

Informants/Sources of Information

608.1 PURPOSE AND SCOPE

In some instances, a successful investigation cannot be conducted without the use of Informants. In a custodial setting, Sources of Information present themselves to staff and will require proper handling. To protect the integrity of the Orange County Sheriff's Department and Members using Informants and Sources of Information, it shall be the policy of this Department to take appropriate precautions by developing sound policies.

Informants do not belong to an individual deputy or investigator, but they are agents of the Department and act on its behalf. As with any case management, it is important to maintain proper Informant management to ensure officer safety, proper legal and ethical standards, and to limit civil liability to the Department and the Informant handler.

Sources of Information are not agents of the Department and are not considered Informants. However, they still require documentation and tracking to ensure proper legal and ethical standards, and to limit civil liability to the Department.

608.1.1 DEFINITIONS

Informant : An Informant is any person who knowingly provides information to law enforcement related to another's criminal activity, whose motivations for doing so are other than that of an uninvolved witness, victim, or private citizen primarily acting through a sense of civic responsibility and who, as a general rule, but not necessarily, expects some form of benefit or advantage for himself, herself, or another person in return.

Source of Information (SOI): A Source of Information (SOI) is an inmate who provides information to law enforcement regarding criminal activity, or any non-criminal activity related to jail security; but has not been directed to do so by law enforcement, and, upon providing such information, the inmate has not requested or been offered, nor received any benefit or consideration in return for the information. An SOI is not an Informant, a victim or potential suspect.

Informant Consideration and Benefits: A benefit includes any consideration or advantage an Informant was offered, promised or received in exchange for information or testimony provided. It includes a benefit for the Informant or a benefit for another person at the Informant's request. Refer to section 608.3 for further information.

608.2 INFORMANT AND SOURCE OF INFORMATION FILE SYSTEMS AND STORAGE

Informant files generated by Members within the Special Investigations Bureau (North/South Narcotics, North/South GET and the Advanced Surveillance and Protection team), shall be maintained by the unit supervisor of the specific unit that generated the Informant file.

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

The North Narcotics Unit Supervisor shall be responsible for maintaining Informant files generated within the Transit Operations Division, Special Operations Division, North Operations Division, Criminal Investigations Bureau (excluding the Custody Intelligence Unit) and the Professional Services Command.

The South Narcotics Unit Supervisor shall be responsible for maintaining Informant files generated within the Southeast Operations Division and Southwest Operations Division.

The Custody Intelligence Unit Supervisor shall be responsible for maintaining Informant and Source of Information (SOI) files generated within the Custody Operations Command.

A separate file shall be maintained on each Informant and SOI. These files shall be the complete set of records about the information provided by the Informant or SOI; shall enable review and evaluation of information given by the Informant or SOI; shall be available for discovery purposes when legal authority is provided; and shall minimize incidents that could be used to question the integrity of deputies/investigators or the reliability of the Informant or SOI. Informant and SOI files shall be maintained and locked in a secure area.

Access to Informant and SOI files shall be restricted to the Sheriff, the Undersheriff, the Investigations & Special Operations Command Assistant Sheriff, the Constitutional Policing Advisor, the Investigations Division Commander, the Special Investigations Bureau Captain, the Criminal Investigations Bureau Captain, the Special Investigations Unit Supervisors, the Custody Intelligence Unit Supervisors, and the Informant Handler or their designees. Members are prohibited from maintaining their own databases, files, and logs on SOIs and Informants.

