

Senate Bill 208

By: Senator Thompson of the 33rd

A BILL TO BE ENTITLED
AN ACT

1 To provide for a short title; to provide for legislative findings; to amend Title 35 of the
2 Official Code of Georgia Annotated, relating to law enforcement officers and agencies, so
3 as to provide for parameters regarding the use of confidential informants; to provide for
4 definitions; to prohibit a law enforcement agency from selecting certain specified persons to
5 act as confidential informants; to provide for exceptions; to require that any agreement
6 between a law enforcement agency and a confidential informant be reduced to writing and
7 signed by certain designated parties; to require a law enforcement agency to notify a
8 confidential informant of his or her right to legal counsel before executing an assistance
9 agreement; to require certain record keeping; to provide requirements for the proper use of
10 confidential informants; to provide for related matters; to provide for an effective date; to
11 repeal conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 This Act shall be known and may be cited as "Rachel's Law."

15 **SECTION 2.**

16 (a) The General Assembly recognizes that by using confidential informants in law
17 enforcement undercover operations, law enforcement agencies can improve efforts to
18 reduce crime and remove dangerous criminals from the community. However, because
19 many confidential informants are not trained law enforcement personnel, the General
20 Assembly believes that if a law enforcement agency elects to use a confidential informant,
21 law enforcement agencies should take special care when evaluating the abilities of a
22 confidential informant to perform the required tasks of the undercover operation and
23 should, at all times, closely supervise the activities of the confidential informant. The
24 General Assembly further recognizes that a confidential informant's participation in a law
25 enforcement undercover operation may be detrimental and dangerous to the informant and

26 to others. Therefore, it is the intent of the General Assembly to allow law enforcement
 27 agencies to use confidential informants, but to do so in a fair and reasonably safe manner
 28 in order to reduce adverse risks, including injury or death, to the confidential informant,
 29 law enforcement personnel, the target offender, and the public.

30 (b) The General Assembly also finds that there are no state-wide, uniform standards or
 31 guidelines applicable when using confidential informants. Therefore, it is the intent of the
 32 General Assembly that the minimum standards set forth in this Act be followed by all law
 33 enforcement agencies in this state when using confidential informants.

34 **SECTION 3.**

35 Title 35 of the Official Code of Georgia Annotated, relating to law enforcement officers and
 36 agencies, is amended in Chapter 1, relating to general provisions for law enforcement
 37 officers and agencies, by adding a new Code section to read as follows:

38 "35-1-16.

39 (a) As used in this Code section, the term:

40 (1) 'Confidential informant' means a person who is not employed by a law enforcement
 41 agency and who, in exchange for consideration, supplies information about potential
 42 criminal activity to law enforcement personnel or participates in a law enforcement
 43 undercover operation.

44 (2) 'Consideration' means anything of value, including, but not limited to, monetary
 45 payment; leniency considerations concerning any criminal activity, charge, or potential
 46 charge; or a recommendation from a law enforcement agency for a reduction of a
 47 criminal charge or sentence.

48 (3) 'Controlled buy' means the purchase of stolen goods, controlled substances, or the
 49 like from a target offender which is initiated, managed, overseen, or participated in by
 50 law enforcement personnel with the knowledge of the confidential informant.

51 (4) 'Law enforcement undercover operation' means an investigative technique in which
 52 a law enforcement agency uses a confidential informant to:

53 (A) Assume a covert identity or purpose in order for the confidential informant to take
 54 action to acquire evidence or information that would likely be unavailable but for the
 55 target offender's reliance on the confidential informant's covert role; or

56 (B) Participate in a controlled buy from a target offender who is under investigation.

57 (5) 'Substantial assistance agreement' means a written contract between a law
 58 enforcement agency and a confidential informant who has been charged with or convicted
 59 of a crime, or who may be charged with a crime, which provides that the prosecuting
 60 attorney may move the sentencing court to reduce or suspend the sentence of the
 61 confidential informant or reduce or dismiss charges if the confidential informant provides

62 assistance to the law enforcement agency or prosecuting attorney by assisting in the
63 identification, arrest, or conviction of a codefendant, accessory, coconspirator, principal,
64 or any other person believed to be engaged in a violation of state law.

65 (6) 'Target offender' means the person whom a law enforcement agency suspects will be
66 implicated by the activities of a confidential informant.

