

SENATE BILL NO. 489

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHROER.

1853S.01I

KRISTINA MARTIN, Secretary

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Section A. Section 595.209, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 491.065 and 595.209, to read as follows: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

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

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

26 (2) The substance of the testimony; and

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

30 3. On a monthly basis, each prosecuting or circuit
31 attorney shall send the information described under
32 subsection 2 of this section to the Missouri state highway
33 patrol, and the information shall be maintained in a
34 centralized statewide record that is available to
35 prosecuting or circuit attorneys throughout the state.

36 4. The information described in this section is not a
37 public record subject to the provisions of chapter 610 and
38 is accessible only by the prosecuting or circuit attorney or
39 by any attorney who has entered an appearance on behalf of a
40 party to the case in which the informant is an endorsed
41 witness.

42 5. If a prosecuting or circuit attorney endorses a
43 witness to testify as an informant, the following material
44 and information shall be disclosed within fourteen days of
45 the endorsement by the prosecuting or circuit attorney:

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

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

54 (3) The substance, time, and place of any statement
55 allegedly given by the defendant to the informant, and the
56 substance, time, and place of any statement given by the
57 informant to a law enforcement agency implicating the
58 defendant in the offense charged;

59 (4) Whether the informant recanted that testimony or
60 statement and, if so, the time and place of the recantation,
61 the nature of the recantation, and the names of the persons
62 who were present at the recantation; and

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

66 (a) The case name and number;

67 (b) The substance of the testimony;

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

72 (d) Any other information that is requested to be
73 disclosed under the Constitution of the United States, the
74 Constitution of Missouri, and the Missouri rules of criminal
75 procedure.

76 6. Failure to provide information in response to
77 subsection 5 of this section during discovery shall result
78 in a waiver of absolute immunity and a report to the
79 Missouri office of chief disciplinary counsel for any
80 prosecuting or circuit attorney who violates the provisions

81 of subsection 5 of this section and a waiver of qualified
82 immunity and a report to the POST commission for any law
83 enforcement officer who fails to disclose to the defendant
84 any benefits or promises of benefits offered to the
85 informant.

86 7. In any criminal prosecution in which the
87 prosecuting or circuit attorney intends to introduce the
88 testimony of an informant and upon the motion of the
89 defendant, the court shall conduct a pretrial evidentiary
90 hearing to determine whether the informant's testimony is
91 reliable and therefore admissible based upon the material
92 and information disclosed under subsections 5 and 6 of this
93 section, as well as the following factors:

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

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

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

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

101 (5) The circumstances under which the informant
102 initially provided the information to law enforcement or the
103 prosecuting or circuit attorney, including whether the
104 informant was responding to leading questions.

105 8. The prosecuting or circuit attorney shall show by a
106 preponderance of the evidence that the informant's testimony
107 is reliable based on the factors under subsection 5 of this
108 section in order for the court to allow the testimony to be
109 heard at trial.

110 9. If the informant's testimony is admitted into
111 evidence, the court shall instruct jurors to consider the
112 material and information disclosed and enumerated under

113 **subsection 5 and 7 of this section when assessing the**
114 **reliability and truthfulness of the informant's testimony.**

595.209. 1. The following rights shall automatically
2 be afforded to victims of dangerous felonies, as defined in
3 section 556.061, victims of murder in the first degree, as
4 defined in section 565.020, victims of voluntary
5 manslaughter, as defined in section 565.023, victims of any
6 offense under chapter 566, victims of an attempt to commit
7 one of the preceding crimes, as defined in section 562.012,
8 and victims of domestic assault, as defined in sections
9 565.072 to 565.076; and, upon written request, the following
10 rights shall be afforded to victims of all other crimes and
11 witnesses of crimes:

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

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

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

25 (4) For victims, the right to confer with and to be
26 informed by the prosecutor regarding bail hearings, guilty
27 pleas, pleas under chapter 552 or its successors, hearings,
28 sentencing and probation revocation hearings and the right
29 to be heard at such hearings, including juvenile

30 proceedings, unless in the determination of the court the
31 interests of justice require otherwise;

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

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

37 (b) The right to be informed by local law enforcement
38 agencies or the appropriate juvenile authorities of the
39 availability of victim compensation assistance, assistance
40 in obtaining documentation of the victim's losses,
41 including, but not limited to and subject to existing law
42 concerning protected information or closed records, access
43 to copies of complete, unaltered, unedited investigation
44 reports of motor vehicle, pedestrian, and other similar
45 accidents upon request to the appropriate law enforcement
46 agency by the victim or the victim's representative, and
47 emergency crisis intervention services available in the
48 community;

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

51 (d) Within twenty-four hours, any escape by such
52 person from a municipal detention facility, county jail, a
53 correctional facility operated by the department of
54 corrections, mental health facility, or the division of
55 youth services or any agency thereof, and any subsequent
56 recapture of such person;

57 **(e) Any instance in which such person has been**
58 **endorsed by a prosecuting or circuit attorney as an**
59 **informant under section 491.065 and any benefit that has**
60 **been requested by or has been offered to the informant and**

61 **any benefit that may be provided at a future date in**
62 **connection with such endorsement;**