608.2.1 FILE SYSTEM PROCEDURE

Each Informant file shall be coded with an assigned Informant Control Number (ICN). The Special Investigations Bureau Captain or the Criminal Investigations Bureau Captain shall assign the ICN from their respective Master Control Logs. An Informant packet shall be prepared to correspond to each Informant file. The Informant file shall contain the following:

- (a) Informant Cover Sheet
- (b) Informant Checklist
- (c) Signed Approval to Operate Informant
- (d) Informant Personal History
- (e) Signed Informant Admonishment
- (f) Signed Informant Agreement

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

- (g) Signed Paid Informant Admonishment (If applicable)
- (h) Informant Compensation Record (If applicable)
- (i) Informant Receipt of Payment (If applicable)
- (j) Informant Update/Yearly Audit
- (k) Informant Performance Record
- (l) Copy of Informant's criminal history (CII/FBI/warrant checks)
- (m) DMV printouts to include driver's license, driver history, and vehicle registration
- (n) Informant's photograph and fingerprints (If applicable)
- (o) Copy of Informant's arrest report (If applicable)
- (p) Copy of the Orange County Informant Index card (DA-OCII). The original OCII card shall be forwarded to the to Orange County District Attorney's OCII Coordinator.
- (q) Informant Activity Log
- (r) Reports resulting from the Informant's work (If applicable)
- (s) Consideration Letter (If applicable)
- (t) Current Jail Management System documents related to the Informant, including any Jail Incident Reports, Classification Review Forms, and any grievances directly related to the inmate's Informant status (If applicable).

608.2.2 SOURCE OF INFORMATION

A Source of Information (SOI) is an inmate who provides information to law enforcement regarding criminal activity, or any non-criminal activity related to jail security; but has not been directed to do so by law enforcement, and, upon providing such information, the inmate has not requested or been offered, nor received any benefit or consideration in return for the information. An SOI is not an Informant, a victim or potential suspect. When an inmate is a potential SOI the following protocols shall be followed:

- (a) Every instance in which a deputy is contacted by a potential SOI, the following admonishment shall be read:

"Your disclosure of any information to me is voluntary and completely of your own free will. You will not receive leniency as it pertains to your prior, current, or future cases. You will not receive any special privileges or compensation. Do you understand what I have read to you? Do you still want to talk to me?"

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

- (b) The deputy shall document on an intra-departmental memo the admonishment was given and the inmate's response. All information provided by the SOI and the outcome of any action taken shall be included in the memo and addressed to the CIU Sergeant. This memo will be kept in the SOI's file. The Memorandum does not absolve the Member of their responsibilities to document the incident on the appropriate report.
- (c) If the potential SOI agrees to voluntarily disclose information to the deputy without a benefit or consideration in return, then the deputy will debrief the inmate and preliminarily vet the information. If the information appears credible and the deputy wishes to act upon the information, they shall notify their immediate supervisor and the CIU Sergeant. The CIU Sergeant will begin the SOI documentation and approval process.
- (d) No deputy will obtain information from a potential SOI who requests a benefit after being read the above admonishment. The CIU Sergeant will be notified if the individual chooses not to provide information unless they receive a benefit. The CIU Sergeant, in consultation with the Criminal Investigations Bureau Captain, will determine whether the person should be documented as an Informant in accordance with this policy.
- (e) In all cases involving an SOI, the CIU Sergeant will confirm the SOI does not meet the definition of an Informant. If the SOI has a previous OCII entry, the SOI file will reflect the inmate's prior Informant status and handling law enforcement agency. The designation of an inmate as an SOI shall be reviewed by the Criminal Investigations Bureau Captain and, if there is any question about whether the inmate may meet the definition of an informant, the Criminal Investigations Bureau Captain will consult with the Orange County District Attorney's Office.
- (f) A repeating SOI is an inmate who has voluntarily provided information a third time within the inmate's current incarceration period. If an inmate is a repeating SOI, the CIU Sergeant shall interview the inmate to determine if the inmate is seeking a benefit. The CIU Sergeant shall reiterate to the inmate that OCSD Policy prohibits promises or offers of consideration when inmates provide information to law enforcement. The CIU Sergeant shall document this interview in an internal memorandum and include it in the SOI file. The CIU Captain's audit of the SOI file shall confirm that the CIU Sergeant interviewed the repeating SOIs and the SOI file contains complete documentation and further action as necessary.
- (g) If an SOI provides information regarding an exigent or quickly developing situation, staff may act upon the SOI's information to ensure the safety and security of a facility, staff, or inmates. Staff shall admonish the SOI and notify their immediate supervisor and the CIU Sergeant as soon as practical. Under no circumstances will a benefit be provided to an SOI. All SOI's will be issued a Source Control Number (SCN). This is a permanent number that is specific to the individual SOI and shall be used anytime an SOI is reactivated. The SCN consists of the letters SCN, followed by the last two digits of the current calendar year, a hyphen, and a sequential number (Example: SCN16-001). All SOI files will be maintained by the CIU Sergeant. The file will be tracked via the SCN.
- (h) A copy of any Department Reports generated because of information provided by the SOI will be maintained in the SOI file.

