

1                   A bill to be entitled  
2           An act relating to confidential informants; creating  
3           "Rachael's Law"; defining terms; requiring a law  
4           enforcement agency that uses confidential informants to  
5           disclose certain information to persons who are requested  
6           to serve as confidential informants; providing that a law  
7           enforcement agency must provide an opportunity to consult  
8           with legal counsel to a person who is requested to serve  
9           as a confidential informant; requiring training for  
10          persons involved with the recruitment and use of  
11          confidential informants; requiring a law enforcement  
12          agency to adopt policies and procedures to preserve the  
13          safety of confidential informants, law enforcement  
14          personnel, target offenders, and the public; requiring a  
15          law enforcement agency that uses confidential informants  
16          to address the recruitment, control, and use of  
17          confidential informants in policies and procedures of the  
18          agency; requiring a law enforcement agency to establish  
19          policies and procedures to assess the suitability of using  
20          a person as a confidential informant; requiring a law  
21          enforcement agency to establish procedures to maintain the  
22          security of records relating to confidential informants;  
23          requiring a law enforcement agency to periodically review  
24          confidential informant practices; providing that the act  
25          does not grant any right or entitlement to a confidential  
26          informant or a person who is requested to be a  
27          confidential informant; providing an effective date.  
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29 WHEREAS, by using confidential informants in law  
30 enforcement undercover operations, law enforcement agencies can  
31 improve efforts to reduce crime and remove dangerous criminals  
32 from the community, and

33 WHEREAS, because most confidential informants are not  
34 trained law enforcement personnel, a law enforcement agency that  
35 elects to use a confidential informant must take special care to  
36 evaluate the abilities of the confidential informant to perform  
37 the required tasks of the undercover operation and must, at all  
38 times, closely supervise the activities of the confidential  
39 informant, and

40 WHEREAS, the participation of a confidential informant in a  
41 law enforcement undercover operation may be detrimental and  
42 dangerous to the informant and to others, and

43 WHEREAS, the Legislature intends for law enforcement  
44 agencies to continue to use confidential informants subject to  
45 policies and procedures that will ensure that such use is in a  
46 fair and reasonably safe manner that reduces adverse risks,  
47 including injury or death, to the confidential informant, law  
48 enforcement personnel, and other persons, and

49 WHEREAS, there are currently no statewide mandatory and  
50 uniform standards or guidelines that apply to the use of  
51 confidential informants, and

52 WHEREAS, in March of 2009, the Florida Police Chiefs  
53 Association, the Florida Sheriffs Association, the State Law  
54 Enforcement and Chiefs Association, and the Florida Department  
55 of Law Enforcement voluntarily adopted "Guidelines To Be Used By  
56 Florida State And Local Law Enforcement Agencies In Dealing With

57 Confidential Informants," which provide minimum expectations for  
 58 agency policies for dealing with confidential informants, and

59 WHEREAS, if the minimum expectations contained in those  
 60 guidelines were to be required of every law enforcement agency  
 61 that uses confidential informants, the Legislature's intent to  
 62 promote safer use of confidential informants in the state would  
 63 be substantially advanced, and

64 WHEREAS, the Legislature intends to codify the standards  
 65 set forth in the "Guidelines To Be Used By Florida State And  
 66 Local Law Enforcement Agencies In Dealing With Confidential  
 67 Informants," and to require those standards to be followed by  
 68 all law enforcement agencies in this state which use  
 69 confidential informants, NOW, THEREFORE,

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

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73 Section 1. Confidential informants.--

74 (1) This section may be cited as "Rachael's Law."

75 (2) As used in this section, the term:

76 (a) "Confidential informant" means a person who cooperates  
 77 with a law enforcement agency confidentially in order to protect  
 78 the person or the agency's intelligence gathering or  
 79 investigative efforts and:

80 1. Seeks to avoid arrest or prosecution for a crime, or  
 81 mitigate punishment for a crime in which a sentence will be or  
 82 has been imposed; and

83 2. Is able, by reason of his or her familiarity or close  
 84 association with suspected criminals, to:

85 a. Make a controlled buy or controlled sale of contraband,  
 86 controlled substances, or other items that are material to a  
 87 criminal investigation;

88 b. Supply regular or constant information about suspected  
 89 or actual criminal activities to a law enforcement agency; or

90 c. Otherwise provide information important to ongoing  
 91 criminal intelligence gathering or criminal investigative  
 92 efforts.

93 (b) "Controlled buy" means the purchase of contraband,  
 94 controlled substances, or other items that are material to a  
 95 criminal investigation from a target offender which is  
 96 initiated, managed, overseen, or participated in by law  
 97 enforcement personnel with the knowledge of a confidential  
 98 informant.

