

2017 HOUSE JUDICIARY

HB 1221

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1221
2/1/2017
27733

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the use of confidential informants by law enforcement.

Minutes:

1,2,3,4,5,6

Chairman K. Koppelman: Opened the hearing on HB 1221.

Rep. Rick C. Becker: Introduced the bill. (#1) Went through his hand out. (:45-13:00)

Representative Klemin: Is this based on some model act or where did it come from?

Rep. Rick Becker: It came from Florida statute. It has been modified.

Representative Klemin: The last page on legal remedy, that reads that even if law enforcement had evidence against some third party who had committed a crime that evidence obtained could not be used against that third party individual? Is that what it means?

Rep. Becker: That is my understanding.

Representative Nelson: I was looking at the report required. Why is much of this even necessary to inform the public?

Rep. Becker: I don't disagree with you. I think the general idea of why it is there it is probably if people want to know if there is a bias. I don't have a problem if that is stricken.

Chairman K. Koppelman: If you eliminate the ability to offer an inducement that pretty much does away with the confidential informant?

Rep. Becker: I believe a lot of the inducement or prohibit the inducement by making promises is what BCI is doing most of the time anyway. I think the difference is a promise other than saying the court will look differently. They can't make a promise because that wouldn't be trustful.

Chairman K. Koppelman: It is a false promise.

Allen Olmsted, ND Association of Justice: Just introduced Tim O'Keith.

Tim O'Keith, Attorney from Fargo and on the Board of ND Association of Justice: What we like about this bill is informed decision making and a decision. We want them to know what they are facing when they consent to be an informant. I like the safety aspect of this bill. This undercover work is some of the most dangerous work that is done. An 18, 19 or 20-year-old does not have the training that our police officers do. Those are the things we like about HB 1221.

Representative Klemin: I am wondering about a parent child interaction on this thing? I don't see anything that protects the parent into being brought in to testify against the child.

Tim O'Keith: What is important to me in this bill is they have a right to seek legal counsel.

Representative Klemin: They said the parent would sign this agreement if I didn't know the facts. I would not want to be the parent who is held liable. Can you point to things that are not being done correctly by BCI that would be new to their procedures?

Tim O'Keith: I do not know of any procedure that requires the BCI to inform a potential CI that they have a right to consult to an attorney before they agree to sign on as a CI. I don't believe that is a policy.

Representative Klemin: If the client tells some third party have they waived the attorney client privilege?

Representative Roers Jones: Have you had a situation where you as an attorney would suggest that a client act as a CI?

Tim O'Keith: Yes I have had situations and agreed with the client that I think they should cooperate.

Jackson Lofgren, ND ACDL: We are in support of this bill. We are in support of using confidential informants. I have prosecuted many cases where we used CI's. This bill creates some framework and accountability. They are notified that sex should not be used by these informants. (37:00-39:00) Discussed an issue they had with an informant.

Representative Nelson: Is that whole process confidential?

Jackson Lofgren: How do we identify are they indigent. Who makes that decision and how do they get that lawyer?

Representative Nelson: We talked about confidential informant. How broad a binding is that? Is that binding on the States Attorney?

Jackson Lofgren: As a prosecutor I almost never got that information. Some CI's get paid.

Representative Nelson: The defense attorney has excess to these?

Jackson Lofgren: if the case does get charged out under the duties of the prosecutor to provide information they do have to turn it over. The defendant does see if this person was acting as a CI and were they getting paid?

Chairman K. Koppelman: Is that the case when the prosecution is against the CI or when the prosecution is against someone who is identified by the CI's actions?

Jackson Lofgren: A little bit of both. I wanted to see the copy of the CI's agreement. If someone is getting paid to do this type of work the defendant should have that.

Chairman K. Koppelman: What was the communication like between you and law enforcement if a CI was used to identify someone you were prosecuting or being asked to go more lightly on someone because they have been a CI?

Jackson Lofgren: For those cases where a CI was signed up to work off charges and they did the CI work and then the law enforcement officer never forwarded any report or any citation in my office; I never knew about them. Those cases don't exist.

Representative Jones: On page 6, where it says no promise or inducement of any kind can be given without the express written agreement of the prosecuting attorney. Doesn't this add clarity to this. Which prosecuting attorney are we talking about?

Jackson Lofgren: That gives some conformation for persons working as a CI this is what I am going to get. The prosecuting attorney is not bound to follow this agreement that law enforcement told you. This give some assurance to the CI if you do these certain things you will also have the support of the prosecution.

Representative Jones: He can't necessarily promise?

Jackson Lofgren: The prosecutor can say if you can get us these buys or do this for us rather than charge you with possession with intent I will charge you with possession. They can't control sentencing.

Representative Hanson: No promise of an inducement. You had some cases where some CI's was paid for some work. How do you see the offer to provide payment fitting in with this bill? Should we clarify that in the bill?

Jackson Lofgren: They can say I am done and they are not subject to the other things that the CI that is trying to work off charges is subject to. I don't know if that needs to be modified to address their situation.

Representative Klemin: Can that CI subsequently be charged with buying that heroin?

Jackson Lofgren: There would be an issue with entrapment. Generally, they are wired up and at some point they are possessing a controlled substance. The agents don't want this

to happen where a CI go in and do a buy and maybe they smoke a little bite and nobody likes that. That is usually the last buy you do for them.

Representative Klemin: Legal remedies on the last page. Even obtained in violation of the chapter must be excluded in admission in a criminal proceeding. Is that all of the evidence including evidence against a third party is not going to be admissible?

Jackson Lofgren: That is evidence obtained through the use of the CI. If they were used to violate the perimeters of the statute and the CI agreement. That would be excludable through the CI who did the buy on.

Representative Klemin: Legal remedies on the last page.

Jackson Lofgren: If the confidential informant was used or turned a blind eye to the fact the CI was using sex to get in with the individual and obtain the controlled substance and later that came to light. Then he says wait a minute we were engaged in a sexual relationship and I did not know the whole time she was wearing a wire etc. the defendant could move to exclude that evidence based on statutory exclusion.

Representative Klemin: I think the way this is written now is too broad.

Jackson Lofgren: Yes if they added language on the end if the language said all evidence used by the improper use of a CI.

Representative Klemin: Page 8, line 16-19 means is that this would shift the burden of proof to the civil defendant to prove that he was not negligent. Is that correct?

Jackson Lofgren: Yes. Lefts say they were negligent in their handling the CI's identity; then the officer tells the news media and later on they find that person dead. I think that would be a violation of the statutory framework regarding the use of CI's. in a civil action switch the burden to the agency to show that they were in compliance.

Chairman K. Koppelman: This second one would be another problem?

Jackson Lofgren: Yes. It is rare because the CI would have to show that they were somehow injured.

Representative Vetter: In the case of Andrew; would his parents be able to come that they found out it was leaked, then they could take civil action against the agency. This that what we are talking about with this?

Jackson Lofgren: Yes if they were negligent relating to the leak, I think that does that.

Representative Klemin: Rep. Vetter we do have provisions now in the law.

Opposition:

Dallas Carlson, Director of the BCI: (#2) Went through his handout. (59:00-1:0:45) (#3)
Copy of power point for the record.

Representative Vetter: Have you ever used minors?

Dallas Carlson: We have used no one under 17.

Representative Vetter: If you already have it in your agency laws why would it be bad?

Dallas Carlson: Law enforcement changes fast. Having the ability to adopt and stay within current law and adopt on how we use them is very valuable.

Representative Vetter: If it is just an agency law and not a state law, how do we check you them? How do we check you?

Dallas Carlson: We so teach it in basic class. This power point will show you with the chief's and staff at a joint meeting all over the state they want a copy of this and they are going to use it. We will check our records with them to see if they have in fact done their training.

Representative Roers Jones: What is the procedure you use when you start with a CI?

Dallas Carlson: They are advised of their rights.

Representative Satrom: It sounds like we don't have anything uniform? It is like a give and take?

Dallas Carlson: Policies are specific to that agency. Some policies can bleed over into all agencies. We have 51 agencies including myself spread throughout the state. A vast majority of drug cases are done by our agents with the assistance of other agencies.

Representative Klemin: If we didn't have this bill would there be some kind of procedure that said an agency or law enforcement could not use a CI unless they do have these kinds of policies in place?

Dallas Carlson: Can we show agencies what we have and have them adopt something similar the answer is yes.

Representative Klemin: As an alternative to this bill if we had something that said no CI's unless you got something in place in BCI.

Dallas Carlson: That could be done administratively thru administrative rules. That is a good idea.

Representative Paur: You said you could do that with administrative rules, but you would have a problem doing that at all. But you would have a problem doing it in statues.

Dallas Carlson: Yes.

Chairman K. Koppelman: Your administrative rules are not subject to 28.32 and they don't go thru the administrative rules committee process?

Dallas Carlson: We do go through the administrative rules process.

Representative Nelson: How are you protecting the information?

Dallas Carlson: When our agents get a CI we use a number. We have a financial record of what was spent on the CI.

Representative Nelson: When you are giving those people monies you file a 1099 or how do you this?

Dallas Carlson: We do have a limited amount of \$159. That is up to them to report that income.

Representative Klemin: On page 6, line 16 there is a provision in your forms that there isn't a promise and I didn't see anything that requires a signature of a prosecuting attorney.

Dallas Carlson: Correct. There is nothing the prosecutor has to sign. If they do not work with us the case will probably be lost. That is done upfront.

Representative Klemin: I am thinking of the confidential informant.

Dallas Carlson: We can add something.

Representative Jones: I don't see anything in there that it says he can talk to an attorney before he is going to do that?

Dallas Carlson: Yes. There is always conversation. They know.

Steve Gutknecht, Office of Attorney General: (#4) Read his testimony. (1:21:01-1:26:15)

Representative Vetter: What would some of these things be that we would be locking you into? What would some of those things be?

Steve Gutknecht: Law enforcement and criminal behavior is always an ongoing and on changing thing. I am not sure what that would be, but we would have to wait 2 years before we could change it.

Representative Klemin: What kind of money do you pay CI's?

Steve Gutknecht: Usually it is not more than \$500. We evaluate each situation.

Aaron Birst, Association of Counties and States Attorneys: We have no objections if we want to standardize this. Prosecutors generally do not want to be involved with flee deals precharged with deals and signing off on deals? Law enforcement does all the leg work on

the CI and then comes up to the States Attorney's office and drops in our lap. We look forward with working with the committee to make this bill work.

Bruce Burkett, ND Peace Officers Association: This could be done through rule through licensing when I get a license for the board. Definition of what is a confidential informant? When we pay someone for the information so we do pay some money. We don't make an agreement.

Representative Klemin:

Chairman K. Koppelman: We are going to appoint a subcommittee on this bill.

Travis Fink, Deputy Director ND Comm. On Legal Counsel for Indigents: (#5) There will be costs if we have to do this.

Chairman K. Koppelman: We visited about this earlier and the was agreeable to say if this calls for the counsel who represents people who are charged with a crime. He was very agreeable to remove that from this bill.

Subcommittee: Rep. Jones, Rep. Nelson, Rep. Klemin-Chair.

Hearing closed.

(#6) proposed amendment to HB 1221 handed out later.

(HOUSE) (~~SENATE~~) BILL NO. 1221 SUBCOMMITTEE OF THE

Judiciary STANDING COMMITTEE

Meeting location: Prairie Room

Date of meeting: Feb. 6, 2017

Time meeting called to order: 11:35 am

Members present: Rep. Klemm, Jones, Nelson

Others present (may attach attendance sheet):

Rep. Simmons

Topics discussed:

Proposed amendments to HB 1221 in
confidential informants

Motion and vote:

Motion to recommend amendments as written
in draft of HB 1221 - passed 3-0.

Time of adjournment: 11:55 am

Note: If a motion is made, a description of the motion must be provided along with the member seconding the motion. A recorded roll call vote must be taken and reported for any nonprocedural motion.

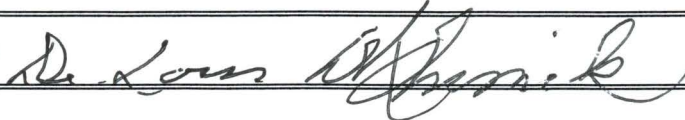
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1221
2/13/2017
28289

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the use of confidential informants by law enforcement.

Minutes:

1

Chairman K. Koppelman: Opened the meeting on HB 1221.

Representative Klemin: Handed out proposed amendment. (#1) Went over the proposed amendment. (:52-4:00)

Chairman K. Koppelman: The defense commission was here and they questioned that so it was appropriate to remove that since they had not been charged with a crime.

Representative Klemin: (4:30-9:30) Continued going through the proposal.

Representative Hanson: Did the Attorney General's office have an opinion on this certification process?

Representative Klemin: We did not discuss that with them. It is going to be BCI. We created this certification process every three years that they are doing this stuff and it is just a matter of reviewing it. Once they have a schedule implemented it would be relatively simple. Local law enforcement will have to keep up with the training on these CI's.

Chairman K. Koppelman: I did visit with BCI this morning and they are comfortable with where we are.

Representative Paur: I can't figure out page 7 line 7, 8 & 9 for review?

Representative Klemin: We start with Page 7, line 5 we are deleting the next sentence.

Representative Roers Jones: I want to thank the subcommittee. This accomplishes all of the concerns that were raised during the hearing.

Motion Made to move the amendment by Representative Roers Jones: Seconded it by Rep. Vetter

Discussion: None

Voice vote carried.

Do Pass as Amended by Representative Vetter: Seconded by Representative Paur

Discussion: None

Roll Call Vote: 13 Yes 0 No 2 Absent Carrier: Representative Klemin

Closed.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1221

Page 3, line 14, replace "using" with "may not use"

Page 3, line 14, replace "shall" with "unless the law enforcement agency is certified by the attorney general's office at least once every three years. Certification under this section must establish the law enforcement agency"

Page 3, line 15, replace "Train" with "Trains"

Page 3, line 19, replace "Assign" with "Assigns"

Page 3, line 22, replace "Execute" with "Executes"

Page 3, line 25, replace "Train" with "Trains"

Page 3, line 28, replace "Designate" with "Designates"

Page 4, line 1, replace "Restrict" with "Restricts"

Page 4, line 4, replace "Establish" with "Establishes"

Page 4, line 6, replace "advise" with "advises"

Page 4, line 10, replace "Inform" with "Informs"

Page 4, line 12, remove "If an individual cannot afford legal counsel."

Page 4, remove line 13

Page 4, line 14, replace "Provide" with "Provides"

Page 4, line 16, replace "Establish" with "Establishes"

Page 4, line 19, replace "Establish" with "Establishes"

Page 5, line 7, replace "Establish" with "Establishes"

Page 5, line 16, replace "Establish" with "Establishes"

Page 6, line 3, replace "Perform" with "Performs"

Page 6, line 17, replace the second "the" with "any"

Page 7, line 1, replace "Transparency and accountability" with "Report to the attorney general"

Page 7, line 3, after the underscored period insert "Data required to be collected under this subsection is confidential."

Page 7, line 7, remove ". Upon receipt of the"

Page 7, remove line 8

Page 7, line 9, replace "available report by June first of each year" with "for review"

Page 7, line 30, remove "whose cause of death the supervising law"

Page 7, remove line 31

Page 8, line 1, remove "informant's service"

Page 8, remove lines 13 through 19

Renumber accordingly

2/13/17 DA

2 of 2

Date: 2-2-17
 Roll Call Vote

**2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1221**

House Judiciary Committee

Subcommittee

Amendment LC# or Description: _____

- Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider

Recommend Amendments

Motion Made By Rep. Nelson Seconded By Rep. Jones

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson	✓	
Rep. Blum					
Rep. Johnston					
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Total (Yes) 3 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. 1221

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17-0595-02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep Roers Jones Seconded By Rep Vetter

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman			Rep. Hanson		
Vice Chairman Karls			Rep. Nelson		
Rep. Blum					
Rep. Johnston					
Rep. Jones					
Rep. Klemin					
Rep. Magrum					
Rep. Maragos					
Rep. Paur					
Rep. Roers-Jones					
Rep. Satrom					
Rep. Simons					
Rep. Vetter					

Vote taken

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

2017 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO 1221

House Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0596.02001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider

Motion Made By Rep Vetter Seconded By Rep Paur

Representatives	Yes	No	Representatives	Yes	No
Chairman K. Koppelman	✓		Rep. Hanson	✓	
Vice Chairman Karls	✓		Rep. Nelson	✓	
Rep. Blum	✓				
Rep. Johnston	✓				
Rep. Jones	✓				
Rep. Klemin	✓				
Rep. Magrum	✓				
Rep. Maragos	✓				
Rep. Paur	✓				
Rep. Roers-Jones	✓				
Rep. Satrom	—				
Rep. Simons	—				
Rep. Vetter	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment : Rep Krumm

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1221: Judiciary Committee (Rep. K. Koppelman, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). HB 1221 was placed on the Sixth order on the calendar.

Page 3, line 14, replace "using" with "may not use"

Page 3, line 14, replace "shall" with "unless the law enforcement agency is certified by the attorney general's office at least once every three years. Certification under this section must establish the law enforcement agency"

Page 3, line 15, replace "Train" with "Trains"

Page 3, line 19, replace "Assign" with "Assigns"

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Page 7, line 1, replace "Transparency and accountability" with "**Report to the attorney general**"

Page 7, line 3, after the underscored period insert "Data required to be collected under this subsection is confidential."

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Page 7, remove line 8

Page 7, line 9, replace "available report by June first of each year" with "for review"

Page 7, line 30, remove "whose cause of death the supervising law"

Page 7, remove line 31

Page 8, line 1, remove "informant's service"

Page 8, remove lines 13 through 19

Renumber accordingly

2017 SENATE JUDICIARY

HB 1221

2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1221
3/21/2017
29530

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the use of confidential informants by law enforcement.

Minutes:

Testimony attached #

1,2,3,4,5,6,7,8,9,10,11

Chairman Armstrong called the committee to order on HB 1221. All committee members were present.

Rick Becker, North Dakota State Representative District 7 (:55 – 7:15), testified in support of the bill. (see attachment 1)

“This bill was brought forth by the death of Andrew Sadek, a 20-year-old North Dakotan who was killed while working as a confidential informant. He was told not to tell anyone that he was an informant and he was not informed of his right to talk to a lawyer. He was found dead in the Red River two months after he was reported missing. That is why this is termed Andrew’s Law. I don’t believe this hinders law enforcement in any way and I hope you pass this bill.”

Chairman Armstrong (7:15): “Does this require counsel or the right to counsel?”

Representative Becker: “Notification.”

Tammy Sadek, North Dakota citizen and mother of Andrew Sadek (7:52 – 15:00), testified in support of the bill. (see attachment 2)

Karen Edland, North Dakota citizen and friend of the Sadek family (15:45 – 19:10), testified in support of the bill. (see attachment 3)

Susan Strang, North Dakota citizen (19:30ish – 21:45), testified in support of the bill. (see attachment 4)

Jennifer Cook, Policy director for ACLU of North Dakota (22:00 - 29:40), testified in support of the bill. (see attachment 5)

Jackson Lofgren, President of the North Dakota Association of Criminal Defense Lawyers (29:45 – 37:25), testified in support of the bill. No written testimony.

“What this bill does is makes sure that CI’s receive proper training and if there is improper training then that officer who is running that informant can be removed from the case, switched to another area, and things like that. I don’t see how people can object to these changes.”

Chairman Armstrong (32:35): “So in that instance where there’s two buys what they are doing is taking two buys and running them consecutively, both the fine and the charge?”

Jackson Lofgren: “Correct.”

Chairman Armstrong: “Have you ever seen someone get 40 years in North Dakota for marijuana laws on back-to-back control buys.”

Jackson Lofgren: “Absolutely not.”

Senator Luick (37:25): “Do you have flavor of putting any stuff back in the bill that was removed in the House?”

Jackson Lofgren: “I think that that is something that should be available.”

Senator Luick (39:00): “Do you see anything that needs to be added that was taken out?”

Jackson Lofgren: “Not really. I know there was a provision that if law enforcement used a person in violation of these protocols, then that information collected from that person could not be used against the person the informant did the buys on. Essentially an exclusionary rule.”

Land Erickson, (41:20 – 57:00), testified in opposition of the bill. (see attachment 6)

Chairman Armstrong (43:20): “This scenario of cops lying to kids about what kind of sentence they can get, whether common or not, does happens. I’ve also seen that people tell them minimum mandatory will apply.”

Land Erickson: “A lot of the things you talk about are undisputable. But understand that judges under Rule 11 are required to tell people the maximum consecutive sentences that they can receive.”

Chairman Armstrong (44:45): I understand that. But that’s in an open court room and not an interrogation room.”

Land Erickson continued his testimony 45:15

Chairman Armstrong (46:55): “One of the best things you can do, especially with young offenders who are about to be charged with a felony, let’s not talk about the maximum sentence. The only felony that matters is the first one. So being able to attack those pre-

charge is important. The last thing you want to do as a young college student is have a felony on your record.”

Land Erickson: “There’s a diametrically imposed conflict between our rules of ethics and the way the bill would operate so we’d have to look on that.”

Land continued discussing how things are different in rural areas compared to urban areas. He also said he has concerns with how this bill is modeled after a Florida bill which is a plaintiff’s bill.

Chairman Armstrong (54:40): “I don’t think the goal of good policy is to take all policing and turn it into confidential informant work. So we will be careful not to do that, but the other answer is, is that you and I both practice in rural America and there’s a difference between one and the other. I think we need to statutorily define this.”

Land Erickson: “I don’t think we disagree on that.”

Senator Luick (57:05): “How many CI’s are there in the last year, approximately?”

Land Erickson: “I heard that there was 141 that BCI did, though I’m not sure if that’s true. But we don’t report all of ours that would meet the definitions in this bill. So it’s hard to get an accurate number.”

Dallas Carlson, Director of North Dakota BCI (58:55 – 1:14:10), testified in opposition of the bill. (see attachment 7) Dallas also handed out a copy of the CI training officers receive as well as BCI policy of handling confidential informants. (see attachment 8,10,11)

Senator Luick (1:02:40): “Looking at this last section you just covered, what do you think went wrong in Wahpeton?”

Dallas Carlson: “Training.”

Senator Luick: “But you just stated your officers are well trained?”

Dallas Carlson: “I’m speaking for BCI. I can’t speak for other agencies.”

Senator Luick (1:06:25): “Is the BCI involved in Wahpeton at all?”

Dallas Carlson: “We are now. We don’t coordinate it but we have an agent in there”

Senator Luick: “What are his duties?”

Dallas Carlson: “General drug investigations. And to answer your question from earlier, there are a 116 CI’s currently active.”

Chairman Armstrong (1:07:10): “What are the ramifications if an agent treats a CI differently than your training? Is it internal or what? Is there any uniformity to that? I’m assuming you have a policy for that, do you share that policy with agencies across the state.”

Dallas Carlson: "We do have a policy, and we review each person's policy every 6 months. If they violate it then it's either a letter in the file up to termination. We have shared our files to other agencies but there is no shared policy."

Senator Myrdal: (1:11:00): "Where would be if we took the young scared kid out this issue and used paid informants and career criminals? Do you think that having an attorney present stop them from being a CI?"

Dallas Carlson: "I agree allowing them have an attorney, certainly. Would allowing them an attorney stop them from being a CI? I don't think so. I just feel that legislating how we do our job is locking us in a tight little fence."

Senator Osland (1:13:05): "Can you describe what your practice is when you work with those people?"

Dallas Carlson: "If our CI's are juveniles, then a supervisor, parent, and lawyer must all be involved."

Land Erickson came back to the podium.

Land Erickson: "Just because someone is young doesn't mean they are innocent. I've had a couple cases of 18 year olds who committed murder."

Chairman Armstrong: "I would also argue that some of these young people are the ones who really don't want the felonies, successful college kids. We don't necessarily want to preclude them from having the opportunities that we give career criminals. So there is a reason to have that conversation as well."

Land Erickson: "Our system does have coercion but it's for the benefit of the person we arrested. They could go to treatment or jail, things like that."

Steve Andrist, Executive Director of the North Dakota Newspaper Association, made a brief statement. (see attachment 9)

Chairman Armstrong closed the hearing on HB 1221.

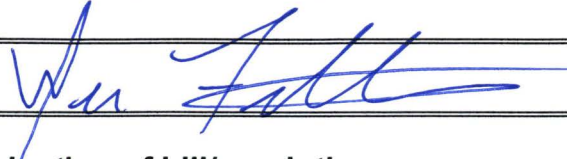
2017 SENATE STANDING COMMITTEE MINUTES

Judiciary Committee
Fort Lincoln Room, State Capitol

HB 1221 Committee Work
3/28/2017
29751

- Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to the use of confidential informants by law enforcement.

Minutes:

Attachments

1

Chairman Armstrong began the discussion on HB 1221. All committee members were present.

Proposed amendment was reviewed by the committee. (see attachment 1)

Chairman Armstrong: "The purpose of these amendments is to replace the bill as it exists and fit it into an existing statutory and regulatory system that doesn't have to be created. The BCI already has duties we can just amend in to. This bill is going to end up in conference committee. What I'm trying to do is redline the bill that we had in front of us and try and fix what I consider to be horribly fatal flaws in that bill. What I mean by that, is that under the bill we have as introduced, if you pull a guy over on the rural highway and you catch him with a dime bag of weed in the center counsel, and he looks at you and volunteers and says he just bought this at the Bowman hotel can we work something out? Then he is technically a CI and you can't use him as an informant without an agreement. I think there is an issue with that. I think the bill goes too far and I think it applies to some things that should not be confidential informants."

