



526792

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/23/2015	.	
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The Committee on Criminal Justice (Bradley) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Paragraphs (f) and (g) are added to subsection (3) of section 914.28, Florida Statutes, subsections (4), (5), and (7) of that section are amended, present subsection (8) of that section is redesignated as subsection (12) and amended, and new subsections (8) through (11) are added to that section, to read:



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11 914.28 Confidential informants.-

12 (3) A law enforcement agency that uses confidential  
13 informants shall:

14 (f) Adopt policies and procedures that provide reasonable  
15 protective measures for confidential informants when a law  
16 enforcement agency knows or should have known of a risk or  
17 threat of harm to a person serving as a confidential informant  
18 and the risk or threat of harm is a result of his or her service  
19 to the law enforcement agency.

20 (g) Provide prospective and current confidential informants  
21 who are known to be substance abusers or to be at risk for  
22 substance abuse with information on substance abuse treatment  
23 options that may be available in their community or region.

24 (4) A law enforcement agency that uses confidential  
25 informants shall establish policies and procedures addressing  
26 the recruitment, control, and use of confidential informants.  
27 The policies and procedures must state the:

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

30 (b) General guidelines for the management and safety of  
31 handling confidential 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



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40 investigative or intelligence gathering with confidential  
41 informants;

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

45 (g) Training requirements that agency personnel must  
46 complete in order to recruit and manage confidential informants  
47 which are consistent with national law enforcement standards  
48 ~~Level of supervisory approval required before a juvenile is used~~  
49 ~~as a confidential informant.~~

50 (5) A law enforcement agency that uses confidential  
51 informants shall establish policies and procedures to assess the  
52 suitability of using a person as a confidential informant which,  
53 at a minimum, consider all of ~~by considering~~ ~~the minimum~~  
54 following factors:

55 (a) The person's age, ~~and~~ maturity, and experience to serve  
56 as a confidential informant.

57 (b) The risk the person poses to adversely affect a present  
58 or potential investigation or prosecution.

59 (c) The effect ~~upon agency efforts~~ that the disclosure of  
60 the person's cooperation may have on the agency's investigative  
61 or intelligence gathering activities. ~~in the community may have;~~

62 (d) Whether the person is a substance abuser or has a  
63 history of substance abuse. ~~or is in a court-supervised drug~~  
64 ~~treatment program;~~

65 (e) The risk of physical harm to the person, his or her  
66 immediate family, or close associates as a result of providing  
67 information or assistance, or upon the disclosure of the  
68 person's assistance. ~~to the community;~~



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69 (f) Whether the person has shown any indication of  
70 emotional instability ~~or~~ unreliability, or of furnishing false  
71 information.~~†~~

72 (g) The person's criminal history or prior criminal  
73 record.~~†~~and

74 (h) Whether the use of the person ~~is~~ may be necessary  
75 ~~important to or vital~~ to the success of an investigation.

76 (7) A ~~state or local~~ law enforcement agency that uses  
77 confidential informants shall perform a periodic review of  
78 actual agency confidential informant practices to ensure  
79 conformity with the agency's policies and procedures and this  
80 section.

81 (8) A law enforcement agency that enlists a person to be a  
82 confidential informant shall inform the person of the right to  
83 consult with a legal counsel before entering into a Substantial  
84 Assistance Agreement to serve as a confidential informant.  
85 However, the agency may advise the prospective confidential  
86 informant that he or she may waive the right to consult with  
87 legal counsel before entering into the Substantial Assistance  
88 Agreement, and he or she may serve as a confidential informant  
89 without consulting with legal counsel if such waiver is  
90 documented.

91 (9) (a) A person who is younger than 18 years of age may not  
92 participate in a controlled buy or sale of contraband or related  
93 activities without the written consent of a parent or legal  
94 guardian, but may provide confidential information to a law  
95 enforcement agency.

96 (b) A person who is receiving inpatient substance abuse  
97 treatment or outpatient substance abuse treatment from a



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98 licensed service provider pursuant to ch. 394 may not  
99 participate in a controlled buy or sale of contraband or related  
100 activities, but may provide confidential information to a law  
101 enforcement agency while receiving substance abuse treatment. A  
102 person who is under the jurisdiction of a drug court or  
103 participating in a drug court program may not participate in a  
104 controlled buy or sale or related activities without the consent  
105 of the state attorney assigned to the drug court program. If a  
106 law enforcement agency believes that a drug court participant  
107 has violated any drug court rules, the law enforcement agency  
108 shall promptly report the participant to the state attorney  
109 assigned to the drug court.

