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LEGISLATIVE ACTION

Senate

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House

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04/29/2009 05:51 PM

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Senator Lawson moved the following:

Senate Amendment (with title amendment)

Delete lines 126 - 211

and insert:

(c) Provide a person who is requested to serve as a confidential informant with an opportunity to consult with legal counsel upon request before the person agrees to perform any activities as a confidential informant. However, this section does not create a right to publicly funded legal counsel unless it is to determine the expectancy of or bargain for the perspective confidential informant of what value, inducements, or effects such assistance shall or shall not have a legal or



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13 equitable benefit to him or her for the assistance.

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

18 (e) Adopt policies and procedures that assign the highest
19 priority in operational decisions and actions to the
20 preservation of the safety of confidential informants, law
21 enforcement personnel, target offenders, and the public.

22 (4) A law enforcement agency that uses confidential
23 informants shall establish policies and procedures addressing
24 the recruitment, control, and use of confidential informants.
25 The policies and procedures must be uniform throughout the state
26 in collaboration with the Attorney General and the Department of
27 Law Enforcement and state the:

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

30 (b) General guidelines for handling confidential
31 informants;

32 (c) Process to advise a confidential informant of
33 conditions, restrictions, and procedures associated with
34 participating in the agency's investigative or intelligence-
35 gathering activities;

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

38 (e) Limits or restrictions on off-duty association or
39 social relationships by agency personnel involved in
40 investigative or intelligence gathering with confidential
41 informants;



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42 (f) Guidelines to deactivate confidential informants,
43 including guidelines for deactivating communications with
44 confidential informants; and

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

47 (5) A law enforcement agency that uses confidential
48 informants shall establish policies and procedures that are
49 uniform throughout the state in collaboration with the Attorney
50 General and the Department of Law Enforcement to assess the
51 suitability of using a person as a confidential informant by
52 considering the minimum following factors:

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

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

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

58 (d) Whether the person is a substance abuser or has a
59 history of substance abuse or is in a court-supervised drug
60 treatment program;

61 (e) The risk of physical harm to the person, or to his or
62 her immediate family or close associates, as a result of
63 providing information or assistance or upon disclosure to the
64 community of the person's assistance;

65 (f) Whether the person has shown any indication of
66 emotional instability, unreliability, or furnishing false
67 information;

68 (g) The person's criminal history or prior criminal record;
69 and

70 (h) Whether the use of the person is important or vital to



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71 the success of an investigation.

72 (6) A law enforcement agency that uses confidential
73 informants shall establish written security procedures that are
74 uniform throughout the state in collaboration with the Attorney
75 General and the Department of Law Enforcement which, at a
76 minimum:

77 (a) Provide for the secured retention of any records
78 related to the law enforcement agency's confidential sources,
79 including access to files identifying the identity of
80 confidential sources;

81 (b) Limit availability to records relating to confidential
82 informants to those within the law enforcement agency or law
83 enforcement community having a need to know or review those
84 records, or to those whose access has been required by court
85 process or order;

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

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

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

92 (7) A state or local law enforcement agency that uses
93 confidential informants shall perform a periodic review of its
94 actual practices regarding confidential informants which are
95 uniform throughout the state in collaboration with the Attorney
96 General and the Department of Law Enforcement in order to ensure
97 conformity with the agency's policies and procedures and this
98 section.

99 (8) Any law enforcement agency not compliant with the



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100 policies or procedures of this section shall be subject to
101 sanctions or penalties as adopted by rule of the Office of the
102 Attorney General under the Florida Administrative Code or
103 prescribed by general law.

104 (9) The provisions of this section and policies and
105 procedures adopted pursuant to this section shall grant a right
106 or entitlement to a confidential informant or a person who is
107 requested to be a confidential informant subject to a cause of
108 action against state and local entities and agencies in equity
109 or law under s. 86 or s. 768.28.

110
111 ===== T I T L E A M E N D M E N T =====

112 And the title is amended as follows:

113 Delete line 26

114 and insert:

115 confidential informants; providing that noncompliant
116 law enforcement agencies are subject to sanctions or
117 penalties; providing that the act does