

**TULSA COUNTY DISTRICT ATTORNEY
INFORMANT GUIDELINES**

PURPOSE

The cooperation of persons charged with crimes and seeking leniency in return for truthful testimony and/or investigative assistance is frequently an effective tool for law enforcement. However, unless properly monitored and controlled, the operation of these individuals can be and has proven to be embarrassing to the controlling officer and the sponsoring agency. Improperly monitored sources may lead to physical harm to the source, the investigator, innocent citizens, as well as credibility problems for law enforcement and the criminal justice system.

Cooperating individuals, whether paid informants or charged individuals, *are not* to be considered employees of law enforcement agencies. They do, however, have a unique relationship to the agency for which they supply information or assistance. When law enforcement directs or encourages the activities of such persons, the sponsoring agency must exercise discretion and control within acceptable ethical and legal standards.

Based on the above reasoning, the Tulsa County District Attorney (TCDA) is establishing uniform standards for Tulsa County law enforcement agencies to manage and control informants and cooperating individuals assisting in the prosecution of criminal cases.

The guidelines set forth in this policy statement establish *minimum standards of conduct* expected from members of all law enforcement agencies served by the TCDA. This policy does not preclude any Tulsa County law enforcement agency from establishing internal procedures for the management and control of its own sources. In fact, TCDA strongly encourages the establishment of detailed procedures for each agency on this issue.

INFORMANTS

For purposes of this policy, a confidential informant (CI) is defined as a person who provides information or assistance to law enforcement regarding criminal activity, *whether for remuneration, prosecutorial consideration or some other purpose*. A reliable confidential informant (RCI) is a person who has provided information which has proved to be truthful to a law enforcement agency in the past, and has resulted in documented accomplishments such as arrests, recoveries, search warrants, fines, savings, or other reliable information.

A cooperating witness (CW) is a witness, whether involved with a particular offense or not, who is in a position to be used for covert investigative purposes and is anticipated to appear as a witness in court proceedings. Charged co-defendants who elect to cooperate and/or testify may be used as a CI or CW but are not considered to hold the same status as regular CIs.

The confidentiality of sources is recognized as an essential and desirable function of law enforcement, in part, because special trust often develops between such persons and their handling officers. However, the responsibility for the control of such persons is an agency function. The identity of these individuals should be known to supervising officials in the respective law enforcement agencies and documented. The files on these persons should be maintained in secure locations within the agency. Files should include true and accurate names, addresses, phone numbers, names of family members, names of close contacts, vehicle information, employment, criminal records and probation/parole officers where applicable. Records of statistical accomplishments of the CI/CW should also be documented to assess the value of the source for future use. When the use of a CI/CW is discontinued, they *must be informed and the termination reflected in the CI/CW case file*.

EVALUATION OF INFORMANTS

Persons should not be considered for utilization as a CW or CI unless the sponsoring agency objectively assesses the following factors:

1. Risk to the source, officers, citizens and the investigation in utilizing the source.
2. The nature and seriousness of the investigation and the lack of evidence absent the use of the source.
3. The ability of the agency to control and protect the source.
4. The value of the information/evidence to be obtained in comparison to the concession being offered.
5. Sources under supervision of the Department of Corrections require notification and concurrence of probation/parole officers. (One of the terms and conditions of probation/parole is that the defendant is not to associate with persons with criminal records/engaging in criminal activity).
6. The TCDA will coordinate notification of the appropriate Court regarding persons with pending cases.
7. Use of sources in fugitive status is discouraged. Certain exceptions may apply if the handling officer obtains supervisory approval and the TCDA is made aware of the circumstances.
8. When a source has previously worked for another agency, the sponsoring agency should contact the original agency concerning the reliability of the proposed source prior to submission for consideration by the TCDA.
9. Regular contacts with sources are encouraged to assure their reliability and continuing development.
10. Background checks should be maintained in the agency CW/CI file.
11. Information from sources should be corroborated. Those who prove to be unreliable should be documented, closed and notified they are no longer considered CI's.
12. Payments to CI's should be witnessed by two officers and documented in the source file.
13. Sources should have an alternate officer contact and the source should be aware of how to contact that officer.
14. Supervisors should meet the officers' sources or at least observe a contact.
15. Notification of the CI/CW as to his responsibilities, that is the CI is not an employee of the agency, does not have arrest powers, that his/her relationship is to be kept confidential, that he/she is not authorized to engage in criminal activity without supervision, and that he/she is not to perform any investigative activity without supervision should be memorialized in writing and maintained in the CI file. (Informant Liability Waiver Form).
16. No officer or agency should conceal the commission of a crime by one of its informants. Such information should be immediately brought to the attention of the TCDA for appropriate action.
17. Whenever information of criminal activity by a source comes to the attention of the supervising agency, that agency should notify the appropriate investigative

jurisdiction. If notification jeopardizes a pending investigation, the TCDA should be notified, and the agency involved shall preserve all relevant evidence of the offense for notification at the proper time.

