
SENATE BILL 5373

State of Washington

63rd Legislature

2013 Regular Session

By Senator Kline

Read first time 01/28/13. Referred to Committee on Law & Justice.

1 AN ACT Relating to confidential informants; and adding a new
2 chapter to Title 10 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions in this section apply
5 throughout this chapter unless the context clearly requires otherwise.

6 (1) "Confidential informant" means a person who confidentially
7 cooperates with a law enforcement agency to protect the person or the
8 agency's intelligence gathering or investigative efforts and:

9 (a) Seeks to avoid arrest or prosecution for a crime or mitigate
10 punishment for a crime in which a sentence will or has been imposed;
11 and

12 (b) By using personal knowledge, connections, or association with
13 suspected criminals, agrees to:

14 (i) Make a controlled buy or a controlled sale of contraband,
15 controlled substances, or other items that are material to a criminal
16 investigation;

17 (ii) Provide regular or constant information about suspected or
18 actual criminal activities to a law enforcement agency; or

1 (iii) Otherwise provide important information for ongoing criminal
2 intelligence gathering or criminal investigative efforts.

3 (2) "Contraband" means any item that a person is prohibited from
4 producing, obtaining, or possessing by statute, rule, regulation, or
5 order of a court.

6 (3) "Controlled buy" means a purchase of contraband, controlled
7 substances, or other items that are material to a criminal
8 investigation from a target offender which is initiated, managed,
9 overseen, or participated in by law enforcement personnel with the
10 knowledge of a confidential informant.

11 (4) "Controlled sale" means a sale of contraband, controlled
12 substances, or other items that are material to a criminal
13 investigation to a target offender which is initiated, managed,
14 overseen, or participated in by law enforcement personnel with the
15 knowledge of a confidential informant.

16 (5) "Controlled substance" means a drug, substance, or immediate
17 precursor included in Schedules I through V as set forth in federal or
18 state laws, or federal or board rules as defined in RCW 69.50.101.

19 (6) "Law enforcement agency" means a general law enforcement agency
20 as defined in RCW 10.93.020 and a limited law enforcement agency as
21 defined in RCW 10.93.020.

22 (7) "Target offender" means a person suspected by law enforcement
23 to be involved in criminal activities.

24 NEW SECTION. **Sec. 2.** (1) Individuals sixteen years of age and
25 younger must not be used as confidential informants under any
26 circumstances.

27 (2) Individuals seventeen and eighteen years of age may be used as
28 confidential informants if the individual's parent or legal guardian
29 consents to the individual acting as a confidential informant.

30 NEW SECTION. **Sec. 3.** (1) A law enforcement agency that uses
31 confidential informants must establish policies and procedures for
32 determining the suitability of a person to act as a confidential
33 informant by considering the following factors:

34 (a) Person's age and maturity;

35 (b) Risks that could adversely affect a present or potential

1 investigation or prosecution as a result of the person acting as a
2 confidential informant;

3 (c) Potential effects on agency efforts as a result of disclosing
4 the person's cooperation in the community;

5 (d) Whether the person is a current substance abuser, has a history
6 of substance abuse, or is in a court supervised drug treatment program;

7 (e) Risks of physical harm to the person, his or her immediate
8 family, or close associates that could result from the person acting as
9 a confidential informant;

10 (f) Whether the person has shown any indication of mental or
11 emotional instability, unreliability, or furnishing false information;

12 (g) Person's criminal history or prior criminal record; and

13 (h) Whether the person is important or vital to the success of the
14 investigation or intelligence gathering.

15 (2) A law enforcement agency that uses confidential informants must
16 establish policies and procedures for the recruitment, use, and
17 management of confidential informants. These policies and procedures
18 must state the:

19 (a) Information that the law enforcement agency must maintain for
20 each confidential informant;

21 (b) General guidelines for the use of confidential informants;

22 (c) Process for advising confidential informants of the procedures,
23 conditions, and restrictions associated with acting as a confidential
24 informant;

25 (d) Designated supervisory or command-level review and oversight in
26 the use of confidential informants;

27 (e) Limits or restrictions on off-duty association or social
28 relationships by agency personnel involved in investigations or
29 intelligence gathering with confidential informants;

30 (f) Guidelines for terminating confidential informants, including
31 guidelines for terminating communication with confidential informants;
32 and

33 (g) Level of supervisory approval required before eligible minors,
34 by age or parental consent, are used as confidential informants.

35 (3) A law enforcement agency that uses confidential informants must
36 establish written security procedures that, at a minimum:

37 (a) Provide for the secured retention of records related to the law

1 enforcement agency's confidential sources, including access to files
2 identifying the identity of confidential sources;

3 (b) Limit the availability of records relating to confidential
4 informants;

5 (c) Require documentation of each person who accesses the records
6 and the date the records are accessed;

7 (d) Provide for review and oversight by the law enforcement agency
8 to ensure that the security procedures are followed; and

9 (e) Define the process for lawfully destroying records concerning
10 a confidential informant.

11 NEW SECTION. **Sec. 4.** (1) Prior to using a confidential informant,
12 a law enforcement agency must enter into a written agreement with a
13 confidential informant that states:

14 (a) The number of cases that the confidential informant will be
15 assigned; and

16 (b) The changes in the confidential informant's case that will
17 result from participating in the assigned cases.

18 (2) The specific details about the confidential informant's
19 participation in each case must be communicated in writing to the
20 confidential informant when the case is assigned.

21 (3) If a confidential informant is represented by counsel in the
22 underlying criminal charge, the law enforcement agency must give the
23 confidential informant's counsel notice of the agreement and the
24 opportunity to review the agreement and to consult with the
25 confidential informant. A copy of subsequent agreements and writings
26 must be sent to the confidential informant's counsel.

27 (4) All agreements and writings produced pursuant to this section
28 are exempt from disclosure through the public records act under chapter
29 42.56 RCW.

30 NEW SECTION. **Sec. 5.** A state or local law enforcement agency that
31 uses confidential informants must perform a periodic review of agency
32 confidential informant practices to ensure compliance with the agency's
33 policies and procedures and this chapter.

34 NEW SECTION. **Sec. 6.** (1) The provisions in this chapter and the

1 policies and procedures adopted pursuant to this chapter do not grant
2 any right or entitlement to a confidential informant or a person who is
3 asked to be a confidential informant.

4 (2) Any failure to abide by the requirements in this chapter cannot
5 be relied upon to create a substantive or procedural right enforceable
6 at law by a defendant in a criminal proceeding.

7 NEW SECTION. **Sec. 7.** Sections 1 through 6 of this act constitute
8 a new chapter in Title 10 RCW.

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