

HOUSE BILL NO. 2658

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SAULS.

5466H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 595.209, RSMo, and to enact in lieu thereof two new sections relating to informants in criminal proceedings.

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

Section A. Section 595.209, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 491.065 and 595.209, to read as follows:

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

2. 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.

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. Each prosecuting or circuit attorney shall maintain a central record that is**
19 **searchable and tracks:**

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

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

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

25 **4. On a monthly basis, each prosecuting or circuit attorney shall send the**
26 **information described under subsection 3 of this section to the Missouri state highway**
27 **patrol, and the information shall be maintained in a centralized statewide record that is**
28 **available to prosecuting or circuit attorneys throughout the state.**

29 **5. The information described in this section is not a public record subject to the**
30 **provisions of chapter 610 and is accessible only by the prosecuting or circuit attorney or**
31 **by any attorney who has entered an appearance on behalf of a party to the case in which**
32 **the informant is an endorsed witness.**

33 **6. If a prosecuting or circuit attorney endorses a witness to testify as an**
34 **informant, the following material and information shall be disclosed within fourteen**
35 **days of the endorsement by the prosecuting or circuit attorney:**

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

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

42 **(3) The substance, time, and place of any statement allegedly given by the**
43 **defendant to the informant, and the substance, time, and place of any statement given**
44 **by the informant to a law enforcement agency implicating the defendant in the offense**
45 **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 7. Failure to provide information in response to subsection 6 of this section
61 during discovery shall result in a waiver of absolute immunity and a report to the
62 Missouri office of chief disciplinary counsel for any prosecuting or circuit attorney who
63 violates the provisions of subsection 6 of this section and a waiver of qualified immunity
64 and a report to the POST commission for any law enforcement officer who fails to
65 disclose to the defendant any benefits or promises of benefits offered to the informant.

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

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

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

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

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

79 (5) The circumstances under which the informant initially provided the
80 information to law enforcement or the prosecuting or circuit attorney, including
81 whether the informant was responding to leading questions.

82 9. The prosecuting or circuit attorney shall show by a preponderance of the
83 evidence that the informant's testimony is reliable based on the factors under subsection
84 6 of this section in order for the court to allow the testimony to be heard at trial.

85 10. If the informant's testimony is admitted into evidence, the court shall
86 instruct jurors to consider the material and information disclosed and enumerated
87 under subsections 6 and 8 of this section when assessing the reliability and truthfulness
88 of the informant's testimony.

595.209. 1. The following rights shall automatically be afforded to victims of
2 dangerous felonies, as defined in section 556.061, victims of murder in the first degree, as

3 defined in section 565.020, victims of voluntary manslaughter, as defined in section 565.023,
4 victims of any offense under chapter 566, victims of an attempt to commit one of the
5 preceding crimes, as defined in section 562.012, and victims of domestic assault, as defined in
6 sections 565.072 to 565.076; and, upon written request, the following rights shall be afforded
7 to victims of all other crimes and witnesses of crimes:

8 (1) For victims, the right to be present at all criminal justice proceedings at which the
9 defendant has such right, including juvenile proceedings where the offense would have been a
10 felony if committed by an adult, even if the victim is called to testify or may be called to
11 testify as a witness in the case;

12 (2) For victims, the right to information about the crime, as provided for in
13 subdivision (5) of this subsection;

14 (3) For victims and witnesses, to be informed, in a timely manner, by the prosecutor's
15 office of the filing of charges, preliminary hearing dates, trial dates, continuances and the
16 final disposition of the case. Final disposition information shall be provided within five days;

17 (4) For victims, the right to confer with and to be informed by the prosecutor
18 regarding bail hearings, guilty pleas, pleas under chapter 552 or its successors, hearings,
19 sentencing and probation revocation hearings and the right to be heard at such hearings,
20 including juvenile proceedings, unless in the determination of the court the interests of justice
21 require otherwise;

22 (5) The right to be informed by local law enforcement agencies, the appropriate
23 juvenile authorities or the custodial authority of the following:

24 (a) The status of any case concerning a crime against the victim, including juvenile
25 offenses;