JUVENILE SOURCES

Juvenile offenders enjoy special protections under Oklahoma Statutes. Any consideration to use a juvenile as a CI/CW must follow existing Oklahoma and federal law. Therefore use of a juvenile as a source should not be considered without approval from the chief of the law enforcement agency or his designate and the approval of the TCDA.

PROCEDURAL GUIDELINES

The TCDA has designated a Drug Prosecution Coordinator and ADAs from each trial team to liaison with Tulsa County law enforcement agencies regarding drug investigations and informants.

Steve Kunzweiler, the Chief of the Criminal Division, is charged with supervisory responsibility of Assistant District Attorneys assigned to criminal matters.

He will be consulted on all issues in this program when they require his attention. Investigators involved in drug cases are encouraged to contact the respective ADA to assure proper attention to priority cases including trafficking, manufacturing, possession with intent cases and any other pertinent targets of interest. Any concerns, suggestions or complaints about decisions involving intake or how a case is handled should be communicated to the Drug Prosecution Coordinator or the Chief of Criminal.

Before a CI/CW is *presented to the TCDA in a request for prosecutorial consideration*, they must be approved by the sponsoring agency and the TCDA. The sponsoring officer should obtain his agency supervisory approval and submit a written request to the Drug Prosecution Coordinator (James M. Hawkins). The written request will include an NCIC Computerized

Criminal History (CCH) as well as local TRACIS summary. The Chief of Criminal Division will be consulted on a case by case-as necessary basis. In the event of exigent circumstances, telephonic approval may be obtained with the appropriate documentation to be submitted the following business day. ADAs assigned to this liaison duty are fully engaged in prosecutorial responsibilities including jury trials, preliminary hearings, and other court appearances. They should, however, be included and informed of the progress of pertinent investigations. These ADAs may have the opportunity to assist in alternative avenues to enhance pending investigations.

The most common CI is typically the defendant with little or no prior criminal history and who is arrested with a small amount of contraband (Possession CDS). Cases with citizen victims will be most carefully scrutinized, when considering a defendant as a source. Approval will be granted only in exceptional circumstances and after careful consideration of all the facts, circumstances and possible benefits weighed against the possible negative ramifications.

A common problem in the past is the practice of officers striking deals with arrestees without notifying the TCDA. What can happen in these situations is that the "street deal" fails and the officer thereafter submits charges to be filed. This practice creates a plethora of problems for TCDA and these charges WILL NOT BE APPROVED. Similarly, offers of consideration for cooperation with arrested subjects during the administration of an advice of rights should not be done. These types of cases may very well result in suppression of confessions and physical evidence. Finally, negotiations with defense counsel should be the venue of the TCDA and not investigators.

DRUG INVESTIGATIONS

The proliferation of television programs related to crime scene investigations, and courtroom dramas has a profound impact on the criminal justice system. Approximately 65% of recent jury pools in Tulsa County indicate they regularly watch one or more of the CSI shows, "Law and Order" or some other law enforcement program. The public is captivated by the crime solving techniques depicted on the screen. Many citizens, unfamiliar with the system, have unrealistic expectations of what they expect to see actually presented in the courtroom. They expect the utilization of sophisticated investigative techniques, especially after they learn that equipment or resources were available to investigators but simply was not used.

Controlled purchases by CIs must be closely supervised by investigators. Where the CI must be used for the buy and is expected to testify, it is suggested that phone conversations, meetings and debriefings be video and audio recorded. Recordings of telephone calls setting up controlled buys are extremely desirable evidence in drug prosecutions. Verbatim accounts of conversations monitored by supervising officers during buys and surveillances is encouraged and will be used in court. Actual preparation of transcripts may await the setting of jury trial and be ready to meet discovery dates.

Search warrants are strongly encouraged. Photos of locations of contraband, suspects, associates, children, surroundings before and after the execution of a search warrant and full interviews of all persons present are extremely beneficial and a key factor in successful investigations and prosecutions. Video cameras should be set so that the date and time of the scene is accurate. They should be reviewed by investigators to assure the evidence is observable. Audio equipment in interview rooms should be adjusted so that the witnesses may be heard.

Interviewing officers should allow the witness to explain what happened instead of suggesting or leading the suspect or witness.

Identification of suspects is a critical issue in all criminal cases. In cases where operatives have made purchases of contraband from suspects with whom they have limited knowledge, photo lineups should be presented to the CI as soon as possible and maintained as evidence on a property receipt. Scene photos should also be maintained in property instead of stored on a disc to possibly be lost or copied over.

Suspected contraband should be immediately submitted to the appropriate forensic laboratory for testing. Field tests should be conducted of representative samples. Frequently, only one package of a group of baggies or item is tested leaving the argument of sufficient quantities for trafficking weight at a preliminary hearing. Laboratory reports typically are unavailable at the time of preliminary hearing, handing the defense the argument that not all the packages may be drugs. Finally, officers should make themselves available for court appearances and prosecutors should strive to timely inform the officers of court appearances. Investigations and arrests are fruitless when witnesses are not available for court.


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