

By Senator Dean

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1 A bill to be entitled
2 An act relating to confidential informants; amending
3 s. 914.28, F.S.; requiring a law enforcement agency
4 that uses confidential informants to adopt policies
5 and procedures providing reasonable protective
6 measures; requiring such agencies to refer certain
7 prospective and current confidential informants to
8 substance abuse prevention or treatment services;
9 requiring that the policies and procedures provide
10 general guidelines for the management and safety of
11 confidential informants and training requirements for
12 certain agency personnel; revising factors used in
13 assessing a person's suitability as a confidential
14 informant; requiring law enforcement agencies that
15 solicit persons to act as confidential informants to
16 provide them with the opportunity to consult with an
17 attorney before signing an assistance agreement;
18 allowing such agencies to advise prospective
19 confidential informants that they may waive that
20 right; prohibiting a person under the age of 18 from
21 participating in certain activities; allowing such
22 person to provide confidential information to a law
23 enforcement agency; prohibiting a person who is
24 receiving substance abuse services or related
25 treatment from participating in certain activities;
26 allowing such person to provide confidential
27 information to a law enforcement agency; prohibiting
28 Florida College System and university police from
29 recruiting or using enrolled students for certain

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30 activities; allowing a student to provide confidential
31 information to Florida College System or university
32 police or another law enforcement agency; requiring a
33 law enforcement agency to annually collect and submit
34 confidential informant data to the Department of Law
35 Enforcement; prohibiting such data from disclosing the
36 identity of a confidential informant; specifying
37 information required to be submitted to the
38 department; requiring the department make such data
39 publicly available by a specified date; providing
40 criminal penalties; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Paragraphs (f) and (g) are added to subsection
45 (3) of section 914.28, Florida Statutes, subsections (4), (5),
46 and (7) of that section are amended, present subsection (8) of
47 that section is redesignated as subsection (13), and a new
48 subsection (8) and subsections (9) through (12) are added to
49 that section, to read:

50 914.28 Confidential informants.—

51 (3) A law enforcement agency that uses confidential
52 informants shall:

53 (f) Adopt policies and procedures that provide reasonable
54 protective measures for confidential informants when a law
55 enforcement agency knows or should have known of a risk or
56 threat of harm to a person serving as a confidential informant
57 and the risk or threat of harm is a result of his or her service
58 to the law enforcement agency.

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59 (g) Refer prospective and current confidential informants
60 who are known to be substance abusers or to be at risk for
61 substance abuse to prevention or treatment services.

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

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

68 (b) General guidelines for the management and safety of
69 ~~handling~~ confidential informants;

70 (c) Process to advise a confidential informant of
71 conditions, restrictions, and procedures associated with
72 participating in the agency's investigative or intelligence
73 gathering activities;

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

76 (e) Limits or restrictions on off-duty association or
77 social relationships by agency personnel involved in
78 investigative or intelligence gathering with confidential
79 informants;

80 (f) Guidelines to deactivate confidential informants,
81 including guidelines for deactivating communications with
82 confidential informants; and

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

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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 which,
91 at a minimum, consider all of ~~by considering~~ the ~~minimum~~
92 following factors:

93 (a) The person's age, and maturity, and experience to serve
94 as a confidential informant.~~;~~

95 (b) The risk the person poses to adversely affect a present
96 or potential investigation or prosecution.~~;~~

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

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

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

107 (f) Whether the person has shown any indication of
108 emotional instability or, unreliability, or of furnishing false
109 information.~~;~~

110 (g) The person's criminal history or prior criminal
111 record. ~~and~~

112 (h) Whether the use of the person is necessary ~~important to~~
113 ~~or vital~~ to the success of an investigation.

114 (7) A ~~state or local~~ law enforcement agency that uses
115 confidential informants shall perform a periodic review of
116 actual agency confidential informant practices to ensure

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117 conformity with the agency's policies and procedures and this
118 section.

119 (8) A law enforcement agency that solicits a person to act
120 as a confidential informant shall give that person the
121 opportunity to consult with legal counsel before entering into
122 an assistance agreement and serving as a confidential informant.
123 However, the agency may advise the prospective confidential
124 informant that he or she may waive the right to consult with
125 legal counsel before entering into the assistance agreement, and
126 he or she may serve as a confidential informant without
127 consulting with legal counsel if such waiver is documented.

128 (9) (a) A person who is younger than 18 years of age may not
129 participate in a controlled buy or sale of contraband or related
130 activities, but may provide confidential information to a law
131 enforcement agency.

132 (b) A person who is receiving inpatient or outpatient
133 substance abuse treatment from a licensed service provider, is
134 in a treatment-based drug court program, or is otherwise
135 receiving treatment or related services pursuant to chapter 397
136 may not participate in a controlled buy or sale of contraband or
137 related activities, but may provide confidential information to
138 a law enforcement agency while receiving substance abuse
139 treatment.

140 (10) Florida College System and university police who are
141 regulated under s. 1012.88 or s. 1012.97, respectively, may not
142 recruit, assist in the recruitment of, refer to another law
143 enforcement agency, or otherwise use an enrolled student to
144 participate in a controlled buy or sale of contraband or related
145 activities, but an enrolled student may provide confidential

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146 information to such police or another law enforcement agency.

147 (11) A law enforcement agency that uses confidential
148 informants shall collect and report data that includes the
149 information required by paragraphs (a) through (j). The
150 Department of Law Enforcement shall develop and disseminate a
151 standardized form that must be completed by every law
152 enforcement agency that uses confidential informants. A law
153 enforcement agency that uses confidential informants shall
154 collect such data for the preceding calendar year and report it
155 by March 1 of each year to the department. Upon receipt of the
156 completed forms, the department shall compile the data and, by
157 each June 1, issue a publicly available report. The data and
158 report may not disclose the identity of a confidential informant
159 but must include all of the following information:

160 (a) The number of active confidential informants.

161 (b) Categories of active confidential informants compiled
162 by race, ethnicity, gender, age, and zip code.

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

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

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

172 (f) The number of deaths of confidential informants whose
173 cause of death may be related to their service as a confidential
174 informant.

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175 (g) The number of injuries to confidential informants whose
176 cause of injury may be related to their service as a
177 confidential informant.

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

180 (i) The total number of dropped or reduced charges provided
181 to a prospective or current confidential informant by the
182 agency.

183 (j) The total number of instances in which the law
184 enforcement agency recommended leniency for a confidential
185 informant at sentencing.

186 (12) A law enforcement officer, or a person designated as
187 support personnel as defined in s. 943.10(11), who willfully
188 fails to comply with this act commits a felony of the third
189 degree, punishable as provided in s. 775.082, s. 775.083, or s.
190 775.084.

191 (13) ~~(8) The provisions of~~ This section and policies and
192 procedures adopted pursuant to this section do not grant any
193 right or entitlement to a confidential informant or a person who
194 is requested to be a confidential informant, and any failure to
195 abide by this section may not be relied upon to create any
196 additional right, substantive or procedural, enforceable at law
197 by a defendant in a criminal proceeding.

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