

HOUSE BILL NO. 2523

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHROER.

5275H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 491, RSMo, by adding thereto one new section relating to informants.

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

Section A. Chapter 491, RSMo, is amended by adding thereto one new section, to be known as section 491.065, to read as follows:

491.065. 1. As used in this section unless the context otherwise requires, the following words mean:

(1) "Benefit", any plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, immunity, financial payment, reward, or amelioration of current or future conditions of incarceration that has been requested or that has been or may, at a future date, be offered or provided in connection with or in exchange for the testimony of an informant who was endorsed by the state;

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

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

(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. Each prosecuting attorney's office shall maintain a central record that is searchable and tracks:

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.

19 (1) Each case in which an informant has been endorsed by the state to testify
20 against a defendant's interest;

21 (2) The substance of the testimony; and

22 (3) Any benefit that has been requested by or has been offered to the informant,
23 and any benefit that may be provided at a future date in connection with such testimony.

24 3. On a monthly basis, each county's prosecuting attorney's office shall send the
25 information described under subsection 2 of this section to the Missouri state highway
26 patrol within the department of public safety, and the information shall be maintained
27 in a centralized statewide record that is available to prosecuting attorneys throughout
28 the state.

29 4. The information described in this section is accessible only by the prosecuting
30 attorney's office and is not subject to the provisions under chapter 610. Nothing in this
31 section shall be interpreted to exclude the mandatory disclosure of this information to a
32 defendant through discovery, in accordance with *Brady v. Maryland*, 373 U.S. 83 (1963)
33 and other controlling legal precedent.

34 5. If a prosecuting attorney endorses a witness to testify as an informant, the
35 following material and information shall be disclosed within the time frame provided
36 under rule 25 of the Missouri rules of criminal procedure:

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

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

43 (3) The substance, time, and place of any statement allegedly given by the
44 defendant to the informant, and the substance, time, and place of any statement given
45 by the informant to law enforcement implicating the defendant in the offense charged;

46 (4) Whether the informant recanted that testimony or statement and, if so, the
47 time and place of the recantation, the nature of the recantation, and the names of the
48 persons who were present at the recantation; and

49 (5) Information concerning other criminal cases in any county in which the
50 informant was endorsed by the state to testify against a defendant, including the
51 following:

52 (a) The case name and number;

53 (b) The substance of the testimony;

54 (c) Any cooperation agreement, deal, promise, inducement, or benefit that was
55 requested, offered, or provided to the informant in connection with the informant's
56 testimony; and

57 (d) Any other information that is requested to be disclosed under the
58 Constitution of the United States, the Constitution of Missouri, and the Missouri
59 rules of criminal procedure.

60 6. Failure to provide in discovery information in response to subsection 5 of this
61 section shall result in a waiver of absolute immunity for any prosecuting attorney who
62 violates the provision and a waiver of qualified immunity for any law enforcement
63 officer who fails to disclose benefits or promises of benefits.

64 7. In any criminal prosecution in which the prosecuting attorney's office intends
65 to introduce the testimony of an informant and upon the motion of the defendant, the
66 court shall conduct a pretrial hearing to determine whether the informant's testimony is
67 reliable and therefore admissible based upon the material and information disclosed
68 under subsections 5 and 6 of this section, as well as the following factors:

69 (1) The extent to which the informant's testimony is supported by other
70 evidence;

71 (2) The specificity of the informant's testimony;

72 (3) The extent to which the testimony contains details known only by the
73 defendant;

74 (4) The extent to which the details of the testimony could be obtained from a
75 source other than the defendant; and

76 (5) The circumstances under which the informant initially provided the
77 information to law enforcement or the prosecuting attorney, including whether the
78 informant was responding to leading questions.

79 8. The prosecuting attorney shall show by a preponderance of the evidence that
80 the informant's testimony is reliable based on the factors under subsection 5 of this
81 section in order for the court to allow the testimony to be heard at trial.

82 9. If the informant's testimony is admitted into evidence, the court shall instruct
83 jurors to consider the material and information disclosed and enumerated under
84 subsection 5 of this section when assessing the reliability and truthfulness of the
85 informant's testimony.

86 10. If an informant receives a benefit related to a pending charge, a prior
87 conviction, or a sentence for an offense committed by the informant that involved a
88 victim, the prosecuting attorney shall notify the victim of the benefit the informant is
89 receiving in accordance with the provisions under chapter 595.