

By Senator Dean

5-00195-16

20161334\_\_

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 adopted by a law enforcement agency provide  
11          general guidelines for the management and safety of  
12          confidential informants and training requirements for  
13          certain agency personnel; revising factors used in  
14          assessing a person's suitability as a confidential  
15          informant; requiring a law enforcement agency that  
16          solicits a person to act as a confidential informant  
17          to inform such person of his or her right to consult  
18          with legal counsel before signing a Substantial  
19          Assistance Agreement; authorizing such agencies to  
20          advise prospective confidential informants that they  
21          may waive that right; prohibiting a person under 18  
22          years of age from participating in certain activities  
23          without written parental or guardian consent; allowing  
24          such person to provide confidential information to a  
25          law enforcement agency; prohibiting a person who is  
26          receiving certain substance abuse treatment from  
27          participating in certain activities; allowing such  
28          person to provide confidential information to a law  
29          enforcement agency; prohibiting a person who is under  
30          the jurisdiction of a drug court program from  
31          participating in certain activities without the  
32          consent of the state attorney assigned to the drug

5-00195-16

20161334\_\_

33 court program; requiring a law enforcement agency to  
34 report to the state attorney a drug court participant  
35 who the agency believes has violated any drug court  
36 rule; requiring a law enforcement agency to annually  
37 collect and submit confidential informant data to the  
38 Department of Law Enforcement; prohibiting such data  
39 from disclosing certain information; specifying  
40 information required to be submitted to the  
41 department; requiring the department to publicly  
42 release such data by a specified date; providing  
43 penalties; providing an effective date.

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

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

53 914.28 Confidential informants.—

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

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

5-00195-16

20161334\_\_

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

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

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

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

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

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

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

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

87 (g) Training requirements that agency personnel must  
88 complete in order to recruit and manage confidential informants,  
89 which must be consistent with national law enforcement standards  
90 ~~Level of supervisory approval required before a juvenile is used~~

5-00195-16

20161334\_\_

91 ~~as a confidential informant.~~

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

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

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

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

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

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

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

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

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

118 (7) A ~~state or local~~ law enforcement agency that uses  
119 confidential informants shall perform a periodic review of

5-00195-16

20161334\_\_

120 actual agency confidential informant practices to ensure  
121 conformity with the agency's policies and procedures and this  
122 section.

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

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

138 (b) A person who is receiving inpatient or outpatient  
139 substance abuse treatment from a licensed service provider  
140 pursuant to chapter 394 may not participate in a controlled buy  
141 or sale of contraband or related activities, but may provide  
142 confidential information to a law enforcement agency while  
143 receiving substance abuse treatment. A person who is under the  
144 jurisdiction of a drug court or participating in a drug court  
145 program may not participate in a controlled buy or sale or  
146 related activities without the consent of the state attorney  
147 assigned to the drug court program. If a law enforcement agency  
148 believes that a drug court participant has violated any drug

5-00195-16

20161334\_\_

149 court rule, the law enforcement agency shall promptly report the  
150 participant to the state attorney assigned to the drug court.

151 (10) A law enforcement agency that uses confidential  
152 informants shall collect and report data that include 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 the data by March 1 of each  
159 year to the department. Upon receipt of the completed forms, the  
160 department shall compile the data and, by June 1 of each year,  
161 publicly release a 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 on  
170 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 which  
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

5-00195-16

20161334\_\_

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 each  
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, 2016.