

By the Committee on Criminal Justice; and Senators Fasano and Joyner

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1 A bill to be entitled
2 An act relating to confidential informants; creating
3 Rachael's Law; defining terms; requiring a law
4 enforcement agency that uses confidential informants
5 to disclose certain information to persons who are
6 requested to serve as confidential informants;
7 providing that a law enforcement agency must provide a
8 person who is requested to serve as a confidential
9 informant the opportunity to consult with legal
10 counsel; requiring training for persons involved in
11 the recruitment and use of confidential informants;
12 requiring a law enforcement agency to adopt policies
13 and procedures to preserve the safety of confidential
14 informants, law enforcement personnel, target
15 offenders, and the public; requiring a law enforcement
16 agency that uses confidential informants to address
17 the recruitment, control, and use of confidential
18 informants in policies and procedures of the agency;
19 requiring a law enforcement agency to establish
20 policies and procedures to assess the suitability of
21 using a person as a confidential informant; requiring
22 a law enforcement agency to establish procedures to
23 maintain the security of records relating to
24 confidential informants; requiring a law enforcement
25 agency to periodically review its practices regarding
26 confidential informants; providing that the act does
27 not grant any right or entitlement to a confidential
28 informant or a person who is requested to be a
29 confidential informant; providing an effective date.

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

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

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

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

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

WHEREAS, in March of 2009, the Florida Police Chiefs Association, the Florida Sheriffs Association, the State Law Enforcement and Chiefs Association, and the Department of Law Enforcement voluntarily adopted "Guidelines To Be Used By Florida State And Local Law Enforcement Agencies In Dealing With

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59 Confidential Informants," which provide minimum expectations for
60 agency policies for dealing with confidential informants, and

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

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

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

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75 Section 1. Confidential informants.-

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

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

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

82 1. Seeks to avoid arrest or prosecution for a crime, or
83 mitigate punishment for a crime in which a sentence will be or
84 has been imposed; and

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

87 a. Make a controlled buy or controlled sale of contraband,

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88 controlled substances, or other items that are material to a
89 criminal investigation;

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

92 c. Otherwise provide information that is important to
93 ongoing criminal intelligence-gathering or criminal
94 investigative efforts.

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

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

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

109 (3) A law enforcement agency that uses confidential
110 informants shall:

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

116 (b) Inform each person who is requested to serve as a

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117 confidential informant that the value of his or her assistance
118 as a confidential informant and any effect that assistance may
119 have on pending criminal matters can be determined only by the
120 appropriate legal authority.

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

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

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

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

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

140 (b) General guidelines for handling confidential
141 informants;

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

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

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

152 (f) Guidelines to deactivate confidential informants,
153 including guidelines for deactivating communications with
154 confidential informants; and

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

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

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

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

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

166 (d) Whether the person is a substance abuser or has a
167 history of substance abuse or is in a court-supervised drug
168 treatment program;

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

173 (f) Whether the person has shown any indication of
174 emotional instability, unreliability, or furnishing false

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175 information;

176 (g) The person's criminal history or prior criminal record;
177 and

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

180 (6) A law enforcement agency that uses confidential
181 informants shall establish written security procedures that, at
182 a minimum:

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

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

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

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

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

198 (7) A state or local law enforcement agency that uses
199 confidential informants shall perform a periodic review of its
200 actual practices regarding confidential informants in order to
201 ensure conformity with the agency's policies and procedures and
202 this section.

203 (8) The provisions of this section and policies and

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204 procedures adopted pursuant to this section do not grant any
205 right or entitlement to a confidential informant or a person who
206 is requested to be a confidential informant.

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