

ASSEMBLY BILL NO. 201—ASSEMBLYMEN GONZÁLEZ, YEAGER, FLORES; ANDERSON, BILBRAY-AXELROD, COHEN, CONSIDINE, MARZOLA, BRITTNEY MILLER, C.H. MILLER, NGUYEN, ORENTLICHER, PETERS, SUMMERS-ARMSTRONG, THOMAS, TORRES AND WATTS

MARCH 8, 2021

JOINT SPONSORS: SENATORS DONATE,
D. HARRIS AND OHRENSCHALL

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to informants.
(BDR 14-777)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal procedure; requiring each office of a prosecuting attorney to maintain certain records relating to certain informants; requiring a prosecuting attorney to make certain disclosures to the defense relating to informants; requiring a court to instruct jurors to consider certain information relating to informants; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 5 of this bill requires each office of a prosecuting attorney to maintain complete and systematic records of cases prosecuted by the office in which testimony or information was provided by an informant pursuant to a cooperation agreement. **Sections 5 and 8** of this bill provide that such records are confidential and not considered public books or records.

Section 6 of this bill provides that if a prosecuting attorney intends to use testimony or information provided by an informant in a hearing or trial, the prosecuting attorney must disclose the following information or materials to the defense: (1) a summary of the criminal history of the informant; (2) a copy of any cooperation agreement; (3) any benefit that was provided or may be provided to the informant in exchange for his or her testimony or information; (4) the substance and, if known, the time and place of any statement made by the defendant to the



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informant that is relevant to the hearing or trial; (5) the substance and, if known, the time and place of any statement implicating the defendant that was made by the informant to a law enforcement officer; (6) details relating to any occasion in which the informant recanted his or her testimony; (7) information concerning other cases in which the informant testified in exchange for a benefit; and (8) any other case known to the prosecuting attorney in which the informant offered to provide testimony in exchange for a benefit but did not testify in the case. **Section 6** requires such disclosures to be made not later than 30 days before the hearing or trial unless the court revises the deadline for making the disclosures or the court continues the hearing or trial. **Section 6** also provides that if a court finds that making the disclosures may result in substantial bodily harm to the informant, the court may order the disclosures to only be made to the attorney for the defendant, and not to the defendant or any other party. Finally, **section 6** requires a court to instruct the jury to consider certain information in assessing the credibility of an informant.

Sections 3, 3.5 and 4 of this bill define the terms “benefit,” “cooperation agreement” and “informant,” respectively, for the purposes of this bill. **Section 2** of this bill makes a conforming change relating to the definitions.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 178 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. *As used in sections 2 to 7, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3, 3.5 and 4 of this act have the meanings ascribed to them in those sections.*

Sec. 3. *“Benefit” means:*

- 1. A plea bargain;*
- 2. Any consideration of bail or conditions of release;*
- 3. A reduction or modification of a term of sentence; or*
- 4. Any other leniency, immunity, financial payment, reward or amelioration of the current or future conditions of any term of sentence.*

Sec. 3.5. *“Cooperation agreement” means a written agreement:*

- 1. Between a person who is in jail or prison and the office of a prosecuting attorney wherein the person agrees to be an informant; and*
- 2. Which includes, without limitation, a summary of:*
 - (a) The testimony or information to be provided by the informant; and*
 - (b) The benefit which has been or may be provided to the informant in exchange for the testimony or information described in paragraph (a).*



Sec. 4. "Informant" means a person who:

1. Provides testimony or information on behalf of the State based on any statement made by a defendant while the defendant and the person were in jail or prison; and

2. Requested, received or may receive a benefit in connection with the provision of the testimony or information described in subsection 1.

Sec. 5. 1. Every office of a prosecuting attorney must maintain complete and systematic records of any case prosecuted by the office in which testimony or information was provided by an informant pursuant to a cooperation agreement. The records must include, without limitation:

(a) The substance of the testimony or information;

(b) Any benefit that has been requested by, offered to or has been or may be provided to the informant in connection with the provision of the testimony or information; and

(c) A copy of the cooperation agreement.

2. The records described in subsection 1 are confidential and are not public books or records within the meaning of NRS 239.010.

