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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/18/2009	.	
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The Committee on Criminal Justice (Dean) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Confidential informants.—

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

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

(a) "Confidential informant" means a person who cooperates with a law enforcement agency confidentially in order to protect the person or the agency's intelligence-gathering or



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12 investigative efforts and:

13 1. Seeks to avoid arrest or prosecution for a crime, or  
14 mitigate punishment for a crime in which a sentence will be or  
15 has been imposed; or

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

18 a. Make a controlled buy or controlled sale of contraband,  
19 controlled substances, or other items that are material to a  
20 criminal investigation;

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

23 c. Otherwise provide information important to ongoing  
24 criminal intelligence-gathering or criminal investigative  
25 efforts.

26 (b) "Controlled buy" means the purchase of contraband,  
27 controlled substances, or other items that are material to a  
28 criminal investigation from a target offender which is  
29 initiated, managed, overseen, or participated in by law  
30 enforcement personnel with the knowledge of a confidential  
31 informant.

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

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

40 (3) A law enforcement agency that uses confidential



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41 informants shall:

42 (a) Inform each person who is requested to serve as a  
43 confidential informant that the agency cannot promise  
44 inducements such as a grant of immunity, dropped or reduced  
45 charges, or reduced sentences or placement on probation in  
46 exchange for serving as a confidential informant.

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

52 (c) Provide a person who is requested to serve as a  
53 confidential informant with an opportunity to consult with legal  
54 counsel upon request before the person agrees to perform any  
55 activities as a confidential informant. However, this section  
56 does not create a right to publicly funded legal counsel.

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

61 (e) Adopt policies and procedures that assign the highest  
62 priority in operational decisions and actions to the  
63 preservation of the safety of confidential informants, law  
64 enforcement personnel, target offenders, and the public.

65 (4) A law enforcement agency that uses confidential  
66 informants shall establish policies and procedures addressing  
67 the recruitment, control, and use of confidential informants.  
68 The policies and procedures must state the:

69 (a) Information that the law enforcement agency shall



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70 maintain concerning each confidential informant;  
71 (b) General guidelines for handling confidential  
72 informants;  
73 (c) Process to advise a confidential informant of  
74 conditions, restrictions, and procedures associated with  
75 participating in the agency's investigative or intelligence-  
76 gathering activities;  
77 (d) Designated supervisory or command-level review and  
78 oversight in the use of a confidential informant;  
79 (e) Limits or restrictions on off-duty association or  
80 social relationships by agency personnel involved in  
81 investigative or intelligence gathering with confidential  
82 informants;  
83 (f) Guidelines to deactivate confidential informants,  
84 including guidelines for deactivating communications with  
85 confidential informants; and  
86 (g) Level of supervisory approval required before a  
87 juvenile is used as a confidential informant.  
88 (5) A law enforcement agency that uses confidential  
89 informants shall establish policies and procedures to assess the  
90 suitability of using a person as a confidential informant by  
91 considering the minimum following factors:  
92 (a) The person's age and maturity;  
93 (b) The risk the person poses to adversely affect a present  
94 or potential investigation or prosecution;  
95 (c) The effect upon agency efforts that the disclosure of  
96 the person's cooperation in the community may have;  
97 (d) Whether the person is a substance abuser or has a  
98 history of substance abuse or is in a court-supervised drug



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99 treatment program;

100 (e) The risk of physical harm to the person, his or her  
101 immediate family, or close associates as a result of providing  
102 information or assistance, or upon the disclosure of the  
103 person's assistance to the community;

104 (f) Whether the person has shown any indication of  
105 emotional instability, unreliability, or of furnishing false  
106 information;

107 (g) The person's criminal history or prior criminal record;  
108 and

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

111 (6) A law enforcement agency that uses confidential  
112 informants shall establish written security procedures that, at  
113 a minimum:

114 (a) Provide for the secured retention of any records  
115 related to the law enforcement agency's confidential sources,  
116 including access to files identifying the identity of  
117 confidential sources;

118 (b) Limit availability to records relating to confidential  
119 informants to those within the law enforcement agency or law  
120 enforcement community having a need to know or review those  
121 records, or to those whose access has been required by court  
122 process or order;

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

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

127 (e) Define the process by which records concerning a



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128 confidential informant may be lawfully destroyed.

