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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3117

02/11/2020 Authored by Quam and Dehn The bill was read for the first time and referred to the Public Safety and Criminal Justice Reform Finance and Policy Division

1.1 A bill for an act
1.2 relating to public safety; requiring a policy for the use of confidential informants;
1.3 proposing coding for new law in Minnesota Statutes, chapter 626.

1.4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.5 Section 1. TITLE.

1.6 This act shall be known as "Matthew's Law."

1.7 Sec. 2. [626.8474] CONFIDENTIAL INFORMANTS; REQUIRED POLICY AND
1.8 TRAINING.

1.9 Subdivision 1. Definitions. (a) For the purposes of this section the terms in this
1.10 subdivision have the meanings given them.

1.11 (b) "Confidential informant" means a person who cooperates with a law enforcement
1.12 agency confidentially in order to protect the person or the agency's intelligence gathering
1.13 or investigative efforts and:

1.14 (1) seeks to avoid arrest or prosecution for a crime, mitigate punishment for a crime in
1.15 which a sentence will be or has been imposed, or receive a monetary or other benefit; and

1.16 (2) is able, by reason of the person's familiarity or close association with suspected
1.17 criminals, to:

1.18 (i) make a controlled buy or controlled sale of contraband, controlled substances, or
1.19 other items that are material to a criminal investigation;

2.1 (ii) supply regular or constant information about suspected or actual criminal activities
2.2 to a law enforcement agency; or

2.3 (iii) otherwise provide information important to ongoing criminal intelligence gathering
2.4 or criminal investigative efforts.

2.5 (c) "Controlled buy" means the purchase of contraband, controlled substances, or other
2.6 items that are material to a criminal investigation from a target offender that is initiated,
2.7 managed, overseen, or participated in by law enforcement personnel with the knowledge
2.8 of a confidential informant.

2.9 (d) "Controlled sale" means the sale of contraband, controlled substances, or other items
2.10 that are material to a criminal investigation to a target offender that is initiated, managed,
2.11 overseen, or participated in by law enforcement personnel with the knowledge of a
2.12 confidential informant.

2.13 (e) "Target offender" means the person suspected by law enforcement personnel to be
2.14 implicated in criminal acts by the activities of a confidential informant.

2.15 Subd. 2. **Model policy.** (a) By January 1, 2021, the board shall adopt a model policy
2.16 addressing the use of confidential informants by law enforcement. The model policy must
2.17 establish policies and procedures for the recruitment, control, and use of confidential
2.18 informants. In developing the policy, the board shall consult with representatives of the
2.19 Bureau of Criminal Apprehension, Minnesota Police Chiefs Association, Minnesota Sheriff's
2.20 Association, Minnesota Police and Peace Officers Association, Minnesota County Attorneys
2.21 Association, treatment centers for substance abuse, and mental health organizations. The
2.22 model policy must include, at a minimum, the following:

2.23 (1) information that the law enforcement agency shall maintain about each confidential
2.24 informant that must include, at a minimum, an emergency contact for the informant in the
2.25 event of the informant's physical or mental harm or death;

2.26 (2) a process to advise a confidential informant of conditions, restrictions, and procedures
2.27 associated with participating in the agency's investigative or intelligence gathering activities;

2.28 (3) procedures for compensation to an informant as an employee or compensation that
2.29 is commensurate with the value of the services and information provided and based on the
2.30 level of the targeted offender, the amount of any seizure, and the significance of contributions
2.31 made by the informant;

2.32 (4) designated supervisory or command-level review and oversight in the use of a
2.33 confidential informant;

3.1 (5) consultation with the informant's probation, parole, or supervised release agent, if
3.2 any;

3.3 (6) limits or restrictions on off-duty association or social relationships by law enforcement
3.4 agency personnel with confidential informants;

3.5 (7) exclusion of an informant from engaging in a controlled buy or sale of a controlled
3.6 substance if the informant is receiving in-patient or out-patient treatment administered by
3.7 a licensed service provider for substance abuse, participating in a treatment-based drug
3.8 court program, or has experienced a drug overdose within the past year, except that the
3.9 informant may provide confidential information to a law enforcement agency while receiving
3.10 treatment;

