

FIRST REGULAR SESSION

# HOUSE BILL NO. 1311

102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SAULS.

2651H.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 know 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

61           **7. (1) A person who is under eighteen years of age shall not participate in a**  
62 **controlled buy or sale of contraband or related activities but may provide confidential**  
63 **information to a law enforcement agency.**

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

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

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

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

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

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

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

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

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

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

99           **(8) The total amount of cash payments provided to confidential informants by**  
100 **the agency;**

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

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

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

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

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