

By Senator Fasano

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1                   A bill to be entitled  
2           An act relating to confidential informants; providing  
3           a short title; providing legislative intent; defining  
4           terms; prohibiting a law enforcement agency from  
5           selecting certain specified persons to act as  
6           confidential informants; providing exceptions;  
7           requiring that any agreement between a law enforcement  
8           agency and a confidential informant be reduced to  
9           writing and signed by certain designated parties;  
10          requiring a law enforcement agency to notify the  
11          confidential informant of his or her right to legal  
12          counsel before executing an assistance agreement;  
13          requiring recordkeeping; providing requirements for  
14          the proper use of confidential informants; providing  
15          an effective date.

16  
17 Be It Enacted by the Legislature of the State of Florida:

18  
19       Section 1. Confidential informants.—

20       (1) SHORT TITLE.—This section may be cited as “Rachel’s  
21 Law.”

22       (2) LEGISLATIVE INTENT.—

23       (a) The Legislature recognizes that by using confidential  
24 informants in law enforcement undercover operations, law  
25 enforcement agencies can improve efforts to reduce crime and  
26 remove dangerous criminals from the community. However, because  
27 many confidential informants are not trained law enforcement  
28 personnel, the Legislature believes that if a law enforcement  
29 agency elects to use a confidential informant, the agency must

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30 take special care when evaluating the abilities of the  
31 confidential informant to perform the required tasks of the  
32 undercover operation and must, at all times, closely supervise  
33 the activities of the confidential informant. The Legislature  
34 further recognizes that a confidential informant's participation  
35 in a law enforcement undercover operation may be detrimental and  
36 dangerous to the informant and to others. Therefore, it is the  
37 intent of the Legislature to allow law enforcement agencies to  
38 use confidential informants, but to do so in a fair and  
39 reasonably safe manner in order to reduce adverse risks,  
40 including injury or death, to the confidential informant, law  
41 enforcement personnel, the target offender, and the public.

42 (b) The Legislature also finds that there are no statewide,  
43 uniform standards or guidelines applicable when using  
44 confidential informants. Therefore, it is the intent of the  
45 Legislature that the minimum standards set forth in this section  
46 be followed by all law enforcement agencies in this state when  
47 using confidential informants.

48 (3) DEFINITIONS.—As used in this section, the term:

49 (a) "Confidential informant" means a person who is not  
50 employed by a law enforcement agency and who, in exchange for  
51 consideration, supplies information about potential criminal  
52 activity to law enforcement personnel or participates in a law  
53 enforcement undercover operation.

54 (b) "Consideration" means anything of value, including, but  
55 not limited to, monetary payment; leniency considerations  
56 concerning any criminal activity, charge, or potential charge;  
57 or a recommendation from a law enforcement agency for a  
58 reduction of a criminal charge or sentence.

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59       (c) "Controlled buy" means the purchase of stolen goods,  
60 controlled substances, or the like from a target offender which  
61 is initiated, managed, overseen, or participated in by law  
62 enforcement personnel with the knowledge of the confidential  
63 informant.

64       (d) "Law enforcement undercover operation" means an  
65 investigative technique in which a law enforcement agency uses a  
66 confidential informant to:

67       1. Assume a covert identity or purpose in order for the  
68 confidential informant to take action to acquire evidence or  
69 information that would likely be unavailable but for the target  
70 offender's reliance on the confidential informant's covert role;  
71 or

72       2. Participate in a controlled buy from a target offender  
73 who is under investigation.

74       (e) "Substantial assistance agreement" means a written  
75 contract between a law enforcement agency and a confidential  
76 informant who has been charged with or convicted of a crime, or  
77 who may be charged with a crime, which provides that the state  
78 attorney may move the sentencing court to reduce or suspend the  
79 sentence of the confidential informant or reduce or dismiss  
80 charges if the confidential informant provides assistance to the  
81 law enforcement agency or state attorney by assisting in the  
82 identification, arrest, or conviction of a codefendant,  
83 accessory, coconspirator, principal, or any other person  
84 believed to be engaged in a violation of state law.

85       (f) "Target offender" means the person whom a law  
86 enforcement agency suspects will be implicated by the activities  
87 of a confidential informant.

