

Committee Substitute for  
Committee Substitute for House Bill No. 271

An act relating to confidential informants; creating “Rachel’s Law”; defining terms; requiring a law enforcement agency that uses confidential informants to disclose certain information to persons who are requested to serve as confidential informants; providing that a law enforcement agency must provide an opportunity to consult with legal counsel to a person who is requested to serve as a confidential informant; requiring training for persons involved with the recruitment and use of confidential informants; requiring a law enforcement agency to adopt policies and procedures to preserve the safety of confidential informants, law enforcement personnel, target offenders, and the public; requiring a law enforcement agency that uses confidential informants to address the recruitment, control, and use of confidential informants in policies and procedures of the agency; requiring a law enforcement agency to establish policies and procedures to assess the suitability of using a person as a confidential informant; requiring a law enforcement agency to establish procedures to maintain the security of records relating to confidential informants; requiring a law enforcement agency to periodically review confidential informant practices; providing that the act does not grant any right or entitlement to a confidential informant or a person who is requested to be a confidential informant; providing that any failure to abide by the act does not create any additional right enforceable by a defendant in a criminal proceeding; providing an effective date.

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 Florida Department of Law Enforcement voluntarily adopted “Guidelines To Be Used By Florida State And Local Law Enforcement Agencies In Dealing With Confidential Informants,” which provide minimum expectations for agency policies for dealing with confidential informants, and

WHEREAS, if the minimum expectations contained in those guidelines were to be required of every law enforcement agency that uses confidential informants, the Legislature’s intent to promote safer use of confidential informants in the state would be substantially advanced, and

WHEREAS, the Legislature intends to codify the standards set forth in the “Guidelines To Be Used By Florida State And Local Law Enforcement Agencies In Dealing With Confidential Informants,” and to require those standards to be followed by all law enforcement agencies in this state which use confidential informants, NOW, THEREFORE,

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

Section 1. Confidential informants.—

(1) This section may be cited as “Rachel’s Law.”

(2) As used in this section, the term:

(a) “Confidential informant” means a person who cooperates with a law enforcement agency confidentially in order to protect the person or the agency’s intelligence gathering or investigative efforts and:

1. Seeks to avoid arrest or prosecution for a crime, or mitigate punishment for a crime in which a sentence will be or has been imposed; and

2. Is able, by reason of his or her familiarity or close association with suspected criminals, to:

a. Make a controlled buy or controlled sale of contraband, controlled substances, or other items that are material to a criminal investigation;

b. Supply regular or constant information about suspected or actual criminal activities to a law enforcement agency; or

c. Otherwise provide information important to ongoing criminal intelligence gathering or criminal investigative efforts.

(b) “Controlled buy” means the purchase of contraband, controlled substances, or other items that are material to a criminal investigation from a target offender which is initiated, managed, overseen, or participated in by law enforcement personnel with the knowledge of a confidential informant.

(c) “Controlled sale” means the sale of contraband, controlled substances, or other items that are material to a criminal investigation to a target

offender which is initiated, managed, overseen, or participated in by law enforcement personnel with the knowledge of a confidential informant.

(d) “Law enforcement agency” means an agency having a primary mission of preventing and detecting crime and the enforcement of the penal, criminal, traffic, or highway laws of the state and that in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10.

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

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

(a) Inform each person who is requested to serve as a confidential informant that the agency cannot promise inducements such as a grant of immunity, dropped or reduced charges, or reduced sentences or placement on probation in exchange for serving as a confidential informant.

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

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

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

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

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

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

(b) General guidelines for handling confidential informants;

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

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

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

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

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

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

(a) The person's age and maturity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor May 7, 2009.

Filed in Office Secretary of State May 7, 2009.