63 (6) For victims, the right to be informed by
64 appropriate juvenile authorities of probation revocation
65 hearings initiated by the juvenile authority and the right
66 to be heard at such hearings or to offer a written
67 statement, video or audio tape, counsel or a representative
68 designated by the victim in lieu of a personal appearance,
69 the right to be informed by the board of probation and
70 parole of probation revocation hearings initiated by the
71 board and of parole hearings, the right to be present at
72 each and every phase of parole hearings, the right to be
73 heard at probation revocation and parole hearings or to
74 offer a written statement, video or audio tape, counsel or a
75 representative designated by the victim in lieu of a
76 personal appearance, and the right to have, upon written
77 request of the victim, a partition set up in the probation
78 or parole hearing room in such a way that the victim is
79 shielded from the view of the probationer or parolee, and
80 the right to be informed by the custodial mental health
81 facility or agency thereof of any hearings for the release
82 of a person committed pursuant to the provisions of chapter
83 552, the right to be present at such hearings, the right to
84 be heard at such hearings or to offer a written statement,
85 video or audio tape, counsel or a representative designated
86 by the victim in lieu of personal appearance;

87 (7) For victims and witnesses, upon their written
88 request, the right to be informed by the appropriate
89 custodial authority, including any municipal detention
90 facility, juvenile detention facility, county jail,
91 correctional facility operated by the department of
92 corrections, mental health facility, division of youth

93 services or agency thereof if the offense would have been a
94 felony if committed by an adult, postconviction or
95 commitment pursuant to the provisions of chapter 552 of the
96 following:

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

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

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

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

109 (e) Within twenty-four hours, any escape by such
110 person from a municipal detention facility, county jail, a
111 correctional facility operated by the department of
112 corrections, mental health facility, or the division of
113 youth services or any agency thereof, and any subsequent
114 recapture of such person;

115 (f) Any decision by a parole board, by a juvenile
116 releasing authority or by a circuit court presiding over
117 releases pursuant to the provisions of chapter 552, or by a
118 circuit court presiding over releases under section 217.362,
119 to release such person or any decision by the governor to
120 commute the sentence of such person or pardon such person;

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

123 (8) For witnesses who have been summoned by the
124 prosecuting attorney and for victims, to be notified by the

125 prosecuting attorney in a timely manner when a court
126 proceeding will not go on as scheduled;

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

132 (10) For victims and witnesses, on charged cases or
133 submitted cases where no charge decision has yet been made,
134 to be informed by the prosecuting attorney of the status of
135 the case and of the availability of victim compensation
136 assistance and of financial assistance and emergency and
137 crisis intervention services available within the community
138 and information relative to applying for such assistance or
139 services, and of any final decision by the prosecuting
140 attorney not to file charges;

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

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

149 (13) When a victim's property is no longer needed for
150 evidentiary reasons or needs to be retained pending an
151 appeal, the prosecuting attorney or any law enforcement
152 agency having possession of the property shall, upon request
153 of the victim, return such property to the victim within
154 five working days unless the property is contraband or
155 subject to forfeiture proceedings, or provide written

156 explanation of the reason why such property shall not be
157 returned;

158 (14) An employer may not discharge or discipline any
159 witness, victim or member of a victim's immediate family for
160 honoring a subpoena to testify in a criminal proceeding,
161 attending a criminal proceeding, or for participating in the
162 preparation of a criminal proceeding, or require any
163 witness, victim, or member of a victim's immediate family to
164 use vacation time, personal time, or sick leave for honoring
165 a subpoena to testify in a criminal proceeding, attending a
166 criminal proceeding, or participating in the preparation of
167 a criminal proceeding;

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

172 (16) For victims and witnesses, the right to speedy
173 disposition of their cases, and for victims, the right to
174 speedy appellate review of their cases, provided that
175 nothing in this subdivision shall prevent the defendant from
176 having sufficient time to prepare such defendant's defense.
177 The attorney general shall provide victims, upon their
178 written request, case status information throughout the
179 appellate process of their cases. The provisions of this
180 subdivision shall apply only to proceedings involving the
181 particular case to which the person is a victim or witness;

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

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

191 2. The provisions of subsection 1 of this section
192 shall not be construed to imply any victim who is
193 incarcerated by the department of corrections or any local
194 law enforcement agency has a right to be released to attend
195 any hearing or that the department of corrections or the
196 local law enforcement agency has any duty to transport such
197 incarcerated victim to any hearing.

198 3. Those persons entitled to notice of events pursuant
199 to the provisions of subsection 1 of this section shall
200 provide the appropriate person or agency with their current
201 addresses and telephone numbers or the addresses or
202 telephone numbers at which they wish notification to be
203 given.

204 4. Notification by the appropriate person or agency
205 utilizing the statewide automated crime victim notification
206 system as established in section 650.310 shall constitute
207 compliance with the victim notification requirement of this
208 section. If notification utilizing the statewide automated
209 crime victim notification system cannot be used, then
210 written notification shall be sent by certified mail to the
211 most current address provided by the victim.

212 5. Victims' rights as established in Section 32 of
213 Article I of the Missouri Constitution or the laws of this
214 state pertaining to the rights of victims of crime shall be
215 granted and enforced regardless of the desires of a
216 defendant and no privileges of confidentiality shall exist
217 in favor of the defendant to exclude victims or prevent
218 their full participation in each and every phase of parole
219 hearings or probation revocation hearings. The rights of

220 the victims granted in this section are absolute and the
221 policy of this state is that the victim's rights are
222 paramount to the defendant's rights. The victim has an
223 absolute right to be present at any hearing in which the
224 defendant is present before a probation and parole hearing
225 officer.

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