

# HOUSE BILL NO. 1218

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COLLINS.

2524H.011

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To amend chapter 545, RSMo, by adding thereto one new section relating to in-custody informants.

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

Section A. Chapter 545, RSMo, is amended by adding thereto one new section, to be known as section 545.365, to read as follows:

**545.365. 1. As used in this section, the following terms shall mean:**

**(1) "Consideration", any agreement that is expressed or implied for a plea bargain, bail consideration, reduction or modification of sentence, or any other leniency, benefit, immunity, financial assistance, reward, or amelioration of current or future conditions of incarceration in return for, or in connection with, the informant's testimony in the criminal proceeding in which the prosecuting or circuit attorney intends to call him or her as a witness;**

**(2) "In-custody informant", a person, other than a co-defendant, percipient witness, accomplice, or co-conspirator whose testimony is based upon statements made by the defendant while both the defendant and the informant were being held within the same correctional institution.**

**2. In any criminal trial or proceeding in which the prosecuting or circuit attorney intends to call an in-custody informant to testify on any matter, the prosecuting or circuit attorney shall disclose to the defense attorney, in addition to any other information required to be disclosed by law, the following:**

**(1) A written statement, signed by the informant, his or her attorney if the informant is represented, and the prosecuting or circuit attorney, setting out any and all**

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 consideration promised to, received by, or to be received by the informant from any  
19 source;

20 (2) Any video or audio recording of the informant's interview or discussion with  
21 law enforcement officers regarding the statement;

22 (3) The complete criminal history of the informant;

23 (4) The names and addresses of any and all persons with information concerning  
24 the defendant's alleged statements including, but not limited to:

25 (a) Law enforcement and prison officers to whom the informant related the  
26 statements;

27 (b) Other persons named or included in the statement; and

28 (c) Any other persons who witnessed the statement or who can be reasonably  
29 expected to have witnessed the statement;

30 (5) Any prior cases in which the informant testified and any consideration  
31 promised to, or received by, the informant, provided such information may be obtained by  
32 reasonable inquiry;

33 (6) Any and all statements by the informant concerning the offense charged; and

34 (7) Any other information that tends to undermine the informant's credibility.

35 3. Any materials required to be disclosed under this section are admissible to  
36 impeach the credibility of the in-custody informant if the informant testifies at a court  
37 proceeding.

38 4. In order for the testimony of an in-custody informant to be admissible in a court  
39 proceeding, the prosecuting or circuit attorney shall file a motion requesting the testimony  
40 be admissible. The prosecuting or circuit attorney shall bear the burden of proof at the  
41 hearing. The court may approve the motion if it concludes that, by a preponderance of the  
42 evidence, the testimony is reliable and corroborated by other evidence.

43 5. Corroborating evidence shall be credible evidence or information available  
44 independent of the in-custody informant that significantly supports the informant's  
45 testimony. Corroborating evidence shall not include the testimony of another in-custody  
46 informant unless it is established by a preponderance of the evidence that the informant  
47 has not communicated with another in-custody informant about the testimony.

48 6. In order to determine whether the evidence is reliable, the court shall consider  
49 the following:

50 (1) Any requests for consideration by the in-custody informant, any consideration  
51 offered, and whether any offer of consideration was in writing and signed by the  
52 prosecuting or circuit attorney and the informant;

53           (2) Whether the informant's interview or discussion with law enforcement officers  
54 regarding the statement was video or audio recorded;

55           (3) The complete criminal history of the informant;

56           (4) Any statement made by the defendant, including the specificity of the statement,  
57 whether the statement led to the discovery of new evidence or contained details only known  
58 by the perpetrator, and the extent to which the statement contained details that could  
59 reasonably be accessed by the informant other than through statements by the defendant;

60           (5) The time, place, and circumstances of the statement and the disclosure of the  
61 statement to law enforcement officials, including how the statement was recorded by the  
62 informant, how law enforcement officers learned that the informant had information, and  
63 how officers questioned the informant about the disclosure, investigated the information,  
64 and recorded the disclosure;

65           (6) Any relationship between the informant and the defendant;

66           (7) Any inconsistent statement by the informant;

67           (8) The reliability of testimony provided by the informant on previous occasions  
68 in which the informant claimed to have been witness to statements made in custody or  
69 testified in a court proceeding on behalf of or against another person, or on his or her own  
70 behalf;

71           (9) The quality of corroborating evidence; and

72           (10) Any other evidence relating to the credibility of the informant and the  
73 reliability of the testimony.

74           7. When an in-custody informant has testified at trial, the court shall instruct the  
75 jury to consider the factors listed in subsection 6 of this section when evaluating the  
76 reliability of the testimony. The jury shall not be instructed that the court has already  
77 found the in-custody informant to be reliable.

78           8. The attorney general shall create and maintain a registry of in-custody  
79 informants. The registry shall contain the name of any in-custody informant who testifies  
80 at any criminal proceeding, and any information regarding the informant or such person's  
81 testimony that was presented in court or disclosed to defense attorneys under this section.  
82 Information in the registry shall not be a public record under chapter 610 and shall only  
83 be available to prosecuting or circuit attorneys, law enforcement officers, and defense  
84 attorneys upon request.

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