

1                                   A bill to be entitled  
2           An act relating to confidential informants; amending  
3           s. 914.28, F.S.; requiring a law enforcement agency  
4           that uses confidential informants to adopt policies  
5           and procedures providing reasonable protective  
6           measures; requiring such agencies to refer certain  
7           prospective and current confidential informants to  
8           substance abuse prevention or treatment services;  
9           requiring that the policies and procedures provide  
10          general guidelines for the management and safety of  
11          confidential informants and training requirements for  
12          certain agency personnel; revising factors used in  
13          assessing a person's suitability as a confidential  
14          informant; requiring law enforcement agencies that  
15          solicit persons to act as confidential informants to  
16          provide them with the opportunity to consult with an  
17          attorney before signing an assistance agreement;  
18          allowing such agencies to advise prospective  
19          confidential informants that they may waive that  
20          right; prohibiting a person under the age of 18 from  
21          participating in certain activities; allowing such  
22          person to provide confidential information to a law  
23          enforcement agency; prohibiting a person who is  
24          receiving substance abuse services or related  
25          treatment from participating in certain activities;  
26          allowing such person to provide confidential

27 information to a law enforcement agency; prohibiting  
28 Florida College System and university police from  
29 recruiting or using enrolled students for certain  
30 activities; allowing a student to provide confidential  
31 information to Florida College System or university  
32 police or another law enforcement agency; requiring a  
33 law enforcement agency to annually collect and submit  
34 confidential informant data to the Department of Law  
35 Enforcement; prohibiting such data from disclosing the  
36 identity of a confidential informant; specifying  
37 information required to be submitted to the  
38 department; requiring the department make such data  
39 publicly available by a specified date; providing  
40 criminal penalties; providing an effective date.

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Paragraphs (f) and (g) are added to subsection  
45 (3) of section 914.28, Florida Statutes, subsections (4), (5),  
46 and (7) of that section are amended, present subsection (8) of  
47 that section is redesignated as subsection (13), and a new  
48 subsection (8) and subsections (9) through (12) are added to  
49 that section, to read:

50 914.28 Confidential informants.—

51 (3) A law enforcement agency that uses confidential  
52 informants shall:

53        (f) Adopt policies and procedures that provide reasonable  
54 protective measures for confidential informants when a law  
55 enforcement agency knows or should have known of a risk or  
56 threat of harm to a person serving as a confidential informant  
57 and the risk or threat of harm is a result of his or her service  
58 to the law enforcement agency.

59        (g) Refer prospective and current confidential informants  
60 who are known to be substance abusers or to be at risk for  
61 substance abuse to prevention or treatment services.

62        (4) A law enforcement agency that uses confidential  
63 informants shall establish policies and procedures addressing  
64 the recruitment, control, and use of confidential informants.  
65 The policies and procedures must state the:

66        (a) Information that the law enforcement agency shall  
67 maintain concerning each confidential informant;

68        (b) General guidelines for the management and safety of  
69 ~~handling~~ confidential informants;

70        (c) Process to advise a confidential informant of  
71 conditions, restrictions, and procedures associated with  
72 participating in the agency's investigative or intelligence  
73 gathering activities;

74        (d) Designated supervisory or command-level review and  
75 oversight in the use of a confidential informant;

76        (e) Limits or restrictions on off-duty association or  
77 social relationships by agency personnel involved in  
78 investigative or intelligence gathering with confidential

79 informants;

80 (f) Guidelines to deactivate confidential informants,  
 81 including guidelines for deactivating communications with  
 82 confidential informants; and

83 (g) Training requirements that agency personnel must  
 84 complete in order to recruit and manage confidential informants  
 85 which are consistent with national law enforcement standards  
 86 ~~Level of supervisory approval required before a juvenile is used~~  
 87 ~~as a confidential informant.~~

88 (5) A law enforcement agency that uses confidential  
 89 informants shall establish policies and procedures to assess the  
 90 suitability of using a person as a confidential informant which,  
 91 at a minimum, consider all of ~~by considering~~ the ~~minimum~~  
 92 following factors:

93 (a) The person's age, ~~and~~ maturity, and experience to  
 94 serve as a confidential informant.

95 (b) The risk the person poses to adversely affect a  
 96 present or potential investigation or prosecution.

