

Amendment No. 317

Assembly Amendment to Assembly Bill No. 201	(BDR 14-777)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



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; ~~requiring the victim of a crime perpetrated by an informant to be informed of any leniency provided to the informant in exchange for his or her testimony or information;~~ 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 ~~that~~ **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 ~~;~~ ~~between the State and the informant;~~ (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 ~~that~~ **and, if known, the** time and place of any statement made by the defendant to the informant ~~that is relevant to the hearing or trial;~~ (5) the substance ~~that~~ **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; ~~and;~~ (7) information concerning other cases in which the informant ~~has~~ testified ~~or offered to testify or otherwise provided information;~~ **in exchange for a benefit; and (8) any other case known to the prosecuting attorney in which the informant offered to provide testimony**

18 ~~in exchange for a benefit but did not testify in the case.~~ Section 6 requires such disclosures
19 to be made not later than ~~[45]~~ 30 days before the hearing or trial unless the court revises the
20 deadline for making the disclosures or the court continues the hearing or trial. Section 6 also
21 provides that if a court finds that making the disclosures may result in substantial bodily harm
22 to the informant, the court may order the disclosures to only be made to the attorney for the
23 defendant, and not to the defendant or any other party. Finally, section 6 requires a court to
24 instruct the jury to consider certain information in assessing the credibility of an informant.

25 ~~[— Section 7 of this bill requires the prosecuting attorney to notify the victim of a crime~~
26 ~~perpetrated by an informant of any leniency provided to the informant in connection with his~~
27 ~~or her provision of testimony or information.]~~

28 Sections 3, 3.5 and 4 of this bill define the terms ~~["benefit"]~~ "benefit," "cooperation
29 agreement" and "informant" , respectively, for the purposes of this bill. Section 2 of this bill
30 makes a conforming change relating to the definitions.

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

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

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

6 Sec. 3. "Benefit" means:

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

12 Sec. 3.5. "Cooperation agreement" means a written agreement:

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

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

- 20 1. Provides testimony or information on behalf of the State based on any
21 statement made by a defendant while the defendant and the person were in jail or
22 prison; and
23 2. Requested, received or may receive a benefit in connection with the
24 provision of the testimony or information described in subsection 1.

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

- 29 (a) The substance of the testimony or information; ~~and~~
30 (b) Any benefit that has been requested by, offered to or has been or may be
31 provided to the informant in connection with the provision of the testimony or
32 information ~~+~~; and
33 (c) A copy of the cooperation agreement.

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

1 **Sec. 6.** 1. Except as otherwise provided in subsections 2 and 3, if a
2 prosecuting attorney intends to use testimony or information provided by an
3 informant at a hearing or trial, the prosecuting attorney must disclose the
4 following information or material to the defense as soon as possible, but not later
5 than ~~45~~ 30 days before the hearing or trial:

6 (a) ~~The~~ A summary of the criminal history of the informant, including,
7 without limitation:

8 (1) Any pending charges; and

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

10 (b) A copy of any cooperation agreement ; ~~between the State and the~~
11 ~~informant concerning his or her provision of the testimony or information;~~

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

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

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

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

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

22 (1) The time and place of the recantation;

23 (2) The nature of the recantation; and

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

26 (f) Any other case in which the informant provided testimony ~~;~~ offered to
27 ~~provide testimony or otherwise provided information in exchange for a benefit;~~
28 and the benefit offered or provided in each case ~~;~~ and

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

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

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

37 (b) The information and materials described in subsection 1 could not have
38 been discovered or obtained by the prosecuting attorney with the exercise of due
39 diligence before the deadline for making the disclosures described in subsection
40 1.

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

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

50 **Sec. 7.** ~~1. If an informant receives any leniency relating to an offense~~
51 ~~against a person because of offering or providing testimony or information~~
52 ~~against a suspect or defendant, the prosecuting attorney shall notify any victim of~~
53 ~~a crime perpetrated by an informant of the leniency received by the informant.~~