110 (10) A law enforcement agency that uses confidential  
111 informants shall collect and report data that includes the  
112 information required by paragraphs (a)-(h). The Department of  
113 Law Enforcement shall develop and disseminate a standardized  
114 form that must be completed by every law enforcement agency that  
115 uses confidential informants. A law enforcement agency that uses  
116 confidential informants shall collect such data for the  
117 preceding calendar year and report it by March 1 of each year to  
118 the department. Upon receipt of the completed forms, the  
119 department shall compile the data and, by each June 1, issue a  
120 publicly available report on paragraphs (a)-(h). The data and  
121 report may not include categories of active confidential  
122 informants compiled by race, ethnicity, gender, and zip code or  
123 disclose the identity of a confidential informant, but must  
124 include all of the following information:

125 (a) The number of active confidential informants.

126 (b) The ages of active confidential informants.



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127       (c) The number of confidential informants used to conduct  
128 controlled buys or sales of contraband, or related activities  
129 conducted on behalf of the agency.

130       (d) The number of deaths of confidential informants which  
131 occurred during controlled buys or sales of contraband, or  
132 related activities conducted on behalf of the agency.

133       (e) The number of injuries to confidential informants that  
134 occurred during controlled buys or sales of contraband, or  
135 related activities conducted on behalf of the agency.

136       (f) The number of deaths of confidential informants whose  
137 cause of death may be related to their service as a confidential  
138 informant.

139       (g) The number of injuries to confidential informants whose  
140 cause of injury may be related to their service as a  
141 confidential informant.

142       (h) The total amount of cash payments provided to a  
143 confidential informant by the agency.

144       (11) A law enforcement officer, or a person designated as  
145 support personnel as defined in s. 943.10(11), who willfully  
146 fails to comply with this act commits culpable negligence as  
147 provided in s. 782.07(1) or s. 784.05(1).

148       (12)-(8) The provisions of This section and policies and  
149 procedures adopted pursuant to this section do not grant any  
150 right or entitlement to a confidential informant or a person who  
151 is requested to be a confidential informant, and any failure to  
152 abide by this section may not be relied upon to create any  
153 additional right, substantive or procedural, enforceable at law  
154 by a defendant in a criminal proceeding.

155       Section 2. This act shall take effect October 1, 2015.



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

And the title is amended as follows:

Delete everything before the enacting clause  
and insert:

A bill to be entitled

An act relating to confidential informants; amending  
s. 914.28, F.S.; requiring a law enforcement agency  
that uses confidential informants to adopt policies  
and procedures providing reasonable protective  
measures; requiring such agencies to provide certain  
prospective and current confidential informants with  
information on substance abuse treatment options that  
may be available; requiring that the policies and  
procedures provide general guidelines for the  
management and safety of confidential informants and  
training requirements for certain agency personnel;  
revising factors used in assessing a person's  
suitability as a confidential informant; requiring a  
law enforcement agency that solicits a person to act  
as a confidential informants to provide them with the  
opportunity to consult with legal counsel before  
signing a Substantial Assistance Agreement;  
authorizing such agencies to advise prospective  
confidential informants that they may waive that  
right; prohibiting a person under 18 years of age from  
participating in certain activities without written  
parental or guardian consent; allowing such person to  
provide confidential information to a law enforcement



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185 agency; prohibiting a person who is receiving certain  
186 substance abuse treatment from participating in  
187 certain activities; allowing such person to provide  
188 confidential information to a law enforcement agency;  
189 prohibiting a person who is under the jurisdiction of  
190 a drug court program from participating in certain  
191 activities without the consent of the state attorney  
192 assigned to the drug court program; requiring a law  
193 enforcement agency to report a drug court participant  
194 it believes has violated any drug court rules to the  
195 state attorney; requiring a law enforcement agency to  
196 annually collect and submit confidential informant  
197 data to the Department of Law Enforcement; prohibiting  
198 such data from disclosing certain information;  
199 specifying information required to be submitted to the  
200 department; requiring the department to make such data  
201 publicly available by a specified date; providing  
202 penalties; providing an effective date.