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

- (i) SOI files have a 99 year retention period, beginning on the date of inactivation. The transitory nature of the County Jail population requires OCSD to maintain consistency in the records derived from a particular inmate. If an SOI were released from OCSD custody and later returned to an OC Jail facility, their previous SCN number which is specific to the individual SOI, and their respective SOI file shall be reopened and updated with any additional and continuing information.
- (j) The Criminal Investigations Bureau Captain shall audit all active SOI files quarterly. The audit will review all SOI records, confirm accuracy, and ensure all records are up to date within the SOI file. The audits will be documented on the SOI Quarterly Audit Form within the SOI file. For more information regarding this audit please refer to section 608.11.
- (l) Annually, and no later than January 15th of the calendar year, the Criminal Investigations Bureau Captain shall provide the OCII Coordinator at the Orange County District Attorney's Office a list of all SOI files created in the preceding calendar year as part of the OCSD/OCDA Annual Informant/SOI Joint Audit. Any errors or omissions identified by OCSD or OCDA shall be corrected immediately. The Criminal Investigations Bureau Captain will provide audit results, deviations from policy (if any), and areas for improvement identified (if any) to the Division Commander of Investigations.

608.2.3 FILE SYSTEM PROCEDURE FOR SOURCES OF INFORMATION (SOI)

Each SOI file shall be coded with an assigned Source Control Number (SCN). The Criminal Investigations Bureau Captain shall assign the SCN from the Master Control Log. An SOI history shall be prepared to correspond to each SOI file. The SOI file shall contain the following:

- (a) SOI Cover Sheet
- (b) SOI Approval Form
- (c) SOI Quarterly Audit Form
- (d) SOI's Booking Photograph
- (e) Copy of SOI's criminal history (CII/FBI/warrant checks)
- (f) Copy of the Orange County Sheriff's Department Source of Information Card. The original SOI card shall be forwarded to Orange County District Attorney's Office upon creation of the SOI file.
- (g) SOI Memo (to include admonishment)
- (h) All reports resulting from the information provided by the SOI
- (i) SOI Activity Log
- (j) Current Jail Management System documents related to the SOI, including any Jail Incident Reports, Classification Review Forms, and any grievances directly related to the inmate's SOI status (If applicable)

Informants/Sources of Information

608.3 USE OF INFORMANTS

Prior to approval supervisors will consider the suitability of the informant. Informants may not be suitable due to their criminal history. Those serious offenses involving violence or sex crimes, etc. should be considered before approval to avoid compromising an investigation or embarrassing the Department. Before using an individual as an Informant, the Informant packet must be completed and approved by the proper Special Investigations Unit Supervisor or Custody Intelligence Unit Supervisor, and the Special Investigations Bureau Captain or the Criminal Investigations Bureau Captain. In the event a new, unsigned Informant can provide information or assistance crucial to a quickly developing investigation, the Informant packet shall be completed as soon as practical. However, unit supervisor approval is required. An OCII card shall be submitted to the Orange County District Attorney's Office for all Informants at the first possible opportunity, but no later than five business days from the date the Informant Admonishment and Informant Agreement forms are signed by the Informant.

608.3.1 TYPES OF INFORMANTS

Defendant Informant: A Defendant Informant is an Informant who has a pending criminal matter, including probation and/or parole violations; or who awaits sentencing after conviction; or is serving a custodial sentence; or is on probation or parole. A Defendant Informant acts under the specific direction of law enforcement to secure information and/or may have been offered, promised, or provided a benefit or any type of consideration for the information he/she provides.