Senator Myrdal (2:40): "These amendments seem to me that standard ethical practices and things we discuss during the hearing; does it answer anything that relates to the rights of that confidential informant to have counsel? Can a young person be used and get sent deeply into a criminal world without being prepared and without counsel?"

Chairman Armstrong: "The bill as we had in front of us didn't require counsel either."

Senator Myrdal: "So this just wipes the bill out?"

Chairman Armstrong: "Yes, this is a hoghouse."

Michael Mahoney, Assistant Attorney General and Legal Counsel for the POST-board, came to the podium to answer questions.

Senator Luick: “What’s the POST-board?”

Michael Mahoney: “It’s a licensing agency for all law enforcement officers in the state of North Dakota – Peace Officer Standards and Training.”

Chairman Armstrong: “Have you had a chance to review this amendment?”

Michael Mahoney: “I did receive it and it’s my understanding that the POST-board will initiate changes of administrative rules that would encompass CI usage and behavior between law enforcement and those individuals. It would make any improper activity subject to POST-board licensing rules and procedures.”

Chairman Armstrong (7:45): “One of the things here, is having legislative oversight so these rules as they relate to CI’s after they got promulgated would have to come in front of administrative rules?”

Michael Mahoney: “Correct.”

Chairman Armstrong: “The POST-board is the disciplinary board for officers as well?”

Michael Mahoney: “Correct.”

Chairman Armstrong: “Can you explain how that process works?”

Michael Mahoney: “The POST-board meets quarterly. We also have two special meetings every year. So we meet about six times every year total. We receive complaints from the public, other law enforcement officers, etc., regarding activities of police officers. Our rules are in the administrative code. If they violate the codes and conducts; we would notify the individual that we received a complaint. We are starting a new procedure where we are calling sort of a probable cause hearing. We’re inviting them to appear with or without counsel. We’ll advise them of the complaint and ask them to give sworn testimony about the complaint. The board then discusses the matter, takes a vote on what actions should be taken. If that occurs, they would be given notice and if they agree with the matter we can have discussions about proposed penalties. The matter can also go to administrative where we can conduct more quasi-administrative hearings.”

Chairman Armstrong: “Do officers take the POST-board seriously? Is this a remedy that has teeth?”

Michael Mahoney: “I think it is.”

Senator Larson (13:27): “Wouldn’t you think the POST-board’s relationship with officers be similar to the Medical Association with doctors? The AMA can take licenses away from doctors and make sure they are trained and certified. Would this be similar to that?”

Michael Mahoney: "That is correct."

Senator Nelson (15:30): "What would be the timeframe on how fast you can get those standards for property confidential informant handling done?"

Michael Mahoney: "I couldn't give you a firm timeframe. I think we could get it done by Summer, but I'm not sure."

Chairman Armstrong: "If this law passes, let's just say we should get that done as soon as possible."

Senator Nelson: "Well I'm just wondering how fast we could get them to do it."

Chairman Armstrong: "We could add an emergency clause to it. That would probably be the fastest way to do it. We can add that to the amendment when we pick that up."

Dallas Carson (18:20), Director of Bureau of Criminal Investigation, came up to podium to answer questions.

Chairman Armstrong: "How do you envision this working?"

Dallas Carlson: "We have a training program already set up that we give to our agents. We could certainly use that for other agencies."

Senator Larson (19:05): "So this is already in your guidelines but this is not something that you have offered as POST certified training so that they sign that they've gotten that training, is that correct?"

Dallas Carlson: "It is POST approved. We offer it in other training curriculums."

Chairman Armstrong: "I think what we are getting at, Dallas, is that we want to make sure that whatever we do on local jurisdictions and local departments is something that is practical and that we can actually implement. What you offer and what you are going to be required to offer when we leave here may be two very different things."

Senator Nelson (21:10): "Who screwed up in Wahpeton?"

Dallas Carlson: "I guess I can only answer that by saying it was Southeast Multi-County Drug Task Force. That was the agency that was doing that case."

Senator Nelson: "Did they get any training or what?"

Dallas Carlson: "I'm not sure, so I can't answer that."

Chairman Armstrong: "But you guys are there now, correct?"

Dallas Carlson: "Yes."

Senator Myrdal (21:55): “Did the POST-board get involved for that case and were there any repercussions or taking away licenses?”

Dallas Carlson: “There was nothing to this point that would bring them to the POST-board. There are no complaints that I know as well.”

Senator Luick: “There is a lawsuit going on in that case right now, just so the committee is aware.”

Dallas Carlson: “Correct.”

Senator Myrdal (22:47): “I fail to see the connection of enforcement; what will be your idea to make sure this doesn’t happen again?”

Dallas Carlson: “We in law enforcement have a POST license, without that then we won’t have a job. There are various things that can affect that license. There are various stipulations that law enforcement has to adhere to, to keep their licenses.”

Senator Osland (24:50): “Any estimates on how often this stuff happens here? Like this case?”

Dallas Carlson: “I can’t think of any cases where we get complaints about the abuse of CI’s.”

Senator Luick (27:15): “Do you think this amendment is acceptable to you and your department?”

Dallas Carlson: “It is acceptable.”

Senator Luick: “What kind of guarantee can we have that there will be changes so these things will not happen again?”

Dallas Carlson: “I’m not sure we can guarantee that. We will do our best to make sure people who are handling CI’s receive the best training that we can give them.”

Chairman Armstrong: “I’d argue that the law doesn’t do that either, Senator Luick.”

Senator Luick: “I misspoke there; I realize there is no guarantee that can be made to change this.”

Senator Larson (30:15): “I’ve spoken with you many times and I know that you are sensitive to these stories and that you care about officers doing the right thing. Do you feel that setting this up so that this amendment says that you will establish standards with CI procedures, do you feel this will take care by making sure the bad actors are given the right information to make sure they know what they are supposed to do? Do you think this amendment will take care of that?”

Dallas Carlson: "I do for a variety of reasons. The vast majority of officers want to do the right thing. We police ourselves well. If we read about an officer who got in trouble it affects us all, and we don't want that to tarnish us."

Chairman Armstrong (32:18): "This is by no means the final step of this process. It could very well be changed."

Dallas Carlson: "We will work with you all the way."

Senator Larson motioned to Adopt the Amendment and to add an emergency clause.
Senator Osland seconded.

Discussion followed:

Chairman Armstrong: "This is a tough issue for me. I understand that the necessity for it, but the problem is, is that you are dealing with humans, and these instances can be extremely different from each other."

Senator Myrdal: "I don't think this amendment has enough teeth for me and I hope conference committee comes with a better solution. These young kids need more protection, I believe."

Chairman Armstrong: "Just to add to that. The other answer by the way is I think this is a really important thing to get through. I don't disagree with anything you said, but that young person with a career and a future in front of them that has been charged, or is about to get charged with a felony, is also the single one-person that could probably utilize this properly and benefit the most."

Senator Myrdal: "I agree, as long as there are some safeguards."

Senator Luick (39:05): "I think this amendment is a little too watered down for my taste. But I think we are on the right trail."

A Roll Call Vote was taken. Yea: 4 Nay: 2 Absent: 0.
The motion carried.

Senator Larson motioned for Do Pass as Amended. **Senator Osland** seconded.

A Roll Call Vote was taken. Yea: 5 Nay: 1 Absent: 0.
The motion carried.

Chairman Armstrong carried the bill.

Chairman Armstrong ended the discussion on HB 1221.

March 24, 2017

CJ
3/28-2017
1 of 2

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1221

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 4 of section 12-60-07 and section 12-63-04 of the North Dakota Century Code, relating to powers, duties, and functions of the bureau of criminal investigation and powers and duties of the peace officer standards and training board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12-60-07 of the North Dakota Century Code is amended and reenacted as follows:

4. The bureau shall assist the sheriffs and other peace officers in establishing a system for the apprehension of criminals and detection of crime. The assistance must include offering guidelines and training for the proper handling of confidential informants.

SECTION 2. AMENDMENT. Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

12-63-04. Board - Powers - Duties - Authority.

The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
 - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
 - b. Examine, under oath, any applicant for licensing.
 - c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.

d. ~~Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.~~

3. The board shall adopt rules relating to the professional conduct of licensed peace officers and to implement the requirements of this chapter, including rules:

- a. Relating to professional licensure and continuing education;
- b. Establishing ethical standards of practice; and
- c. Establishing standards for proper confidential informant handling procedures and setting limits on officer conduct in recruiting an individual to operate as a confidential informant."

Renumber accordingly

**2017 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1221**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0595.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider _____

Motion Made By Senator Larson Seconded By Senator Osland

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick		X			
Senator Myrdal		X			
Senator Osland	X				

Total (Yes) 4 No 2

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

**2017 SENATE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1221**

Senate Judiciary Committee

Subcommittee

Amendment LC# or Description: 17.0595.03001

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Senator Larson Seconded By Senator Osland

Senators	Yes	No	Senators	Yes	No
Chairman Armstrong	X		Senator Nelson	X	
Vice-Chair Larson	X				
Senator Luick	X				
Senator Myrdal		X			
Senator Osland	X				

Total (Yes) 5 No 1

Absent 0

Floor Assignment Chairman Armstrong

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1221, as engrossed: **Judiciary Committee (Sen. Armstrong, Chairman)** recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 1 NAYS, 0 ABSENT AND NOT VOTING). Engrossed HB 1221 was placed on the Sixth order on the calendar.

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 4 of section 12-60-07 and section 12-63-04 of the North Dakota Century Code, relating to powers, duties, and functions of bureau of criminal investigation and powers and duties of the peace officer standards and training board.

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~~standards of practice, for persons holding a license to practice peace officer duties.~~

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 - a. Relating to professional licensure and continuing education;
 - b. Establishing ethical standards of practice; and
 - c. Establishing standards for proper confidential informant handling procedures and setting limits on officer conduct in recruiting an individual to operate as a confidential informant."

Renumber accordingly

2017 CONFERENCE COMMITTEE

HB 1221

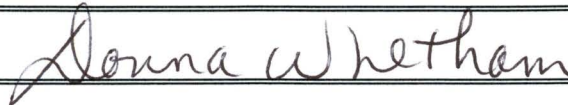
2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1221
4/13/2017
30102

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to powers, duties, and functions of the bureau of criminal investigation and powers and duties of the peace officer standards and training board.

Minutes:

Attachment 1

Chairman Jones: Opened the conference committee on HB 1221.

Attendance: Chairman Jones, Rep. Johnston, Rep. Magrum; Senators Armstrong, Senator Myrdal, Senator C. Nelson.

Chairman Jones: We were happy with this bill when it came out of our committee. We thought it would provide protection to the people we are serving as confidential informants. The amendment that we first saw caused me quite a bit of alarm, so I guess I would ask that you can explain where we are and where you would like to see us go.

Senator Armstrong: (See Attachment #1) The Senate amendment that we accepted was a place holder. We knew that was not going to be the final bill. We needed something to move forward to force it into conference committee. I think you have all seen the amendment that I have been working on and I think that is where we should start having the discussion between the senate amended version and the house version.

Chairman Jones: I understand there is a motion to recede from that amendment so that we can start working forward with the other one.

2:06

Senator Armstrong: I make a motion that the Senate would recede from its amendments and further amend.

Senator Myrdal: I second that.

Chairman Jones: We have a motion and a second. Discussion? Seeing none. We will take a roll call vote.

Roll call vote taken: Yes 5 No 1 Absent 0

Chairman Jones: We now have the House version before us. Discussion on the further amendment?

Senator Armstrong: I understand this. When we received the house bill there were two things that were abundantly clear. One, it went a lot further than just confidential informants. The way the definitions were worded and phrased, I think you could make a real argument that any custodial interrogation required a written agreement. The other thing the house bill didn't have was any remedy. There was not benefit conferred upon a confidential informant in a criminal proceeding and there was no basis for penalty for anyone that violated the statute. Essentially it became a bill; they defined informant as anybody who had any information at all to give to law enforcement. Went through the proposed amendment. 5:29 For juveniles you cannot use one as a confidential informant unless they have contacted a lawyer. The reality is you want them to talk to a lawyer.

Chairman Jones: When you are talking about them having an attorney the concern we had was that if they are not charged with a crime, then they can't be given the public attorney. What you are talking about here is that even if they have not been charged with a crime, and you are going to use a confidential informant and it is a juvenile he has to have access to an attorney. One way or another that is going to be provided. Is that what I understand from your discussion?

Senator Armstrong: No, it would be the other way. They are not allowed to use him unless he talked to a lawyer. If it is a pre-charge issue he still doesn't qualify for indigent defense.

Chairman Jones: Is there a mechanism in your amendments to allow them to get an attorney provided to allow them to be used as a confidential informant? I don't want to see them have to be charged in order to get a public defender, but I do like what you have done here to make sure that they have spoken with an attorney, so the question is how are you going to do that if they haven't been charged? Is there going to be a special carve out?

Senator Armstrong: In the bill, no. You run into ethical rules on both sides of the equation and legal rules on both sides. Without charges, indigent defense doesn't trigger unless we want to dive into the whole indigent defense code. Here is how I would anticipate it going. One as far as everyone I have spoken to on both sides of this, it is just not used. Juveniles are just not used in ND, but you have to consult the parent or guardian and a lawyer.

Representative Johnston: On page 10 when you talk about using a juvenile between the ages of 15 – 18. In the original bill I think there was a provision that you couldn't use them for a controlled buy, but in your amendment you can use a juvenile if they are married, emancipated, if they are serving in the armed forces, etc. Down on line 27 it says there is no other reasonable avenues to obtain evidence to the crime being investigated and the risk of harm to the juvenile is minimal. Who defines minimal?
9:53

Senator Armstrong: The post officer training board and the rules they have to promulgate.

Representative Johnston: Who would comprise this board?

Senator Armstrong: That is in statute 25. 9 members including the director of the law enforcement training center, 6 peace officers, 1 county government representative, 1 city government representative. With the exception of the director of the law enforcement training center, all the members shall be appointed by the attorney general and shall serve staggered 2 year terms.

Chairman Jones: If we have never used minors for informants then it wouldn't be much burden to put something in this legislation to say that if it is going to be done that we will provide them an attorney similar to an indigent.

Senator Armstrong: If we are going into that then I just would prohibit the use of juveniles. I personally would not have a problem with that.

Senator Myrdal: On page 10 you are talking about someone 15 years of age or younger. If you are talking about a prohibition, you would have to go to 18. If you get caught and you are 18 it is a felony. If it is a juvenile thing, it is not going to ruin your life. If you are 18 and you commit a felony I would think the attorney's advice is going to be to work with the cops, so you don't start your life out as a felon. I think we are kind of talking 2 different things here.

Rep. Magrum: I thought we had a good bill coming out of the house. If we went back to the House bill what would you have to have added to our bill rather than us looking at all of your amendments? Could you pick something out that you absolutely have to have and why?

Senator Myrdal: That is why we are here. The bill as it came from the house was not acceptable. You are seeing a good bill with the work on the amendments. Even though there could be some tweaks you are seeing what we would want to have.

Rep. Magrum: The whole goal that I get out of your amendments is to put the peace officers under the post board; if they make a mistake the Attorney General has an independent organization that they would investigate. The way your amendment reads the post board would be the ones that do the investigation. It is kind of like the fox watching the chicken coop. Am I reading your amendments right?

16:44

Senator Armstrong: The post board has legislative oversight on those rules. The 10 things that are required in the written agreement is not just a post board remedy. The post board does it now. They are the ones who control licensing. Page 12 went over the 29-29.5-05 section. Also went over the 29-29.5-07 section. The post board are the ones that control law enforcement. A couple things that I feel are the real issues when you deal with confidential informants that we tried to address in here. One is the parameters of the agreement are required to be in there. Two, the statement that there is no guarantee or promise that can be made. You have to have that in there, because cops can't make a promise about what is going to happen in a court case. Those have to be in there because when you go to the last section, we are now conferring statutorily a dispositional benefit to somebody who is working as a confidential informant. This is no longer a negotiation

between a law enforcement officer and a confidential informant. This gives them protection in the confidential informant agreement that can be used in court.

21:00

Representative Johnston: Under the original bill there was provision that if they were injured or killed, they had to contact the attorney general's office immediately and he would appoint an independent investigation to study the circumstance. What is the provision in your amendment for this?

Senator Armstrong: I don't know if there is one.

Chairman Jones: We are not going to get this done here today. We need to get some earlier versions of the bill and get all of the information we need.

Representative Johnston: Yes, on the investigation part; on page 12 they have 20 days upon receive a compliant and actually report to the board.

Senator Armstrong: We left it at 20 days. If you have a smaller jurisdiction they will ask the BCI to do the investigation. For internal large departments 20 days would be fine.

Chairman Jones: I want to go back to where you were talking about the judge being informed of the agreement; it is on page 13, line 10, it says may be there; I think it should be shall?

Senator Armstrong: Once you have may in there then the defense attorney can bring it forward. There might be a lot of reasons you might not want that to be court. You are basically still trying to protect the identity of the confidential informant. By forcing the agreement into court every time you are either dealing with open court or you are going into sealed proceedings in dealing with those issues. If you put shall in, then everybody has to do it every time. This is a protection for the informant.

Representative Jones: On pager 12 the next violation; I am concerned about 20 days if appropriate or if there was actually a violation. Shouldn't it be reported sooner than 20 days if the safety of the informant is at stake?

Senator Armstrong: You deal with this stuff all the time on a timeline situation. What you are dealing with is once you make a report what is the amount of time needed to make sure that they believe an actual investigation really took place? In legal time, 45 days is really fast.

27:40

Representative Johnston: Going back to the independent investigation; the Attorney General appointed the BCI to investigate. Wouldn't it still be better to have an independent investigator appointed like in the original bill?

Senator Myrdal: Are you asking for outside of the post board or outside of what?

Senator Armstrong: I understand this, but why shouldn't we do it for all other areas. Why would it be different for this policeman's conduct? At some point in time there has to be a structure and the bills we introduce have to be within that structure. When you statutorily confer requirements for rules and agreements you now have a 3rd option and that is civil litigation. That hasn't existed before. I don't know who would be better to do this than who is doing it now?

Chairman Jones: I want some more time to review this amendment. We will reschedule another hearing. Adjourned


2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1221
4/14/2017
30138

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to powers, duties, and functions of the bureau of criminal investigation and powers and duties of the peace officer standards and training board.

Minutes:

Attachment 1

Attendance: Rep. Jones, Rep. Johnston, Rep. Magrum; Senators Armstrong, Senator Myrdal, Senator C. Nelson.

Rep. Jones: Opened the conference committee on HB 1221. We have had quite a few discussions on this bill. I like the amendments but we have a technical difficulty. We have not had anyone move the amendment we were discussing.

Motion Made to move the proposed amendment .03009 by Senator Myrdal; Seconded by Rep. Johnston.

Discussion:

Rep. Johnston: (#1) Proposed amendment. Yesterday we talked about a few things to add to this from the original bill. Go to page 5 concerning the death of a confidential informants the language I added was upon the death of a confidential informant the supervising law enforcement agency shall withdraw from the investigation of the death of its confidential informant. The supervising law enforcement agency shall promptly notify the Attorney General of its withdrawal; from the investigation and the Attorney General shall authorize an independent law enforcement agency investigation.

Senator Armstrong: I think the language is good. I have a couple of additional recommendations; page 9, line 30 of the 03008 recommendation; say favorable recommend put or bond recommendation. You can get recommendations for pre-trial release and there are a lot of situations where that occurs. On page 11, line 7; law enforcement is certified should say trained by an Attorney General approved course. You have to get trained to be certified. I think we should require the training. The last one is line 23, page 13, subsection 5; this section does not prohibit disposition of cases by deferral or prosecution with or without court approval. Sometimes deferred prosecutions occur outside of the courtroom they are

dealt with between prosecutors and defense attorneys. Never walking into a court room is better than trying to seal a court proceeding to protect an informant.

Chairman Jones: I have a question on the last one; with or without court approval. Wouldn't everything that gets done have to be approved by the judge at some point?

Senator Armstrong: If there is a pending criminal charge, yes. If there is a pre-charged deferral of prosecution, no. If the prosecutor never charges the confidential informant with a crime then there is never court interaction. That would be the single best benefit. If you get caught selling meth then it never shows up if you were ever charged. If you were going to derive the single best benefit of doing confidential informant work that would be how you would do it.

Senator Nelson: The 09000 version is your handed out is basically the 08000 version plus your one statement of 29-29.5-06; is that correct?

Representative Johnston: Yesterday we brought up the section limiting the use of juvenile confidential informants and there is a provision in there where you can use informants in there between the age of 15-18. I think it would be OK if we just cut out juvenile informants all together. I would like to discuss that.

Chairman Jones: I have had several discussions on this as well.

Senator Armstrong: You are not using a juvenile without a lawyer. I don't think they use them at all. I personally would be fine with that.

Senator Nelson: In 25-29.5.02 if you change subdivision 1 to 18 years of age and delete subsection 2.

Chairman Jones: I am going to say I am opposed to this. I understand why we would not use them, but I think we should approach this with caution. We are seeing a large increase in the drugs that are going on and I hate to take the tools out of the tool box. I understand why we would not use them. I have a 15-year-old daughter still in high school and I would like to give every tool to law enforcement.

Senator Armstrong: They are mandated they have to talk to a lawyer. On the ground the law enforcement agencies will know who to direct the lawyer. I do believe it is used so rarely. I don't want this whole thing to get hung up on this issue one way or the other.

Chairman Jones: I asked the representative that is a sheriff on our side whether the girl that was sixteen was a confidential informant or whether she was just a willing person to give information. He did not know about that.

Representative Johnston: We don't know whether she was a snitch per say or a confidential informant. I move we strike the use of juvenile confidential informants from the bill all together.

Senator Armstrong: You would say the law enforcement officer may not use a juvenile 18 years of age or younger as a confidential informant. 29-29.5-02 I would change the word

limitation to prohibition and one subsection 1 if would change a law enforcement agency may not use a juvenile under the age of 18.

Senator Myrdal: If we put this in; does that prohibit a police officer going into a school?

Senator Armstrong: No I don't think this would prohibit that. We are wanting to protect confidential informants. What is where the definition of confidential informant is important. We don't want to create a situation where every interrogation would not be covered under the law.

Senator Myrdal: The definition of a confidential informant as set forth in this bill and if we take the prohibition in as well we are not hindering any police work when it comes to police investigation of a school incident.

Chairman Jones: The motion before us would be a change in 29-29.5-02 we would change the word limitation to prohibition; under Section 1 state law enforcement agency may not use a juvenile under the age of 18. Strike Section 2 in its entirety.

Senator Armstrong: I am putting all the changes on this so if we accept it as a package; then we should be OK. I do have one more thing that I forgot to talk about. (17:24) On the definition of benefit it use to be a,b,c,d and e. D was money and E was anything of value as defined in 12.1-01.04. I removed money before I brought it in. If they are working out a contractual agreement to do law enforcement; that is outside of the scope of what is in here. Remove anything defined as value. If we remove that I would recommend when we do the post board rules we should do establish a rule as to deal with paid confidential informants. They should have a rule on how to use paid confidential informants. It is a very different situation; they should have a rule in training on how to do that too. Page 4; we are creating and h and reads establish written procedures relating to the use of paid confidential informants. Section 2 remove line d.

Chairman Jones: Please go over the proposed amendments.

Senator Armstrong: (21:24) Went over the amendment as proposed.

Motion Made to withdraw our prior amendment .03009 by Senator Myrdal; Seconded by Rep. Johnson

Motion made for the Senate would then recede from the Senate Amendments and further amend to the Johnston amendment by Senator Armstrong; Seconded by Senator Nelson.

Chairman Jones: I would like to have the intern get this drafted so we can look at it all together.

Adjourned

2017 HOUSE STANDING COMMITTEE MINUTES

Judiciary Committee
Prairie Room, State Capitol

HB 1221
4/14/2017 PM
30152

Subcommittee
 Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to powers, duties, and functions of the bureau of criminal investigation and powers and duties of the peace officer standards and training board.

Minutes:

1

Rep. T. Jones: Opened the conference committee on HB 1221.

Attendance: Rep. Jones, Rep. Johnston, Rep. Magrum; Senators Armstrong, Senator Myrdal, Senator C. Nelson, absent.

Senator Armstrong: (#1) Went over the amendment .03010. Look at the amendment added on page 2 on the bottom of the Christmas tree version. That would be great if all juveniles were treated as juveniles in the criminal justice system; but a 17-year-old juvenile who gets caught with any kind of serious crime has a very high likelihood of being charged in an adult court. That is the way they deal with juveniles and probation and those types of things. Everyone I talked to said leave it available; that absolute right to counsel only exists here and in involuntary mental health commitment. That is a strong policy statement regarding the use of confidential informants. The language Rep. Johnston brought requiring and audit to evaluate the effectiveness of the confidential training requirements is an exceptionally good thing to add in as we are creating a whole new set of reform.

Representative Johnston: I am ok with leaving the juvenile confidential informants in there. I think we have some good provisions in this bill and it honors the original intent of the bill.

Senator Myrdal: I think there was no doubt from the get go that we were going to work for this. I want to hand Senator Armstrong who has brought these changes.

