

By the Committee on Criminal Justice; and 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 provide certain
7 prospective and current confidential informants with
8 information on substance abuse treatment options that
9 may be available; requiring that the policies and
10 procedures provide general guidelines for the
11 management and safety of confidential informants and
12 training requirements for certain agency personnel;
13 revising factors used in assessing a person's
14 suitability as a confidential informant; requiring a
15 law enforcement agency that solicits a person to act
16 as a confidential informants to provide them with the
17 opportunity to consult with legal counsel before
18 signing a Substantial Assistance Agreement;
19 authorizing such agencies to advise prospective
20 confidential informants that they may waive that
21 right; prohibiting a person under 18 years of age from
22 participating in certain activities without written
23 parental or guardian consent; allowing such person to
24 provide confidential information to a law enforcement
25 agency; prohibiting a person who is receiving certain
26 substance abuse treatment from participating in
27 certain activities; allowing such person to provide
28 confidential information to a law enforcement agency;
29 prohibiting a person who is under the jurisdiction of

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30 a drug court program from participating in certain
31 activities without the consent of the state attorney
32 assigned to the drug court program; requiring a law
33 enforcement agency to report a drug court participant
34 it believes has violated any drug court rules to the
35 state attorney; requiring a law enforcement agency to
36 annually collect and submit confidential informant
37 data to the Department of Law Enforcement; prohibiting
38 such data from disclosing certain information;
39 specifying information required to be submitted to the
40 department; requiring the department to make such data
41 publicly available by a specified date; providing
42 penalties; providing an effective date.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Paragraphs (f) and (g) are added to subsection
47 (3) of section 914.28, Florida Statutes, subsections (4), (5),
48 and (7) of that section are amended, present subsection (8) of
49 that section is redesignated as subsection (12) and amended, and
50 new subsections (8) through (11) are added to that section, to
51 read:

52 914.28 Confidential informants.—

53 (3) A law enforcement agency that uses confidential
54 informants shall:

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

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59 and the risk or threat of harm is a result of his or her service
60 to the law enforcement agency.

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

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

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

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

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

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

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

83 (f) Guidelines to deactivate confidential informants,
84 including guidelines for deactivating communications with
85 confidential informants; and

86 (g) Training requirements that agency personnel must
87 complete in order to recruit and manage confidential informants

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88 which are consistent with national law enforcement standards
89 ~~Level of supervisory approval required before a juvenile is used~~
90 ~~as a confidential informant.~~

91 (5) A law enforcement agency that uses confidential
92 informants shall establish policies and procedures to assess the
93 suitability of using a person as a confidential informant which,
94 at a minimum, consider all of ~~by considering~~ the ~~minimum~~
95 following factors:

96 (a) The person's age, and maturity, and experience to serve
97 as a confidential informant.~~†~~

98 (b) The risk the person poses to adversely affect a present
99 or potential investigation or prosecution.†

100 (c) The effect ~~upon agency efforts~~ that the disclosure of
101 the person's cooperation may have on the agency's investigative
102 or intelligence gathering activities. ~~in the community may have.~~†

103 (d) Whether the person is a substance abuser or has a
104 history of substance abuse. ~~or is in a court supervised drug~~
105 ~~treatment program.~~†

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

110 (f) Whether the person has shown any indication of
111 emotional instability ~~or~~ unreliability, or of furnishing false
112 information.†

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

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

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117 (7) A ~~state or local~~ law enforcement agency that uses
118 confidential informants shall perform a periodic review of
119 actual agency confidential informant practices to ensure
120 conformity with the agency's policies and procedures and this
121 section.

122 (8) A law enforcement agency that enlists a person to be a
123 confidential informant shall inform the person of the right to
124 consult with a legal counsel before entering into a Substantial
125 Assistance Agreement to serve as a confidential informant.
126 However, the agency may advise the prospective confidential
127 informant that he or she may waive the right to consult with
128 legal counsel before entering into the Substantial Assistance
129 Agreement, and he or she may serve as a confidential informant
130 without consulting with legal counsel if such waiver is
131 documented.

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

137 (b) A person who is receiving inpatient substance abuse
138 treatment or outpatient substance abuse treatment from a
139 licensed service provider pursuant to ch. 394 may not
140 participate in a controlled buy or sale of contraband or related
141 activities, but may provide confidential information to a law
142 enforcement agency while receiving substance abuse treatment. A
143 person who is under the jurisdiction of a drug court or
144 participating in a drug court program may not participate in a
145 controlled buy or sale or related activities without the consent

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146 of the state attorney assigned to the drug court program. If a
147 law enforcement agency believes that a drug court participant
148 has violated any drug court rules, the law enforcement agency
149 shall promptly report the participant to the state attorney
150 assigned to the drug court.

151 (10) A law enforcement agency that uses confidential
152 informants shall collect and report data that includes the
153 information required by paragraphs (a)-(h). The Department of
154 Law Enforcement shall develop and disseminate a standardized
155 form that must be completed by every law enforcement agency that
156 uses confidential informants. A law enforcement agency that uses
157 confidential informants shall collect such data for the
158 preceding calendar year and report it by March 1 of each year to
159 the department. Upon receipt of the completed forms, the
160 department shall compile the data and, by each June 1, issue a
161 publicly available report on paragraphs (a)-(h). The data and
162 report may not include categories of active confidential
163 informants compiled by race, ethnicity, gender, and zip code or
164 disclose the identity of a confidential informant, but must
165 include all of the following information:

166 (a) The number of active confidential informants.

167 (b) The ages of active confidential informants.

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

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

174 (e) The number of injuries to confidential informants that

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175 occurred during controlled buys or sales of contraband, or
176 related activities conducted on behalf of the agency.

177 (f) The number of deaths of confidential informants whose
178 cause of death may be related to their service as a confidential
179 informant.

180 (g) The number of injuries to confidential informants whose
181 cause of injury may be related to their service as a
182 confidential informant.

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

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

189 (12)-(8) The provisions of This section and policies and
190 procedures adopted pursuant to this section do not grant any
191 right or entitlement to a confidential informant or a person who
192 is requested to be a confidential informant, and any failure to
193 abide by this section may not be relied upon to create any
194 additional right, substantive or procedural, enforceable at law
195 by a defendant in a criminal proceeding.

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