In-Custody Informant: An In-Custody Informant is "a person, other than a co-defendant, percipient witness, accomplice, or co-conspirator whose testimony is based upon statements made by the defendant while both the defendant and the Informant are held within a correctional institution." Penal Code sections 1127a, 1191.25 and 4001.1 govern their use.

Paid Informant: A Paid Informant is an out of custody individual, excluding a Defendant Informant, who receives any form of consideration from law enforcement in return for information regarding criminal activity.

Accomplice Informant: An Accomplice Informant is an Informant who has a pending criminal matter and provides information about one or more co-defendants in return for a benefit or consideration in the pending criminal matter.

608.4 INFORMANTS REQUIRING SPECIAL REVIEW

Some persons being considered for use as Informants may require special review for approval before being activated. These include juveniles, persons on probation or parole, or those who hold

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

privileged positions, e.g., attorneys, doctors, clergy, reporters, persons in the Witness Protection Program and former law enforcement officers.

Persons on probation or parole present specific concerns. The Department cannot place a probationer or parolee in a position that violates the terms or conditions of their probation or parole. The Department has no authority to override the conditions set forth by a court or the authority of the controlling agency.

Guidance from the Constitutional Policing Advisor, County Counsel and the Orange County District Attorney's Narcotics Enforcement Team should be sought when persons of privileged status are being considered for use as Informants.

608.4.1 INFORMANTS ON COUNTY PROBATION

The handling deputy/investigator shall determine if the person is on Summary (Informal) Probation or Formal Probation. If the person is on Formal Probation the handling deputy/investigator shall do the following:

- (a) Contact the court or probation officer to determine if the Informants use will not violate the conditions of their probation;
- (b) Document the concerns if notification will jeopardize a major case investigation.

If the use of the Informant is in conflict with the terms of their probation, the handling deputy/investigator can attempt to amend the terms of probation through the court. If the court requests written documentation, the handling deputy/investigator shall submit the request on Department letterhead with the proper Departmental approvals. A request should be made with the court to refrain from placing a copy of the letter in the probationer's file to preserve the confidentiality of the Informant.

608.4.2 INFORMANTS ON FEDERAL PROBATION

The handling deputy/investigator shall contact the person's probation officer. Federal probationers can only be used as Informants when the court of jurisdiction has been formally contacted and approved for use. A formal request to use a federal probationer as an Informant shall be made on Department letterhead with the proper Departmental approvals. If the request is approved, the probation officer shall complete and submit the necessary paperwork to the concerned federal court for approval.

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

608.4.3 INFORMANTS ON STATE PAROLE

The handling deputy/investigator shall contact the appropriate state agent to request to use the parolee as an Informant. The name of the agent contacted shall be documented on the Informant History form. If a written request is made by the agent, the handling deputy/investigator shall submit the request on Department letterhead with the proper Departmental approvals, describing in general details the activity in which the parolee will be used, the duration of use and any anticipated travel.

608.4.4 INFORMANTS ON FEDERAL PAROLE

Currently, the United States Parole Commission discourages the use of federal parolees as Informants. If the use of a federal parolee is essential in a major case, the Assistant Sheriff commanding the Investigations & Special Operations Command shall submit a written request to the Chairperson of the United States Parole Commission for the use of that Informant. If the Commission approves the request, the Informant may be used for only 90 days. Extensions may only be requested by the Assistant Sheriff through the Commission.

608.4.5 JUVENILE INFORMANTS

The use of Juvenile Informants under the age of 13-years is prohibited. Except as provided for in the enforcement of the Tobacco Enforcement Act, Business & Professions Code Section 22950, et seq., the use of any Juvenile Informant between the ages of 13 and 18 years is only authorized by court order obtained pursuant to Penal Code Section 701.5.