Sec. 6. 1. Except as otherwise provided in subsections 2 and 3, if a prosecuting attorney intends to use testimony or information provided by an informant at a hearing or trial, the prosecuting attorney must disclose the following information or material to the defense as soon as possible, but not later than 30 days before the hearing or trial:

(a) A summary of the criminal history of the informant, including, without limitation:

(1) Any pending charges; and

(2) Any charge that was reduced or dismissed as part of a plea bargain;

(b) A copy of any cooperation agreement;

(c) Any benefit that has been requested by, offered to, or has been or may be provided to the informant in connection with his or her provision of the testimony;

(d) The substance and, if known, the time and place of:

(1) Any statement that is relevant to the hearing or trial made by the defendant to the informant; and

(2) Any statement implicating the defendant in the charged offense made by the informant to a law enforcement officer;

(e) Any occasion in which the informant recanted his or her testimony, including, without limitation:

(1) The time and place of the recantation;

(2) The nature of the recantation; and



(3) The name of any person who was present at the time of the recantation;

(f) Any other case in which the informant provided testimony and the benefit offered or provided in each case; and

(g) Any other case known to the prosecuting attorney in which the informant offered to provide testimony in exchange for a benefit but did not testify in the case.

2. A court may, upon good cause shown, implement a revised deadline for making the disclosures described in subsection 1 or, upon its own motion, continue the hearing or trial described in subsection 1, if:

(a) The informant was not known to the prosecuting attorney until after the deadline for making disclosures described in subsection 1; and

(b) The information and materials described in subsection 1 could not have been discovered or obtained by the prosecuting attorney with the exercise of due diligence before the deadline for making the disclosures described in subsection 1.

3. If a court finds that disclosing the information and materials described in subsection 1 will result in the possibility of substantial bodily harm to the informant, the court may require the information and materials to be viewed exclusively by the attorney for the defendant, and not by the defendant or any other party.

4. In every trial in which a prosecuting attorney uses testimony or information provided by an informant, the court shall instruct the jury to consider the information described in paragraphs (c) to (g), inclusive, of subsection 1 in assessing the credibility of the informant.

Sec. 7. (Deleted by amendment.)

Sec. 8. NRS 239.010 is hereby amended to read as follows:

239.010 1. Except as otherwise provided in this section and NRS 1.4683, 1.4687, 1A.110, 3.2203, 41.071, 49.095, 49.293, 62D.420, 62D.440, 62E.516, 62E.620, 62H.025, 62H.030, 62H.170, 62H.220, 62H.320, 75A.100, 75A.150, 76.160, 78.152, 80.113, 81.850, 82.183, 86.246, 86.54615, 87.515, 87.5413, 87A.200, 87A.580, 87A.640, 88.3355, 88.5927, 88.6067, 88A.345, 88A.7345, 89.045, 89.251, 90.730, 91.160, 116.757, 116A.270, 116B.880, 118B.026, 119.260, 119.265, 119.267, 119.280, 119A.280, 119A.653, 119A.677, 119B.370, 119B.382, 120A.690, 125.130, 125B.140, 126.141, 126.161, 126.163, 126.730, 127.007, 127.057, 127.130, 127.140, 127.2817, 128.090, 130.312, 130.712, 136.050, 159.044, 159A.044, 172.075, 172.245, 176.01249, 176.015, 176.0625, 176.09129, 176.156, 176A.630, 178.39801, 178.4715, 178.5691, 179.495, 179A.070, 179A.165, 179D.160, 200.3771,



1 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392,
2 209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140,
3 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464,
4 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240,
5 218G.350, 226.300, 228.270, 228.450, 228.495, 228.570, 231.069,
6 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239.014,
7 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230,
8 239C.250, 239C.270, 239C.420, 240.007, 241.020, 241.030,
9 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560,
10 250.087, 250.130, 250.140, 250.150, 268.095, 268.0978, 268.490,
11 268.910, 269.174, 271A.105, 281.195, 281.805, 281A.350,
12 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068,
13 286.110, 286.118, 287.0438, 289.025, 289.080, 289.387, 289.830,
14 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.5757, 293.870,
15 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061,
16 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725,
17 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049,
18 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255,
19 360.755, 361.044, 361.2242, 361.610, 365.138, 366.160, 368A.180,
20 370.257, 370.327, 372A.080, 378.290, 378.300, 379.0075, 379.008,
21 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455,
22 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249,
23 391.033, 391.035, 391.0365, 391.120, 391.925, 392.029, 392.147,
24 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335,
25 392.850, 393.045, 394.167, 394.16975, 394.1698, 394.447, 394.460,
26 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685,
27 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153,
28 414.280, 416.070, 422.2749, 422.305, 422A.342, 422A.350,
29 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175,
30 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902,
31 432C.140, 432C.150, 433.534, 433A.360, 437.145, 437.207,
32 439.4941, 439.840, 439.914, 439B.420, 439B.754, 439B.760,
33 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395,
34 442.735, 442.774, 445A.665, 445B.570, 445B.7773, 447.345,
35 449.209, 449.245, 449.4315, 449A.112, 450.140, 450B.188,
36 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050,
37 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993,
38 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.535, 480.545,
39 480.935, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536,
40 483.340, 483.363, 483.575, 483.659, 483.800, 484A.469, 484E.070,
41 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160,
42 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090,
43 603.070, 603A.210, 604A.303, 604A.710, 612.265, 616B.012,
44 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.238,
45 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425,