Motion Made for the Senate to recede from the Senate amendments and amend as follows using 17.0595.03012 by Magrum; Seconded by Senator Myrdal.

Roll Call Vote: 5 Yes 0 No 1 Absent Carried.

House Judiciary Committee

HB 1221

April 14, 2017

Page 2

Closed.

April 14, 2017

4/19/17 TJA
1 of 6

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1221

That the Senate recede from its amendments as printed on pages 1282 and 1283 of the House Journal and pages 1001-1003 of the Senate Journal and that Engrossed House Bill No. 1221 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 29-29.5 of the North Dakota Century Code, relating to the use of confidential informants; to amend and reenact section 12-63-04 of the North Dakota Century Code, relating to the powers and duties of the peace officer standards and training board; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

12-63-04. Board - Powers - Duties - Authority.

The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
 - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
 - b. Examine, under oath, any applicant for licensing.
 - c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
 - d. Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating

9/19/17 DP
2 of 6

to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.

3. The board shall adopt rules relating to the professional conduct of licensed peace officers involved in confidential informant agreements under chapter 29-29.5, and shall receive complaints and make determinations if an officer's conduct violated the protections provided in chapter 29-29.5. Annually, the board shall conduct an audit evaluating the effectiveness of confidential informant training requirements.

4. The board shall establish penalties and enforce violations of protections provided in chapter 29-29.5. The penalties established must be formulated based on the nature, severity, gravity, and recurrence of violations. The board may deny, suspend, or revoke a license or may impose probationary conditions, including remedial training.

SECTION 2. Chapter 29-29.5 of the North Dakota Century Code is created and enacted as follows:

29-29.5-01. Definitions.

1. "Benefit" means any of the following conferred on a confidential informant or a third party:
 - a. Leniency in a criminal case or probation or parole matter, including a decision whether to arrest or charge an offense or to limit the number or severity of charges;
 - b. Sentence reduction of any kind or amount; or
 - c. A favorable sentencing or bond recommendation.
2. "Confidential informant" means an individual who cooperates with a law enforcement agency and:
 - a. Is willing to attempt a controlled buy or controlled sale or agrees to surreptitiously record a target offender; and
 - b. Seeks or is offered a benefit.
3. "Controlled buy" means the purchase or attempted purchase of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of law enforcement.
4. "Controlled sale" means the sale or attempted sale of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of enforcement.
5. "Informant agreement" means a written agreement describing the rights and obligations of a confidential informant and law enforcement agency.
6. "Law enforcement agency" means an agency authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.

4/14/17 DP
3 of 6

7. "Target offender" means an individual suspected of a violation of the law, whose identity is known or unknown, and who is the focus of an informant agreement.

29-29.5-02. Limitation on use of juvenile confidential informants.

1. A law enforcement agency may not use a juvenile fifteen years of age or younger as a confidential informant.
2. A juvenile over the age of fifteen, but under the age of eighteen, may not be used as a confidential informant unless:
 - a. The juvenile is married;
 - b. The juvenile is emancipated;
 - c. The juvenile is serving in the active duty armed forces; or
 - d. The juvenile is subject to criminal charges; and
 - (1) There are no other reasonable avenues to obtain evidence of the crime being investigated and the risk of harm to the juvenile is minimal;
 - (2) The juvenile's custodial parent or guardian has signed the informant agreement; and
 - (3) The juvenile has consulted with legal counsel.

29-29.5-03. Limitation on use of campus police.

A law enforcement officer employed under section 15-10-17 may not enter an informant agreement with a student enrolled in an institution under the control of the state board of higher education.

29-29.5-04. Law enforcement confidential informant training and guidelines.

1. After July 1, 2018, a law enforcement agency may not use a confidential informant unless the law enforcement agency is trained in the use of confidential informants in a training course approved by the attorney general.
 - a. Training must occur at least once every three years, and must establish that the law enforcement agency has trained all personnel who are involved in the use or recruitment of confidential informants in the law enforcement agency's policies and procedures in a manner consistent with the peace officer standards and training requirements.
 - b. The law enforcement agency shall document the date and scope of all training along with all law enforcement personnel trained.
2. The peace officers standards and training board shall adopt rules for the use of confidential informants which at a minimum:
 - a. Assign the consideration of the preservation of the safety of a confidential informant.

4/19/17 DO
1 of 6

- b. Execute reasonable protective measures for a confidential informant.
- c. Establish guidelines for the training and briefing of confidential informants.
- d. Restrict off-duty association or social relationships by law enforcement agency personnel with confidential informants.
- e. Establish procedures to deactivate confidential informants which maintain the safety and anonymity of confidential informants.
- f. Establish a process to evaluate and report the criminal history and propensity for violence of any target offenders.
- g. Establish written security procedures protecting the identity of a confidential informant.
- h. Establish written procedures relating to the use of a paid confidential informant.

29-29.5-05. Written agreement required.

Except for court proceedings, a law enforcement agency may use a confidential informant only with a written agreement executed by the confidential informant and the law enforcement agency. An agreement for use of a confidential informant must be in writing, and include:

- 1. The confidential informant's right to remain silent, the right to speak with legal counsel at any time, and the right to cease working as a confidential informant;
- 2. A statement of the benefit, which will be recommended upon substantial compliance with the informant agreement;
- 3. A statement that an absolute guarantee or promise may not be made to the confidential informant other than law enforcement will truthfully report cooperation;
- 4. A statement of the inherent risk associated with acting as a confidential informant;
- 5. Confidential informant responsibilities, including testifying truthfully if called as a witness in a court proceeding;
- 6. A written waiver of right to counsel which must be executed separately and attached to the informant agreement, signed by the confidential informant and a law enforcement officer, and include language stating that consulting legal counsel at any time will not invalidate the agreement;
- 7. The parameters of the agreement, detailing the anticipated number of buys, sales, acts, or the duration of service;
- 8. A description of any penalty for violating the terms of the written agreement, including any additional criminal charges;

9. A warning that sexual relations with an intended target of a police investigation is a violation of the agreement and may be a violation of the law;
10. A statement that money or property loaned or entrusted to the confidential informant by law enforcement may not be used for personal use and must be accounted for at all times; and
11. Specification of any known crimes of violence committed by a target offender.

29-29.5-06. Death of a confidential informant.

Upon the death of a confidential informant, the supervising law enforcement agency shall withdraw from the investigation of the death of its confidential informant. The supervising law enforcement agency promptly shall notify the attorney general of its withdrawal from the investigation, and the attorney general shall authorize an independent law enforcement agency investigation.

29-29.5-07. Reporting violations of this chapter.

1. An individual may report a suspected violation of this chapter to the appropriate law enforcement agency administration. The law enforcement agency shall investigate any reported violation within twenty days from receiving the complaint and, within forty-five days from receiving the complaint, make a written determination on whether a violation occurred. Upon completion, the law enforcement agency shall forward the written report to the individual who filed the initial complaint and to the peace officer standards and training board for review. An individual who filed a report for a suspected violation may seek additional remedies from the peace officer standards and training board.
2. A licensed peace officer or a prosecutor who reasonably believes a law enforcement officer or a law enforcement agency has violated this chapter shall file a written report with the peace officer standards and training board.

29-29.5-08. Disposition of cases involving confidential informants.

1. An informant agreement may be presented to the court at the time of sentencing. A court shall give consideration at sentencing to a confidential informant who has substantially complied with an informant agreement.
2. After consideration of an informant agreement, notwithstanding section 19-03.1-23.2, a court may defer imposition of sentence or suspend a portion of a minimum mandatory sentence when a confidential informant has substantially complied with an informant agreement.
3. If necessary to protect a confidential informant or the integrity of an ongoing investigation, a court may direct submission of sentencing memoranda in writing under seal when sentencing or deferring imposition of sentence of a confidential informant.

4/14/17 DA
6086

4. If necessary to protect a confidential informant or the integrity of an investigation, a court may dispense with reporting departure from a mandatory sentence under subsection 3 of section 12.1-32-03.
5. This section does not prohibit disposition of cases by deferral of prosecution with or without court approval."

Renumber accordingly

**2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL NO. HB 1221 as (re) engrossed

House Judiciary Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed
 - Other _____

Motion Made by: Senator Armstrong Seconded by: Senator Myrdal

Representatives	4/13		Yes	No		Senators	4/13		Yes	No
Chairman T. Jones	X		X			Senator Armstrong	X		X	
Rep. Johnston	X		X			Senator Myrdal	X		X	
Rep. Magrum	X			X		Senator C. Nelson	X		X	
Total Rep. Vote			2	1		Total Senate Vote			3	0

Vote Count Yes: 5 No: 1 Absent: 0

House Carrier _____ Senate Carrier _____

LC Number _____ of amendment

LC Number _____ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment: No amendment brought forth at this time.

**2017 HOUSE CONFERENCE COMMITTEE
 ROLL CALL VOTES**

BILL NO. HB 1221 as (re) engrossed

House Judiciary Committee

- Action Taken**
- HOUSE accede to Senate Amendments
 - HOUSE accede to Senate Amendments and further amend
 - SENATE recede from Senate amendments
 - SENATE recede from Senate amendments and amend as follows
 - Unable to agree, recommends that the committee be discharged and a new committee be appointed
 - Other _____

Motion Made by: Rep. Magrum Seconded by: Senator Myrdal

Representatives	4/14		Yes	No		Senators	4/14		Yes	No
Chairman T. Jones	X		X			Senator Armstrong	X		X	
Rep. Johnston	X		X			Senator Myrdal	X		X	
Rep. Magrum	X		X			Senator C. Nelson	---		--	
Total Rep. Vote			3			Total Senate Vote			2	0

Vote Count Yes: 5 No: _____ Absent: 1

House Carrier Rep. Jones Senate Carrier Senator Armstrong

LC Number 17.0595. . 03012 of amendment

LC Number 17.0595 . 05000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment: No amendment brought forth at this time.

Added as per 17.0595.03010

Insert LC: 17.0595.03010
House Carrier: Jones
Senate Carrier: Armstrong

REPORT OF CONFERENCE COMMITTEE

HB 1221, as engrossed: Your conference committee (Sens. Armstrong, Myrdal, Nelson and Reps. Jones, Johnston, Magrum) recommends that the **SENATE RECEDE** from the Senate amendments as printed on HJ pages 1001-1003, adopt amendments as follows, and place HB 1221 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1282 and 1283 of the House Journal and pages 1001-1003 of the Senate Journal and that Engrossed House Bill No. 1221 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 29-29.5 of the North Dakota Century Code, relating to the use of confidential informants; to amend and reenact section 12-63-04 of the North Dakota Century Code, relating to the powers and duties of the peace officer standards and training board; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

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The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
 - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
 - b. Examine, under oath, any applicant for licensing.
 - c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
 - d. Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.

Insert LC: 17.0595.03010
House Carrier: Jones
Senate Carrier: Armstrong

3. The board shall adopt rules relating to the professional conduct of licensed peace officers involved in confidential informant agreements under chapter 29-29.5, and shall receive complaints and make determinations if an officer's conduct violated the protections provided in chapter 29-29.5.
4. The board shall establish penalties and enforce violations of protections provided in chapter 29-29.5. The penalties established must be formulated based on the nature, severity, gravity, and recurrence of violations. The board may deny, suspend, or revoke a license or may impose probationary conditions, including remedial training.

SECTION 2. Chapter 29-29.5 of the North Dakota Century Code is created and enacted as follows:

29-29.5-01. Definitions.

1. "Benefit" means any of the following conferred on a confidential informant or a third party:
 - a. Leniency in a criminal case or probation or parole matter, including a decision whether to arrest or charge an offense or to limit the number or severity of charges;
 - b. Sentence reduction of any kind or amount; or
 - c. A favorable sentencing or bond recommendation.
2. "Confidential informant" means an individual who cooperates with a law enforcement agency and:
 - a. Is willing to attempt a controlled buy or controlled sale or agrees to surreptitiously record a target offender; and
 - b. Seeks or is offered a benefit.
3. "Controlled buy" means the purchase or attempted purchase of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of law enforcement.
4. "Controlled sale" means the sale or attempted sale of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of enforcement.
5. "Informant agreement" means a written agreement describing the rights and obligations of a confidential informant and law enforcement agency.
6. "Law enforcement agency" means an agency authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.
7. "Target offender" means an individual suspected of a violation of the law, whose identity is known or unknown, and who is the focus of an informant agreement.

29-29.5-02. Limitation on use of juvenile confidential informants.

1. A law enforcement agency may not use a juvenile fifteen years of age or younger as a confidential informant.

2. A juvenile over the age of fifteen, but under the age of eighteen, may not be used as a confidential informant unless:
 - a. The juvenile is married;
 - b. The juvenile is emancipated;
 - c. The juvenile is serving in the active duty armed forces; or
 - d. The juvenile is subject to criminal charges; and
 - (1) There are no other reasonable avenues to obtain evidence of the crime being investigated and the risk of harm to the juvenile is minimal;
 - (2) The juvenile's custodial parent or guardian has signed the informant agreement; and
 - (3) The juvenile has consulted with legal counsel.

29-29.5-03. Limitation on use of campus police.

A law enforcement officer employed under section 15-10-17 may not enter an informant agreement with a student enrolled in an institution under the control of the state board of higher education.

29-29.5-04. Law enforcement confidential informant training and guidelines.

1. After July 1, 2018, a law enforcement agency may not use a confidential informant unless the law enforcement agency is trained in the use of confidential informants in a training course approved by the attorney general.
 - a. Training must occur at least once every three years, and must establish that the law enforcement agency has trained all personnel who are involved in the use or recruitment of confidential informants in the law enforcement agency's policies and procedures in a manner consistent with the peace officer standards and training requirements.
 - b. The law enforcement agency shall document the date and scope of all training along with all law enforcement personnel trained.
2. The peace officers standards and training board shall adopt rules for the use of confidential informants, which at a minimum:
 - a. Assign the consideration of the preservation of the safety of a confidential informant.
 - b. Execute reasonable protective measures for a confidential informant.
 - c. Establish guidelines for the training and briefing of confidential informants.
 - d. Restrict off-duty association or social relationships by law enforcement agency personnel with confidential informants.

- e. Establish procedures to deactivate confidential informants which maintain the safety and anonymity of confidential informants.
- f. Establish a process to evaluate and report the criminal history and propensity for violence of any target offenders.
- g. Establish written security procedures protecting the identity of a confidential informant.
- h. Establish written procedures relating to the use of a paid confidential informant.

29-29.5-05. Written agreement required.

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- 1. The confidential informant's right to remain silent, the right to speak with legal counsel at any time, and the right to cease working as a confidential informant;
- 2. A statement of the benefit which will be recommended upon substantial compliance with the informant agreement;
- 3. A statement that an absolute guarantee or promise may not be made to the confidential informant other than law enforcement will truthfully report cooperation;
- 4. A statement of the inherent risk associated with acting as a confidential informant;
- 5. Confidential informant responsibilities, including testifying truthfully if called as a witness in a court proceeding;
- 6. A written waiver of right to counsel which must be executed separately and attached to the informant agreement, signed by the confidential informant and a law enforcement officer, and include language stating that consulting legal counsel at any time will not invalidate the agreement;
- 7. The parameters of the agreement, detailing the anticipated number of buys, sales, acts, or the duration of service;
- 8. A description of any penalty for violating the terms of the written agreement, including any additional criminal charges;
- 9. A warning that sexual relations with an intended target of a police investigation is a violation of the agreement and may be a violation of the law;
- 10. A statement that money or property loaned or entrusted to the confidential informant by law enforcement may not be used for personal use and must be accounted for at all times; and
- 11. Specification of any known crimes of violence committed by a target offender.

29-29.5-06. Death of a confidential informant.

Upon the death of a confidential informant, the supervising law enforcement agency shall withdraw from the investigation of the death of its confidential informant. The supervising law enforcement agency promptly shall notify the attorney general of its withdrawal from the investigation, and the attorney general shall authorize an independent law enforcement agency investigation.

29-29.5-07. Reporting violations of this chapter.

1. An individual may report a suspected violation of this chapter to the appropriate law enforcement agency administration. The law enforcement agency shall investigate any reported violation within twenty days from receiving the complaint and, within forty-five days from receiving the complaint, make a written determination on whether a violation occurred. Upon completion, the law enforcement agency shall forward the written report to the individual who filed the initial complaint and to the peace officer standards and training board for review. An individual who filed a report for a suspected violation may seek additional remedies from the peace officer standards and training board.
2. A licensed peace officer or a prosecutor who reasonably believes a law enforcement officer or a law enforcement agency has violated this chapter shall file a written report with the peace officer standards and training board.

29-29.5-08. Disposition of cases involving confidential informants.

1. An informant agreement may be presented to the court at the time of sentencing. A court shall give consideration at sentencing to a confidential informant who has substantially complied with an informant agreement.
2. After consideration of an informant agreement, notwithstanding section 19-03.1-23.2, a court may defer imposition of sentence or suspend a portion of a minimum mandatory sentence when a confidential informant has substantially complied with an informant agreement.
3. If necessary to protect a confidential informant or the integrity of an ongoing investigation, a court may direct submission of sentencing memoranda in writing under seal when sentencing or deferring imposition of sentence of a confidential informant.
4. If necessary to protect a confidential informant or the integrity of an investigation, a court may dispense with reporting departure from a mandatory sentence under subsection 3 of section 12.1-32-03.
5. This section does not prohibit disposition of cases by deferral of prosecution with or without court approval."

Renumber accordingly

Engrossed HB 1221 was placed on the Seventh order of business on the calendar.

2017 TESTIMONY

HB 1221

#1
1221
2-1-17

HB1221. Confidential Informant Reform.

Rick Becker 02/01/17

What is it?

Sets a defined process in place for a Confidential Informant program.

1. That process addresses protocols and protections for vulnerable individuals
2. Gives specific Guidelines for law enforcement regarding training, handling of prospective and active informants, documentation, confidentiality, and QA.
3. Outlines the agreement that the informant must enter.
4. Provides transparency and accountability to the program.

Why is this bill before you?

Andrew Sadek - student at NDSCS, was told he was looking at 40 years in prison for two occurrence involving marijuana with a total value of \$80, and coerced into being a Confidential Informant.

I don't claim to know specifics of Andrew's case, or the details on "he said, she said", but what I do know is that protocols were not in place for Andrew's protection, I know that transparency is lacking, and I know he ended up dead.

The bill

Page 1. Definitions

Page 2. Limitations on use of vulnerable CI

Can't be under 15yo. 15-18yo have limitations; parental consent, attorney

Page 3, 4, 5. LE Guidelines

CI recruitment training, CI training, Guidelines for deactivation, Inform right to legal counsel, Provide an agreement to the CI, Assess suitability to be a CI, Recordkeeping

Page 6. Details of the Informant Agreement

Right to attorney, No promise of an inducement, What activities required, No sex acts

Page 7. Transparency and accountability. A yearly report of CI activity

Why give a Do Not Pass

BCI/LE are already doing all of this. The new protocols take care of all the issues. BCI doesn't want the legislature telling them what to do. BCI wants wiggle room in the program - **where?**

If this is an acceptable argument, we must ask exactly which specific sections are too restrictive, and in what specific scenarios would the need that extra wiggle room.

Why give a Do Pass

This is a program with potentially serious consequences that desperately needs standardization, transparency, and protections for the individuals brought into the program.

↓

#2
1221
2-1-17

HOUSE JUDICIARY COMMITTEE
FEBRUARY 1, 2017

TESTIMONY OF DALLAS CARLSON
OFFICE OF ATTORNEY GENERAL – BCI
HOUSE BILL NO. 1221

Chairman Koppelman, members of the Committee.

My name is Dallas Carlson. I am the Director of the Bureau of Criminal Investigation (BCI). I am here to testify in opposition of House Bill 1221.

Most law enforcement, including BCI, has used or routinely uses Confidential Informants (CI's). CI's are utilized in a variety of ways. They may be used in an ongoing drug conspiracy, a drug purchase, for gathering intelligence, or to solve general crimes ranging from burglary to homicide. CI's are an important part of our "tool box".

CI's typically cooperate with law enforcement for 3 reasons; consideration on charges or sentencing, working for money, or retaliation against an ex-partner in crime.

I would like to address this bill;

Page 1; Law Enforcement use of CI's for the reasons listed in lines 10-12 and 21-22 need to have approval of the prosecuting attorney. We do not make deals on the street dealing with sentencing. Law Enforcement does pay money to CI's as listed in line 13. Law Enforcement does not use CI's for the reasons listed in lines 14-18. We certainly don't have the authority to intervene with immigration

status and North Dakota has no witness protection plan.

Page 2; Line 9-12. BCI, and law enforcement in general, does ^{NOT} routinely do controlled sales of illegal drugs or property. BCI, well as other agencies, has used informant agreements mentioned in lines 13-14 for years . Page 2, lines 19-31 and page 3, lines 1-4 discusses the use of juveniles. BCI discourages and does not use juveniles for CI's. In fact BCI's training on CI's lists juveniles as "Individuals not considered" for CI use.

Page 3; Lines 4-8 discusses the use of college students. Most college students are adults. Not all college students are full time students. Some college students may take only 1 or 2 classes. This bill does not define what a college student is. Aside from this issue some ND colleges have POST certified police officers and police departments. These officers receive the same basic training as any Deputy Sheriff, City Police Officer, or BCI agent. Law enforcement would not use someone receiving in patient treatment as described in lines 9-12 nor do we put someone in a position to jeopardize any outpatient treatment plan they may be in. Page 3, lines 13-29 and Page 4, lines 1-5 and 10-15 are being trained and have been used for years by law enforcement.

Page 4; Lines 16-31 discuss the process to evaluate the criminal history and propensity for violence, as well as establish policies to assess potential CI's. While this is done informally, it is done. All cases contain research of the suspects criminal past. All CI's are interviewed prior to becoming CI's or even considering them to be CI's. These interviews allow law enforcement to make

a decision on whether or not to use this person as a CI. In the last 2-3 years law enforcement was given grants through the State Land Department. These grants are administered by BCI. Part of these grants were used to supply North Dakota law enforcement agencies with a uniform, standard policy. LEXIPOL keeps policies up to date by the use of research and court decisions. Along with the policies are on line short daily briefings. To date 56 agencies have taken advantage of this program. This program enabled all size agencies to have good policies. I would like to go back to lines 6-9 on page 4. I have been employed with BCI for 27+ years. I do not know of one CI that has been murdered while working with North Dakota law enforcement.

Page 5; BCI, and I presume other agencies that deal with CI's, already have good, secure record keeping systems in place.

Page 6; As I mentioned, most agencies have policies and procedures to deal with CI's. BCI has policies titled CONFIDENTIAL INFORMANTS and PAROLE/PROBATION INFORMANT HANDLING. BCI's policy discourages using juveniles. BCI, as with most agencies, also has a statement of rights form, cooperating individual agreement, probation authorization, and deactivation confidential informants forms. (I will supply copies to the committee)

Page 7 and 8; This appears to be administration and policies dealing with CI's. Currently we do keep records that list the number of active and inactive CI's. We keep track of how much buy fund is used on each case a CI does for us as well as how much we pay a CI. We do keep record of demographics of CI's. We don't

have any death records of CI's as there has not been any. While these records are important I don't feel they are records that need to be made public. CI's don't want their information public (only at the order of the court). In fact making this information public would endanger the lives of CI's. I don't believe we want to do that. Also making this information public would hinder future investigations.

I'm sure the question will be if we already do most of what is in this bill, why are we against it? As we know legislation binds us to a set of rules we live with for at least 2 years. Law enforcement moves fast, situations change fast, criminals adapt and can change their ways and don't have to wait 2 years. Good policies, procedures and training accomplish the same thing. BCI teaches at police basic. We have a BCI drug school and a BCI criminal investigation school. CI handling is taught in all three. Most agencies have good policies and procedures to deal with CI's. All small agencies look to us to assist with cases that have a need for CI's. BCI was created years ago to assist small agencies that do not have the personnel or ability to conduct investigations, some of which use CI's. I feel comfortable saying large agencies have good policies in place. Bismarck is an example of this. Law enforcement can adapt and keep ahead of, or at least up with, criminals if we are allowed to continue to adapt our training and procedures.

I will attempt to answer any questions.

Thank you.

4

NORTH DAKOTA BUREAU OF CRIMINAL INVESTIGATION
GENERAL ORDERS

NUMBER: 2-11

SUBJECT: CONFIDENTIAL INFORMANTS

EFFECTIVE DATE: February 1, 2008

AMENDS/SUPERSEDES: October 1, 2001

I. POLICY

The Bureau encourages development and use of confidential informants. The proper legal use of confidential informants can greatly assist the efforts of agents in conducting investigations.

II. PURPOSE

The purpose of this order is to set forth procedures to help agents of the Bureau develop and effectively use confidential informants and the information obtained.

III. PROCEDURE

A. Identity of confidential informants

1. Each agent who wishes to develop and use a confidential informant shall prepare a confidential file on the confidential informant which includes:
 - a) a photo
 - b) Cooperating Individual Agreement (SFN 11881)
 - c) Personal History Report (SFN 10596)

This information shall be sent to the Bismarck Bureau office.

