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 refer certain prospective and current confidential informants to substance abuse prevention or treatment services; 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 law enforcement agencies that solicit persons to act as confidential informants to provide them with the opportunity to consult with an attorney before signing an assistance agreement; allowing such agencies to advise prospective confidential informants that they may waive that right; prohibiting a person under the age of 18 from participating in certain activities; allowing such person to provide confidential information to a law enforcement agency; prohibiting a person who is receiving substance abuse services or related treatment from participating in certain activities; allowing such person to provide confidential information to a law enforcement agency; prohibiting Florida College System and university police from recruiting or using enrolled students for certain
activities; allowing a student to provide confidential information to Florida College System or university police or another law enforcement agency; requiring a law enforcement agency to annually collect and submit confidential informant data to the Department of Law Enforcement; prohibiting such data from disclosing the identity of a confidential informant; specifying information required to be submitted to the department; requiring the department make such data publicly available by a specified date; providing criminal penalties; providing an effective date.

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

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 (13), and a new subsection (8) and subsections (9) through (12) are added to that section, to read:

914.28 Confidential informants.—
(3) A law enforcement agency that uses confidential informants shall:

(f) Adopt policies and procedures that provide reasonable protective measures for confidential informants when a law enforcement agency knows or should have known of a risk or threat of harm to a person serving as a confidential informant and the risk or threat of harm is a result of his or her service to the law enforcement agency.
(g) Refer prospective and current confidential informants who are known to be substance abusers or to be at risk for substance abuse to prevention or treatment services.

(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 the management and safety of 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) Training requirements that agency personnel must complete in order to recruit and manage confidential informants which are consistent with national law enforcement standards.

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 which, at a minimum, consider all of the following factors:

(a) The person’s age, and maturity, and experience to serve as a confidential informant.

(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 may have on the agency’s investigative or intelligence gathering activities.

(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 or unreliability, or of furnishing false information.

(g) The person’s criminal history or prior criminal record.

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

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

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

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

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

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

(a) The number of active confidential informants.
(b) Categories of active confidential informants compiled by race, ethnicity, gender, age, and zip code.
(c) The number of confidential informants used to conduct controlled buys or sales of contraband, or related activities conducted on behalf of the agency.
(d) The number of deaths of confidential informants which occurred during controlled buys or sales of contraband, or related activities conducted on behalf of the agency.
(e) The number of injuries to confidential informants that occurred during controlled buys or sales of contraband, or related activities conducted on behalf of the agency.
(f) The number of deaths of confidential informants whose cause of death may be related to their service as a confidential informant.
(g) The number of injuries to confidential informants whose cause of injury may be related to their service as a confidential informant.

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

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

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

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

(13) 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 October 1, 2015.