

1                   A bill to be entitled  
 2           An act relating to confidential informants; providing a  
 3           short title; providing legislative intent; defining terms;  
 4           prohibiting a law enforcement agency from selecting  
 5           certain specified persons to act as confidential  
 6           informants; providing exceptions; requiring that any  
 7           agreement between a law enforcement agency and a  
 8           confidential informant be reduced to writing and signed by  
 9           certain designated parties; requiring a law enforcement  
 10          agency to notify the confidential informant of his or her  
 11          right to legal counsel before executing an assistance  
 12          agreement; requiring recordkeeping; providing requirements  
 13          for the proper use of confidential informants; providing  
 14          an effective date.

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 16 Be It Enacted by the Legislature of the State of Florida:

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 18           Section 1. Confidential informants.--

19           (1) SHORT TITLE.--This section may be cited as "Rachel's  
 20 Law."

21           (2) LEGISLATIVE INTENT.--

22           (a) The Legislature recognizes that by using confidential  
 23 informants in law enforcement undercover operations, law  
 24 enforcement agencies can improve efforts to reduce crime and  
 25 remove dangerous criminals from the community. However, because  
 26 many confidential informants are not trained law enforcement  
 27 personnel, the Legislature believes that if a law enforcement  
 28 agency elects to use a confidential informant, the agency must

29 take special care when evaluating the abilities of the  
30 confidential informant to perform the required tasks of the  
31 undercover operation and must, at all times, closely supervise  
32 the activities of the confidential informant. The Legislature  
33 further recognizes that a confidential informant's participation  
34 in a law enforcement undercover operation may be detrimental and  
35 dangerous to the informant and to others. Therefore, it is the  
36 intent of the Legislature to allow law enforcement agencies to  
37 use confidential informants, but to do so in a fair and  
38 reasonably safe manner in order to reduce adverse risks,  
39 including injury or death, to the confidential informant, law  
40 enforcement personnel, the target offender, and the public.

41 (b) The Legislature also finds that there are no  
42 statewide, uniform standards or guidelines applicable when using  
43 confidential informants. Therefore, it is the intent of the  
44 Legislature that the minimum standards set forth in this section  
45 be followed by all law enforcement agencies in this state when  
46 using confidential informants.

47 (3) DEFINITIONS.--As used in this section, the term:

48 (a) "Confidential informant" means a person who is not  
49 employed by a law enforcement agency and who, in exchange for  
50 consideration, supplies information about potential criminal  
51 activity to law enforcement personnel or participates in a law  
52 enforcement undercover operation.

53 (b) "Consideration" means anything of value, including,  
54 but not limited to, monetary payment; leniency considerations  
55 concerning any criminal activity, charge, or potential charge;  
56 or a recommendation from a law enforcement agency for a

57 reduction of a criminal charge or sentence.

58 (c) "Controlled buy" means the purchase of stolen goods,  
59 controlled substances, or the like from a target offender which  
60 is initiated, managed, overseen, or participated in by law  
61 enforcement personnel with the knowledge of the confidential  
62 informant.

63 (d) "Law enforcement undercover operation" means an  
64 investigative technique in which a law enforcement agency uses a  
65 confidential informant to:

66 1. Assume a covert identity or purpose in order for the  
67 confidential informant to take action to acquire evidence or  
68 information that would likely be unavailable but for the target  
69 offender's reliance on the confidential informant's covert role;  
70 or

71 2. Participate in a controlled buy from a target offender  
72 who is under investigation.

73 (e) "Substantial assistance agreement" means a written  
74 contract between a law enforcement agency and a confidential  
75 informant who has been charged with or convicted of a crime, or  
76 who may be charged with a crime, which provides that the state  
77 attorney may move the sentencing court to reduce or suspend the  
78 sentence of the confidential informant or reduce or dismiss  
79 charges if the confidential informant provides assistance to the  
80 law enforcement agency or state attorney by assisting in the  
81 identification, arrest, or conviction of a codefendant, an  
82 accessory, a coconspirator, a principal, or any other person  
83 believed to be engaged in a violation of state law.

84 (f) "Target offender" means the person who a law

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85 enforcement agency suspects will be implicated by the activities  
86 of a confidential informant.