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88           (4) SELECTING CONFIDENTIAL INFORMANTS RECEIVING SUBSTANCE  
89 ABUSE TREATMENT OR ON PAROLE OR PROBATION.—Except as provided in  
90 this subsection and paragraph (6) (c), a law enforcement agency  
91 may select any qualified person to act as a confidential  
92 informant. A law enforcement agency may not use a person as a  
93 confidential informant in a law enforcement undercover operation  
94 if that person is:

95           (a) Currently participating in a court-ordered drug or  
96 substance abuse treatment program unless the law enforcement  
97 agency receives express approval from the circuit judge  
98 supervising the drug court. When determining whether the person  
99 may be used as a confidential informant, the judge shall  
100 consider whether the person's participation as a confidential  
101 informant may jeopardize the success of his or her treatment  
102 program.

103           (b) Voluntarily enrolled in a drug or substance abuse  
104 treatment program unless the law enforcement agency receives the  
105 express approval from the state attorney of the circuit in which  
106 the law enforcement agency is located. Before approving this  
107 person's participation as a confidential informant, the state  
108 attorney shall consult with the person's treatment provider and  
109 reasonably determine whether the person's participation as a  
110 confidential informant may jeopardize the success of his or her  
111 treatment program.

112           (c) Currently on parole or probation unless the law  
113 enforcement agency receives the express approval from the state  
114 attorney in the circuit in which the law enforcement agency is  
115 located and the approval of the parole or probation officer  
116 supervising the parolee or probationer.

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117       (5) SUBSTANTIAL ASSISTANCE AGREEMENTS; RIGHT TO LEGAL  
118 COUNSEL; RECORDKEEPING AND WRITTEN PROTOCOLS.—

119       (a) Before a proposed confidential informant provides any  
120 assistance to a law enforcement agency, all plea negotiations  
121 and consideration offered to the proposed confidential informant  
122 must be reduced to a written substantial assistance agreement  
123 that is executed by the law enforcement agency and the  
124 confidential informant and approved by the state attorney  
125 prosecuting the case. The substantial assistance agreement must  
126 include a description of the work that the confidential  
127 informant will be doing, the length of service, and the  
128 consideration that the confidential informant will be receiving.

129       (b) Each person who is solicited to act as a confidential  
130 informant must be given the opportunity to consult with legal  
131 counsel before entering into a substantial assistance agreement.  
132 If the person is not represented by legal counsel at the time of  
133 the solicitation, the law enforcement agency must advise the  
134 person of his or her right to consult with legal counsel before  
135 entering into the substantial assistance agreement.

136       (c) An agent of a law enforcement agency may not promise,  
137 agree, or suggest to a prospective confidential informant any  
138 type of immunity from prosecution without the express authority  
139 of the state attorney. The confidential informant shall be  
140 provided a complete and legible copy of the executed and  
141 approved substantial assistance agreement. The law enforcement  
142 agency is the controlling agent with respect to such agreement,  
143 and shall report to the state attorney upon the successful  
144 conclusion of the agreement or the informant's inability or  
145 unwillingness to fulfill the agreement.

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146 (d) Each law enforcement agency that uses confidential  
147 informants shall:

148 1. Establish guidelines and protocols to prepare and  
149 maintain a record of all contacts with confidential informants.

150 2. Develop protocols governing the training of personnel  
151 who deal with confidential informants and for implementing and  
152 enforcing the requirements of this section.

153 (6) USING CONFIDENTIAL INFORMANTS.—

154 (a) When using a confidential informant, the first priority  
155 of a law enforcement agency is to preserve the safety of the  
156 confidential informant, law enforcement personnel, the target  
157 offender, and the public. All operational decisions and actions  
158 must be based on this principle and law enforcement personnel  
159 shall exercise the utmost care and judgment in order to minimize  
160 the risk of harm to all persons involved.

161 (b) To effectuate this principle, a law enforcement agency  
162 must determine whether the confidential informant has the  
163 ability to safely perform the tasks required. In making this  
164 determination, a law enforcement agency must consider, without  
165 limitation:

166 1. The age, maturity, emotional stability, and relevant  
167 experience of the confidential informant;

168 2. The criminal history of the confidential informant,  
169 including the number and nature of any prior offenses;

170 3. The consideration that is promised to the confidential  
171 informant;

172 4. The nature of assistance sought from the confidential  
173 informant;

174 5. The age and maturity of the target offender;

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175       6. The criminal history of the target offender, including  
176 the number and nature of any prior offenses and the nature of  
177 the target offense; and

178       7. The propensity of the target offender for violence.

179       (c) If a person has no prior convictions for committing a  
180 violent crime, that person may not be used as a confidential  
181 informant in a law enforcement undercover operation involving a  
182 target offender who is known or suspected to have engaged in  
183 violence in the past or if the law enforcement agency has reason  
184 to believe that the person may be exposed to harm.

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