97 (c) The effect ~~upon agency efforts~~ that the disclosure of  
 98 the person's cooperation may have on the agency's investigative  
 99 or intelligence gathering activities. ~~in the community may have;~~

100 (d) Whether the person is a substance abuser or has a  
 101 history of substance abuse. ~~or is in a court supervised drug~~  
 102 ~~treatment program;~~

103 (e) The risk of physical harm to the person, his or her  
 104 immediate family, or close associates as a result of providing

105 information or assistance, or upon the disclosure of the  
106 person's assistance. ~~to the community;~~

107 (f) Whether the person has shown any indication of  
108 emotional instability ~~or~~ unreliability, or of furnishing false  
109 information. ~~;~~

110 (g) The person's criminal history or prior criminal  
111 record. ~~;~~ and

112 (h) Whether the use of the person is necessary ~~important~~  
113 ~~to or vital~~ to the success of an investigation.

114 (7) A ~~state or local~~ law enforcement agency that uses  
115 confidential informants shall perform a periodic review of  
116 actual agency confidential informant practices to ensure  
117 conformity with the agency's policies and procedures and this  
118 section.

119 (8) A law enforcement agency that solicits a person to act  
120 as a confidential informant shall give that person the  
121 opportunity to consult with legal counsel before entering into  
122 an assistance agreement and serving as a confidential informant.  
123 However, the agency may advise the prospective confidential  
124 informant that he or she may waive the right to consult with  
125 legal counsel before entering into the assistance agreement, and  
126 he or she may serve as a confidential informant without  
127 consulting with legal counsel if such waiver is documented.

128 (9) (a) A person who is younger than 18 years of age may  
129 not participate in a controlled buy or sale of contraband or  
130 related activities, but may provide confidential information to

131 a law enforcement agency.

132 (b) A person who is receiving inpatient or outpatient  
133 substance abuse treatment from a licensed service provider, is  
134 in a treatment-based drug court program, or is otherwise  
135 receiving treatment or related services pursuant to chapter 397  
136 may not participate in a controlled buy or sale of contraband or  
137 related activities, but may provide confidential information to  
138 a law enforcement agency while receiving substance abuse  
139 treatment.

140 (10) Florida College System and university police who are  
141 regulated under s. 1012.88 or s. 1012.97, respectively, may not  
142 recruit, assist in the recruitment of, refer to another law  
143 enforcement agency, or otherwise use an enrolled student to  
144 participate in a controlled buy or sale of contraband or related  
145 activities, but an enrolled student may provide confidential  
146 information to such police or another law enforcement agency.

147 (11) A law enforcement agency that uses confidential  
148 informants shall collect and report data that includes the  
149 information required by paragraphs (a) through (j). The  
150 Department of Law Enforcement shall develop and disseminate a  
151 standardized form that must be completed by every law  
152 enforcement agency that uses confidential informants. A law  
153 enforcement agency that uses confidential informants shall  
154 collect such data for the preceding calendar year and report it  
155 by March 1 of each year to the department. Upon receipt of the  
156 completed forms, the department shall compile the data and, by

157 each June 1, issue a publicly available report. The data and  
158 report may not disclose the identity of a confidential informant  
159 but must include all of the following information:

160 (a) The number of active confidential informants.

161 (b) Categories of active confidential informants compiled  
162 by race, ethnicity, gender, age, and zip code.

163 (c) The number of confidential informants used to conduct  
164 controlled buys or sales of contraband, or related activities  
165 conducted on behalf of the agency.

166 (d) The number of deaths of confidential informants which  
167 occurred during controlled buys or sales of contraband, or  
168 related activities conducted on behalf of the agency.

169 (e) The number of injuries to confidential informants that  
170 occurred during controlled buys or sales of contraband, or  
171 related activities conducted on behalf of the agency.

172 (f) The number of deaths of confidential informants whose  
173 cause of death may be related to their service as a confidential  
174 informant.

175 (g) The number of injuries to confidential informants  
176 whose cause of injury may be related to their service as a  
177 confidential informant.

178 (h) The total amount of cash payments provided to a  
179 confidential informant by the agency.

180 (i) The total number of dropped or reduced charges  
181 provided to a prospective or current confidential informant by  
182 the agency.

183        (j) The total number of instances in which the law  
 184 enforcement agency recommended leniency for a confidential  
 185 informant at sentencing.

186        (12) A law enforcement officer, or a person designated as  
 187 support personnel as defined in s. 943.10(11), who willfully  
 188 fails to comply with this act commits a felony of the third  
 189 degree, punishable as provided in s. 775.082, s. 775.083, or s.  
 190 775.084.

191        (13)-(8) ~~The provisions of~~ This section and policies and  
 192 procedures adopted pursuant to this section do not grant any  
 193 right or entitlement to a confidential informant or a person who  
 194 is requested to be a confidential informant, and any failure to  
 195 abide by this section may not be relied upon to create any  
 196 additional right, substantive or procedural, enforceable at law  
 197 by a defendant in a criminal proceeding.

198        Section 2. This act shall take effect October 1, 2015.