~~2. As used in this section, "leniency" means:~~
~~(a) A plea bargain;~~
~~(b) A reduction or dismissal of charges;~~
~~(c) Any consideration of bail or conditions of release; or~~
~~(d) A reduction or modification of a term of sentence.~~ (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, 200.3772, 200.5095, 200.604, 202.3662, 205.4651, 209.392, 209.3923, 209.3925, 209.419, 209.429, 209.521, 211A.140, 213.010, 213.040, 213.095, 213.131, 217.105, 217.110, 217.464, 217.475, 218A.350, 218E.625, 218F.150, 218G.130, 218G.240, 218G.350, 226.300, 228.270, 228.450, 228.495, 228.570, 231.069, 231.1473, 233.190, 237.300, 239.0105, 239.0113, 239.014, 239B.030, 239B.040, 239B.050, 239C.140, 239C.210, 239C.230, 239C.250, 239C.270, 239C.420, 240.007, 241.020, 241.030, 241.039, 242.105, 244.264, 244.335, 247.540, 247.550, 247.560, 250.087, 250.130, 250.140, 250.150, 268.095, 268.0978, 268.490, 268.910, 269.174, 271A.105, 281.195, 281.805, 281A.350, 281A.680, 281A.685, 281A.750, 281A.755, 281A.780, 284.4068, 286.110, 286.118, 287.0438, 289.025, 289.080, 289.387, 289.830, 293.4855, 293.5002, 293.503, 293.504, 293.558, 293.5757, 293.870, 293.906, 293.908, 293.910, 293B.135, 293D.510, 331.110, 332.061, 332.351, 333.333, 333.335, 338.070, 338.1379, 338.1593, 338.1725, 338.1727, 348.420, 349.597, 349.775, 353.205, 353A.049, 353A.085, 353A.100, 353C.240, 360.240, 360.247, 360.255, 360.755, 361.044, 361.2242, 361.610, 365.138, 366.160, 368A.180, 370.257, 370.327, 372A.080, 378.290, 378.300, 379.0075, 379.008, 379.1495, 385A.830, 385B.100, 387.626, 387.631, 388.1455, 388.259, 388.501, 388.503, 388.513, 388.750, 388A.247, 388A.249, 391.033, 391.035, 391.0365, 391.120, 391.925, 392.029, 392.147, 392.264, 392.271, 392.315, 392.317, 392.325, 392.327, 392.335, 392.850, 393.045, 394.167, 394.16975, 394.1698, 394.447, 394.460, 394.465, 396.3295, 396.405, 396.525, 396.535, 396.9685, 398A.115, 408.3885, 408.3886, 408.3888, 408.5484, 412.153, 414.280, 416.070, 422.2749, 422.305, 422A.342, 422A.350, 425.400, 427A.1236, 427A.872, 432.028, 432.205, 432B.175, 432B.280, 432B.290, 432B.407, 432B.430, 432B.560, 432B.5902, 432C.140, 432C.150, 433.534, 433A.360, 437.145, 437.207, 439.4941, 439.840, 439.914, 439B.420, 439B.754, 439B.760, 440.170, 441A.195, 441A.220, 441A.230, 442.330, 442.395, 442.735, 442.774, 445A.665, 445B.570, 445B.7773, 447.345, 449.209, 449.245, 449.4315, 449A.112, 450.140, 450B.188, 453.164, 453.720, 453A.610, 453A.700, 458.055, 458.280, 459.050, 459.3866, 459.555, 459.7056, 459.846, 463.120, 463.15993, 463.240, 463.3403, 463.3407, 463.790, 467.1005, 480.535, 480.545, 480.935, 480.940, 481.063, 481.091, 481.093, 482.170, 482.5536, 483.340, 483.363, 483.575, 483.659, 483.800, 484A.469, 484E.070, 485.316, 501.344, 503.452, 522.040, 534A.031, 561.285, 571.160, 584.655, 587.877, 598.0964, 598.098, 598A.110, 599B.090, 603.070, 603A.210,

604A.303, 604A.710, 612.265, 616B.012, 616B.015, 616B.315, 616B.350, 618.341, 618.425, 622.238, 622.310, 623.131, 623A.137, 624.110, 624.265, 624.327, 625.425, 625A.185, 628.418, 628B.230, 628B.760, 629.047, 629.069, 630.133, 630.2673, 630.30665, 630.336, 630A.555, 631.368, 632.121, 632.125, 632.3415, 632.405, 633.283, 633.301, 633.4715, 633.524, 634.055, 634.214, 634A.185, 635.158, 636.107, 637.085, 637B.288, 638.087, 638.089, 639.2485, 639.570, 640.075, 640A.220, 640B.730, 640C.580, 640C.600, 640C.620, 640C.745, 640C.760, 640D.190, 640E.340, 641.090, 641.221, 641.325, 641A.191, 641A.262, 641A.289, 641B.170, 641B.282, 641B.460, 641C.760, 641C.806, 642.524, 643.189, 644A.870, 645.180, 645.625, 645A.050, 645A.082, 645B.060, 645B.092, 645C.220, 645C.225, 645D.130, 645D.135, 645G.510, 645H.320, 645H.330, 647.0945, 647.0947, 648.033, 648.197, 649.065, 649.067, 652.228, 653.900, 654.110, 656.105, 657A.510, 661.115, 665.130, 665.133, 669.275, 669.285, 669A.310, 671.170, 673.450, 673.480, 675.380, 676A.340, 676A.370, 677.243, 678A.470, 678C.710, 678C.800, 679B.122, 679B.124, 679B.152, 679B.159, 679B.190, 679B.285, 679B.690, 680A.270, 681A.440, 681B.260, 681B.410, 681B.540, 683A.0873, 685A.077, 686A.289, 686B.170, 686C.306, 687A.110, 687A.115, 687C.010, 688C.230, 688C.480, 688C.490, 689A.696, 692A.117, 692C.190, 692C.3507, 692C.3536, 692C.3538, 692C.354, 692C.420, 693A.480, 693A.615, 696B.550, 696C.120, 703.196, 704B.325, 706.1725, 706A.230, 710.159, 711.600, *and section 5 of this act*, sections 35, 38 and 41 of chapter 478, Statutes of Nevada 2011 and section 2 of chapter 391, Statutes of Nevada 2013 and unless otherwise declared by law to be confidential, all public books and public records of a governmental entity must be open at all times during office hours to inspection by any person, and may be fully copied or an abstract or memorandum may be prepared from those public books and public records. Any such copies, abstracts or memoranda may be used to supply the general public with copies, abstracts or memoranda of the records or may be used in any other way to the advantage of the governmental entity or of the general public. This section does not supersede or in any manner affect the federal laws governing copyrights or enlarge, diminish or affect in any other manner the rights of a person in any written book or record which is copyrighted pursuant to federal law.

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

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

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

(a) The public record:

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

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

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

(1) Give access to proprietary software; or

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

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

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

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