

By the Committees on Judiciary; and 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 Rachel'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 "Rachel'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) "Law enforcement agency" means an agency having a
107 primary mission of preventing and detecting crime and the
108 enforcement of the penal, criminal, traffic, or highway laws of
109 the state and that in furtherance of that primary mission
110 employs law enforcement officers as defined at s. 943.10.

111 (e) "Target offender" means the person suspected by law
112 enforcement personnel to be implicated in criminal acts by the
113 activities of a confidential informant.

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

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

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117 confidential informant that the agency cannot promise
118 inducements such as a grant of immunity, dropped or reduced
119 charges, or reduced sentences or placement on probation in
120 exchange for serving as a confidential informant.

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

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

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

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

139 (4) A law enforcement agency that uses confidential
140 informants shall establish policies and procedures addressing
141 the recruitment, control, and use of confidential informants.
142 The policies and procedures must state the:

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

145 (b) General guidelines for handling confidential

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146 informants;

147 (c) Process to advise a confidential informant of
148 conditions, restrictions, and procedures associated with
149 participating in the agency's investigative or intelligence-
150 gathering activities;

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

153 (e) Limits or restrictions on off-duty association or
154 social relationships by agency personnel involved in
155 investigative or intelligence gathering with confidential
156 informants;

157 (f) Guidelines to deactivate confidential informants,
158 including guidelines for deactivating communications with
159 confidential informants; and

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

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

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

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

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

171 (d) Whether the person is a substance abuser or has a
172 history of substance abuse or is in a court-supervised drug
173 treatment program;

174 (e) The risk of physical harm to the person, or to his or

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175 her immediate family or close associates, as a result of
176 providing information or assistance or upon disclosure to the
177 community of the person's assistance;

178 (f) Whether the person has shown any indication of
179 emotional instability, unreliability, or furnishing false
180 information;

181 (g) The person's criminal history or prior criminal record;
182 and

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

185 (6) A law enforcement agency that uses confidential
186 informants shall establish written security procedures that, at
187 a minimum:

188 (a) Provide for the secured retention of any records
189 related to the law enforcement agency's confidential sources,
190 including access to files identifying the identity of
191 confidential sources;

192 (b) Limit availability to records relating to confidential
193 informants to those within the law enforcement agency or law
194 enforcement community having a need to know or review those
195 records, or to those whose access has been required by court
196 process or order;

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

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

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

203 (7) A state or local law enforcement agency that uses

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204 confidential informants shall perform a periodic review of its
205 actual practices regarding confidential informants in order to
206 ensure conformity with the agency's policies and procedures and
207 this section.

208 (8) The provisions of this section and policies and
209 procedures adopted pursuant to this section do not grant any
210 right or entitlement to a confidential informant or a person who
211 is requested to be a confidential informant.

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