For purposes of this policy, a "Juvenile Informant" means any juvenile who participates, on behalf of this Department, in a prearranged transaction or series of prearranged transactions with direct face-to-face contact with any party, when the juvenile's participation in the transaction is for the purpose of obtaining or attempting to obtain evidence of illegal activity by a third party and where the juvenile is participating in the transaction for the purpose of reducing or dismissing a pending juvenile petition against the juvenile.

608.5 GUIDELINES FOR HANDLING INFORMANTS

All Informants are required to sign and abide by the provisions of the Department Informant Admonishment form. The deputy/investigator using the Informant shall discuss each of the provisions of the Admonishment form with the Informant. No personnel assigned to Custody Operations shall handle informants.

Members of the Department shall not make any promises or representations, express or implied, to any Informant regarding his or her pending criminal matters, or those of any other person(s), without the concurrence of the OCII Coordinator.

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

608.5.1 RELATIONSHIPS WITH INFORMANTS

No Member of the Orange County Sheriff's Department shall knowingly maintain a social relationship with an Informant while off duty, or otherwise become intimately involved with an Informant. Members of the Orange County Sheriff's Department shall neither solicit nor accept gratuities nor engage in any private business transaction with an Informant.

To maintain officer/Informant integrity, the following must be adhered to:

- (a) Deputies/investigators shall not withhold the identity of an Informant from their superiors;
- (b) Identities of Informants shall otherwise be kept confidential;
- (c) Criminal activity by Informants shall not be condoned;
- (d) Informants shall be told they are not acting as police officers, or employees of the Orange County Sheriff's Department and that they shall not represent themselves as such;
- (e) The relationship between deputies/investigators and Informants shall always be ethical and professional;
- (f) Social contact shall be avoided unless necessary to conduct an official investigation, and only with prior approval of the appropriate Special Investigations or Custody Intelligence Unit Supervisor. They shall not meet with an Informant while off-duty;
- (g) Deputies/investigators shall not meet with Informants unless accompanied by at least one additional deputy/investigator or with prior approval of the appropriate Special Investigations or Custody Intelligence Unit Supervisor;
- (h) In all instances when Department funds are paid to Informants, a voucher shall be completed in advance itemizing the expenses.

608.6 INFORMANT CONSIDERATION AND BENEFITS

Any and all benefits and consideration given to an Informant will be recorded and documented in the Informant's file.

Consideration and benefits include, but are not limited to, the following:

- (a) Financial – Monetary payments of any kind including, but not limited to, room and board, payment of debts, cash, meals, use of vehicles, cell phone bills or other Informant expenses.
- (b) Release from custody – Leniency in an arrest or booking, assistance with an own-recognition (OR) release or request for a lowering of bail.
- (c) Charging leniency – Leniency shown in the filing of charges and enhancements, including the non-filing of charges.
- (d) Delay – Continuances in arraignment, pre-trial motions and sentencing.

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

- (e) Disposition – Dismissal or reduction in charges, custody time, probation terms or favorable input by a deputy district attorney or investigation deputy/investigator made directly to the court.
- (f) Favorable intervention – Favorable action taken on behalf of the Informant with other governmental agencies, such as the Department of Motor Vehicles, the Department of Homeland Security, or employers.
- (g) In custody – A change in housing location, non-collect phone calls, extended visits, extra jail issue, extra food or placing money in an Informant's jail account.
- (h) Immunity

608.6.1 INFORMANT PAYMENT PROCEDURES

The payment of money to any Informant must be done in accordance with the law and Department policy. Additionally, to maintain a good accounting of such funds requires a strict procedure for disbursements.

608.6.2 PAYMENT FORMULA

The amount of funds to be paid to any Informant shall be evaluated against the following criteria:

- [REDACTED]

The Informant Handler shall discuss the above factors with the appropriate Special Investigations or Custody Intelligence Unit Supervisor and arrive at a recommended payment. The fee paid to an Informant shall be based on the type of information given and to what extent the information given assists in an investigation.