2. The agent shall assign a Confidential Informant (CI) number. Confidential informants shall have only one active number and be controlled by only one agent at a time. When a CI is transferred to another agent, the CI shall be assigned a new number specific to that agent.
3. Once a confidential informant file has been prepared, all future references to the confidential informant in any reports shall be by confidential informant number only. Agents should identify confidential informants by their complete numbers within reports. The CI numbers may be either Bureau numbers or other-agency numbers.
4. Once the confidential informant file has been prepared, the agent is responsible for keeping the file up to date.
5. Agents are encouraged to keep only active confidential informants on file. Approximately every six months, a list of confidential informants will be sent to each agent for their review. If there has been no activity by the confidential informant for a six-month period, the confidential informant agreement may be terminated. Termination of confidential informant agreements is accomplished by memo to the Chief Agent.
6. Agents may retain their own duplicate confidential informant files, but will be responsible for file security.
7. The identity of informants is privileged and confidential under N.D.R.Ev. 509 and as otherwise provided for by law.

B. Use of agency confidential informants

1. Agents shall not make any deals with people concerning charging, pleading, or sentencing. Agents may, however, consult with the state's attorney regarding these matters.
2. Agents shall deal with confidential informants very carefully, particularly with those of a different gender or those whose sexual preferences may make an investigation susceptible to compromise. Whenever possible, agents shall have two individuals present when dealing with informants of a different gender or sexual preference.
3. Use of juvenile confidential informants is particularly sensitive, so agents must obtain parental permission in writing and consult with the state's attorney or juvenile court personnel. Use of juveniles as confidential informants is discouraged.

NORTH DAKOTA BUREAU OF CRIMINAL INVESTIGATION
GENERAL ORDERS

NUMBER: 2-11.5

SUBJECT: PAROLE/PROBATION INFORMANT POLICY HANDLING

EFFECTIVE DATE: February 1, 2008

AMENDS/SUPERSEDES: October 1, 2001

I. POLICY

A. On occasion, it becomes necessary to utilize informants who are under the supervision of the Department of Correction, Parole and Probation.

II. PURPOSE

The purpose of this general order is to provide guidelines in utilizing informants who are under the supervision of the Department of Correction, Parole and Probation.

III. PROCEDURE

A. The use of these types of informants by BCI agents will be restricted to the following conditions:

1. Whenever possible, the use of these types of informants should be avoided or their involvement in an investigation be kept to a minimum.
2. If the potential informant is under the supervision of Parole and Probation, the Agent is to obtain permission from the sentencing judge pursuant to NDCC 12.1-32-07.9.
3. This type of informant may not be utilized without an amended court order.

4. In all cases involving these types of informants, they are not to be used without consultation with the Chief Agents or the Bureau Director.
5. Whenever possible, agent introduction will be used to minimize the probationer handling of contraband.



STATEMENT OF RIGHTS
 OFFICE OF THE ATTORNEY GENERAL
 BUREAU OF CRIMINAL INVESTIGATION
 SFN 17354 (02/05)

Place	
Date	
Time	

STATEMENT OF RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can and will be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided for you before any questioning.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time.

I have read this statement of my rights and I understand what my rights are.

Signature

Time

Date

WAIVER OF RIGHTS

I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no mental or physical force of any kind has been used against me.

Signature

Time

Date

CERTIFICATION

I CERTIFY that the foregoing Statement of Rights was read to the above signatory, that he/she also read it and has affixed his/her signature in my presence.

Signature of Officer

Witness

Witness

9



COOPERATING INDIVIDUAL AGREEMENT

ND OFFICE OF THE ATTORNEY GENERAL

BUREAU OF CRIMINAL INVESTIGATION

SFN 10596 (05/2014)

Informant Submission		Cooperating Individual Number		Telephone Number			
Name (Last, First, Middle)							
Address		City		State	ZIP Code		
Alias or Other Names							
Date of Birth	Place of Birth (City and State)	Race	Gender <input type="checkbox"/> M <input type="checkbox"/> F	Height	Weight	Eye Color	Hair Color
Identifying Characteristics (scars, marks, physical defects, etc.)				Occupation			
Drug User <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what drug? _____					Social Security Number		
FBI Number		SID Number		Other			

The Privacy Act of 1974 requires the following information be provided when individuals are requested to disclose their social security numbers. Disclosure of the social security number is voluntary and it is requested for identification purposes. Failure to disclose this information will not affect participation in this program.

Driver's License Information

State or County	Number	Expiration Date
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Vehicle Registration

Make/Model	Year of Car	License Number	Year	State
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Education

Name of School	Level Completed
----------------	-----------------

Agent Observations/Miscellaneous

Comments

Criminal Activity

Locations of Criminal Activity (City, State, County)
--

Criminal Associates (Last, First, Middle Name)
--

of Supply (Name)

Prior Criminal Record

10

Name of Cooperating Individual	Confidential Informant Number
--------------------------------	-------------------------------

Family

Spouse			
Address	City	State	ZIP Code
Father			
Address	City	State	ZIP Code
Mother			
Address	City	State	ZIP Code
Brothers/Sisters/Children (Name and Relationship)			
Address	City	State	ZIP Code
Brothers/Sisters/Children (Name and Relationship)			
Address	City	State	ZIP Code
Brothers/Sisters/Children (Name and Relationship)			
Address	City	State	ZIP Code

Agent's Name (Print)	Signature	Date
Supervisor's Name (Print)	Signature	Date

11

Name of Cooperating Individual	Confidential Informant Number
--------------------------------	-------------------------------

1. Do you understand that you have no police power under the state of North Dakota or any local government subdivision and have no authority to carry a weapon?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Do you understand that your association with the Bureau of Criminal Investigation is only as a <u>Confidential Informant</u> and that any payment received from the Bureau of Criminal Investigation will not be subject to federal or state withholding or social security? All reporting of income is the responsibility of the <u>Confidential Informant</u> .	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Do you understand that as a Confidential Informant you are not an employee of the state of North Dakota, nor are you entitled to Worker's Compensation or unemployment benefits from the state of North Dakota and will not hold the state liable for any injuries or damage incurred by reason of your association with the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Do you understand that you are not privileged to break any laws during the course of your association with the Bureau of Criminal Investigation and are not to handle any contraband or illegal drugs at any time unless specifically authorized to do so by an agent of the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Do you understand you are not to divulge to any person, except the agent with whom you are associated, your status as a Confidential Informant for the Bureau of Criminal Investigation and that you will not use your association with the Bureau of Criminal Investigation to resolve your personal problems?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Do you understand that you are to report to the agent assigned to work with you on a continuous basis while actively associated with the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Do you understand that your association with the Bureau of Criminal Investigation does not afford you any special privileges regarding the use or sale of controlled substances?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Do you understand that you are not to use the Bureau of Criminal Investigation or any of its agents as credit references or employment references unless prior approval is obtained from the agent with whom you are associated?	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. Do you understand the law as it relates to entrapment, as I have explained it to you?	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. Do you understand that if you are currently on parole or probation that prior approval must be obtained from a district judge, after an in-camera hearing, before entering into any agreement with the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Do you understand that no promises can be made to you about court appearances and that you may have to appear in court if the circumstances so require?	<input type="checkbox"/> Yes <input type="checkbox"/> No
12. Do you have any questions concerning the rules and regulations to which you will be required to adhere?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Witness Signature	Date
Agent Signature	Date
Confidential Informant Signature	Date

- 12 -



PROBATIONER AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION
SFN 51811 (05/2014)

District Judge (print)	Law Enforcement Officer (print)
Probationer(print)	Date

Permission is hereby granted allowing above-named probationer to be utilized by law enforcement in criminal investigations. The probationer agrees that they are not privileged to break any laws during their association with law enforcement and are not to handle any contraband or illegal drugs at any time, unless specifically authorized to do so by a law enforcement officer.

The probationer also agrees to adhere to the conditions set forth in the Cooperating Individual Agreement form.

The probationer also agrees to keep in contact with the law enforcement agency authorized to utilize the probationer and to follow any additional rules or conditions set forth by the law enforcement agency.

District Judge Signature
Law Enforcement Signature
Probationer Signature



DEACTIVATING CONFIDENTIAL INFORMANTS (CI)

ND OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION
SFN 51171 (05/2014)

Agent Name	Agent Number	Date
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CI Information

CI Name	CI Number
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Comments

Signature	Date
Chief Agent Signature	Date

HH

#19
1221
2-1-17

CONFIDENTIAL INFORMANT PROCESSING



Individuals NOT Considered

- ⊗ Currently on Parole
- ⊗ Juveniles
- ⊗ Prior Perjury conviction(s)
- ⊗ Sexual Offenders
- ⊗ Proven unreliable
 - ♥ High flight risk (if working off charges)
 - ♥ Past unreliable work



Individuals that Require Prior Approval from State's Attorney

- ⊗ Prior false information convictions
- ⊗ Working off certain charges
 - ♥ Financial Crimes
 - ♥ DUI
 - ♥ Cases involving victims
- ⊗ Currently on Probation
 - ♥ Probation Officer approval
 - ♥ In-camera hearing
- ⊗ Attempting to get out of jail
 - ♥ Bail reduction
 - ♥ History of Failure to appear



Situational Processing

⊗ Individuals incarcerated wanting to cooperate

- ♥ Determine reason incarcerated
- ♥ Run criminal history
- ♥ Debrief
- ♥ Wait until out of jail, meet and sign up



Situational Processing

⊗ Individuals detained wanting to cooperate

- ♥ Debrief

- ♥ Verbally get criminal history

 - ☐ Perjury

 - ☐ False info – get story behind

- ♥ Sign up

 - ☐ Start making calls in presence of officer/agent

- ♥ Meet up later if can't do something immediately

 - ☐ Run criminal history prior to meet

 - ☐ Debrief

 - ☐ Sign up



Situational Processing

🌐 Mercenary

- ♥ Run criminal history
- ♥ Debrief
 - 📄 Determine motivation
 - 📄 Determine expectation of compensation
- ♥ Sign up



Situational Processing

⊗ Non-custodial/Charges pending contact

♥ Contact potential CI

- Inform of pending charges
- Continue if they wish to cooperate

♥ Debrief

♥ Run criminal history

♥ Sign up

♥ Determine if charges will be filed or not filed

- Consider level of cooperation
- Consider type of charges
- If proffer sign up right away



Cooperation Considerations

- ⊗ Do not set number of cases must do
- ⊗ Consideration is up to State's Attorney
 - ♥ Opinion of Agent/Officer generally considered
- ⊗ Information relayed to CI
 - ♥ The more you do the more consideration you'll get
 - ♥ Quality of work helps
 - ☐ Keeping in contact
 - ☐ Following instructions
 - ☐ Keeping out of trouble



General Information

- ⊗ Do not record sign up (even during proffer)
- ⊗ Do not record conversations related to the potential of becoming a CI
- ⊗ Federal cases
 - ▼ Do not contact potential CI if they are represented
 - ▼ US Attorney's office will set up

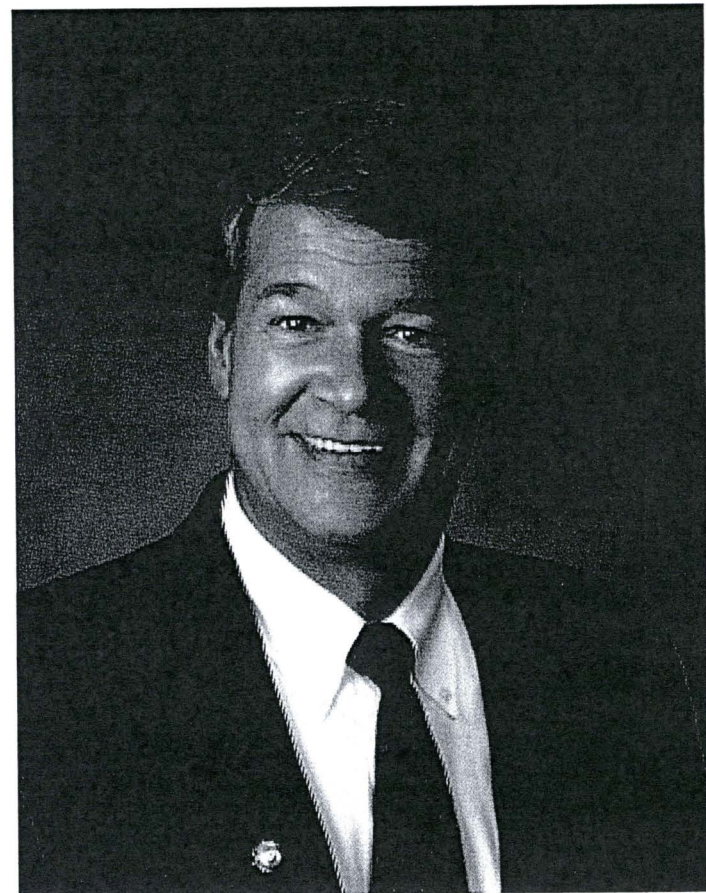


INFORMANT DEVELOPMENT



**North Dakota Office of
the Attorney General**

**Wayne Stenehjem
Attorney General**



Why Law Enforcement Uses Informants

- **More crimes of a significant nature have been solved and more investigative intelligence has been gathered through the successful use of informants than from any other investigative tool available to the law enforcement community.**
- **However, more embarrassment on the witness stand has occurred, and more good cases have been lost from improper uses of informants than from any other particular action by law enforcement officers.**

Interim Performance Objectives

- Identify strategies for avoiding common problems when working with informants.
- Identify skills needed to recruit informants in rural areas.
- Identify problem areas that rural police agencies encounter with informants and informant management.

Interim Performance Objectives

- Identify methods of deactivating informants.
- Identify the difference between informants and other sources of information.

Definitions

- Informant
 - An informant is anyone who provides information of an investigative nature to the law enforcement community for personal benefit.

- Confidential informant
 - Confidential informant or “CI” is an individual or group that provides to the law enforcement community information of a confidential nature. The “CI” does not want to be identified.

Precedent-Setting Cases

- Aguilar v. Texas

- “the two pronged test”
- Reliability and Truthful

- California Supreme Court

- The information must be factual not conclusionary and the information must be from personal knowledge.
- The affidavit must contain some underlying factual information so that the magistrate can reasonably conclude the information credible.

Precedent-Setting Cases

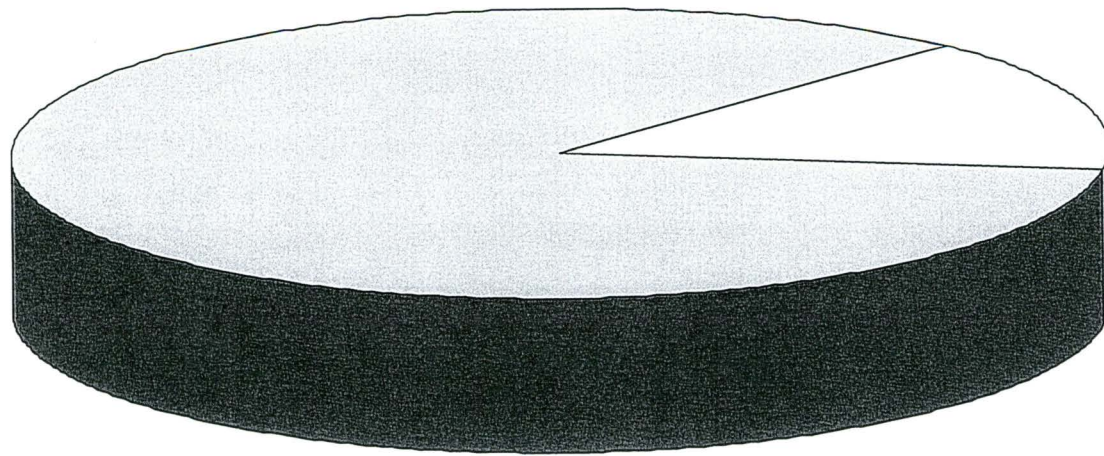
- Illinois v. Gates

- “totality of the circumstances” could be used when reliability of the “CI” cannot be shown.

- Aguilar v. Texas

- While Gates and Aguilar both address the requirements of the Fourth Amendment, Gates is more flexible and accommodates public as well as private interests.

Benefits of Confidential Informants



□ 85% of drug cases solved through the use of sources

Objectives of Confidential Informant Usage

- To assist law enforcement in solving crimes.
- To obtain intelligence in order to prevent crimes before commission.

General Uses of Confidential Informants

- Provide independent surveillance in certain areas where the mere presence of a stranger would be suspect.
- Furnish information from sources not readily available to law enforcement officers.
- Conduct controlled undercover negotiations with or introduce undercover agents to criminal suspects.

General Uses of Confidential Informants

- Testify for the government at legal proceedings.
- Gather intelligence (i.e., prices of contraband, M.O. of suspects, etc.).
- Develop and use other sources of information within the community (i.e., Crime Stoppers).

Sources of Information

- Average citizen
 - usually very reliable, but does not have direct knowledge of the criminal activity
 - will take advantage of the different State and government programs
- Other law enforcement personnel
 - keys to success

Sources of Information

- Violator or associate of the criminal
 - can be your most valuable source of information
 - can cause control problems, embarrassment, entrapment problems, and/or credibility problems

Source Groups

- Informants
an individual whose identity is not held in confidence
- Confidential Informants (“CI”)
 - persons who wish to remain anonymous for various reasons

Tips for Handling Informants

- Always conduct personal and criminal background checks on the source.
- Treat each and every violator as a potential informant.
- Be sociable and present a pleasing personality.
- Maintain a liaison with fellow officers and agents from other agencies.

Tips for Handling Informants

- Emphasize the development of informants by uniformed officers.
- Work hard and with dedication to develop good informants.
- Develop good interviewing techniques, including listening and asking questions.

Questions to Ask about Informants

- What is the potential informant's motivation?
- What is the expected reliability of the potential informant?
- What is the potential informant's intelligence level?
- How does the potential informant know of the violation?
- Does the potential informant have a personal interest?

Questions to Ask about Informants

- Does the potential informant have direct knowledge of this information?
- Does the potential informant have access to non-drug related information?
- Does the potential informant have reason to be vengeful towards the violator?

Questions to Ask about Informants

- Has this person previously been an informant?
- Is the person withholding any information?
- Has the person fabricated any information in the past?
- Has the person been convicted of perjury or obstruction of the legal process?

Control and Handling of Informants

- **Investigative Control** - The investigator should control the investigation ; not the informant.
- **Suggestions** - The informant should be encouraged to offer suggestions.
- **Promises** - Don't make promises that you are unable to keep.
- **Personal Contact** - Maintain frequent personal contact with informants, in a safe place.

Control and Handling of Informants

- **Use of second officer** - when possible, utilize a second officer when meeting with a informant. This will reduce the risk of false allegations which might be made by the informant.
- **Supervisory notification** - it is recommended that you notify your supervisor after each contact with the informant. This will allow your supervisor a better picture of the informant, investigator working environment.
- **Entrapment** - explain the law of entrapment to the informant and make sure the informant understands entrapment.

Control and Handling of Informants

- **Moral standards** - be aware of the differences in your moral standards and those of the informant.
- **Trust** - maintain a good rapport, but never trust an informant.
- **Values** - be truthful and fair
- **Corroboration** - attempt to corroborate the informants information through independent verification.
- **Money** - never make a personal loan to an informant.

Control and Handling of Informants

- **Termination** - Officially document the termination or deactivation of the use of an informant. Preferably, a supervisor should handle any termination of an informant.

Use of "CI's" for Undercover Buys

- Steps for use
 - thoroughly debrief CI
 - CI must sign for money
 - search CI and his vehicle, if used
 - observe the CI enter and exit the location

Use of "CI's" for Undercover Buys

- Steps for use
 - have prearranged (neutral location) meeting immediately after the buy
 - collect evidence and equipment from CI
 - search CI again for all contraband
 - obtain written statement and debrief

Use of "CI's" for Undercover Buys

- Written statements
 - should always be obtained from a CI whenever he/her has an interaction with the target(s) of the investigation outside the presence of an officer

- Control mechanisms
 - placed on the CI by following steps; the officer establishes and further enhances the credibility of the CI when exercising these established procedures

Managing the Confidential Informant

- **Identify** - experience will develop the ability to identify potential confidential Informants
- **Recruit** - successful recruitment can be achieved through establishing rapport and being able to articulate what the person can realize as a result of the cooperation.
- **Establish** - documentation of a new confidential informant and the maintenance of the file is important.
- **Develop** - Know the limitations of the confidential informant and assist the "CI" to achieve the sources full potential.

Managing the Confidential Informant

- **Maintain** - keep the confidential informant active by not exposing the "CI" to situations that will limit or restrict the "CI's" ability to perform at the "CI's" maximum potential.
- **Utilize** - be sure to continue to use the "CI" to maintain the "CI" creditability.
- **Control** - this element is the most important aspect to successful "CI" management. The "CI" must never be allowed to run an investigation.

Attributes of Successful Informant Management

- Mutual satisfaction of needs
- Officer values
 - **honesty** - be honest with the Informant
 - **integrity** - the officer must maintain a high integrity to maintain control of the informant.
 - **Fairness** - be fair and reasonable with the informant.
 - **clarity of direction** - failure to give clear direction enhances the possibility of losing control of the informant.

Attributes of Failure in Confidential Informant Management

- **Dishonesty** - the "CI" will not be honest with you if your not honest with the "CI".
- **Disrespect** - don't degrade the "CI".
- **Situational ethics** - ethics can't be turned on and off you must maintain high ethics always.
- **Loss of objectivity** - always maintain your objectivity remember they are a "CI" not your partner.

Attributes of Failure in Confidential Informant Management

- **Misidentification of Motive** - The officer that misjudges the true motives of a "CI" may experience tremendous control problems.

Dangers of Informant Usage

- Borrowing money from the CI
- Receiving gifts from the CI
- Entering into a business relationship with a CI

Dangers of Informant Usage

- Paying the CI without a witness
- Meeting CI by yourself (avoid whenever possible)
- Testimony/Credibility
- Violations of the law by the CI (drug use)

Protection of Informant's Identity

- **Reprisals** - reprisals against an informant can affect the investigator personally and reflect adversely on the law enforcement community.
- **Withholding identity** - courts' informant privilege doctrine allows the government to withhold the informant's identity however, this is not absolute. The court can order the government to identify the informant if: the informant provided more than investigative information; the informant is a material witness; the informant participated in the crime or handled evidence; or the informant's testimony is essential to the defense of the accused.

#4
1221
2-1-17

HOUSE JUDICIARY COMMITTEE
FEBRUARY 1ST 2017

TESTIMONY OF SS/A STEVE GUTKNECHT
OFFICE OF ATTORNEY GENERAL
HOUSE BILL NO. 1221

Mr. Chairman, members of the Committee. I am Steve Gutknecht, Supervisory Special Agent of NDBCI stationed in Williston. Confidential informants are a necessary tool of law enforcement to get information needed to assist in enforcing the laws for the greater good of all citizens of ND. Hundreds if not thousands of confidential informants have been used throughout the years usually for the mutual benefit of both law enforcement and the confidential informants with few exceptions. Are there dangers involved? Absolutely, there are dangers involved in many of the activities law enforcement does. No one can deny this. These dangers however should be mitigated by law enforcement to best of their abilities. It should be remembered that most confidential informants already live in the criminal realm and got into it on their own. It is not law enforcement introducing them to it for the first time.

The recent murder of Jack Sjol is an excellent example of why confidential informants are necessary. This homicide probably wouldn't have gotten solved without the use of a confidential informant.

- Jack Sjol was a local rancher that was murdered by Ryan Stensaker a known drug user/dealer that had been through the judicial system many times.

-After killing Jack Sjol, Stensaker loaded the body and transported it to a private landfill near a rural home. This act left law enforcement without much evidence to go on. For two weeks law enforcement worked and we're no closer to solving this crime.

- Then a long time confidential informant, that I had known for many years and had paid several times for information in addition to working off charges on occasion, obtained information on the whereabouts of Sjol's body. This person came in and told Law enforcement the information known, leading to the arrest and subsequent conviction of Stensaker. Thus solving this crime. Without this confidential informant's prior use by law enforcement, the family and friends would still not have closure to this day and law enforcement would still be expending resources attempting to solve this murder.

This bill is too far reaching and too restrictive to be followed and still allow law enforcement officers to be most effective with confidential informants. Problems I see with the proposed bill are:

-Not being able to use a person who is currently participating in a drug treatment program. Some people want to work as a confidential informant while in this situation and this bill would take that opportunity away from them.

-There are portions of this bill that are so open to interpretation that they will mean different things to different people. Some of the terms are "reasonable protective measures" and "national law enforcement standards." Who defines these? Another is "service period." Some confidential informants get to work right away others take quite

some time to get started. Each case is different. Sometimes for the safety of the confidential informant we must wait before they start working.

-Requiring the use of legal counsel and prosecuting attorneys could slow the process a great deal. The Miranda warning often covers their right to this opportunity now.

-Subsection #11 is not completely possible. Law enforcement does not always have a drug dealer identified prior to a controlled buy taking place. Sometimes a controlled buy is set up by a CI that only knows the dealer by his moniker and that person is not identified until arrested or he shows up to make the sale. Also, there is no guarantee of who a confidential informant may run into at a criminal's residence or on the street during a controlled purchase.

In the "transparency and accountability" section of this bill are some things that are just not conducive to good sound law enforcement practices, Such as publishing the exact numbers of confidential informants. Some drug dealers are smart and would follow these numbers to determine when and where it is safe to do business.

