Sixty-fifth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 3, 2017

HOUSE BILL NO. 1221
(Representatives Rick C. Becker, Johnston, Kiefert, Louser, Schreiber-Beck)
(Senators Luick, Robinson)

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. 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.

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.

_____	_____
Speaker of the House	President of the Senate
_____	_____
Chief Clerk of the House	Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fifth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1221.

House Vote:	Yeas 90	Nays 0	Absent 4
Senate Vote:	Yeas 44	Nays 1	Absent 2

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Chief Clerk of the House

Received by the Governor at _____M. on _____, 2017.

Approved at _____M. on _____, 2017.

_____
Governor

Filed in this office this _____day of _____, 2017,

at _____ o'clock _____M.

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Secretary of State