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

608.6.3 CASH DISBURSEMENT POLICY

The following establishes a cash disbursement policy for Informants. No Informant shall be told in advance or given an exact amount or percentage for services rendered.



608.6.4 PAYMENT PROCESS

Fees paid to Informants and expenditures incurred during investigations shall comply with the following limitations and authorizations.

Informant fee limits:

\$1 - \$500: Special Investigations or Custody Intelligence Unit Supervisor approval

\$501 - \$1,500: Special Investigations Bureau Captain approval or Criminal Investigations Bureau Captain approval

\$1,501 - \$3,500: Investigations Division Commander approval

\$3,501+: Investigations & Special Operations Command Assistant Sheriff approval

To complete the Informant payment transaction, the Informant Handler and witness shall pay the Informant. The Informant shall sign the Receipt of Payment form indicating the amount received, the date received and the names of the deputies/investigators he/she received the funds from. The Informant Handler and witnessing deputy/investigator shall sign the Receipt of Payment form. The signed form shall be placed in the Informant's file.

Upon payment to the Informant, the Informant Handler shall complete an expense voucher. The Informant Handler shall write the voucher number on the Informant Payment Receipt form. The voucher copies shall be disbursed in the proper manner and the Informant Payment Receipt form shall be placed in the Informant file.

If the payment amount exceeds \$500.00, a statement of the Informant's involvement in the case shall be memorialized on an Internal Memorandum, addressed to the Special Investigations Bureau Captain or the Criminal Investigations Bureau Captain, and placed in the Informant's file.

Each Informant receiving a cash payment shall be informed of his or her responsibility to report the cash to the Internal Revenue Service (IRS) as income.

608.7 INACTIVATING INFORMANTS

Informants may be inactivated at any time. There are several reasons detailed in the Informant Update form. When the handling deputy/investigator determines the Informant should be inactivated, he/she shall submit an Informant Update form stating the reason and submit it to

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

the appropriate Special Investigations or Custody Intelligence Unit Supervisor for review. Once reviewed, the unit supervisor shall forward the file to the Special Investigations Bureau Captain or Criminal Investigations Bureau Captain. If approved by the Bureau Captain for inactivation, the unit supervisor shall place the Informant file into the "inactive" file. Inactive files shall be retained for a period of 99 years.

When the handling deputy/ investigator suspects that an Informant is undesirable or unreliable, the handling deputy/ investigator shall complete the Informant Update form checking the unreliable box stating the reason, then submit it to the appropriate Special Investigations or Custody Intelligence Unit Supervisor for review. Once reviewed, the unit supervisor shall forward the file to the Special Investigations Bureau Captain or Criminal Investigations Bureau Captain. If approved by the Bureau Captain for inactivation, the unit supervisor shall place the Informant file into the "undesirable/unreliable" file.

The handling deputy/investigator should then notify the Informant as to their change in status and make it clear to the Informant he/she shall no longer be providing services to the Department. In all cases, the OCII Coordinator at the District Attorney's Office shall be notified whenever an Informant is classified as undesirable and/ or unreliable. Additionally, if an Informant was used in a criminal case that was filed by the District Attorney's Office and it was later determined the Informant was untruthful and/ or unreliable, the handling Deputy District Attorney on the criminal case shall be notified.

608.8 NOTIFICATION AND INFORMATION SHARING WITH THE DISTRICT ATTORNEY'S OFFICE

It is essential that deputies and/or investigators inform the District Attorney's Office when a case involves an Informant or an SOI in any capacity. This is vital in order to ensure the proper evaluation of discovery and any Brady material at the earliest possible time, to determine the best effective filing strategy, and to preserve the integrity of the criminal prosecutions within Orange County. (**Brady v. Maryland** (1963) 373 US 83, 87). The case agent is responsible for notifying the OCII Coordinator if their case involved an SOI or Informant. Additionally, the case agent is responsible for notifying the OCII Coordinator of any potential exculpatory information. For example, if an Informant is related to a criminal matter, the prosecutor may consider such information when making a filing determination to better protect and ensure the confidentiality of the Informant. Also, if an Informant or SOI is related to a criminal matter, the prosecutor will need to request all appropriate discovery materials under federal, state, and statutory laws to meet their obligations as part of the prosecution team.