3.11 (8) exclusion of an informant under the age of 18 years from participating in a controlled
3.12 buy or sale of a controlled substance without the written consent of a parent or legal guardian,
3.13 except that the informant may provide confidential information to a law enforcement agency;

3.14 (9) consideration of an informant's diagnosis of mental illness, substance abuse, or
3.15 disability, and history of mental illness, substance abuse, or disability;

3.16 (10) consultation with an advocate for the informant if the informant is a vulnerable
3.17 adult as defined in section 626.5572, subdivision 21, paragraph (a), clause (4);

3.18 (11) referral of prospective and current confidential informants who are known to be
3.19 substance abusers or to be at risk for substance abuse to prevention or treatment services;

3.20 (12) reasonable protective measures for confidential informants when law enforcement
3.21 knows or should have known of a risk or threat of harm to a person serving as a confidential
3.22 informant and the risk or threat of harm is a result of the informant's service to the law
3.23 enforcement agency;

3.24 (13) guidelines for the training and briefing of confidential informants;

3.25 (14) security procedures protecting the identity of a confidential informant during the
3.26 time the person is acting as an informant;

3.27 (15) procedures to deactivate confidential informants that maintain the safety and
3.28 anonymity of the informants and offer and provide assistance with physical, mental, or
3.29 emotional health services as accepted by the informant;

3.30 (16) a process to evaluate and report the criminal history and propensity for violence of
3.31 any target offenders; and

4.1 (17) guidelines for a written agreement between the confidential informant and the law
4.2 enforcement agency that take into consideration, at a minimum, an informant's physical or
4.3 mental infirmity or other physical, mental, or emotional dysfunction that impairs the
4.4 informant's ability to knowingly contract or otherwise protect the informant's self-interest.

4.5 (b) The board shall annually review and, as necessary, revise the model confidential
4.6 informant policy in collaboration with representatives from the organizations listed under
4.7 paragraph (a).

4.8 Subd. 3. **Agency policies required.** (a) The chief law enforcement officer of every state
4.9 and local law enforcement agency must establish and enforce a written policy governing
4.10 the use of confidential informants. The policy must be identical or, at a minimum,
4.11 substantially similar to the new or revised model policy adopted by the board under
4.12 subdivision 2.

4.13 (b) Every state and local law enforcement agency must certify annually to the board that
4.14 it has adopted a written policy in compliance with the board's model confidential informant
4.15 policy.

4.16 (c) The board shall assist the chief law enforcement officer of each state and local law
4.17 enforcement agency in developing and implementing confidential informant policies under
4.18 this subdivision.

4.19 Subd. 4. **Required preservice training.** (a) By January 1, 2021, the board shall prepare
4.20 learning objectives based on the policies and procedures of the model policy for instructing
4.21 peace officers in the recruitment, control, and use of confidential informants. The course
4.22 shall consist of at least seven hours of classroom and skills-based training.

4.23 (b) An individual is not eligible to take the peace officer licensing examination or the
4.24 part-time peace officer licensing examination on or after January 1, 2021, unless the
4.25 individual has received the training described in paragraph (a).

4.26 Subd. 5. **Required in-service training.** The chief law enforcement officer of every state
4.27 and local law enforcement agency shall provide in-service training in the recruitment,
4.28 control, and use of confidential informants to every peace officer and part-time peace officer
4.29 employed by the agency who the chief law enforcement officer determines may be involved
4.30 in working with confidential informants given the officer's responsibilities. The training
4.31 shall comply with learning objectives based on the policies and procedures of the model
4.32 policy developed and approved by the board and shall consist of at least seven hours of
4.33 classroom and skills-based training every five years.

5.1 Subd. 6. **Compliance reviews.** The board has the authority to inspect state and local
5.2 agency policies to ensure compliance with this section. The board may conduct the inspection
5.3 based upon a complaint it receives about a particular agency or through a random selection
5.4 process.

5.5 Subd. 7. **Licensing sanctions; injunctive relief.** The board may impose licensing
5.6 sanctions and seek injunctive relief under section 214.11 for failure to comply with the
5.7 requirements of this section.

5.8 **EFFECTIVE DATE.** This section is effective the day following final enactment.