67 (b) Except as provided in this subsection and paragraph (3) of subsection (d) of this Code
68 section, a law enforcement agency may select any qualified person to act as a confidential
69 informant. A law enforcement agency shall not use a person as a confidential informant
70 in a law enforcement undercover operation if that person is:

71 (1) Currently participating in a court ordered drug or substance abuse treatment program
72 unless the law enforcement agency receives express approval from the chief judge of the
73 court for the circuit in which the confidential informant would be prosecuted. When
74 determining whether the person may be used as a confidential informant, the judge shall
75 consider whether the person's participation as a confidential informant may jeopardize
76 the success of his or her treatment program;

77 (2) Voluntarily enrolled in a drug or substance abuse treatment program unless the law
78 enforcement agency receives the express approval from the prosecuting attorney of the
79 circuit in which the law enforcement agency is located. Before approving this person's
80 participation as a confidential informant, the prosecuting attorney shall consult with the
81 person's treatment provider and reasonably determine whether the person's participation
82 as a confidential informant may jeopardize the success of his or her treatment program;
83 or

84 (3) Currently on parole or probation unless the law enforcement agency receives the
85 express approval from the prosecuting attorney in the circuit in which the law
86 enforcement agency is located and the approval of the parole or probation officer
87 supervising the parolee or probationer.

88 (c)(1) Before a proposed confidential informant provides any assistance to a law
89 enforcement agency, all plea negotiations and consideration offered to the proposed
90 confidential informant shall be reduced to a written substantial assistance agreement that
91 is executed by the law enforcement agency and the confidential informant and approved
92 by the prosecuting attorney prosecuting the case. The substantial assistance agreement
93 shall include a description of the work that the confidential informant will be doing, the
94 length of service, and the consideration that the confidential informant will be receiving.

95 (2) Each person who is solicited to act as a confidential informant shall be given the
96 opportunity to consult with legal counsel before entering into a substantial assistance
97 agreement. If the person is not represented by legal counsel at the time of the solicitation,

98 the law enforcement agency shall advise the person of his or her right to consult with
99 legal counsel before entering into the substantial assistance agreement.

100 (3) An agent of a law enforcement agency shall not promise, agree, or suggest to a
101 prospective confidential informant any type of immunity from prosecution without the
102 express authority of the prosecuting attorney. The confidential informant shall be
103 provided a complete and legible copy of the executed and approved substantial assistance
104 agreement. The law enforcement agency shall be the controlling agent of such agreement
105 and shall report to the prosecuting attorney upon the successful conclusion of the
106 agreement or the informant's inability or unwillingness to fulfill the agreement.

107 (4) Each law enforcement agency that uses confidential informants shall:

108 (A) Establish guidelines and protocols to prepare and maintain a record of all contacts
109 with confidential informants; and

110 (B) Develop protocols governing the training of personnel who deal with confidential
111 informants and for implementing and enforcing the requirements of this Code section.

112 (d)(1) When using a confidential informant, the first priority of a law enforcement
113 agency shall be to preserve the safety of the confidential informant, law enforcement
114 personnel, the target offender, and the public. All operational decisions and actions shall
115 be based on this principle, and law enforcement personnel shall exercise the utmost care
116 and judgment in order to minimize the risk of harm to all persons involved.

117 (2) To effectuate this principle, a law enforcement agency shall determine whether the
118 confidential informant has the ability to safely perform the tasks required. In making this
119 determination, a law enforcement agency shall consider, without limitation:

120 (A) The age, maturity, emotional stability, and relevant experience of the confidential
121 informant;

122 (B) The criminal history of the confidential informant, including the number and nature
123 of any prior offenses;

124 (C) The consideration that is promised to the confidential informant;

125 (D) The nature of assistance sought from the confidential informant;

126 (E) The age and maturity of the target offender;

127 (F) The criminal history of the target offender, including the number and nature of any
128 prior offenses and the nature of the target offense; and

129 (G) The propensity of the target offender for violence.

130 (3) If a person has no prior convictions for committing a violent crime, that person may
131 not be used as a confidential informant in a law enforcement undercover operation
132 involving a target offender who is known or suspected to have engaged in violence in the
133 past or if the law enforcement agency has reason to believe that the person may be
134 exposed to harm.

135 **SECTION 4.**

136 This Act shall become effective upon its approval by the Governor or upon its becoming law
137 without such approval.

138 **SECTION 5.**

139 All laws and parts of laws in conflict with this Act are repealed.