To assist in protecting the integrity of the Orange County criminal justice system and fulfilling OCSD's constitutional and ethical obligations, OCSD shall notify OCDA of any Informants or Sources of Information by providing OCDA with the OCII card or the SOI card. OCII cards shall be submitted to the Orange County District Attorney's Office at the first possible opportunity, but no later than five business days from the date the Informant Admonishment and Informant Agreement

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

forms are signed by the Informant. SOI cards shall be submitted to the Orange County District Attorney's Office at the first possible opportunity, but no later than five business days from the date the SOI provides information. OCSD shall notify OCDA whether an Informant had previously provided information in a custody setting as an SOI. The respective Informant and SOI files will include all relevant materials regarding the specific cooperating individual in possession of OCSD.

In the event OCDA receives an SOI notification from OCSD where the individual has been previously entered into the OCII database due to a submission from another law enforcement agency, OCDA shall notify the Captain of the Criminal Investigations Bureau of the OCII submission and the identity of the submitting law enforcement agent and agency. The Captain of the Criminal Investigations Bureau will document the information received in the SOI file.

The OCSD/OCDA Annual Informant/SOI Joint Audit will be conducted to ensure compliance with the relevant policies of both agencies. For more information regarding this audit please refer to sections 608.2.2(11), 608.10, and 608.11, and to the Orange County Sheriff's Department and Orange County District Attorney's Office Memorandum of Understanding Regarding Custodial Informants and Sources of Information.

608.9 IN-CUSTODY INFORMANT-SCREENING

When a deputy has contact with an inmate who expresses a desire to be an Informant, the following protocols shall be followed:

- (a) Refer the inmate's request/information to the Custody Intelligence Unit (CIU). The CIU Sergeant will evaluate the request based on safety, security and the credibility of the information to be provided. The Criminal Investigations Bureau Captain will consult with the Investigations Division Commander and Executive Command. The Sheriff must approve the decision to utilize an Informant within the jail prior to the use of an Informant. In the event the Sheriff is unavailable, and approval is immediately required due to an exigent situation, then the Undersheriff may approve the use of the Informant. In that case, the Undersheriff must notify the Sheriff at the earliest possible opportunity.
- (b) If the information is determined to best benefit an OCSD investigative detail or outside agency, the CIU Sergeant will forward the information, once vetted, to the appropriate OCSD detail or outside agency.
- (c) If the information is jail-related and it is determined CIU personnel should manage the Informant, CIU shall coordinate with the Orange County Informant Index (OCII) Coordinator to determine eligibility for consideration, in conjunction with OCDA's Cooperating Informant Review Committee (CIRC) approval, prior to using the Informant.
- (d) In the event a new, unsigned Informant can provide information or assistance crucial to a quickly developing investigation, the Informant packet shall be completed as soon as practical. However, unit supervisor approval is required. An OCII card shall be submitted to the Orange County District Attorney's Office for all Informants.

Informants/Sources of Information

- (e) Any time an Informant is used in the jail, the Custody Intelligence Unit Supervisors will ensure the use of the Informant does not involve eliciting information from a person regarding any of his or her pending criminal case(s).

608.10 INFORMANT AUDITS

An audit of active Informant files shall be performed on a yearly basis by the Special Investigations Bureau Captain and the Criminal Investigations Bureau Captain. These audits are in addition to the OCSD/OCDA Annual Informant/SOI Joint Audits. The unit Supervisors shall obtain all updated material and information from the deputies and investigators who manage the Informants. The unit Supervisor shall review the material for completeness and thoroughness prior to the audit and sign the Informant Update Sheet. The approved form and material shall be forwarded to the Special Investigations Bureau Captain or the Criminal Investigations Bureau Captain for approval. The respective Bureau Captain shall place the update form and material into the Informant packet file.