In closing I feel that several parts of this bill are not conducive to good law enforcement practices. The criminal element that law enforcement officers deal with is an ever changing one and to establish legislation that locks us in to one idea, one set of rules or what may be thought of as a good idea at this time may not be applicable to criminal

problems in the future. In short we do not know what criminals are going to come up with next so please don't lock us into something we can't live with in the future.

#5
1221
2-1-17

House Bill 1221
House Judiciary Committee

Testimony of Travis W. Finck
Deputy Director N. D. Comm. On Legal Counsel for Indigents
February 1, 2017

Good Morning, Chairman Koppelman, and members of the Committee. For the record, my name is Travis Finck. I am the Deputy Director of the North Dakota Commission on Legal Counsel for Indigents.

The North Dakota Commission on Legal Counsel for Indigents is the agency in North Dakota tasked with providing counsel to indigent persons when there is a statutory, rule or constitutional guarantee to counsel at public expense. This bill provides, in its current form, the Commission would provide attorneys for perspective confidential informants. At this time, we are unable to accurately predict the costs to the agency in providing attorneys for perspective informants. We can however, aver the attorneys who provide the services will likely need to be available at all times of the night and day to provide services, that there will be an increased number of conflict of interest assignments, and we will be assigned to represent persons who may not be charged with a crime.

If it is the direction of the Legislative Assembly to have a right to indigent counsel, we will once again, as we have in the past, rise to meet the challenge. However, that challenge will necessarily mean increased costs to the agency at a level we simply are not able to predict.

Respectfully Submitted:



Travis W. Finck, Deputy Director
N.D. Comm. On Legal Counsel
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(701) 845-8632

|

#6
1221
2-1-17

Prepared by the North Dakota
Commission on Legal Counsel for Indigents
02//2017

PROPOSED AMENDMENT TO HOUSE BILL NO. 1221

Page 4, line 12, remove "If an individual cannot afford legal counsel,
appointed counsel must be provided."

1
1221
2-13-17

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1221

- Page 3, line 14, replace "using" with "may not use"
- Page 3, line 14, replace "shall" with "unless the law enforcement agency is certified by the attorney general's office at least once every three years. Certification under this section must establish the law enforcement agency"
- Page 3, line 15, replace "Train" with "Trains"
- Page 3, line 19, replace "Assign" with "Assigns"
- Page 3, line 22, replace "Execute" with "Executes"
- Page 3, line 25, replace "Train" with "Trains"
- Page 3, line 28, replace "Designate" with "Designates"
- Page 4, line 1, replace "Restrict" with "Restricts"
- Page 4, line 4, replace "Establish" with "Establishes"
- Page 4, line 6, replace "advise" with "advises"
- Page 4, line 10, replace "Inform" with "Informs"
- Page 4, line 12, remove "If an individual cannot afford legal counsel."
- Page 4, remove line 13
- Page 4, line 14, replace "Provide" with "Provides"
- Page 4, line 16, replace "Establish" with "Establishes"
- Page 4, line 19, replace "Establish" with "Establishes"
- Page 5, line 7, replace "Establish" with "Establishes"
- Page 5, line 16, replace "Establish" with "Establishes"
- Page 6, line 3, replace "Perform" with "Performs"
- Page 6, line 17, replace the second "the" with "any"
- Page 7, line 1, replace "**Transparency and accountability**" with "**Report to the attorney general**"
- Page 7, line 3, after the underscored period insert "Data required to be collected under this subsection is confidential."
- Page 7, line 7, remove ". Upon receipt of the"
- Page 7, remove line 8
- Page 7, line 9, replace "available report by June first of each year" with "for review"
- Page 7, line 30, remove "whose cause of death the supervising law"

Page 7, remove line 31

Page 8, line 1, remove "informant's service"

Page 8, remove lines 13 through 19

Renumber accordingly

HB1221. Confidential Informant Reform.

Rick Becker

What is it?

Sets a defined process in place for a Confidential Informant program.

1. That process addresses protocols and protections for vulnerable individuals
2. Gives specific Guidelines for law enforcement regarding training, handling of prospective and active informants, documentation, confidentiality, and QA.
3. Outlines the agreement that the informant must enter.
4. Provides transparency and accountability to the program.

Why is this bill before you?

Andrew Sadek - student at NDSCS, was told he was looking at 40 years in prison for two occurrence involving marijuana with a total value of \$80, and coerced into being a Confidential Informant.

I don't claim to know specifics of Andrew's case, or the details on "he said, she said", but what I do know is that protocols were not in place for Andrew's protection, I know that transparency is lacking, and I know he ended up dead.

The bill

Page 1. Definitions

Page 2. Limitations on use of vulnerable CI

Can't be under 15yo. 15-18yo have limitations; parental consent, attorney

Page 3, 4, 5. LE Guidelines

CI recruitment training, CI training, Guidelines for deactivation, Inform right to legal counsel, Provide an agreement to the CI, Assess suitability to be a CI, Recordkeeping

Page 6. Details of the Informant Agreement

Right to attorney, No promise of an inducement, What activities required, No sex acts

Page 7. Transparency and accountability. A yearly report of CI activity

Why give a Do Pass

This is a program with potentially serious consequences that desperately needs standardization, transparency, and protections for the individuals brought into the program.

Testimony of Tammy Sadek
Before the North Dakota Senate Judiciary Committee
March 21, 2017

My son, Andrew Sadek, was born on November 22, 1993 in Valley City, ND. Andrew grew up on the family farm and graduated from Valley City High School in 2012. Andrew was the typical boy next door, farm kid. Andrew had started his own herd of cow's, working side by side with my husband, his father, John. Andrew's goal was to become an electrician and he was scheduled to graduate in the top 10% of his class from the North Dakota State College of Science (NDSCS) in May of 2014. Andrew had been accepted into NDSCS Master's Program for the fall of 2014. While attending school at NDSCS Andrew lived in the dorm, but he maintained his permanent residence at the family farm near Rogers, ND.

On two separate occasions in April of 2013, a confidential informant purchased marijuana from Andrew on NDSCS campus, \$80 worth combined. On November 21, 2013, Andrew's dorm room was searched with Andrew's consent, and a plastic grinder was located by law enforcement. On the following day, Andrew's 20th birthday, Andrew met with Deputy Jason Weber at the Law Enforcement Center in Wahpeton, North Dakota. Deputy Weber told Andrew that he was facing two felony charges and one misdemeanor charge with regard to the sale of marijuana and possession of paraphernalia. Deputy Weber told Andrew that the charges he was facing could result in up to 40 years in prison, fines of up to \$40,000, or both. Deputy Weber told Andrew that there was a good possibility that Andrew would have to serve some prison time if he didn't help himself out – or rather, help out Deputy Jason Weber by becoming a confidential informant.

Andrew was also told that in order to get his charges dropped, or significantly reduced, he needed to complete two controlled drug buys on three or four individuals. Andrew told Deputy Weber that he only knew of two people who he could buy marijuana from, but Deputy Weber told him that he would need to find more than two people to buy from, and indicated that the faster it could all be accomplished, the better it would be. After this conversation, and without the offer to consult with an attorney, Andrew agreed to work as a confidential informant.

Andrew was instructed to tell NO ONE about his work as a confidential informant, and he apparently followed that instruction perfectly.

Andrew performed three controlled buys over the next couple of months, involving two individuals. For each buy, Andrew was required to wear an electronic recording device. It is my understanding that Deputy Weber then told Andrew that in order to fulfill his obligations as an informant he would need to conduct one more buy with one of the previous individuals, and that he would also need to purchase from a third suspect. Andrew and Deputy Weber remained in contact through mid-April of 2014. Deputy Weber tried to contact Andrew on April 17, 2014, but he did not ever receive a response.

Andrew went missing in the early morning hours of May 1, 2014, shortly after he was recorded by security cameras leaving Nordgaard Hall on the NDSCS campus. Andrew was reported missing to the NDSCS campus police on May 2, 2014. On May 5, 2014, Andrew's father and I were formed that Andrew had been working as a confidential informant. On May 9, 2014 two criminal Informations were filed in Richland County, North Dakota charging Andrew with two counts of delivery of marijuana within 1000 feet of NDSCS, and one count of possession of marijuana paraphernalia. A warrant was also issued for Andrew's arrest.

On June 27, 2014, Andrew's body was found in the Red River near Breckenridge, Minnesota. Andrew was found to be wearing different clothes than when he had last been seen in and a backpack full of rocks was tied to Andrew's body. Andrew was found to have a gunshot wound to his head, although the medical examiner could not determine the manner of Andrew's death. Andrew's death continues to be under investigation, and it has not yet been decided by authorities whether or not Andrew was murdered.

It is my belief that Andrew's death was a result of his work as a confidential informant. Since Andrew's death, I have learned that murders involving confidential informants are all too common across our nation and that is why my family and I are seeking to change North Dakota law with regard to the use of confidential informants. I believe that my son agreed to be a confidential informant strictly out of fear. He did not have any sort of criminal history, and I feel that if he had been given the opportunity to discuss his charges and his role as a confidential informant with an attorney, my son might still be alive.

People like Andrew that have never been in any trouble with the law, or those who have not had any prior contact with law enforcement, may be easily scared when confronted by a law

enforcement officer about possible drug charges they may be facing. If those individuals are asked to work as a confidential informant, they should have all the information and options explained to them before they agree to perform one of the most dangerous jobs in the world. I'm not saying that no one should ever act as a confidential informant. However, I do not believe that anyone should ever feel forced to work as a confidential informant, or be scared into working in such a capacity. No one should be able to agree to work as an informant until they have been provided with truthful and accurate information, and the opportunity to consult with an attorney.

**Karen Edland
Testimony on HB 1221
Senate Judiciary Committee
March 21, 2017**

Chairman Armstrong and members of the committee:

For the record my name is Karen Edland. I live near McHenry ND but our family spends summer months at Sadek's Lakeside on Lake Ashtabula where we have our camper. I am here to testify in support of HB 1221.

I have known Andrew's parents, Tammy and John Sadek, for several years. I knew Andrew, too.

Andrew was quiet and shy; a good student and a good son. He worked hard on the family farm and cattle ranch. He even helped his dad build the home they live in. Andrew was two weeks from graduating from college when he went missing in May 2014.

Naturally, Andrew's death has had an enormous impact on Tammy and John. Many of us in this room are parents, and losing a child is the worst thing that could happen to us. Tammy and John have lost both of their children: son Nick, in a car accident and now Andrew.

I have accompanied Tammy to every meeting with law enforcement during the past two and half years.

I've seen the frequent dead ends and denials when she asks for information. And I've seen her desperate attempts to get answers to her questions about why this happened to her son. And I'm shocked that law enforcement, the people we trust to protect us from harm, actually put Andrew in harm's way.

I have two points concerning the bill that I ask you to consider:

First, this is a compromise bill - there are a lot of people who believe that using untrained civilians to do the most dangerous type of police work is entirely inappropriate and believe this bill should prohibit law enforcement from using civilians from doing undercover work altogether. We don't use civilians to write parking tickets or go undercover in murder cases. While this bill allows the continuation of this dangerous practice, it establishes reasonable guidelines that apply to all law enforcement agencies.

Which brings me to my second point; this bill creates uniform statewide policies and procedures. If a law enforcement agency in Wahpeton is going to use civilians to do undercover work, the police in Watford City should follow the same protocols. One of the things I've read is that the Bureau of Criminal Investigation said that they already have many of these policies in place. There are more than 113 law enforcement agencies in North Dakota - let's get them all on the same page.

In Andrew's case, there were multiple agencies involved - including several different members from the southeast multi-county agency drug task force. Every law enforcement agency should have to follow uniform statewide policies and that is what this bill will accomplish.

It is my firm belief that if this bill had been the law in North Dakota four years ago, Andrew Sadek would be alive today.

Instead, Andrew is gone, and his parents have fought through heartache, anger, and frustration to try to get the answers they deserve. Tammy and John are working to prevent other families from experiencing the agony they endure each day.

And so I ask you to pass HB 1221, ANDREW'S LAW. THANK YOU.

Susan Strang
Testimony on HB 1221
Senate Judiciary Committee
March 21, 2017

Chairmen Armstrong , members of the Senate Judiciary Committee, for the record, my name is Susan Strang. I am appearing before you today in support of HB 1221.

I believe that this bill is something that ND (and also the country) needs for its youth and young adults. Andrew Sadek was intimidated and manipulated by law enforcement and ultimately, likely killed due to his known CI status. I am the mother of five children ranging in age from 33 to 10. I can remember the uneasy and helpless feeling sending off my two oldest children to college. It was very much like when they went off to kindergarten except the possible dangers that awaited them were far more threatening. The only small comfort that remained for me(as a parent) was that (with a release) there was some transparency and accountability if my child was in any kind of trouble. SEMCA chose to circumvent that not only with NDSCS but also with Tammy and John. Is this how law enforcement chooses to “serve and protect”? It seems not only counterproductive, but moreover, sacrificial to an individual’s best interest. The CI protocol as it exists is clearly focused on the task force’s end game. I understand the war on drugs. What I don’t understand is the endangering of young lives. It is unethical, immoral and flies in the face of humanity. HB 1221 won’t bring Andrew back but this legislation is a

needed first step towards insuring that the young people of North Dakota are protected and valued.

Therefore, I respectfully request that the committee give a “do pass” recommendation to HB 1221.

5

Testimony in Support of HB 1221 – Use of Confidential Informants by Law Enforcement

American Civil Liberties Union of North Dakota

Senate Judiciary Committee

March 21, 2017

Good morning Chairman Armstrong and members of the Senate Judiciary Committee. My name is Jennifer Cook and I am the Policy Director for the American Civil Liberties Union of North Dakota. The ACLU of North Dakota is a nonprofit, nonpartisan organization with more than 6,000 members, activists, and followers. The ACLU of North Dakota is one of the state's leading organizations dedicated to advancing and defending civil liberties and civil rights.

We rise in support of HB 1221. The use of criminal informants is an important part of our criminal justice system. Police and prosecutors routinely cut deals with criminals for information in connection with all sorts of cases, from murder and antitrust to corruption and drug crimes. The practice is, in many ways, a necessary evil. Without it, some kinds of cases could never be prosecuted or solved. It also has significant costs. The use of confidential informants by police is a very broad topic and so I am going to concentrate today on one facet – the facet that makes the tragedy of Andrew Sadek's death a too common and predictable occurrence.

The government's use of criminal informants is largely secretive, unregulated, and unaccountable. This is especially true in connection with street crime and urban drug enforcement. This lack of oversight and quality-control leads to wrongful convictions, more crime, disrespect for the law, and sometimes official corruption. Drug cases typically involve informants or snitches as they are commonly called, sometimes more than one, and drug cases represent 35 percent of state felony convictions and over 1.5 million arrests each year. Investigations of other common crimes such as burglary also rely heavily on criminal informants. Anecdotal evidence and media reports indicate that snitching – and snitches gone wrong – are common in all jurisdictions. This committee can be confident that this is a pervasive issue.

At a minimum, we need more data and better oversight of this important public policy. HB 1221 meets these minimum requirements because it requires oversight and uniform policies and procedures for police handling of informants, but goes further than the minimum by taking the initial steps to ensure the civil rights and safety of people like Andrew Sadek who become informants by providing a right to counsel.

Informants generally have little recourse when wronged or harmed by law enforcement and, therefore, are in need of an attorney when they first consider becoming an informant. Some see an informant agreement as "an extreme form of plea bargaining" and, even though pleas in court are a product of counsel, none is provided to informants making similar decisions on the street. Lack of counsel particularly affects those with substance abuse or mental health problems. The process of flipping an alleged offender into an informant circumvents the protections of the Bill of Rights because it lacks uniform rules and is unchecked by outside scrutiny. Unlike someone who engages in a plea agreement, a coerced informant is generally not given the benefits of judicial review, formal documentation, or assistance of counsel. While the

lack of constraints may be preferable for law enforcement as a way to remain unrestrained, their absence places the rights of informants at risk. Officials use this unrestrained expediency to keep potential informants isolated and off-balance. By its nature, expediency raises questions of due process and fairness to the informant. At times, the criminal informant institution functions as an informal and covert adjudication of criminal liability. Nevertheless, informants who later claim that the process of being flipped violated their Sixth Amendment right to counsel are unlikely to have success. The Supreme Court held that this right does not attach until the government has initiated adversarial proceedings against a defendant. Yet, without the benefit of counsel, an alleged offender may not be able to understand the strength or weakness of the evidence.

Lawyers play a particularly important role for defendants contemplating cooperation after being charged because so much turns on predictions about the relative benefits of the uncertain path of cooperation, compared to taking an ordinary plea or going to trial. The same array of problems faces an informant denied the presence of counsel at the key moment of negotiation. Secrecy, a key ingredient of the informant relationship, is a strong argument for requiring participation of counsel because many informants likely base their decisions on fear and powerlessness. Therefore, people like Andrew Sadek who contemplate becoming confidential informants would benefit from the expertise of counsel.

Another important aspect of HB 1221 is the data collection and reporting requirements of the bill. Even the officials at the center of the criminal process – police and prosecutors – do not know the extent of the use of informants in their own jurisdictions, how many crimes informants help to solve, or how many crimes they get away with. Most state and local jurisdictions have no mechanisms for counting, evaluating or regulating the ways that informants are used. To the extent such data exists, it is not public. The federal government to some extent has addressed this problem. The Department of Justice revised its guidelines for managing confidential informants in 2002. The Office of the Inspector General has conducted audits – of the FBI and DEA – which produced significant information about the handling, reliability, and productivity of the confidential informants used by the federal government. The Sentencing Commission keeps records of how many defendants receive sentencing benefits for cooperation.

HB 1221's data collection and reporting requirements for police mostly mimic federal guidelines applied to federal agencies. Where HB 1221 departs from federal reporting requirements is that the aggregated data and any accompanying audit report are not made public. We discourage the committee from accepting the House Judiciary Committee's amended language on page seven, lines 3 through 4 making the collected data confidential. The bill as originally drafted required the Attorney General to provide a public report of the collected data. There is a strong need for public transparency with regard to the government's use of informants like Andrew Sadek and the data HB 1221 requires police to report to the Attorney General will promote the public's confidence in their government's use of confidential informants in a manner that is consistent with the Constitution.

Fundamentally, when the government cuts a deal with a alleged criminal in exchange for incriminating information, it implicates some of the most important values of our criminal system. We pride ourselves in having a justice system that is public, accountable, and that follows the rule of law. The widespread use of secret deals between police and informants

threatens these ideals. Until now, we have substantially failed to scrutinize or regulate this official practice. As a result, our system failed to protect Andrew Sadek. By establishing better oversight and regulation in this area, the legislature can strengthen law enforcement, improve community safety, and promote justice.

I want to thank the committee for your time and attention this morning. The ACLU of ND urges this committee to strongly consider amending HB 1221 to make the collected data on informants reported to the Attorney General available to the public by striking the language on page seven, lines three through four. We further urge the committee to give a DO PASS recommendation to HB 1221. Again, thank you for your time and I will stand for questions.

RULE 3.8 SPECIAL RESPONSIBILITIES OF A PROSECUTOR

The prosecutor in a criminal case shall:

(c) when communicating with an unrepresented person:

(2) charged with a felony:

(i) avoid providing advice to the defendant, including advising the defendant not to obtain counsel, whether to accept or reject a settlement offer, whether to waive important procedural rights, or how the tribunal is likely to rule in the case; and

(ii) refrain from assisting the defendant in the completion of forms for the waiver of a preliminary hearing or jury trial;

(3) charged with a felony, when the defendant has on the record waived the right to counsel, be permitted to:

(i) discuss the matter with the defendant, including whether to obtain counsel, whether to accept or reject a settlement offer, whether to waive important procedural rights, or how the tribunal is likely to rule in the case; and

(ii) assist the defendant in the completion of forms for the waiver of a preliminary hearing or jury trial;

(4) charged with a felony, make any settlement offer in writing, which must include at least a general notice to the unrepresented person that significant consequences other than any consequences the court imposes may follow from a guilty plea;



SENATE JUDICIARY COMMITTEE
MARCH 21, 2017

TESTIMONY OF DALLAS CARLSON
OFFICE OF ATTORNEY GENERAL – BCI
HOUSE BILL NO. 1221

Chairman Armstrong, members of the Committee.

My name is Dallas Carlson. I am the Director of the Bureau of Criminal Investigation (BCI). I am here to testify in opposition of House Bill 1221.

Most law enforcement, including BCI, has used or routinely uses Confidential Informants (CI's). CI's are utilized in a variety of ways. They may be used in an ongoing drug conspiracy, a drug purchase, for gathering intelligence, or to solve general crimes ranging from burglary to homicide. CI's are an important part of our "tool box".

CI's typically cooperate with law enforcement for 3 reasons; consideration on charges or sentencing, working for money, or retaliation against an ex-partner in crime.

I would like to address this bill in the current marked up version;

Definitions;

Page 1 and 2. I don't feel we need to define what a CI is. As I mentioned law enforcement CI's typically want to work for 3 reason: Consideration on charges or sentencing, working for money, or to retaliate against an ex-partner in crime.

State and local law enforcement have no control over immigration status or witness protection. If this committee feels any part of the definition section is needed my feeling is the definitions on page 2, lines 5-16 do not hinder our jobs.

Limitation on use of vulnerable confidential informants.

Page 2, lines 19 – 31. This is addressed through training. Speaking for BCI we conduct training for our agents as well as instruct CI training at the BCI drug investigation school and the BCI criminal investigation school.

Page 3, lines 1-3 again are trained to officers attending the BCI sanctioned schools mentioned.

Page 3, lines 4 – 8. Police at UND, NDSU, Wahpeton, Bismarck State, and any other college police have attended the ND police basic training like any other ND officer attends. UND has a police officer assigned to the multi-jurisdictional drug task force in Grand Forks. This task force is supervised by BCI. I don't feel it's good policy to single out a law enforcement agency by what its jurisdiction is.

Also this section says a college student cannot be used as a CI. What is the definition of a college student? A "traditional" student? Someone taking an on line class? A 40 something student? Most college students are adults making adult decisions every day. These adult decisions include deciding to purchase or

sell illegal drugs or be involved in such crimes as theft.

Page 3, line 9 – 12. This is accomplished through department policy and common sense. Law enforcement will not put someone in a situation that threatens their treatment.

Law enforcement guidelines

Page 3, lines 13 – 31, all of page 4, all of page 5, page 6 lines 1 – 4. Law enforcement does not disagree with training. We welcome useful training. While this section outlines training, I feel it goes beyond what is necessary . We have very qualified and conscientious trainers and administrators in this state. If the committee feels training needs to be legislated in this area let the people that deal with CI's daily develop the needed training. We are law enforcement professionals, we know what needs to be included in training. Law Enforcement does not and should not plan training for medical professionals, pilots, or any other professional organization.

Informant agreement

Page 6, lines 5 – 31. This information is already being used by law enforcement when signing up a CI. A copy of various forms BCI currently uses is attached to my testimony.

Report to the Attorney General

All of page 7 and page 8. I agree law enforcement should keep records of their CI use. This information is useful to the agency and to prosecutors. This information from other agencies would not necessarily be useful to the Attorney General's Office. Some of the CI information is kept confidential until ordered otherwise by the court. This section indicates the AG needs to develop forms and gather various records from other agencies. This information would then be submitted to the AG's office. To be honest I'm not sure what we would then do with this information as it does not deal with the AG's office or BCI. What would be certain is this would create much more work for the AG's office and possibly BCI. Our budget is already being reduced, this would be an additional strain on already stretched resources.

This bill has already been called the Andrew bill by the bill sponsor. I believe this is to reflect the death of Andrew Sadek who was a college student in Wahpeton. Andrew was a CI working for the local drug task force. The hint is Andrew was killed because he was a CI. Sadek's death is still an open investigation in MN. While I cannot speak on that case I can comment on my time at BCI. I have worked for BCI for 28 years and I have no knowledge of anyone being killed

because they were working as a CI.

The question has been raised by Rep Becker, if we already do most of what is in this bill, why are we against it? As we know legislation binds us to a set of rules we live with for at least 2 years. Law enforcement moves fast, situations change fast, criminals adapt and can change their ways and don't have to wait 2 years. Good policies, procedures and training accomplish the same thing. BCI teaches at police basic. We have a BCI drug school and a BCI criminal investigation school. CI handling is taught in all three. Most agencies have good policies and procedures to deal with CI's. All small agencies look to BCI to assist with cases that have a need for CI's. BCI was created years ago to assist small agencies that do not have the personnel or ability to conduct investigations, some of which use CI's. I feel comfortable saying large agencies in ND have good policies in place. Law enforcement can adapt and keep ahead of, or at least up with, criminals if we are allowed to continue to adapt our training and procedures. I dare say law enforcement is an easy target, many bills are introduced each session to legislate how we do our job. We know how to do our job.

Thank you.

I will attempt to answer any questions.

3/21/17

8

HB 1221

NORTH DAKOTA BUREAU OF CRIMINAL INVESTIGATION
GENERAL ORDERS

NUMBER: 2-11

SUBJECT: CONFIDENTIAL INFORMANTS

EFFECTIVE DATE: February 1, 2008

AMENDS/SUPERSEDES: October 1, 2001

I. POLICY

The Bureau encourages development and use of confidential informants. The proper legal use of confidential informants can greatly assist the efforts of agents in conducting investigations.

II. PURPOSE

The purpose of this order is to set forth procedures to help agents of the Bureau develop and effectively use confidential informants and the information obtained.