26 (b) The right to be informed by local law enforcement agencies or the appropriate
27 juvenile authorities of the availability of victim compensation assistance, assistance in
28 obtaining documentation of the victim's losses, including, but not limited to and subject to
29 existing law concerning protected information or closed records, access to copies of
30 complete, unaltered, unedited investigation reports of motor vehicle, pedestrian, and other
31 similar accidents upon request to the appropriate law enforcement agency by the victim or the
32 victim's representative, and emergency crisis intervention services available in the
33 community;

34 (c) Any release of such person on bond or for any other reason;

35 (d) Within twenty-four hours, any escape by such person from a municipal detention
36 facility, county jail, a correctional facility operated by the department of corrections, mental
37 health facility, or the division of youth services or any agency thereof, and any subsequent
38 recapture of such person;

39 **(e) Any instance in which such person has been endorsed by a prosecuting or**
40 **circuit attorney as an informant under section 491.065 and any benefit that has been**
41 **requested by or has been offered to the informant and any benefit that may be provided**
42 **at a future date in connection with such endorsement;**

43 (6) For victims, the right to be informed by appropriate juvenile authorities of
44 probation revocation hearings initiated by the juvenile authority and the right to be heard at
45 such hearings or to offer a written statement, video or audio tape, counsel or a representative
46 designated by the victim in lieu of a personal appearance, the right to be informed by the
47 board of probation and parole of probation revocation hearings initiated by the board and of
48 parole hearings, the right to be present at each and every phase of parole hearings, the right to
49 be heard at probation revocation and parole hearings or to offer a written statement, video or
50 audio tape, counsel or a representative designated by the victim in lieu of a personal
51 appearance, and the right to have, upon written request of the victim, a partition set up in the
52 probation or parole hearing room in such a way that the victim is shielded from the view of
53 the probationer or parolee, and the right to be informed by the custodial mental health facility
54 or agency thereof of any hearings for the release of a person committed pursuant to the
55 provisions of chapter 552, the right to be present at such hearings, the right to be heard at such
56 hearings or to offer a written statement, video or audio tape, counsel or a representative
57 designated by the victim in lieu of personal appearance;

58 (7) For victims and witnesses, upon their written request, the right to be informed by
59 the appropriate custodial authority, including any municipal detention facility, juvenile
60 detention facility, county jail, correctional facility operated by the department of corrections,
61 mental health facility, division of youth services or agency thereof if the offense would have
62 been a felony if committed by an adult, postconviction or commitment pursuant to the
63 provisions of chapter 552 of the following:

64 (a) The projected date of such person's release from confinement;

65 (b) Any release of such person on bond;

66 (c) Any release of such person on furlough, work release, trial release, electronic
67 monitoring program, or to a community correctional facility or program or release for any
68 other reason, in advance of such release;

69 (d) Any scheduled parole or release hearings, including hearings under section
70 217.362, regarding such person and any changes in the scheduling of such hearings. No such
71 hearing shall be conducted without thirty days' advance notice;

72 (e) Within twenty-four hours, any escape by such person from a municipal detention
73 facility, county jail, a correctional facility operated by the department of corrections, mental
74 health facility, or the division of youth services or any agency thereof, and any subsequent
75 recapture of such person;

76 (f) Any decision by a parole board, by a juvenile releasing authority or by a circuit
77 court presiding over releases pursuant to the provisions of chapter 552, or by a circuit court
78 presiding over releases under section 217.362, to release such person or any decision by the
79 governor to commute the sentence of such person or pardon such person;

80 (g) Notification within thirty days of the death of such person;

81 (8) For witnesses who have been summoned by the prosecuting attorney and for
82 victims, to be notified by the prosecuting attorney in a timely manner when a court
83 proceeding will not go on as scheduled;

84 (9) For victims and witnesses, the right to reasonable protection from the defendant or
85 any person acting on behalf of the defendant from harm and threats of harm arising out of
86 their cooperation with law enforcement and prosecution efforts;

