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CS/CS/HB 271, Engrossed 1

2009 Legislature

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 that any failure to
28 abide by the act does not create any additional right

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29 enforceable by a defendant in a criminal proceeding;
30 providing an effective date.

31
32 WHEREAS, by using confidential informants in law
33 enforcement undercover operations, law enforcement agencies can
34 improve efforts to reduce crime and remove dangerous criminals
35 from the community, and

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

43 WHEREAS, the participation of a confidential informant in a
44 law enforcement undercover operation may be detrimental and
45 dangerous to the informant and to others, and

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

52 WHEREAS, there are currently no statewide mandatory and
53 uniform standards or guidelines that apply to the use of
54 confidential informants, and

55 WHEREAS, in March of 2009, the Florida Police Chiefs
56 Association, the Florida Sheriffs Association, the State Law

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57 Enforcement and Chiefs Association, and the Florida Department
 58 of Law Enforcement voluntarily adopted "Guidelines To Be Used By
 59 Florida State And Local Law Enforcement Agencies In Dealing With
 60 Confidential Informants," which provide minimum expectations for
 61 agency policies for dealing with confidential informants, and

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

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

73

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

75

76 Section 1. Confidential informants.--

77 (1) This section may be cited as "Rachel's Law."

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

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

83 1. Seeks to avoid arrest or prosecution for a crime, or
 84 mitigate punishment for a crime in which a sentence will be or

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85 has been imposed; and

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

88 a. Make a controlled buy or controlled sale of contraband,
 89 controlled substances, or other items that are material to a
 90 criminal investigation;

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

93 c. Otherwise provide information important to ongoing
 94 criminal intelligence gathering or criminal investigative
 95 efforts.

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

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

107 (d) "Law enforcement agency" means an agency having a
 108 primary mission of preventing and detecting crime and the
 109 enforcement of the penal, criminal, traffic, or highway laws of
 110 the state and that in furtherance of that primary mission
 111 employs law enforcement officers as defined in s. 943.10.

112 (e) "Target offender" means the person suspected by law

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113 enforcement personnel to be implicated in criminal acts by the
 114 activities of a confidential informant.

115 (3) A law enforcement agency that uses confidential
 116 informants shall:

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

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

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

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

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

140 (4) A law enforcement agency that uses confidential

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141 informants shall establish policies and procedures addressing
 142 the recruitment, control, and use of confidential informants.
 143 The policies and procedures must state the:
 144 (a) Information that the law enforcement agency shall
 145 maintain concerning each confidential informant;
 146 (b) General guidelines for handling confidential
 147 informants;
 148 (c) Process to advise a confidential informant of
 149 conditions, restrictions, and procedures associated with
 150 participating in the agency's investigative or intelligence
 151 gathering activities;
 152 (d) Designated supervisory or command-level review and
 153 oversight in the use of a confidential informant;
 154 (e) Limits or restrictions on off-duty association or
 155 social relationships by agency personnel involved in
 156 investigative or intelligence gathering with confidential
 157 informants;
 158 (f) Guidelines to deactivate confidential informants,
 159 including guidelines for deactivating communications with
 160 confidential informants; and
 161 (g) Level of supervisory approval required before a
 162 juvenile is used as a confidential informant.
 163 (5) A law enforcement agency that uses confidential
 164 informants shall establish policies and procedures to assess the
 165 suitability of using a person as a confidential informant by
 166 considering the minimum following factors:
 167 (a) The person's age and maturity;
 168 (b) The risk the person poses to adversely affect a

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169 present or potential investigation or prosecution;
 170 (c) The effect upon agency efforts that the disclosure of
 171 the person's cooperation in the community may have;
 172 (d) Whether the person is a substance abuser or has a
 173 history of substance abuse or is in a court-supervised drug
 174 treatment program;
 175 (e) The risk of physical harm to the person, his or her
 176 immediate family, or close associates as a result of providing
 177 information or assistance, or upon the disclosure of the
 178 person's assistance to the community;
 179 (f) Whether the person has shown any indication of
 180 emotional instability, unreliability, or of furnishing false
 181 information;
 182 (g) The person's criminal history or prior criminal
 183 record; and
 184 (h) Whether the use of the person is important to or vital
 185 to the success of an investigation.
 186 (6) A law enforcement agency that uses confidential
 187 informants shall establish written security procedures that, at
 188 a minimum:
 189 (a) Provide for the secured retention of any records
 190 related to the law enforcement agency's confidential sources,
 191 including access to files identifying the identity of
 192 confidential sources;
 193 (b) Limit availability to records relating to confidential
 194 informants to those within the law enforcement agency or law
 195 enforcement community having a need to know or review those
 196 records, or to those whose access has been required by court

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197 process or order;

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

200 (d) Provide for review and oversight by the law
 201 enforcement agency to ensure that the security procedures are
 202 followed; and

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

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

210 (8) The provisions of this section and policies and
 211 procedures adopted pursuant to this section do not grant any
 212 right or entitlement to a confidential informant or a person who
 213 is requested to be a confidential informant, and any failure to
 214 abide by this section may not be relied upon to create any
 215 additional right, substantive or procedural, enforceable at law
 216 by a defendant in a criminal proceeding.

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