

1 A bill to be entitled
2 An act relating to confidential informants; creating
3 "Rachel'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:

72
 73 Section 1. Confidential informants.--

74 (1) This section may be cited as "Rachel'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) "Law enforcement agency" means an agency having a
105 primary mission of preventing and detecting crime and the
106 enforcement of the penal, criminal, traffic, or highway laws of
107 the state and that in furtherance of that primary mission
108 employs law enforcement officers as defined in s. 943.10.

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

112 (3) A law enforcement agency that uses confidential

113 informants shall:

114 (a) Inform each person who is requested to serve as a
115 confidential informant that the agency cannot promise
116 inducements such as a grant of immunity, dropped or reduced
117 charges, or reduced sentences or placement on probation in
118 exchange for serving as a confidential informant.

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

124 (c) Provide a person who is requested to serve as a
125 confidential informant with an opportunity to consult with legal
126 counsel upon request before the person agrees to perform any
127 activities as a confidential informant. However, this section
128 does not create a right to publicly funded legal counsel.

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

133 (e) Adopt policies and procedures that assign the highest
134 priority in operational decisions and actions to the
135 preservation of the safety of confidential informants, law
136 enforcement personnel, target offenders, and the public.

137 (4) A law enforcement agency that uses confidential
138 informants shall establish policies and procedures addressing
139 the recruitment, control, and use of confidential informants.
140 The policies and procedures must state the:

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

143 (b) General guidelines for handling confidential
144 informants;

145 (c) Process to advise a confidential informant of
146 conditions, restrictions, and procedures associated with
147 participating in the agency's investigative or intelligence
148 gathering activities;

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

151 (e) Limits or restrictions on off-duty association or
152 social relationships by agency personnel involved in
153 investigative or intelligence gathering with confidential
154 informants;

155 (f) Guidelines to deactivate confidential informants,
156 including guidelines for deactivating communications with
157 confidential informants; and

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

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

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

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

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

169 (d) Whether the person is a substance abuser or has a
170 history of substance abuse or is in a court-supervised drug
171 treatment program;

172 (e) The risk of physical harm to the person, his or her
173 immediate family, or close associates as a result of providing
174 information or assistance, or upon the disclosure of the
175 person's assistance to the community;

176 (f) Whether the person has shown any indication of
177 emotional instability, unreliability, or of furnishing false
178 information;

179 (g) The person's criminal history or prior criminal
180 record; and

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

183 (6) A law enforcement agency that uses confidential
184 informants shall establish written security procedures that, at
185 a minimum:

186 (a) Provide for the secured retention of any records
187 related to the law enforcement agency's confidential sources,
188 including access to files identifying the identity of
189 confidential sources;

190 (b) Limit availability to records relating to confidential
191 informants to those within the law enforcement agency or law
192 enforcement community having a need to know or review those
193 records, or to those whose access has been required by court
194 process or order;

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

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197 (d) Provide for review and oversight by the law
198 enforcement agency to ensure that the security procedures are
199 followed; and

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

202 (7) A state or local law enforcement agency that uses
203 confidential informants shall perform a periodic review of
204 actual agency confidential informant practices to ensure
205 conformity with the agency's policies and procedures and this
206 section.

207 (8) The provisions of this section and policies and
208 procedures adopted pursuant to this section do not grant any
209 right or entitlement to a confidential informant or a person who
210 is requested to be a confidential informant.

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