III. PROCEDURE

A. Identity of confidential informants

1. Each agent who wishes to develop and use a confidential informant shall prepare a confidential file on the confidential informant which includes:

- a) a photo
- b) Cooperating Individual Agreement (SFN 11881)
- c) Personal History Report (SFN 10596)

This information shall be sent to the Bismarck Bureau office.

2. The agent shall assign a Confidential Informant (CI) number. Confidential informants shall have only one active number and be controlled by only one agent at a time. When a CI is transferred to another agent, the CI shall be assigned a new number specific to that agent.
3. Once a confidential informant file has been prepared, all future references to the confidential informant in any reports shall be by confidential informant number only. Agents should identify confidential informants by their complete numbers within reports. The CI numbers may be either Bureau numbers or other-agency numbers.
4. Once the confidential informant file has been prepared, the agent is responsible for keeping the file up to date.
5. Agents are encouraged to keep only active confidential informants on file. Approximately every six months, a list of confidential informants will be sent to each agent for their review. If there has been no activity by the confidential informant for a six-month period, the confidential informant agreement may be terminated. Termination of confidential informant agreements is accomplished by memo to the Chief Agent.
6. Agents may retain their own duplicate confidential informant files, but will be responsible for file security.
7. The identity of informants is privileged and confidential under N.D.R.Ev. 509 and as otherwise provided for by law.

B. Use of agency confidential informants

1. Agents shall not make any deals with people concerning charging, pleading, or sentencing. Agents may, however, consult with the state's attorney regarding these matters.
2. Agents shall deal with confidential informants very carefully, particularly with those of a different gender or those whose sexual preferences may make an investigation susceptible to compromise. Whenever possible, agents shall have two individuals present when dealing with informants of a different gender or sexual preference.
3. Use of juvenile confidential informants is particularly sensitive, so agents must obtain parental permission in writing and consult with the state's attorney or juvenile court personnel. Use of juveniles as confidential informants is discouraged.

NORTH DAKOTA BUREAU OF CRIMINAL INVESTIGATION
GENERAL ORDERS

NUMBER: 2-11.5

SUBJECT: PAROLE/PROBATION INFORMANT POLICY HANDLING

EFFECTIVE DATE: February 1, 2008

AMENDS/SUPERSEDES: October 1, 2001

I. POLICY

A. On occasion, it becomes necessary to utilize informants who are under the supervision of the Department of Correction, Parole and Probation.

II. PURPOSE

The purpose of this general order is to provide guidelines in utilizing informants who are under the supervision of the Department of Correction, Parole and Probation.

III. PROCEDURE

- A. The use of these types of informants by BCI agents will be restricted to the following conditions:
1. Whenever possible, the use of these types of informants should be avoided or their involvement in an investigation be kept to a minimum.
 2. If the potential informant is under the supervision of Parole and Probation, the Agent is to obtain permission from the sentencing judge pursuant to NDCC 12.1-32-07.9.
 3. This type of informant may not be utilized without an amended court order.

4. In all cases involving these types of informants, they are not to be used without consultation with the Chief Agents or the Bureau Director.
5. Whenever possible, agent introduction will be used to minimize the probationer handling of contraband.



STATEMENT OF RIGHTS
 OFFICE OF THE ATTORNEY GENERAL
 BUREAU OF CRIMINAL INVESTIGATION
 SFN 17354 (02/05)

Place	
Date	
Time	

STATEMENT OF RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can and will be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you cannot afford a lawyer and want one, a lawyer will be provided for you before any questioning.

If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at any time.

I have read this statement of my rights and I understand what my rights are.

Signature

Time

Date

WAIVER OF RIGHTS

I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no mental or physical force of any kind has been used against me.

Signature

Time

Date

CERTIFICATION

I CERTIFY that the foregoing Statement of Rights was read to the above signatory, that he/she also read it and has affixed his/her signature in my presence.

Signature of Officer

Witness

Witness



COOPERATING INDIVIDUAL AGREEMENT

ND OFFICE OF THE ATTORNEY GENERAL

BUREAU OF CRIMINAL INVESTIGATION

SFN 10596 (05/2014)

Informant Submission			Cooperating Individual Number		Telephone Number			
Name (Last, First, Middle)								
Address			City		State	ZIP Code		
Alias or Other Names								
Date of Birth	Place of Birth (City and State)		Race	Gender <input type="checkbox"/> M <input type="checkbox"/> F	Height	Weight	Eye Color	Hair Color
Identifying Characteristics (scars, marks, physical defects, etc.)					Occupation			
Drug User <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what drug? _____						Social Security Number		
FBI Number			SID Number			Other		

The Privacy Act of 1974 requires the following information be provided when individuals are requested to disclose their social security numbers. Disclosure of the social security number is voluntary and it is requested for identification purposes. Failure to disclose this information will not affect participation in this program.

Driver's License Information

State or County		Number		Expiration Date	
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Vehicle Registration

Make/Model		Year of Car	License Number	Year	State
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Education

Name of School			Level Completed		
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Agent Observations/Miscellaneous

Comments					
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Criminal Activity

Locations of Criminal Activity (City, State, County)					
Criminal Associates (Last, First, Middle Name)					
Source of Supply (Name)					
Prior Criminal Record					

Name of Cooperating Individual	Confidential Informant Number
--------------------------------	-------------------------------

Family

Spouse			
Address	City	State	ZIP Code
Father			
Address	City	State	ZIP Code
Mother			
Address	City	State	ZIP Code
Brothers/Sisters/Children (Name and Relationship)			
Address	City	State	ZIP Code
Brothers/Sisters/Children (Name and Relationship)			
Address	City	State	ZIP Code
Brothers/Sisters/Children (Name and Relationship)			
Address	City	State	ZIP Code

Agent's Name (Print)	Signature	Date
Supervisor's Name (Print)	Signature	Date

Name of Cooperating Individual	Confidential Informant Number
--------------------------------	-------------------------------

1. Do you understand that you have no police power under the state of North Dakota or any local government subdivision and have no authority to carry a weapon?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Do you understand that your association with the Bureau of Criminal Investigation is only as a <u>Confidential Informant</u> and that any payment received from the Bureau of Criminal Investigation will not be subject to federal or state withholding or social security? All reporting of income is the responsibility of the Confidential Informant .	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Do you understand that as a Confidential Informant you are not an employee of the state of North Dakota, nor are you entitled to Worker's Compensation or unemployment benefits from the state of North Dakota and will not hold the state liable for any injuries or damage incurred by reason of your association with the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Do you understand that you are not privileged to break any laws during the course of your association with the Bureau of Criminal Investigation and are not to handle any contraband or illegal drugs at any time unless specifically authorized to do so by an agent of the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Do you understand you are not to divulge to any person, except the agent with whom you are associated, your status as a Confidential Informant for the Bureau of Criminal Investigation and that you will not use your association with the Bureau of Criminal Investigation to resolve your personal problems?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Do you understand that you are to report to the agent assigned to work with you on a continuous basis while actively associated with the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Do you understand that your association with the Bureau of Criminal Investigation does not afford you any special privileges regarding the use or sale of controlled substances?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Do you understand that you are not to use the Bureau of Criminal Investigation or any of its agents as credit references or employment references unless prior approval is obtained from the agent with whom you are associated?	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. Do you understand the law as it relates to entrapment, as I have explained it to you?	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. Do you understand that if you are currently on parole or probation that prior approval must be obtained from a district judge, after an in-camera hearing, before entering into any agreement with the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Do you understand that no promises can be made to you about court appearances and that you may have to appear in court if the circumstances so require?	<input type="checkbox"/> Yes <input type="checkbox"/> No
12. Do you have any questions concerning the rules and regulations to which you will be required to adhere?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Witness Signature	Date
Agent Signature	Date
Confidential Informant Signature	Date



PROBATIONER AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION
SFN 51811 (05/2014)

District Judge (print)	Law Enforcement Officer (print)
Probationer(print)	Date

Permission is hereby granted allowing above-named probationer to be utilized by law enforcement in criminal investigations. The probationer agrees that they are not privileged to break any laws during their association with law enforcement and are not to handle any contraband or illegal drugs at any time, unless specifically authorized to do so by a law enforcement officer.

The probationer also agrees to adhere to the conditions set forth in the Cooperating Individual Agreement form.

The probationer also agrees to keep in contact with the law enforcement agency authorized to utilize the probationer and to follow any additional rules or conditions set forth by the law enforcement agency.

District Judge Signature
Law Enforcement Signature
Probationer Signature



DEACTIVATING CONFIDENTIAL INFORMANTS (CI)

ND OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION
SFN 51171 (05/2014)

Agent Name	Agent Number	Date
------------	--------------	------

CI Information

CI Name	CI Number
---------	-----------

Comments

Signature	Date
Chief Agent Signature	Date



VOUCHER - PAYMENT FOR INFORMATION/EXPENSES
PURCHASE OF EVIDENCE
 ND OFFICE OF ATTORNEY GENERAL
 BUREAU OF CRIMINAL INVESTIGATION
 SFN 10264 (02/2013)

White - Master File
 Yellow - Field Office File
 Pink - CI Master File
 Goldenrod - Agent

PURPOSE OF VOUCHER

<input type="checkbox"/> Payment to Cooperating Individual <input type="checkbox"/> For Information <input type="checkbox"/> For Expenses (<u>Attach receipts if applicable</u>) <input type="checkbox"/> For Purchases of Evidence <input type="checkbox"/> Agent Purchase of Evidence <input type="checkbox"/> Agent Expense(s) (<u>Attach receipts if applicable</u>)	Amount
	Voucher Number
	Cooperating Individual Number
	County
	Case Number

PURPOSE OF EVIDENCE

Evidence Description				Quantity
Purchase Date	Time of Purchase	Place of Purchase	Purchased From	
Description of Payment for Cooperating Individual Information/Expenses or Agent Expenses(s)				

AMOUNT VERIFICATION

Written Dollar Amount	Dollar Amount
-----------------------	---------------

CERTIFICATION OF COOPERATING INDIVIDUAL

I certify that the information described above on this voucher is true and correct.

Name	Signature	Date
------	-----------	------

AGENT PAYER CERTIFICATION

Name of Payer	Signature	Date
Name of Witness	Signature	Date
Agent Balance (please indicate dollar amount)		

APPROVAL

Name of Agent in Charge/Task Force Coordinator	Signature	Date
Name of Approving Chief Agent	Signature	Date
Name of Director	Signature	Date

Grant	Amount
Match Cost Center	Amount

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9

HB 1221

3/21/17



Testimony of Steve Andrist
Executive Director, North Dakota Newspaper Association
To the Senate Judiciary Committee
Regarding HB 1221

Chairman Armstrong and members of the committee, my name is Steve Andrist and I'm the executive director of the North Dakota Newspaper Association, which represents the state's 90 daily and weekly newspapers.

I'm here today not to take a position on HB 1221 as a whole, but to ask you to consider striking one sentence from it. On Page 7 of the bill, proposed statute 29-29.5-05 would require law enforcement agencies using confidential informants to collect and report data on such use. Lines 3 and 4 designate this data as confidential.

We believe there is good reason to collect this data, so that judgements can be made as to the appropriate use and effectiveness of confidential informants. We just believe the information should be available to the public, so citizens, too, can form an understanding of the prevalence, effectiveness and appropriateness of confidential informant programs.

We certainly agree that specifics of individual cases and informants must remain confidential. But aggregated data is precisely what informs and engages citizens. It can be public without jeopardizing investigations or identities.

Earlier this session one of your fellow legislators used a quote from Total Quality Management guru William Edwards Deming: "In God we trust. Everybody else better bring data."

We live in a data-driven society, and so I respectfully request that you eliminate the sentence making this information confidential, allowing members of the public to be informed and engaged.

Thank you.

INFORMANT DEVELOPMENT



**North Dakota Office of
the Attorney General**

**Wayne Stenehjem
Attorney General**



3/21/17

10

HB 1221

Why Law Enforcement Uses Informants

- More crimes of a significant nature have been solved and more investigative intelligence has been gathered through the successful use of informants than from any other investigative tool available to the law enforcement community.
- However, more embarrassment on the witness stand has occurred, and more good cases have been lost from improper uses of informants than from any other particular action by law enforcement officers.

Interim Performance Objectives

- Identify strategies for avoiding common problems when working with informants.
- Identify skills needed to recruit informants in rural areas.
- Identify problem areas that rural police agencies encounter with informants and informant management.

Interim Performance Objectives

- Identify methods of deactivating informants.
- Identify the difference between informants and other sources of information.

Definitions

- Informant

- An informant is anyone who provides information of an investigative nature to the law enforcement community.

- Confidential informant

- Confidential informant or “CI” is an individual or group that provides to the law enforcement community information of a confidential nature and has entered into an agreement for personal benefit. The “CI” does not want to be identified.

Precedent-Setting Cases

■ Aguilar v. Texas

- “the two pronged test”
- Reliability and Truthfulness or Integrity

■ California Supreme Court

- The information must be factual not conclusionary and the information must be from personal knowledge.
- The affidavit must contain some underlying factual information so that the magistrate can reasonably conclude the information credible.

Precedent-Setting Cases

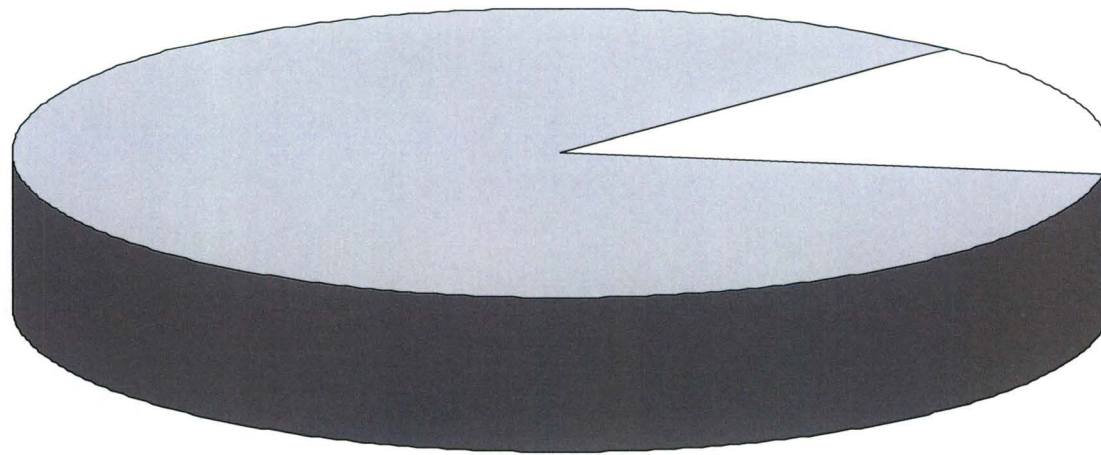
■ Illinois v. Gates

- “totality of the circumstances” could be used when reliability of the Confidential Informant cannot be shown.

■ Aguilar v. Texas

- While Gates and Aguilar both address the requirements of the Fourth Amendment, Gates is more flexible and accommodates public as well as private interests.

Benefits of Confidential Informants



■ 85% of drug cases solved through the use of sources

Objectives of Confidential Informant Usage

- To assist law enforcement in solving crimes.
- To obtain intelligence in order to prevent crimes before commission.

General Uses of Confidential Informants

- Provide independent surveillance in certain areas where the mere presence of a stranger would be suspect.
- Furnish information from sources not readily available to law enforcement officers.
- Conduct controlled undercover negotiations with, or introduce undercover agents to, criminal suspects.

General Uses of Confidential Informants

- Testify for the government at legal proceedings.
- Gather intelligence (i.e., prices of contraband, M.O. of suspects, etc.).
- Develop and use other sources of information within the community (i.e., Crime Stoppers).

Sources of Information

- Average citizen
 - usually very reliable, but does not have direct knowledge of the criminal activity
 - will take advantage of the different State and Local government programs (ie: Crime stoppers.)
- Other law enforcement personnel
 - key to success
 - Provides reliable information

Sources of Information

- Violator or associate of the criminal
 - can be your most valuable source of information;
 - can cause control problems, embarrassment, entrapment problems, and/or credibility problems for the prosecution.

Source Groups

- Informants

an individual whose identity is not held in confidence.

- Confidential Informants (“CI”)

- person who wishes to remain anonymous for various reasons.

Tips for Handling Informants

- Always conduct personal and criminal background checks on the source.
- Treat each and every violator as a potential informant.
- Be sociable and present a pleasing personality.
- Maintain a liaison with fellow officers and agents from other agencies.

Tips for Handling Informants

- Emphasize the development of informants by uniformed officers.
- Work hard to develop good informants.
- Develop good interviewing techniques, including listening and asking questions.

Questions to Ask about Informants

- What is the potential informant's motivation?
- What is the expected reliability of the potential informant?
- What is the potential informant's intelligence level?
- How does the potential informant know of the violation?
- Does the potential informant have a personal interest?

17

Questions to Ask about Informants

- Does the potential informant have direct knowledge of this information?
- Does the potential informant have access to non-drug related information?
- Does the potential informant have reason to be vengeful towards the violator?

Questions to Ask about Informants

- Has this person previously been an informant?
- Is the person withholding any information?
- Has the person fabricated any information in the past?
- Has the person been convicted of perjury or obstruction of the legal process?

Control and Handling of Informants

- **Investigative Control** - The investigator should control the investigation; not the informant.
- **Suggestions** - The informant should be encouraged to offer suggestions.
- **Promises** - Don't make promises unless you can keep them.
- **Personal Contact** - Maintain frequent personal contact with informants, in a safe place.

Control and Handling of Informants

- **Use of second officer** - utilize a second officer when meeting with a informant. This will reduce the risk of false allegations which might be made by the informant.
- **Supervisory notification** - it is recommended that you notify your supervisor after each contact with the informant. This will allow your supervisor a better picture of the informant, investigator working environment.
- **Entrapment** - explain the law of entrapment to the informant and make sure the informant understands entrapment.

Control and Handling of Informants

- **Moral standards** - be aware of the differences in your moral standards and those of the informant.
- **Trust** - maintain a good rapport, but never trust an informant.
- **Values** - be ethical and fair
- **Corroboration** - attempt to corroborate the informant's information through independent verification.
- **Money** - never make a personal loan to an informant.

Control and Handling of Informants

- **Termination** - Officially document the termination or deactivation of the use of an informant.

Use of "CI's" for Undercover Buys

- Steps for use
 - thoroughly debrief CI;
 - CI must sign for money;
 - search CI and his vehicle, if used;
 - Make attempts to observe the CI enter and exit the location;

h^e

Use of "CI's" for Undercover Buys

- Steps for use(cont.)
 - have prearranged (neutral location) meeting immediately after the buy;
 - collect evidence and equipment from CI;
 - search CI again for all contraband;
 - Obtain statement and debrief;

Managing the Confidential Informant

- **Identify** - experience will develop the ability to identify potential confidential Informants
- **Recruit** - successful recruitment can be achieved through establishing rapport and being able to articulate what the person can realize as a result of the cooperation.
- **Establish** - documentation of a new confidential informant and the maintenance of the file is important.
- **Develop** - Know the limitations of the confidential informant and assist the CI to achieve the sources full potential.

Managing the Confidential Informant

- **Maintain** - keep the confidential informant active by not exposing the CI to situations that will limit or restrict the CI's ability to perform at the CI's maximum potential.
- **Utilize** - be sure to continue to use the CI to maintain the CI creditability.
- **Control** - this element is the most important aspect to successful CI management. The CI must never be allowed to run an investigation.

Attributes of Successful Informant Management

- Mutual satisfaction of needs

- Officer values
 - **honesty** - be honest with the Informant
 - **integrity** - the officer must maintain a high integrity to maintain control of the informant.
 - **fairness** - be fair and reasonable with the informant.
 - **clarity of direction** - failure to give clear direction enhances the possibility of losing control of the informant.

Attributes of Failure in Confidential Informant Management

- **Dishonesty** - the CI will not be honest with you if your not honest with the CI.
- **Disrespect** - don't degrade the CI.
- **Situational ethics** - ethics can't be turned on and off you must maintain high ethics always.
- **Loss of objectivity** - always maintain your objectivity remember they are a CI, not your partner.

Attributes of Failure in Confidential Informant Management

- **Misidentification of Motive** - The officer who misjudges the true motives of a CI may experience tremendous control problems.

Dangers of Informant Usage

- Borrowing money from the CI
- Receiving gifts from the CI
- Entering into a business relationship with a CI

Dangers of Informant Usage (cont.)

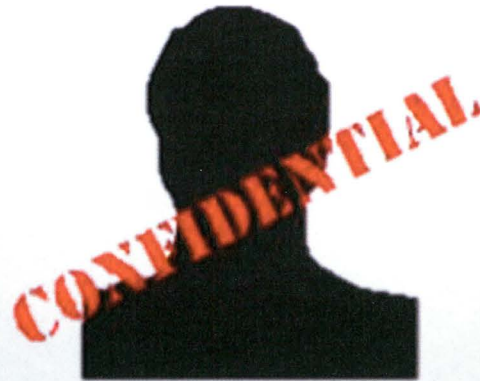
- Paying the CI without a witness.
- Avoid meeting a CI by yourself.
- Testimony/Credibility.
- Violations of the law by the CI (drug use).

Protection of Informant's Identity

- **Reprisals** - reprisals against an informant can affect the investigator personally, and reflect adversely on the law enforcement community.
- **Withholding identity** - courts' informant privilege doctrine allows the government to withhold the informant's identity however; this is not absolute. The court can order the government to identify the informant if: the informant provided more than investigative information; the informant is a material witness; the informant participated in the crime or handled evidence; or the informant's testimony is essential to the defense of the accused.

34

CONFIDENTIAL INFORMANT PROCESSING



Individuals Generally NOT Considered

- ⊗ Currently on Parole
- ⊗ Juveniles
- ⊗ Prior Perjury conviction(s)
- ⊗ Sexual Offenders
- ⊗ Proven unreliable
 - ♥ High flight risk (if working off charges);
 - ♥ Past unreliable work.



35

Individuals who may Require Prior Approval from State's Attorney

- ⊗ Prior false information convictions
- ⊗ Working off certain charges
 - ♥ Financial Crimes;
 - ♥ DUI;
 - ♥ Cases involving victims.
- ⊗ Currently on Probation
 - ♥ Probation Officer approval;
 - ♥ In-camera hearing.
- ⊗ Attempting to get out of jail
 - ♥ Bail reduction;
 - ♥ History of Failure to appear.

36



Situational Processing

⊕ Individuals incarcerated wanting to cooperate

- ♥ Determine reason incarcerated;
- ♥ Run criminal history;
- ♥ Debrief;
- ♥ Wait until out of jail, meet and sign up.



Situational Processing

☉ Individuals detained wanting to cooperate

♥ Debrief

♥ Verbally get criminal history

☐ Perjury;

☐ False info – get story behind.

♥ Sign up

☐ Start making calls in presence of officer/agent.

♥ Meet up later if can't do something immediately

☐ Run criminal history prior to meet;

☐ Debrief and Sign up if appropriate.



38

Situational Processing

Mercenary

♥ Run criminal history

♥ Debrief

☐ Determine motivation;

☐ Determine expectation of compensation.

☐ Check references.

♥ Sign up



Situational Processing

🌐 Non-custodial/Charges pending contact

♥ Contact potential CI

- ☐ Inform of pending charges;
- ☐ Continue if they wish to cooperate.

♥ Debrief

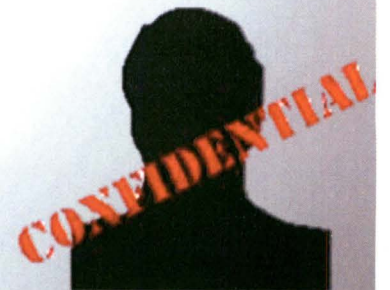
♥ Run criminal history

♥ Sign up

♥ Determine if charges will be filed or not filed

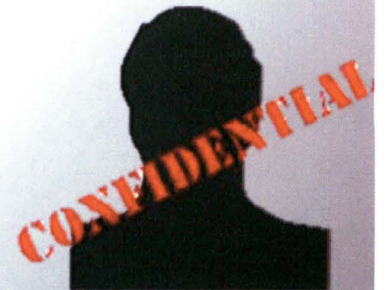
- ☐ Consider level of cooperation;
- ☐ Consider type of charges;
- ☐ If proffer, sign up right away.

oh



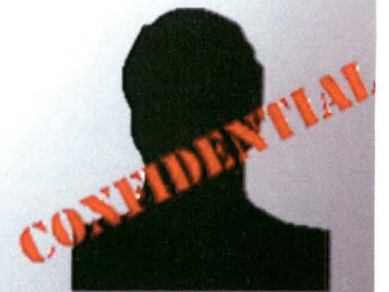
Cooperation Considerations

- ④ Do not set number of cases the CI must do
- ④ Consideration is up to State's Attorney
 - ♥ Opinion of Agent/Officer generally considered
- ④ Information relayed to CI
 - ♥ The more you do the more consideration you'll get
 - ♥ Quality of work helps
 - ☐ Keeping in contact
 - ☐ Following instructions
 - ☐ Staying out of trouble



General Information

- ④ Do not record the sign up (even during proffer)
- ④ Do not record conversations related to the potential of becoming a CI.
- ④ Federal cases
 - ♥ Do not contact potential CI if they are represented.
 - ♥ US Attorney's office will set up.



