shall maintain concerning each confidential informant;**

**(2) General guidelines for the management and safety of handling confidential informants;**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

18           **(3) Process to advise confidential informants of conditions, restrictions, and**  
19 **procedures associated with participating in the agency's investigative or intelligence-**  
20 **gathering activities;**

21           **(4) Designated supervisory or command-level review and oversight in the use of**  
22 **confidential informants;**

23           **(5) Limits or restrictions on off-duty association or social relationships by agency**  
24 **personnel involved in investigative or intelligence gathering with confidential**  
25 **informants;**

26           **(6) Guidelines to deactivate confidential informants, including guidelines for**  
27 **deactivating communications with confidential informants; and**

28           **(7) Training requirements that agency personnel are required to complete in**  
29 **order to recruit and manage confidential informants that are consistent with the**  
30 **national law enforcement standards level of supervisory approval required before a**  
31 **juvenile is used as a confidential informant.**

32           **4. A law enforcement agency that uses confidential informants shall establish**  
33 **policies and procedures to assess the suitability of using a person as a confidential**  
34 **informant that consider the following factors:**

35           **(1) The person's age, maturity, and experience to serve as a confidential**  
36 **informant;**

37           **(2) The risk the person poses to adversely affect a present or potential**  
38 **investigation or prosecution;**

39           **(3) The effect upon agency efforts that the disclosure of the person's cooperation**  
40 **may have on the agency's investigative or intelligence-gathering activities in the**  
41 **community;**

42           **(4) Whether the person is a substance abuser, or has a history of substance abuse**  
43 **or is in a court supervised drug treatment program;**

44           **(5) The risk of physical harm to the person, his or her immediate family, or close**  
45 **associates as a result of providing information or assistance, or upon the disclosure of**  
46 **the person's assistance;**

47           **(6) Whether the person has shown any indication of emotional instability or**  
48 **unreliability, or of furnishing false information;**

49           **(7) The person's criminal history or prior criminal record; and**

50           **(8) Whether the use of the person is necessary, important to, or vital to the**  
51 **success of an investigation.**

52           **5. A state or local law enforcement agency that uses confidential informants shall**  
53 **perform a periodic review of actual agency confidential informant practices to ensure**  
54 **conformity with the agency's policies and procedures and this section.**

55           **6. A law enforcement agency that solicits a person to act as a confidential**  
56 **informant shall give that person the opportunity to consult with legal counsel before**  
57 **entering into an assistance agreement and serving as a confidential informant. However,**  
58 **the agency may advise the prospective confidential informant that he or she may waive**  
59 **the right to consult with legal counsel before entering into the assistance agreement, and**  
60 **he or she may serve as a confidential informant without consulting with legal counsel if**  
61 **such waiver is documented.**

62           **7. (1) A person who is under eighteen years of age shall not participate in a**  
63 **controlled buy or sale of contraband or related activities but may provide confidential**  
64 **information to a law enforcement agency.**

65           **(2) A person who is receiving inpatient or outpatient substance abuse treatment**  
66 **from a licensed service provider or is participating in a treatment-based drug court**  
67 **program shall not participate in a controlled buy or sale of contraband or related**  
68 **activities but may provide confidential information to a law enforcement agency while**  
69 **receiving substance abuse treatment.**

70           **8. College or university police officers shall not recruit, assist in the recruitment**  
71 **of, refer to another law enforcement agency, or otherwise use an enrolled student to**  
72 **participate in a controlled buy or sale of contraband or related activities but an enrolled**  
73 **student may provide confidential information to such police or another law enforcement**  
74 **agency.**

75           **9. A law enforcement agency that uses confidential informants shall collect and**  
76 **report data that includes the information required in subdivisions (1) to (8) of**  
77 **subsection 4 of this section. The department of public safety shall develop and**  
78 **disseminate a standardized form that shall be completed by every law enforcement**  
79 **agency that uses confidential informants. A law enforcement agency that uses**  
80 **confidential informants shall collect such data for the preceding calendar year and**  
81 **report it by March first of each year to the department. Upon receipt of the completed**  
82 **forms, the department shall compile the data and, by June first of each year, issue a**  
83 **publicly available report. The data and report shall not disclose the identity of a**  
84 **confidential informant but shall include the following information:**

85           **(1) The number of active confidential informants;**

86           **(2) Categories of active confidential informants compiled by race, ethnicity,**  
87 **gender, age, and zip code;**

88           **(3) The number of confidential informants used to conduct controlled buys or**  
89 **sales of contraband, or related activities conducted on behalf of the agency;**

90           **(4) The number of deaths of confidential informants that occurred during**  
91 **controlled buys or sales of contraband, or related activities conducted on behalf of the**  
92 **agency;**

93           **(5) The number of injuries to confidential informants that occurred during**  
94 **controlled buys or sales of contraband, or related activities conducted on behalf of the**  
95 **agency;**

96           **(6) The number of deaths of confidential informants whose cause of death may**  
97 **be related to their service as a confidential informant;**

98           **(7) The number of injuries to confidential informants whose cause of injury may**  
99 **be related to their service as a confidential informant;**

100           **(8) The total amount of cash payments provided to a confidential informant by**  
101 **the agency;**

102           **(9) The total number of dropped or reduced charges provided to a prospective or**  
103 **current confidential informant by the agency; and**

104           **(10) The total number of instances in which the law enforcement agency**  
105 **recommended leniency for a confidential informant at sentencing.**

106           **10. A law enforcement officer who willfully fails to comply with this section**  
107 **commits a class C felony.**

108           **11. The provisions of this section and policies and procedures adopted under this**  
109 **section do not grant any right or entitlement to a confidential informant or a person who**  
110 **is requested to be a confidential informant, and any failure to abide by this section shall**  
111 **not be relied upon to create any additional right, substantive or procedural, enforceable**  
112 **at law by a defendant in a criminal proceeding.**

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