129 (7) A state or local law enforcement agency that uses  
130 confidential informants shall perform a periodic review of  
131 actual agency confidential informant practices to ensure  
132 conformity with the agency's policies and procedures and this  
133 section.

134 (8) The provisions of this section and policies and  
135 procedures adopted pursuant to this section do not grant any  
136 right or entitlement to a confidential informant or a person who  
137 is requested to be a confidential informant.

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

139

140 ===== T I T L E A M E N D M E N T =====

141 And the title is amended as follows:

142 Delete everything before the enacting clause  
143 and insert:

144 A bill to be entitled  
145 An act relating to confidential informants; creating Rachael's  
146 Law; defining terms; requiring a law enforcement agency that  
147 uses confidential informants to disclose certain information to  
148 persons who are requested to serve as confidential informants;  
149 providing that a law enforcement agency must provide an  
150 opportunity to consult with legal counsel to a person who is  
151 requested to serve as a confidential informant; requiring  
152 training for persons involved with the recruitment and use of  
153 confidential informants; requiring a law enforcement agency to  
154 adopt policies and procedures to preserve the safety of  
155 confidential informants, law enforcement personnel, target  
156 offenders, and the public; requiring a law enforcement agency



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157 that uses confidential informants to address the recruitment,  
158 control, and use of confidential informants in policies and  
159 procedures of the agency; requiring a law enforcement agency to  
160 establish policies and procedures to assess the suitability of  
161 using a person as a confidential informant; requiring a law  
162 enforcement agency to establish procedures to maintain the  
163 security of records relating to confidential informants;  
164 requiring a law enforcement agency to periodically review  
165 confidential informant practices; providing that the act does  
166 not grant any right or entitlement to a confidential informant  
167 or a person who is requested to be a confidential informant;  
168 providing an effective date.

169  
170 WHEREAS, by using confidential informants in law  
171 enforcement undercover operations, law enforcement agencies can  
172 improve efforts to reduce crime and remove dangerous criminals  
173 from the community, and

174 WHEREAS, because most confidential informants are not  
175 trained law enforcement personnel, a law enforcement agency that  
176 elects to use a confidential informant must take special care to  
177 evaluate the abilities of the confidential informant to perform  
178 the required tasks of the undercover operation and must, at all  
179 times, closely supervise the activities of the confidential  
180 informant, and

181 WHEREAS, the participation of a confidential informant in a  
182 law enforcement undercover operation may be detrimental and  
183 dangerous to the informant and to others, and

184 WHEREAS, the Legislature intends for law enforcement  
185 agencies to continue to use confidential informants subject to



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186 policies and procedures that will ensure that such use is in a  
187 fair and reasonably safe manner that reduces adverse risks,  
188 including injury or death, to the confidential informant, law  
189 enforcement personnel, and other persons, and

190 WHEREAS, there are currently no statewide mandatory and  
191 uniform standards or guidelines that apply to the use of  
192 confidential informants, and

193 WHEREAS, in March of 2009, the Florida Police Chiefs  
194 Association, the Florida Sheriffs Association, the State Law  
195 Enforcement and Chiefs Association, and the Florida Department  
196 of Law Enforcement voluntarily adopted "Guidelines To Be Used By  
197 Florida State And Local Law Enforcement Agencies In Dealing With  
198 Confidential Informants," which provide minimum expectations for  
199 agency policies for dealing with confidential informants, and

200 WHEREAS, if the minimum expectations contained in those  
201 guidelines were to be required of every law enforcement agency  
202 that uses confidential informants, the Legislature's intent to  
203 promote safer use of confidential informants in the state would  
204 be substantially advanced, and

205 WHEREAS, the Legislature intends to codify the standards  
206 set forth in the "Guidelines To Be Used By Florida State and  
207 Local Law Enforcement Agencies In Dealing With Confidential  
208 Informants," and to require those standards to be followed by  
209 all law enforcement agencies in this state which use  
210 confidential informants, NOW, THEREFORE,