47

3/21/17

11

HB 1221

NORTH DAKOTA BUREAU OF CRIMINAL INVESTIGATION
GENERAL ORDERS

NUMBER: 2-11

SUBJECT: CONFIDENTIAL INFORMANTS

EFFECTIVE DATE: February 1, 2008

AMENDS/SUPERSEDES: October 1, 2001

I. POLICY

The Bureau encourages development and use of confidential informants. The proper legal use of confidential informants can greatly assist the efforts of agents in conducting investigations.

II. PURPOSE

The purpose of this order is to set forth procedures to help agents of the Bureau develop and effectively use confidential informants and the information obtained.

III. PROCEDURE

A. Identity of confidential informants

1. Each agent who wishes to develop and use a confidential informant shall prepare a confidential file on the confidential informant which includes:
 - a) a photo
 - b) Cooperating Individual Agreement (SFN 11881)
 - c) Personal History Report (SFN 10596)

This information shall be sent to the Bismarck Bureau office.

2. The agent shall assign a Confidential Informant (CI) number. Confidential informants shall have only one active number and be controlled by only one agent at a time. When a CI is transferred to another agent, the CI shall be assigned a new number specific to that agent.
3. Once a confidential informant file has been prepared, all future references to the confidential informant in any reports shall be by confidential informant number only. Agents should identify confidential informants by their complete numbers within reports. The CI numbers may be either Bureau numbers or other-agency numbers.
4. Once the confidential informant file has been prepared, the agent is responsible for keeping the file up to date.
5. Agents are encouraged to keep only active confidential informants on file. Approximately every six months, a list of confidential informants will be sent to each agent for their review. If there has been no activity by the confidential informant for a six-month period, the confidential informant agreement may be terminated. Termination of confidential informant agreements is accomplished by memo to the Chief Agent.
6. Agents may retain their own duplicate confidential informant files, but will be responsible for file security.
7. The identity of informants is privileged and confidential under N.D.R.Ev. 509 and as otherwise provided for by law.

B. Use of agency confidential informants

1. Agents shall not make any deals with people concerning charging, pleading, or sentencing. Agents may, however, consult with the state's attorney regarding these matters.
2. Agents shall deal with confidential informants very carefully, particularly with those of a different gender or those whose sexual preferences may make an investigation susceptible to compromise. Whenever possible, agents shall have two individuals present when dealing with informants of a different gender or sexual preference.
3. Use of juvenile confidential informants is particularly sensitive, so agents must obtain parental permission in writing and consult with the state's attorney or juvenile court personnel. Use of juveniles as confidential informants is discouraged.

NORTH DAKOTA BUREAU OF CRIMINAL INVESTIGATION
GENERAL ORDERS

NUMBER: 2-11.5

SUBJECT: PAROLE/PROBATION INFORMANT POLICY HANDLING

EFFECTIVE DATE: February 1, 2008

AMENDS/SUPERSEDES: October 1, 2001

I. POLICY

- A. On occasion, it becomes necessary to utilize informants who are under the supervision of the Department of Correction, Parole and Probation.

II. PURPOSE

The purpose of this general order is to provide guidelines in utilizing informants who are under the supervision of the Department of Correction, Parole and Probation.

III. PROCEDURE

- A. The use of these types of informants by BCI agents will be restricted to the following conditions:
1. Whenever possible, the use of these types of informants should be avoided or their involvement in an investigation be kept to a minimum.
 2. If the potential informant is under the supervision of Parole and Probation, the Agent is to obtain permission from the sentencing judge pursuant to NDCC 12.1-32-07.9.
 3. This type of informant may not be utilized without an amended court order.

4. In all cases involving these types of informants, they are not to be used without consultation with the Chief Agents or the Bureau Director.
5. Whenever possible, agent introduction will be used to minimize the probationer handling of contraband.



STATEMENT OF RIGHTS
 OFFICE OF THE ATTORNEY GENERAL
 BUREAU OF CRIMINAL INVESTIGATION
 SFN 17354 (02/05)

Place	
Date	
Time	

STATEMENT OF RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

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You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

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I have read this statement of my rights and I understand what my rights are.

Signature

Time

Date

WAIVER OF RIGHTS

I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me, and no mental or physical force of any kind has been used against me.

Signature

Time

Date

CERTIFICATION

I CERTIFY that the foregoing Statement of Rights was read to the above signatory, that he/she also read it and has affixed his/her signature in my presence.

Signature of Officer

Witness

Witness



COOPERATING INDIVIDUAL AGREEMENT

ND OFFICE OF THE ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION
SFN 10596 (05/2014)

Informant Submission			Cooperating Individual Number		Telephone Number		
Name (Last, First, Middle)							
Address			City		State	ZIP Code	
Alias or Other Names							
Date of Birth	Place of Birth (City and State)	Race	Gender <input type="checkbox"/> M <input type="checkbox"/> F	Height	Weight	Eye Color	Hair Color
Identifying Characteristics (scars, marks, physical defects, etc.)					Occupation		
Drug User <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, what drug? _____						Social Security Number	
FBI Number		SID Number			Other		

The Privacy Act of 1974 requires the following information be provided when individuals are requested to disclose their social security numbers. Disclosure of the social security number is voluntary and it is requested for identification purposes. Failure to disclose this information will not affect participation in this program.

Driver's License Information

State or County	Number	Expiration Date
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Vehicle Registration

Make/Model	Year of Car	License Number	Year	State
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Education

Name of School	Level Completed
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Agent Observations/Miscellaneous

Comments

Criminal Activity

Locations of Criminal Activity (City, State, County)
Criminal Associates (Last, First, Middle Name)
Type of Supply (Name)
Prior Criminal Record

Name of Cooperating Individual	Confidential Informant Number
--------------------------------	-------------------------------

Family

Spouse			
Address	City	State	ZIP Code
Father			
Address	City	State	ZIP Code
Mother			
Address	City	State	ZIP Code
Brothers/Sisters/Children (Name and Relationship)			
Address	City	State	ZIP Code
Brothers/Sisters/Children (Name and Relationship)			
Address	City	State	ZIP Code
Brothers/Sisters/Children (Name and Relationship)			
Address	City	State	ZIP Code

Agent's Name (Print)	Signature	Date
Supervisor's Name (Print)	Signature	Date

Name of Cooperating Individual	Confidential Informant Number
--------------------------------	-------------------------------

1. Do you understand that you have no police power under the state of North Dakota or any local government subdivision and have no authority to carry a weapon?	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. Do you understand that your association with the Bureau of Criminal Investigation is only as a Confidential Informant and that any payment received from the Bureau of Criminal Investigation will not be subject to federal or state withholding or social security? All reporting of income is the responsibility of the Confidential Informant.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. Do you understand that as a Confidential Informant you are not an employee of the state of North Dakota, nor are you entitled to Worker's Compensation or unemployment benefits from the state of North Dakota and will not hold the state liable for any injuries or damage incurred by reason of your association with the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Do you understand that you are not privileged to break any laws during the course of your association with the Bureau of Criminal Investigation and are not to handle any contraband or illegal drugs at any time unless specifically authorized to do so by an agent of the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
5. Do you understand you are not to divulge to any person, except the agent with whom you are associated, your status as a Confidential Informant for the Bureau of Criminal Investigation and that you will not use your association with the Bureau of Criminal Investigation to resolve your personal problems?	<input type="checkbox"/> Yes <input type="checkbox"/> No
6. Do you understand that you are to report to the agent assigned to work with you on a continuous basis while actively associated with the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
7. Do you understand that your association with the Bureau of Criminal Investigation does not afford you any special privileges regarding the use or sale of controlled substances?	<input type="checkbox"/> Yes <input type="checkbox"/> No
8. Do you understand that you are not to use the Bureau of Criminal Investigation or any of its agents as credit references or employment references unless prior approval is obtained from the agent with whom you are associated?	<input type="checkbox"/> Yes <input type="checkbox"/> No
9. Do you understand the law as it relates to entrapment, as I have explained it to you?	<input type="checkbox"/> Yes <input type="checkbox"/> No
10. Do you understand that if you are currently on parole or probation that prior approval must be obtained from a district judge, after an in-camera hearing, before entering into any agreement with the Bureau of Criminal Investigation?	<input type="checkbox"/> Yes <input type="checkbox"/> No
11. Do you understand that no promises can be made to you about court appearances and that you may have to appear in court if the circumstances so require?	<input type="checkbox"/> Yes <input type="checkbox"/> No
12. Do you have any questions concerning the rules and regulations to which you will be required to adhere?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Witness Signature	Date
Agent Signature	Date
Confidential Informant Signature	Date



PROBATIONER AUTHORIZATION
ND OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION
SFN 51811 (05/2014)

District Judge (print)	Law Enforcement Officer (print)
Probationer(print)	Date

Permission is hereby granted allowing above-named probationer to be utilized by law enforcement in criminal investigations. The probationer agrees that they are not privileged to break any laws during their association with law enforcement and are not to handle any contraband or illegal drugs at any time, unless specifically authorized to do so by a law enforcement officer.

The probationer also agrees to adhere to the conditions set forth in the Cooperating Individual Agreement form.

The probationer also agrees to keep in contact with the law enforcement agency authorized to utilize the probationer and to follow any additional rules or conditions set forth by the law enforcement agency.

District Judge Signature
Law Enforcement Signature
Probationer Signature



DEACTIVATING CONFIDENTIAL INFORMANTS (CI)

ND OFFICE OF ATTORNEY GENERAL
BUREAU OF CRIMINAL INVESTIGATION
SFN 51171 (05/2014)

Agent Name	Agent Number	Date
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CI Information

CI Name	CI Number
Comments	

Agent Signature	Date
Supervising Agent Signature	Date

3/24/17

①

HB

1221

17.0595.03001
Title.

Prepared by the Legislative Council staff for
Senator Armstrong
March 24, 2017

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1221

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to amend and reenact subsection 4 of section 12-60-07 and section 12-63-04 of the North Dakota Century Code, relating to powers, duties, and functions of bureau of criminal investigation and powers and duties of the peace officer standards and training board.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 4 of section 12-60-07 of the North Dakota Century Code is amended and reenacted as follows:

4. The bureau shall assist the sheriffs and other peace officers in establishing a system for the apprehension of criminals and detection of crime. The assistance must include offering guidelines and training for the proper handling of confidential informants.

SECTION 2. AMENDMENT. Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

12-63-04. Board - Powers - Duties - Authority.

The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
 - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
 - b. Examine, under oath, any applicant for licensing.
 - c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.

d. ~~Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.~~

3. The board shall adopt rules relating to the professional conduct of licensed peace officers and to implement the requirements of this chapter, including rules:

a. Relating to professional licensure and continuing education;

b. Establishing ethical standards of practice; and

c. Establishing standards for proper confidential informant handling procedures and setting limits on officer conduct in recruiting an individual to operate as a confidential informant."

Renumber accordingly

#1
HB 1221
4-13-17

Sixty-fifth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1221

Introduced by

Representatives Rick C. Becker, Johnston, Kiefert, Louser, Schreiber-Beck

Senators Luick, Robinson

1 A BILL ~~for an Act to create and enact chapter 29-29.5 of the North Dakota Century Code,~~
2 ~~relating to the use of confidential informants by law enforcement~~for an Act to create and enact
3 chapter 29-29.5 of the North Dakota Century Code, relating to the use of confidential
4 informants; to amend and reenact section 12-63-04 of the North Dakota Century Code, relating
5 to the powers and duties of the peace officer standards and training board; and to provide a
6 penalty.

7 BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

8 ~~SECTION 1. Chapter 29-29.5 of the North Dakota Century Code is created and enacted as~~
9 ~~follows:~~

10 ~~29-29.5-01. Definitions.~~

11 ~~As used in this chapter, unless the context or subject matter otherwise requires:~~

12 ~~1. "Benefit" means any of the following conferred on a confidential informant or a third~~
13 ~~party:~~

14 ~~a. Leniency in a criminal case or probation or parole matter, including the decision~~
15 ~~not to arrest for or charge an offense or to limit the number or severity of charges;~~

16 ~~b. Sentence reduction of any kind or amount;~~

17 ~~c. Money;~~

18 ~~d. Change of immigration status;~~

19 ~~e. Witness protection;~~

20 ~~f. In-kind benefits such as food, rent, and travel; or~~

21 ~~g. In-custody benefits such as visiting privileges, transfer to better living conditions,~~
22 ~~and enhanced access to food and entertainment.~~

23 ~~2. "Confidential informant" means an individual who cooperates with a law enforcement~~
24 ~~agency confidentially:~~

- 1 ~~a. To avoid arrest or prosecution for a crime or mitigate punishment for a crime in~~
2 ~~which a sentence will be or has been imposed; and~~
- 3 ~~b. By reason of familiarity or close association with suspected criminals, is able to:~~
- 4 ~~(1) Make a controlled buy or controlled sale;~~
- 5 ~~(2) Supply regular or constant information about suspected or actual criminal~~
6 ~~activities to a law enforcement agency; or~~
- 7 ~~(3) Otherwise provide information important to ongoing criminal intelligence~~
8 ~~gathering or criminal investigative efforts.~~
- 9 ~~3. "Controlled buy" means the purchase of contraband, controlled substances, or other~~
10 ~~items material to a criminal investigation which is initiated, managed, overseen, or~~
11 ~~participated in by law enforcement personnel with the knowledge of a confidential~~
12 ~~informant.~~
- 13 ~~4. "Controlled sale" means the sale of contraband, controlled substances, or other items~~
14 ~~material to a criminal investigation which is initiated, managed, overseen, or~~
15 ~~participated in by law enforcement personnel with the knowledge of a confidential~~
16 ~~informant.~~
- 17 ~~5. "Informant agreement" means a written agreement describing the rights and~~
18 ~~obligations of the confidential informant.~~
- 19 ~~6. "Law enforcement agency" means a government agency or branch that enforces the~~
20 ~~law and conducts or engages in investigations or prosecutions for violations of law.~~
- 21 ~~7. "Target offender" means a person suspected by law enforcement personnel to be~~
22 ~~implicated in a criminal act.~~
- 23 ~~**29-29.5-02. Limitation on use of vulnerable confidential informants.**~~
- 24 ~~1. A law enforcement agency may not use a juvenile fifteen years of age or younger as a~~
25 ~~confidential informant.~~
- 26 ~~2. a. A juvenile over the age of fifteen but younger than eighteen years of age may not~~
27 ~~be used as a confidential informant unless:~~
- 28 ~~(1) The juvenile is subject to criminal charges or subject to having criminal~~
29 ~~charges filed;~~

1 ~~(2) The law enforcement agency has determined there are no other reasonable~~
2 ~~avenues to obtain evidence of the crime being investigated and has~~
3 ~~evaluated all other criteria in subsection 12 of section 29-29.5-03;~~

4 ~~(3) The prosecuting attorney and the juvenile's custodial parent or guardian has~~
5 ~~signed the informant agreement; and~~

6 ~~(4) The juvenile has consulted with legal counsel.~~

7 ~~b. A juvenile over the age of fifteen but younger than eighteen years of age may not~~
8 ~~participate in a controlled buy or controlled sale, but may provide confidential~~
9 ~~information to a law enforcement agency.~~

10 ~~2. College or university police may not recruit, assist in the recruitment of, refer to a law~~
11 ~~enforcement agency, or otherwise use an enrolled student to participate in a controlled~~
12 ~~buy or controlled sale, regardless of whether the student is offered or receives a~~
13 ~~benefit. This section does not preclude a student from providing confidential~~
14 ~~information to college or university police.~~

15 ~~3. An individual receiving inpatient or outpatient substance abuse treatment from a~~
16 ~~licensed service provider or who is in a treatment-based drug court program may not~~
17 ~~participate in a controlled buy or controlled sale, but may provide confidential~~
18 ~~information to a law enforcement agency while receiving substance abuse treatment.~~

19 ~~**29-29.5-03. Law enforcement guidelines.**~~

20 ~~A law enforcement agency may not use a confidential informant unless the law enforcement~~
21 ~~agency is certified by the attorney general's office at least once every three years. Certification~~
22 ~~under this section must establish the law enforcement agency:~~

23 ~~1. Trains all personnel who are involved in the use or recruitment of confidential~~
24 ~~informants in the law enforcement agency's policies and procedures in a manner~~
25 ~~consistent with national law enforcement standards, and document the date and scope~~
26 ~~of each training.~~

27 ~~2. Assigns the consideration of the preservation of the safety of a confidential informant,~~
28 ~~law enforcement personnel, and the public as the highest priority in operational~~
29 ~~decisions and actions.~~

- 1 — ~~3. Executes reasonable protective measures for a confidential informant when the law~~
- 2 ~~enforcement agency knows or should know of a specific risk or threat of harm to a~~
- 3 ~~confidential informant as a result of serving as a confidential informant.~~
- 4 — ~~4. Trains confidential informants on the conditions, restrictions, and procedures~~
- 5 ~~associated with participating in the law enforcement agency's investigative or~~
- 6 ~~intelligence gathering activities, and document and date the scope of the training.~~
- 7 — ~~5. Designates supervisory or command-level review and oversight of the use of~~
- 8 ~~confidential informants.~~
- 9 — ~~6. Restricts off-duty association or social relationships by law enforcement agency~~
- 10 ~~personnel involved in investigative or intelligence gathering with confidential~~
- 11 ~~informants.~~
- 12 — ~~7. Establishes guidelines to deactivate confidential informants which maintain the safety~~
- 13 ~~and anonymity of confidential informants.~~
- 14 — ~~8. In the event of the death of a confidential informant, advises next of kin or the personal~~
- 15 ~~representative of the confidential informant's estate that the death of the confidential~~
- 16 ~~informant is suspected to have occurred as a result of serving as a confidential~~
- 17 ~~informant.~~
- 18 — ~~9. Informs a potential confidential informant of the right to legal counsel and provide a~~
- 19 ~~potential confidential informant with the opportunity to consult with legal counsel~~
- 20 ~~before entering an informant agreement.~~
- 21 — ~~10. Provides a potential confidential informant with an informant agreement before a~~
- 22 ~~potential confidential informant performs any activity as a confidential informant.~~
- 23 — ~~11. Establishes a process to evaluate the criminal history and propensity for violence of~~
- 24 ~~any targeted offenders that a confidential informant will have contact with during a~~
- 25 ~~confidential informant's performance of confidential informant activities.~~
- 26 — ~~12. Establishes policies and procedures to assess and document, in writing, the suitability~~
- 27 ~~of using an individual as a confidential informant which, at a minimum, requires the~~
- 28 ~~evaluation of each of the following factors:~~
- 29 — ~~a. The individual's age and maturity;~~

- 1 ~~b. The risk of physical harm to the individual or the individual's immediate family or~~
2 ~~close associates as a result of providing information or assistance, or upon the~~
3 ~~release of information that discloses an individual's assistance;~~
- 4 ~~c. The risk the individual poses to adversely affect a present or potential~~
5 ~~investigation or prosecution;~~
- 6 ~~d. The effect the disclosure of the individual's cooperation may have on the~~
7 ~~agency's investigative or intelligence gathering activities;~~
- 8 ~~e. Whether the individual is a substance abuser, has a history of substance abuse,~~
9 ~~or is in a drug treatment program;~~
- 10 ~~f. Whether the individual has shown an indication of emotional instability,~~
11 ~~unreliability, or of furnishing false information;~~
- 12 ~~g. The individual's criminal history or prior criminal record; and~~
- 13 ~~h. Whether the use of the individual is important or vital to the success of an~~
14 ~~investigation and the likelihood that information the individual could provide is not~~
15 ~~readily available through other sources of a more direct means.~~
- 16 ~~13. Establishes recordkeeping procedures that, at a minimum:~~
- 17 ~~a. Create a separate file for every confidential informant to be maintained in a~~
18 ~~central or special division of the agency;~~
- 19 ~~b. Collect and record each confidential informant's name, age, gender, race,~~
20 ~~ethnicity, and residential zip code; and~~
- 21 ~~c. Collect and record any contacts or actions between a confidential informant and~~
22 ~~the law enforcement agency or agent, financial transactions, informant~~
23 ~~agreements, and all types of information required by subsection 1 of section~~
24 ~~29-29.5-05.~~
- 25 ~~14. Establishes written security procedures that, at a minimum:~~
- 26 ~~a. Provide for the secured retention of all records related to the law enforcement~~
27 ~~agency's confidential sources, including access to files identifying the identity of~~
28 ~~confidential sources.~~
- 29 ~~b. Limit availability to records relating to confidential informants to those within the~~
30 ~~law enforcement agency or law enforcement community having a need to know~~
31 ~~or review those records, the confidential informant, an attorney representing the~~

1 ~~confidential informant, an individual who has been charged with a criminal~~
2 ~~violation where the confidential informant may be called by the prosecution as a~~
3 ~~witness based on the confidential informant's work as a confidential informant,~~
4 ~~and an attorney representing such an individual.~~

5 ~~c. Require notation of each individual who accesses the records and the date the~~
6 ~~records are accessed.~~

7 ~~d. Provide for review and oversight by the law enforcement agency to ensure record~~
8 ~~access and security procedures are followed.~~

9 ~~e. Define the process by which records concerning a confidential informant may be~~
10 ~~lawfully destroyed.~~

11 ~~15. Performs an annual review of actual agency confidential informant practices to ensure~~
12 ~~conformity with the agency's policies and procedures and this chapter.~~

13 ~~**29-29.5-04. Informant agreement.**~~

14 ~~1. An informant agreement must include:~~

15 ~~a. Notice of an individual's right to legal counsel and the opportunity to consult with~~
16 ~~legal counsel before signing the informant agreement and before performing~~
17 ~~service as a confidential informant. A waiver of the right to legal counsel by an~~
18 ~~individual must be documented in writing and acknowledged by the individual that~~
19 ~~the waiver of the right to legal counsel was knowingly, intelligently, and voluntarily~~
20 ~~made.~~

21 ~~b. Notice that there can be no promise of an inducement of any kind, such as a~~
22 ~~grant of immunity, a dropped or reduced charge, a reduced sentence, or~~
23 ~~placement on probation in exchange for serving as a confidential informant~~
24 ~~without the express written agreement of the prosecuting attorney.~~

25 ~~c. A description of the activities required of a confidential informant, any promised~~
26 ~~benefit, and the service period required of the confidential informant.~~

27 ~~d. Notice that it is a violation of the informant agreement for a confidential informant~~
28 ~~to be asked or permitted to use sexual enticement or promises of future sexual~~
29 ~~acts as part of service as a confidential informant.~~

30 ~~e. The requirement that a confidential informant provide the names and contact~~
31 ~~information for next of kin or a personal representative of the confidential~~

1 ~~informant's estate in the event the law enforcement agency suspects the death of~~
2 ~~a confidential informant was a result of services performed as a confidential~~
3 ~~informant.~~

4 ~~f. Notification that the informant agreement may not release an individual or law~~
5 ~~enforcement agency of liability for a negligent or intentional act alleged in a civil~~
6 ~~action.~~

7 ~~2. The informant agreement must be reviewed and signed by a supervising law~~
8 ~~enforcement agent and a confidential informant.~~

9 ~~**29-29.5-05. Report to the attorney general.**~~

10 ~~1. A law enforcement agency using confidential informants shall collect and report data~~
11 ~~including the information required by this subsection. Data required to be collected~~
12 ~~under this subsection is confidential. The attorney general shall develop and~~
13 ~~disseminate a standardized form that must be completed by every law enforcement~~
14 ~~agency using confidential informants. A law enforcement agency using confidential~~
15 ~~informants shall collect the data for the preceding calendar year and submit a report~~
16 ~~by March first of each year to the attorney general for review. The data and report may~~
17 ~~not disclose the identity of a confidential informant, but must include:~~

18 ~~a. The number of active confidential informants.~~

19 ~~b. The number of active confidential informants used by case category.~~

20 ~~c. The categories of active confidential informants compiled by race, ethnicity,~~
21 ~~gender, age, and zip code.~~

22 ~~d. The number of confidential informants used to conduct controlled buys or~~
23 ~~controlled sales on behalf of an agency.~~

24 ~~e. The number of deaths or injuries to confidential informants whose cause of death~~
25 ~~or injury may be related to service as confidential informants or whose death or~~
26 ~~injury occurs during the service period described in the informant agreement.~~

27 ~~f. The total amount of cash payments and value of any non-leniency related~~
28 ~~benefits provided to confidential informants.~~

29 ~~g. The total number of decisions not to arrest, dropped or reduced charges,~~
30 ~~sentence reductions, or other leniency related benefits provided to confidential~~
31 ~~informants.~~

- 1 ~~h. The disposition of all charges brought against target offenders.~~
- 2 ~~i. The total number of instances in which a law enforcement agency's use of~~
- 3 ~~confidential informants resulted in the criminal prosecution of target offenders.~~
- 4 ~~j. The total number of administrative disciplinary proceedings conducted by a law~~
- 5 ~~enforcement agency for violations of this chapter by a law enforcement agent.~~
- 6 ~~2. Upon the death of a confidential informant, the supervising law enforcement agency~~
- 7 ~~shall withdraw from the investigation of the death of its confidential informant. The~~
- 8 ~~supervising law enforcement agency shall promptly notify the attorney general of its~~
- 9 ~~withdrawal from the investigation, and the attorney general shall authorize an~~
- 10 ~~independent law enforcement agency investigation.~~
- 11 ~~3. If a law enforcement agency head determines a law enforcement agent has violated a~~
- 12 ~~provision of this chapter and finds the circumstances surrounding the violation raise~~
- 13 ~~serious questions about whether the law enforcement agent acted willfully or~~
- 14 ~~intentionally with respect to the violation, the agency head promptly shall initiate a~~
- 15 ~~proceeding to determine whether disciplinary action against the law enforcement~~
- 16 ~~agent is warranted. The agency head shall report the proceeding and the outcome in~~
- 17 ~~the annual report required by subsection 1.~~

18 **SECTION 1. AMENDMENT.** Section 12-63-04 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **12-63-04. Board - Powers - Duties - Authority.**

21 The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate
22 the qualifications of applicants, and approve the examinations for licensing under this chapter.