87 (10) For victims and witnesses, on charged cases or submitted cases where no charge
88 decision has yet been made, to be informed by the prosecuting attorney of the status of the
89 case and of the availability of victim compensation assistance and of financial assistance and
90 emergency and crisis intervention services available within the community and information
91 relative to applying for such assistance or services, and of any final decision by the
92 prosecuting attorney not to file charges;

93 (11) For victims, to be informed by the prosecuting attorney of the right to restitution
94 which shall be enforceable in the same manner as any other cause of action as otherwise
95 provided by law;

96 (12) For victims and witnesses, to be informed by the court and the prosecuting
97 attorney of procedures to be followed in order to apply for and receive any witness fee to
98 which they are entitled;

99 (13) When a victim's property is no longer needed for evidentiary reasons or needs to
100 be retained pending an appeal, the prosecuting attorney or any law enforcement agency
101 having possession of the property shall, upon request of the victim, return such property to the
102 victim within five working days unless the property is contraband or subject to forfeiture
103 proceedings, or provide written explanation of the reason why such property shall not be
104 returned;

105 (14) An employer may not discharge or discipline any witness, victim or member of a
106 victim's immediate family for honoring a subpoena to testify in a criminal proceeding,
107 attending a criminal proceeding, or for participating in the preparation of a criminal
108 proceeding, or require any witness, victim, or member of a victim's immediate family to use
109 vacation time, personal time, or sick leave for honoring a subpoena to testify in a criminal
110 proceeding, attending a criminal proceeding, or participating in the preparation of a criminal
111 proceeding;

112 (15) For victims, to be provided with creditor intercession services by the prosecuting
113 attorney if the victim is unable, as a result of the crime, temporarily to meet financial
114 obligations;

115 (16) For victims and witnesses, the right to speedy disposition of their cases, and for
116 victims, the right to speedy appellate review of their cases, provided that nothing in this
117 subdivision shall prevent the defendant from having sufficient time to prepare such
118 defendant's defense. The attorney general shall provide victims, upon their written request,
119 case status information throughout the appellate process of their cases. The provisions of this
120 subdivision shall apply only to proceedings involving the particular case to which the person
121 is a victim or witness;

122 (17) For victims and witnesses, to be provided by the court, a secure waiting area
123 during court proceedings and to receive notification of the date, time and location of any
124 hearing conducted by the court for reconsideration of any sentence imposed, modification of
125 such sentence or recall and release of any defendant from incarceration;

126 (18) For victims, the right to receive upon request from the department of corrections
127 a photograph taken of the defendant prior to release from incarceration.

128 2. The provisions of subsection 1 of this section shall not be construed to imply any
129 victim who is incarcerated by the department of corrections or any local law enforcement
130 agency has a right to be released to attend any hearing or that the department of corrections or
131 the local law enforcement agency has any duty to transport such incarcerated victim to any
132 hearing.

133 3. Those persons entitled to notice of events pursuant to the provisions of subsection
134 1 of this section shall provide the appropriate person or agency with their current addresses,
135 electronic mail addresses, and telephone numbers or the addresses, electronic mail addresses,
136 or telephone numbers at which they wish notification to be given.

137 4. Notification by the appropriate person or agency utilizing the statewide automated
138 crime victim notification system as established in section 650.310 shall constitute compliance
139 with the victim notification requirement of this section. If notification utilizing the statewide
140 automated crime victim notification system cannot be used, then written notification shall be
141 sent by certified mail or electronic mail to the most current address or electronic mail address
142 provided by the victim.

143 5. Victims' rights as established in Section 32 of Article I of the Missouri Constitution
144 or the laws of this state pertaining to the rights of victims of crime shall be granted and
145 enforced regardless of the desires of a defendant and no privileges of confidentiality shall
146 exist in favor of the defendant to exclude victims or prevent their full participation in each and
147 every phase of parole hearings or probation revocation hearings. The rights of the victims
148 granted in this section are absolute and the policy of this state is that the victim's rights are

149 paramount to the defendant's rights. The victim has an absolute right to be present at any
150 hearing in which the defendant is present before a probation and parole hearing officer.

✓