99 (c) "Controlled sale" means the sale of contraband,  
 100 controlled substances, or other items that are material to a  
 101 criminal investigation to a target offender which is initiated,  
 102 managed, overseen, or participated in by law enforcement  
 103 personnel with the knowledge of a confidential informant.

104 (d) "Target offender" means the person suspected by law  
 105 enforcement personnel to be implicated in criminal acts by the  
 106 activities of a confidential informant.

107 (3) A law enforcement agency that uses confidential  
 108 informants shall:

109 (a) Inform each person who is requested to serve as a  
 110 confidential informant that the agency cannot promise  
 111 inducements such as a grant of immunity, dropped or reduced  
 112 charges, or reduced sentences or placement on probation in

113 exchange for serving as a confidential informant.

114 (b) Inform each person who is requested to serve as a  
115 confidential informant that the value of his or her assistance  
116 as a confidential informant and any effect that assistance may  
117 have on pending criminal matters can be determined only by the  
118 appropriate legal authority.

119 (c) Provide a person who is requested to serve as a  
120 confidential informant with an opportunity to consult with legal  
121 counsel upon request before the person agrees to perform any  
122 activities as a confidential informant. However, this section  
123 does not create a right to publicly funded legal counsel.

124 (d) Ensure that all personnel who are involved in the use  
125 or recruitment of confidential informants are trained in the law  
126 enforcement agency's policies and procedures. The agency shall  
127 keep documentation demonstrating the date of such training.

128 (e) Adopt policies and procedures that assign the highest  
129 priority in operational decisions and actions to the  
130 preservation of the safety of confidential informants, law  
131 enforcement personnel, target offenders, and the public.

132 (4) A law enforcement agency that uses confidential  
133 informants shall establish policies and procedures addressing  
134 the recruitment, control, and use of confidential informants.  
135 The policies and procedures must state the:

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

138 (b) General guidelines for handling confidential  
139 informants;

140 (c) Process to advise a confidential informant of

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141 conditions, restrictions, and procedures associated with  
142 participating in the agency's investigative or intelligence  
143 gathering activities;

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

146 (e) Limits or restrictions on off-duty association or  
147 social relationships by agency personnel involved in  
148 investigative or intelligence gathering with confidential  
149 informants;

150 (f) Guidelines to deactivate confidential informants,  
151 including guidelines for deactivating communications with  
152 confidential informants; and

153 (g) Level of supervisory approval required before a  
154 juvenile is used as a confidential informant.

155 (5) A law enforcement agency that uses confidential  
156 informants shall establish policies and procedures to assess the  
157 suitability of using a person as a confidential informant by  
158 considering the minimum following factors:

159 (a) The person's age and maturity;

160 (b) The risk the person poses to adversely affect a  
161 present or potential investigation or prosecution;

162 (c) The effect upon agency efforts that the disclosure of  
163 the person's cooperation in the community may have;

164 (d) Whether the person is a substance abuser or has a  
165 history of substance abuse or is in a court-supervised drug  
166 treatment program;

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

169 information or assistance, or upon the disclosure of the  
170 person's assistance to the community;

171 (f) Whether the person has shown any indication of  
172 emotional instability, unreliability, or of furnishing false  
173 information;

174 (g) The person's criminal history or prior criminal  
175 record; and

176 (h) Whether the use of the person is important to or vital  
177 to the success of an investigation.

178 (6) A law enforcement agency that uses confidential  
179 informants shall establish written security procedures that, at  
180 a minimum:

181 (a) Provide for the secured retention of any records  
182 related to the law enforcement agency's confidential sources,  
183 including access to files identifying the identity of  
184 confidential sources;

185 (b) Limit availability to records relating to confidential  
186 informants to those within the law enforcement agency or law  
187 enforcement community having a need to know or review those  
188 records, or to those whose access has been required by court  
189 process or order;

190 (c) Require notation of each person who accesses such  
191 records and the date that the records are accessed;

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

195 (e) Define the process by which records concerning a  
196 confidential informant may be lawfully destroyed.

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197        (7) A state or local law enforcement agency that uses  
198 confidential informants shall perform a periodic review of  
199 actual agency confidential informant practices to ensure  
200 conformity with the agency's policies and procedures and this  
201 section.

202        (8) The provisions of this section and policies and  
203 procedures adopted pursuant to this section do not grant any  
204 right or entitlement to a confidential informant or a person who  
205 is requested to be a confidential informant.

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