23 1. The board shall:

- 24 a. Prescribe the criteria for certification of basic, advanced, and specialized peace
25 officer training curriculum, instructors, and schools;
- 26 b. Certify curriculum, instructors, schools, and officers that have met the training
27 certification criteria;
- 28 c. Establish the curriculum for basic and advanced peace officer training; and
- 29 d. Prescribe minimum standards of sidearm training and certification for peace
30 officers before they may carry a sidearm.

- 1 2. The board shall keep records and minutes necessary to carry out its functions. The
2 board may:
 - 3 a. Issue subpoenas, examine witnesses, administer oaths, and investigate
4 allegations of practices violating the provisions of this chapter or rules adopted by
5 the board.
 - 6 b. Examine, under oath, any applicant for licensing.
 - 7 c. Examine, under oath, any licensed peace officer during a hearing to suspend,
8 revoke, or to not renew a license of a peace officer.
 - 9 d. Adopt rules relating to the professional conduct of peace officers and to
10 implement the requirements of this chapter, including rules relating to
11 professional licensure, continuing education, and ethical standards of practice,
12 for persons holding a license to practice peace officer duties.

13 3. The board shall adopt rules relating to the professional conduct of licensed peace
14 officers involved in confidential informant agreements under chapter 29-29.5, and shall
15 receive complaints and make determinations if an officer's conduct violated the
16 protections provided in chapter 29-29.5.

17 4. The board shall establish penalties and enforce violations of protections provided in
18 chapter 29-29.5. The penalties established must be formulated based on the nature,
19 severity, gravity, and recurrence of violations. The board may deny, suspend, or
20 revoke a license or may impose probationary conditions, including remedial training.

21 **SECTION 2.** Chapter 29-29.5 of the North Dakota Century Code is created and enacted as
22 follows:

23 **29-29.5-01. Definitions.**

- 24 1. "Benefit" means any of the following conferred on a confidential informant or a third
25 party:
 - 26 a. Leniency in a criminal case or probation or parole matter, including a decision
27 whether to arrest or charge an offense or to limit the number or severity of
28 charges;
 - 29 b. Sentence reduction of any kind or amount;
 - 30 c. A favorable sentencing recommendation; or
 - 31 d. Any thing of value as defined in section 12.1-01-04.

- 1 2. "Confidential informant" means an individual who cooperates with a law enforcement
2 agency and:
 - 3 a. Is willing to attempt a controlled buy or controlled sale or agrees to surreptitiously
4 record a targeted offender; and
 - 5 b. Seeks or is offered a benefit.
- 6 3. "Controlled buy" means the purchase or attempted purchase of contraband, controlled
7 substances, or other items material to a criminal investigation while under supervision
8 or direction of law enforcement.
- 9 4. "Controlled sale" means the sale or attempted sale of contraband, controlled
10 substances, or other items material to a criminal investigation while under supervision
11 or direction of enforcement.
- 12 5. "Informant agreement" means a written agreement describing the rights and
13 obligations of a confidential informant and law enforcement agency.
- 14 6. "Law enforcement agency" means an agency authorized by law to enforce the law and
15 to conduct or engage in investigations or prosecutions for violations of the law.
- 16 7. "Target offender" means an individual suspected of a violation of the law, whose
17 identity is known or unknown, and who is the focus of an informant agreement.

18 **29-29.5-02. Limitation on use of juvenile confidential informants.**

- 19 1. A law enforcement agency may not use a juvenile fifteen years of age or younger as a
20 confidential informant.
- 21 2. A juvenile over the age of fifteen, but under the age of eighteen, may not be used as a
22 confidential informant unless:
 - 23 a. The juvenile is married;
 - 24 b. The juvenile is emancipated;
 - 25 c. The juvenile is serving in the active duty armed forces; or
 - 26 d. The juvenile is subject to criminal charges; and
 - 27 (1) There are no other reasonable avenues to obtain evidence of the crime
28 being investigated and the risk of harm to the juvenile is minimal;
 - 29 (2) The juvenile's custodial parent or guardian has signed the informant
30 agreement; and
 - 31 (3) The juvenile has consulted with legal counsel.

1 **29-29.5-03. Limitation on use of campus police.**

2 A law enforcement officer employed under section 15-10-17 may not enter an informant
3 agreement with a student enrolled in an institution under the control of the state board of higher
4 education.

5 **29-29.5-04. Law enforcement confidential informant training and guidelines.**

6 1. After July 1, 2018, a law enforcement agency may not use a confidential informant
7 unless the law enforcement agency is certified by the attorney general for use of
8 confidential informants.

9 a. Certification must occur at least once every three years, and must establish the
10 law enforcement agency trains all personnel who are involved in the use or
11 recruitment of confidential informants in the law enforcement agency's policies
12 and procedures in a manner consistent with the peace officer standards and
13 training requirements.

14 b. The certified law enforcement agency shall document the date and scope of all
15 training along with all law enforcement personnel trained.

16 2. The peace officers standards and training board shall adopt rules for the use of
17 confidential informants, which at a minimum:

18 a. Assign the consideration of the preservation of the safety of a confidential
19 informant.

20 b. Execute reasonable protective measures for a confidential informant.

21 c. Establish guidelines for the training and briefing of confidential informants.

22 d. Restrict off-duty association or social relationships by law enforcement agency
23 personnel with confidential informants.

24 e. Establish procedures to deactivate confidential informants which maintain the
25 safety and anonymity of confidential informants.

26 f. Establish a process to evaluate and report the criminal history and propensity for
27 violence of any targeted offenders.

28 g. Establish written security procedures protecting the identity of a confidential
29 informant.

29-29.5-05. Written agreement required.

Except for court proceedings, a law enforcement agency may use a confidential informant only with a written agreement executed by the confidential informant and the law enforcement agency. An agreement for use of a confidential informant must be in writing, and include:

1. The confidential informant's right to remain silent, the right to speak with legal counsel at anytime, and the right to cease working as a confidential informant;
2. A statement of the benefit which will be recommended upon substantial compliance with the informant agreement;
3. A statement that an absolute guarantee or promise may not be made to the confidential informant other than law enforcement will truthfully report cooperation;
4. A statement of the inherent risk associated with acting as a confidential informant;
5. Confidential informant responsibilities, including testifying truthfully if called as a witness in a court proceeding;
6. A written waiver of right to counsel which must be executed separately and attached to the informant agreement, signed by the confidential informant and a law enforcement officer, and include language stating that consulting legal counsel at any time will not invalidate the agreement;
7. The parameters of the agreement, detailing the anticipated number of buys, sales, acts, or the duration of service;
8. A description of any penalty for violating the terms of the written agreement, including any additional criminal charges;
9. A warning that sexual relations with an intended target of a police investigation is a violation of the agreement and may be a violation of the law;
10. A statement that money or property loaned or entrusted to the confidential informant by law enforcement may not be used for personal use and must be accounted for at all times; and
11. Specification of any known crimes of violence committed by a target offender.

29-29.5-06. Reporting violations of this chapter.

1. An individual may report a suspected violation of this chapter to the appropriate law enforcement agency administration. The law enforcement agency shall investigate any reported violation within twenty days from receiving the complaint and, within forty-five

1 days from receiving the complaint, make a written determination on whether a violation
2 occurred. Upon completion, the law enforcement agency shall forward the written
3 report to the individual who filed the initial complaint and to the peace officer standards
4 and training board for review. An individual who filed a report for a suspected violation
5 may seek additional remedies from the peace officer standards and training board.

6 2. A licensed peace officer or a prosecutor who reasonably believes a law enforcement
7 officer or a law enforcement agency has violated this chapter shall file a written report
8 with the peace officer standards and training board.

9 **29-29.5-07. Disposition of cases involving confidential informants.**

10 1. An informant agreement may be presented to the court at the time of sentencing. A
11 court shall give consideration at sentencing to a confidential informant who has
12 substantially complied with an informant agreement.

13 2. After consideration of an informant agreement, notwithstanding section 19-03.1-23.2,
14 a court may defer imposition of sentence or suspend a portion of a minimum
15 mandatory sentence when a confidential informant has substantially complied with an
16 informant agreement.

17 3. If necessary to protect a confidential informant or the integrity of an ongoing
18 investigation, a court may direct submission of sentencing memoranda in writing under
19 seal when sentencing or deferring imposition of sentence of a confidential informant.

20 4. If necessary to protect a confidential informant or the integrity of an investigation, a
21 court may dispense with reporting departure from a mandatory sentence under
22 subsection 3 of section 12.1-32-03.

23 5. This section does not prohibit disposition of cases by deferral of prosecution.

1
1221
4-14-17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1221

That the Senate recede from its amendments as printed on pages 1282 and 1283 of the House Journal and pages 1001-1003 of the Senate Journal and that Engrossed House Bill No. 1221 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 29-29.5 of the North Dakota Century Code, relating to the use of confidential informants; to amend and reenact section 12-63-04 of the North Dakota Century Code, relating to the powers and duties of the peace officer standards and training board; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

12-63-04. Board - Powers - Duties - Authority.

The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
 - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
 - b. Examine, under oath, any applicant for licensing.
 - c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
 - d. Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating

to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.

3. The board shall adopt rules relating to the professional conduct of licensed peace officers involved in confidential informant agreements under chapter 29-29.5, and shall receive complaints and make determinations if an officer's conduct violated the protections provided in chapter 29-29.5.
4. The board shall establish penalties and enforce violations of protections provided in chapter 29-29.5. The penalties established must be formulated based on the nature, severity, gravity, and recurrence of violations. The board may deny, suspend, or revoke a license or may impose probationary conditions, including remedial training.

SECTION 2. Chapter 29-29.5 of the North Dakota Century Code is created and enacted as follows:

29-29.5-01. Definitions.

1. "Benefit" means any of the following conferred on a confidential informant or a third party:
 - a. Leniency in a criminal case or probation or parole matter, including a decision whether to arrest or charge an offense or to limit the number or severity of charges;
 - b. Sentence reduction of any kind or amount;
 - c. A favorable sentencing recommendation; or
 - d. Any thing of value as defined in section 12.1-01-04.
2. "Confidential informant" means an individual who cooperates with a law enforcement agency and:
 - a. Is willing to attempt a controlled buy or controlled sale or agrees to surreptitiously record a targeted offender; and
 - b. Seeks or is offered a benefit.
3. "Controlled buy" means the purchase or attempted purchase of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of law enforcement.
4. "Controlled sale" means the sale or attempted sale of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of enforcement.
5. "Informant agreement" means a written agreement describing the rights and obligations of a confidential informant and law enforcement agency.
6. "Law enforcement agency" means an agency authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.

7. "Target offender" means an individual suspected of a violation of the law, whose identity is known or unknown, and who is the focus of an informant agreement.

29-29.5-02. Limitation on use of juvenile confidential informants.

1. A law enforcement agency may not use a juvenile fifteen years of age or younger as a confidential informant.
2. A juvenile over the age of fifteen, but under the age of eighteen, may not be used as a confidential informant unless:
 - a. The juvenile is married;
 - b. The juvenile is emancipated;
 - c. The juvenile is serving in the active duty armed forces; or
 - d. The juvenile is subject to criminal charges; and
 - (1) There are no other reasonable avenues to obtain evidence of the crime being investigated and the risk of harm to the juvenile is minimal;
 - (2) The juvenile's custodial parent or guardian has signed the informant agreement; and
 - (3) The juvenile has consulted with legal counsel.

29-29.5-03. Limitation on use of campus police.

A law enforcement officer employed under section 15-10-17 may not enter an informant agreement with a student enrolled in an institution under the control of the state board of higher education.

29-29.5-04. Law enforcement confidential informant training and guidelines.

1. After July 1, 2018, a law enforcement agency may not use a confidential informant unless the law enforcement agency is certified by the attorney general for use of confidential informants.
 - a. Certification must occur at least once every three years, and must establish the law enforcement agency trains all personnel who are involved in the use or recruitment of confidential informants in the law enforcement agency's policies and procedures in a manner consistent with the peace officer standards and training requirements.
 - b. The certified law enforcement agency shall document the date and scope of all training along with all law enforcement personnel trained.
2. The peace officers standards and training board shall adopt rules for the use of confidential informants, which at a minimum:
 - a. Assign the consideration of the preservation of the safety of a confidential informant.
 - b. Execute reasonable protective measures for a confidential informant.

- c. Establish guidelines for the training and briefing of confidential informants.
- d. Restrict off-duty association or social relationships by law enforcement agency personnel with confidential informants.
- e. Establish procedures to deactivate confidential informants which maintain the safety and anonymity of confidential informants.
- f. Establish a process to evaluate and report the criminal history and propensity for violence of any targeted offenders.
- g. Establish written security procedures protecting the identity of a confidential informant.

29-29.5-05. Written agreement required.

Except for court proceedings, a law enforcement agency may use a confidential informant only with a written agreement executed by the confidential informant and the law enforcement agency. An agreement for use of a confidential informant must be in writing, and include:

- 1. The confidential informant's right to remain silent, the right to speak with legal counsel at anytime, and the right to cease working as a confidential informant;
- 2. A statement of the benefit which will be recommended upon substantial compliance with the informant agreement;
- 3. A statement that an absolute guarantee or promise may not be made to the confidential informant other than law enforcement will truthfully report cooperation;
- 4. A statement of the inherent risk associated with acting as a confidential informant;
- 5. Confidential informant responsibilities, including testifying truthfully if called as a witness in a court proceeding;
- 6. A written waiver of right to counsel which must be executed separately and attached to the informant agreement, signed by the confidential informant and a law enforcement officer, and include language stating that consulting legal counsel at any time will not invalidate the agreement;
- 7. The parameters of the agreement, detailing the anticipated number of buys, sales, acts, or the duration of service;
- 8. A description of any penalty for violating the terms of the written agreement, including any additional criminal charges;
- 9. A warning that sexual relations with an intended target of a police investigation is a violation of the agreement and may be a violation of the law;

10. A statement that money or property loaned or entrusted to the confidential informant by law enforcement may not be used for personal use and must be accounted for at all times; and
11. Specification of any known crimes of violence committed by a target offender.

29-29.5-06. Death of a confidential informant.

Upon the death of a confidential informant, the supervising law enforcement agency shall withdraw from the investigation of the death of its confidential informant. The supervising law enforcement agency promptly shall notify the attorney general of its withdrawal from the investigation, and the attorney general shall authorize an independent law enforcement agency investigation.

29-29.5-07. Reporting violations of this chapter.

1. An individual may report a suspected violation of this chapter to the appropriate law enforcement agency administration. The law enforcement agency shall investigate any reported violation within twenty days from receiving the complaint and, within forty-five days from receiving the complaint, make a written determination on whether a violation occurred. Upon completion, the law enforcement agency shall forward the written report to the individual who filed the initial complaint and to the peace officer standards and training board for review. An individual who filed a report for a suspected violation may seek additional remedies from the peace officer standards and training board.
2. A licensed peace officer or a prosecutor who reasonably believes a law enforcement officer or a law enforcement agency has violated this chapter shall file a written report with the peace officer standards and training board.

29-29.5-08. Disposition of cases involving confidential informants.

1. An informant agreement may be presented to the court at the time of sentencing. A court shall give consideration at sentencing to a confidential informant who has substantially complied with an informant agreement.
2. After consideration of an informant agreement, notwithstanding section 19-03.1-23.2, a court may defer imposition of sentence or suspend a portion of a minimum mandatory sentence when a confidential informant has substantially complied with an informant agreement.
3. If necessary to protect a confidential informant or the integrity of an ongoing investigation, a court may direct submission of sentencing memoranda in writing under seal when sentencing or deferring imposition of sentence of a confidential informant.
4. If necessary to protect a confidential informant or the integrity of an investigation, a court may dispense with reporting departure from a mandatory sentence under subsection 3 of section 12.1-32-03.
5. This section does not prohibit disposition of cases by deferral of prosecution."

Renumber accordingly

April 14, 2017

PM
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1221
4-14-17

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1221

That the Senate recede from its amendments as printed on pages 1282 and 1283 of the House Journal and pages 1001-1003 of the Senate Journal and that Engrossed House Bill No. 1221 be amended as follows:

Page 1, line 1, after "A BILL" replace the remainder of the bill with "for an Act to create and enact chapter 29-29.5 of the North Dakota Century Code, relating to the use of confidential informants; to amend and reenact section 12-63-04 of the North Dakota Century Code, relating to the powers and duties of the peace officer standards and training board; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 12-63-04 of the North Dakota Century Code is amended and reenacted as follows:

12-63-04. Board - Powers - Duties - Authority.

The board shall administer, coordinate, and enforce the provisions of this chapter, evaluate the qualifications of applicants, and approve the examinations for licensing under this chapter.

1. The board shall:
 - a. Prescribe the criteria for certification of basic, advanced, and specialized peace officer training curriculum, instructors, and schools;
 - b. Certify curriculum, instructors, schools, and officers that have met the training certification criteria;
 - c. Establish the curriculum for basic and advanced peace officer training; and
 - d. Prescribe minimum standards of sidearm training and certification for peace officers before they may carry a sidearm.
2. The board shall keep records and minutes necessary to carry out its functions. The board may:
 - a. Issue subpoenas, examine witnesses, administer oaths, and investigate allegations of practices violating the provisions of this chapter or rules adopted by the board.
 - b. Examine, under oath, any applicant for licensing.
 - c. Examine, under oath, any licensed peace officer during a hearing to suspend, revoke, or to not renew a license of a peace officer.
 - d. Adopt rules relating to the professional conduct of peace officers and to implement the requirements of this chapter, including rules relating

to professional licensure, continuing education, and ethical standards of practice, for persons holding a license to practice peace officer duties.

3. The board shall adopt rules relating to the professional conduct of licensed peace officers involved in confidential informant agreements under chapter 29-29.5, and shall receive complaints and make determinations if an officer's conduct violated the protections provided in chapter 29-29.5. (see below)
4. The board shall establish penalties and enforce violations of protections provided in chapter 29-29.5. The penalties established must be formulated based on the nature, severity, gravity, and recurrence of violations. The board may deny, suspend, or revoke a license or may impose probationary conditions, including remedial training.

SECTION 2. Chapter 29-29.5 of the North Dakota Century Code is created and enacted as follows:

29-29.5-01. Definitions.

1. "Benefit" means any of the following conferred on a confidential informant or a third party:
 - a. Leniency in a criminal case or probation or parole matter, including a decision whether to arrest or charge an offense or to limit the number or severity of charges;
 - b. Sentence reduction of any kind or amount; or
 - c. A favorable sentencing or bond recommendation.
2. "Confidential informant" means an individual who cooperates with a law enforcement agency and:
 - a. Is willing to attempt a controlled buy or controlled sale or agrees to surreptitiously record a target offender; and
 - b. Seeks or is offered a benefit.
3. "Controlled buy" means the purchase or attempted purchase of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of law enforcement.
4. "Controlled sale" means the sale or attempted sale of contraband, controlled substances, or other items material to a criminal investigation while under supervision or direction of enforcement.
5. "Informant agreement" means a written agreement describing the rights and obligations of a confidential informant and law enforcement agency.
6. "Law enforcement agency" means an agency authorized by law to enforce the law and to conduct or engage in investigations or prosecutions for violations of the law.

The board shall conduct an annual audit evaluating the effectiveness of confidential informant training requirements.

7. "Target offender" means an individual suspected of a violation of the law, whose identity is known or unknown, and who is the focus of an informant agreement.

29-29.5-02. Limitation on use of juvenile confidential informants.

1. A law enforcement agency may not use a juvenile fifteen years of age or younger as a confidential informant.
2. A juvenile over the age of fifteen, but under the age of eighteen, may not be used as a confidential informant unless:
 - a. The juvenile is married;
 - b. The juvenile is emancipated;
 - c. The juvenile is serving in the active duty armed forces; or
 - d. The juvenile is subject to criminal charges; and
 - (1) There are no other reasonable avenues to obtain evidence of the crime being investigated and the risk of harm to the juvenile is minimal;
 - (2) The juvenile's custodial parent or guardian has signed the informant agreement; and
 - (3) The juvenile has consulted with legal counsel.

29-29.5-03. Limitation on use of campus police.

A law enforcement officer employed under section 15-10-17 may not enter an informant agreement with a student enrolled in an institution under the control of the state board of higher education.

29-29.5-04. Law enforcement confidential informant training and guidelines.

1. After July 1, 2018, a law enforcement agency may not use a confidential informant unless the law enforcement agency is trained in the use of confidential informants in a training course approved by the attorney general.
 - a. Training must occur at least once every three years, and must establish that the law enforcement agency has trained all personnel who are involved in the use or recruitment of confidential informants in the law enforcement agency's policies and procedures in a manner consistent with the peace officer standards and training requirements.
 - b. The law enforcement agency shall document the date and scope of all training along with all law enforcement personnel trained.
2. The peace officers standards and training board shall adopt rules for the use of confidential informants, which at a minimum:
 - a. Assign the consideration of the preservation of the safety of a confidential informant.

- b. Execute reasonable protective measures for a confidential informant.
- c. Establish guidelines for the training and briefing of confidential informants.
- d. Restrict off-duty association or social relationships by law enforcement agency personnel with confidential informants.
- e. Establish procedures to deactivate confidential informants which maintain the safety and anonymity of confidential informants.
- f. Establish a process to evaluate and report the criminal history and propensity for violence of any target offenders.
- g. Establish written security procedures protecting the identity of a confidential informant.
- h. Establish written procedures relating to the use of a paid confidential informant.

29-29.5-05. Written agreement required.

Except for court proceedings, a law enforcement agency may use a confidential informant only with a written agreement executed by the confidential informant and the law enforcement agency. An agreement for use of a confidential informant must be in writing, and include:

- 1. The confidential informant's right to remain silent, the right to speak with legal counsel at any time, and the right to cease working as a confidential informant;
- 2. A statement of the benefit which will be recommended upon substantial compliance with the informant agreement;
- 3. A statement that an absolute guarantee or promise may not be made to the confidential informant other than law enforcement will truthfully report cooperation;
- 4. A statement of the inherent risk associated with acting as a confidential informant;
- 5. Confidential informant responsibilities, including testifying truthfully if called as a witness in a court proceeding;
- 6. A written waiver of right to counsel which must be executed separately and attached to the informant agreement, signed by the confidential informant and a law enforcement officer, and include language stating that consulting legal counsel at any time will not invalidate the agreement;
- 7. The parameters of the agreement, detailing the anticipated number of buys, sales, acts, or the duration of service;
- 8. A description of any penalty for violating the terms of the written agreement, including any additional criminal charges;

9. A warning that sexual relations with an intended target of a police investigation is a violation of the agreement and may be a violation of the law;
10. A statement that money or property loaned or entrusted to the confidential informant by law enforcement may not be used for personal use and must be accounted for at all times; and
11. Specification of any known crimes of violence committed by a target offender.

29-29.5-06. Death of a confidential informant.

Upon the death of a confidential informant, the supervising law enforcement agency shall withdraw from the investigation of the death of its confidential informant. The supervising law enforcement agency promptly shall notify the attorney general of its withdrawal from the investigation, and the attorney general shall authorize an independent law enforcement agency investigation.

29-29.5-07. Reporting violations of this chapter.

1. An individual may report a suspected violation of this chapter to the appropriate law enforcement agency administration. The law enforcement agency shall investigate any reported violation within twenty days from receiving the complaint and, within forty-five days from receiving the complaint, make a written determination on whether a violation occurred. Upon completion, the law enforcement agency shall forward the written report to the individual who filed the initial complaint and to the peace officer standards and training board for review. An individual who filed a report for a suspected violation may seek additional remedies from the peace officer standards and training board.
2. A licensed peace officer or a prosecutor who reasonably believes a law enforcement officer or a law enforcement agency has violated this chapter shall file a written report with the peace officer standards and training board.

29-29.5-08. Disposition of cases involving confidential informants.

1. An informant agreement may be presented to the court at the time of sentencing. A court shall give consideration at sentencing to a confidential informant who has substantially complied with an informant agreement.
2. After consideration of an informant agreement, notwithstanding section 19-03.1-23.2, a court may defer imposition of sentence or suspend a portion of a minimum mandatory sentence when a confidential informant has substantially complied with an informant agreement.
3. If necessary to protect a confidential informant or the integrity of an ongoing investigation, a court may direct submission of sentencing memoranda in writing under seal when sentencing or deferring imposition of sentence of a confidential informant.

4. If necessary to protect a confidential informant or the integrity of an investigation, a court may dispense with reporting departure from a mandatory sentence under subsection 3 of section 12.1-32-03.
5. This section does not prohibit disposition of cases by deferral of prosecution with or without court approval."

Renumber accordingly