1 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069,
2 630.133, 630.2673, 630.30665, 630.336, 630A.555, 631.368,
3 632.121, 632.125, 632.3415, 632.405, 633.283, 633.301, 633.4715,
4 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085,
5 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075,
6 640A.220, 640B.730, 640C.580, 640C.600, 640C.620, 640C.745,
7 640C.760, 640D.190, 640E.340, 641.090, 641.221, 641.325,
8 641A.191, 641A.262, 641A.289, 641B.170, 641B.282, 641B.460,
9 641C.760, 641C.800, 642.524, 643.189, 644A.870, 645.180,
10 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220,
11 645C.225, 645D.130, 645D.135, 645G.510, 645H.320, 645H.330,
12 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228,
13 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133,
14 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380,
15 676A.340, 676A.370, 677.243, 678A.470, 678C.710, 678C.800,
16 679B.122, 679B.124, 679B.152, 679B.159, 679B.190, 679B.285,
17 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540,
18 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110,
19 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696,
20 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538,
21 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120,
22 703.196, 704B.325, 706.1725, 706A.230, 710.159, 711.600, *and*
23 *section 5 of this act*, sections 35, 38 and 41 of chapter 478, Statutes
24 of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada
25 2013 and unless otherwise declared by law to be confidential, all
26 public books and public records of a governmental entity must be
27 open at all times during office hours to inspection by any person,
28 and may be fully copied or an abstract or memorandum may be
29 prepared from those public books and public records. Any such
30 copies, abstracts or memoranda may be used to supply the general
31 public with copies, abstracts or memoranda of the records or may be
32 used in any other way to the advantage of the governmental entity or
33 of the general public. This section does not supersede or in any
34 manner affect the federal laws governing copyrights or enlarge,
35 diminish or affect in any other manner the rights of a person in any
36 written book or record which is copyrighted pursuant to federal law.

37 2. A governmental entity may not reject a book or record
38 which is copyrighted solely because it is copyrighted.

39 3. A governmental entity that has legal custody or control of a
40 public book or record shall not deny a request made pursuant to
41 subsection 1 to inspect or copy or receive a copy of a public book or
42 record on the basis that the requested public book or record contains
43 information that is confidential if the governmental entity can
44 redact, delete, conceal or separate, including, without limitation,
45 electronically, the confidential information from the information



1 included in the public book or record that is not otherwise
2 confidential.

3 4. If requested, a governmental entity shall provide a copy of a
4 public record in an electronic format by means of an electronic
5 medium. Nothing in this subsection requires a governmental entity
6 to provide a copy of a public record in an electronic format or by
7 means of an electronic medium if:

8 (a) The public record:

9 (1) Was not created or prepared in an electronic format; and

10 (2) Is not available in an electronic format; or

11 (b) Providing the public record in an electronic format or by
12 means of an electronic medium would:

13 (1) Give access to proprietary software; or

14 (2) Require the production of information that is confidential
15 and that cannot be redacted, deleted, concealed or separated from
16 information that is not otherwise confidential.

17 5. An officer, employee or agent of a governmental entity who
18 has legal custody or control of a public record:

19 (a) Shall not refuse to provide a copy of that public record in the
20 medium that is requested because the officer, employee or agent has
21 already prepared or would prefer to provide the copy in a different
22 medium.

23 (b) Except as otherwise provided in NRS 239.030, shall, upon
24 request, prepare the copy of the public record and shall not require
25 the person who has requested the copy to prepare the copy himself
26 or herself.