87 (4) SELECTING CONFIDENTIAL INFORMANTS RECEIVING SUBSTANCE  
88 ABUSE TREATMENT OR ON PAROLE OR PROBATION.--Except as provided  
89 in this subsection and paragraph (6) (c), a law enforcement  
90 agency may select any qualified person to act as a confidential  
91 informant. A law enforcement agency may not use a person as a  
92 confidential informant in a law enforcement undercover operation  
93 if that person is:

94 (a) Currently participating in a court-ordered drug or  
95 substance abuse treatment program unless the law enforcement  
96 agency receives express approval from the circuit judge  
97 supervising the drug court. When determining whether the person  
98 may be used as a confidential informant, the judge shall  
99 consider whether the person's participation as a confidential  
100 informant may jeopardize the success of his or her treatment  
101 program.

102 (b) Voluntarily enrolled in a drug or substance abuse  
103 treatment program unless the law enforcement agency receives the  
104 express approval from the state attorney of the circuit in which  
105 the law enforcement agency is located. Before approving this  
106 person's participation as a confidential informant, the state  
107 attorney shall consult with the person's treatment provider and  
108 reasonably determine whether the person's participation as a  
109 confidential informant may jeopardize the success of his or her  
110 treatment program.

111 (c) Currently on parole or probation unless the law  
112 enforcement agency receives the express approval from the state

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113 attorney in the circuit in which the law enforcement agency is  
114 located and the approval of the parole or probation officer  
115 supervising the parolee or probationer.

116 (5) SUBSTANTIAL ASSISTANCE AGREEMENTS; RIGHT TO LEGAL  
117 COUNSEL; RECORDKEEPING AND WRITTEN PROTOCOLS.--

118 (a) Before a proposed confidential informant provides any  
119 assistance to a law enforcement agency, all plea negotiations  
120 and consideration offered to the proposed confidential informant  
121 must be reduced to a written substantial assistance agreement  
122 that is executed by the law enforcement agency and the  
123 confidential informant and approved by the state attorney  
124 prosecuting the case. The substantial assistance agreement must  
125 include a description of the work that the confidential  
126 informant will be doing, the length of service, and the  
127 consideration that the confidential informant will be receiving.

128 (b) Each person who is solicited to act as a confidential  
129 informant must be given the opportunity to consult with legal  
130 counsel before entering into a substantial assistance agreement.  
131 If the person is not represented by legal counsel at the time of  
132 the solicitation, the law enforcement agency must advise the  
133 person of his or her right to consult with legal counsel before  
134 entering into the substantial assistance agreement.

135 (c) An agent of a law enforcement agency may not promise,  
136 agree, or suggest to a prospective confidential informant any  
137 type of immunity from prosecution without the express authority  
138 of the state attorney. The confidential informant shall be  
139 provided a complete and legible copy of the executed and  
140 approved substantial assistance agreement. The law enforcement

141 agency is the controlling agent with respect to such agreement,  
142 and shall report to the state attorney upon the successful  
143 conclusion of the agreement or the informant's inability or  
144 unwillingness to fulfill the agreement.

145 (d) Each law enforcement agency that uses confidential  
146 informants shall:

147 1. Establish guidelines and protocols to prepare and  
148 maintain a record of all contacts with confidential informants.

149 2. Develop protocols governing the training of personnel  
150 who deal with confidential informants and for implementing and  
151 enforcing the requirements of this section.

152 (6) USING CONFIDENTIAL INFORMANTS.--

153 (a) When using a confidential informant, the first  
154 priority of a law enforcement agency is to preserve the safety  
155 of the confidential informant, law enforcement personnel, the  
156 target offender, and the public. All operational decisions and  
157 actions must be based on this principle and law enforcement  
158 personnel shall exercise the utmost care and judgment in order  
159 to minimize the risk of harm to all persons involved.

160 (b) To effectuate this principle, a law enforcement agency  
161 must determine whether the confidential informant has the  
162 ability to safely perform the tasks required. In making this  
163 determination, a law enforcement agency must consider, without  
164 limitation:

165 1. The age, maturity, emotional stability, and relevant  
166 experience of the confidential informant;

167 2. The criminal history of the confidential informant,  
168 including the number and nature of any prior offenses;

169           3. The consideration that is promised to the confidential  
 170 informant;

171           4. The nature of assistance sought from the confidential  
 172 informant;

173           5. The age and maturity of the target offender;

174           6. The criminal history of the target offender, including  
 175 the number and nature of any prior offenses and the nature of  
 176 the target offense; and

177           7. The propensity of the target offender for violence.

178           (c) If a person has no prior convictions for committing a  
 179 violent crime, that person may not be used as a confidential  
 180 informant in a law enforcement undercover operation involving a  
 181 target offender who is known or suspected to have engaged in  
 182 violence in the past or if the law enforcement agency has reason  
 183 to believe that the person may be exposed to harm.

184           Section 2. This act shall take effect July 1, 2009.