Information/action to be included in the yearly audit shall include:

- (a) Informant Update Form;
- (b) Updated copy of criminal history (CII/FBI/ warrant checks);
- (c) Updated copy of DMV inquiries to include driver's license, driving history and vehicle registration;
- (d) Informant Performance Record;
- (e) Informant Compensation Record and Receipt of Payment Form;
- (f) Copy of Letter(s) of Consideration, if appropriate;
- (g) New Informant photograph if older than two (2) years.
- (h) New Informant Admonishment form (For informants active over 12-months)
- (i) Supervisor's Annual Audit. This audit shall be conducted yearly on active Informants. The audit includes questions that shall be asked of each active Informant. Responses should be documented on the Audit form and maintained inside the Informant file.
- (j) Updated jail management system documents (For Jail Informants)

Additionally, the Special Investigations Bureau Captain and the Criminal Investigations Bureau Captain shall provide the OCII Coordinator at the Orange County District Attorney's Office a list of all Informant files created in the preceding calendar year as part of the OCSD/OCDA Annual Informant/SOI Joint Audit. Any errors or omissions identified by OCSD or OCDA shall be corrected

Informants/Sources of Information

immediately. The respective Bureau Captain will provide audit results, deviations from policy (if any), and areas for improvement identified (if any) to the Division Commander of Investigations.

608.11 SOURCE OF INFORMATION AUDITS

All SOI files of inmates currently in-custody shall be audited on a quarterly basis by the Criminal Investigations Bureau Captain. Upon the SOI's release from custody, a final audit shall be completed. The unit Supervisor shall review the material in the file for completeness and thoroughness. Updated jail management system documents shall be added to the file. The CIU Supervisor and Criminal Investigations Bureau Captain shall sign the SOI audit form. SOI files will be retained for a period of 99 years from the date of inactivation. The Constitutional Policing Advisor, Assistant Sheriff of Investigations and Special Operations Command shall be notified of the completion of the quarterly SOI audits. The Criminal Investigations Bureau Captain will provide audit results, deviations from policy (if any), and areas for improvement identified. These audits are in addition to the OCSD/OCDA Annual Informant/SOI Joint Audits.

608.12 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1. The deputy/investigator conducting [REDACTED] will be solely responsible for coordination with the District Attorney's Office and any other state, federal, or local agency.

[REDACTED]

- i. The Homicide Sergeant, in consultation with the Criminal Investigations Bureau Captain, will also review the proposed [REDACTED] to ensure it is compliant with the law.

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

ii. If there are legal questions regarding the proposed [REDACTED] guidance will be sought from the Constitutional Policing Advisor, County Counsel and/or the District Attorney's Office.

iii. The Special Services Bureau Captain shall be notified of all [REDACTED] prior to them starting. The Special Services Bureau Captain will be responsible for notifying the Custody Chain of Command, including the Commander of the respective facility.

3. A master department report (DR) number will be drawn for each [REDACTED]

4. [REDACTED] will be approved by the Undersheriff or his/her designee and documented in the jail management system.

5. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

6. The Homicide Sergeant will maintain a case log which will document the beginning and ending date and time of the [REDACTED]

7. The file will be maintained for a period of three years from the termination [REDACTED]. If the [REDACTED] leads to criminal charges or was conducted as part of a criminal investigation, the file will not be destroyed until the court proceedings and any appeal are final. The Homicide Sergeant will be responsible for confirming with the prosecutorial agency that the case is final adjudicated and that the defendant's appellate rights have expired.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

is approved, the outside agency shall abide by all terms and conditions of the agreement.

1. The agency conducting the [REDACTED] will be solely responsible for coordination with the District Attorney's Office and any other state, federal, or local agency.

2. At all levels of approval, Sheriff's Members will review the proposed [REDACTED] to ensure it does not violate the inmate's Sixth Amendment rights, which prohibit the government from deliberately eliciting incriminating statements from the defendant after the Sixth Amendment right to counsel attaches. See *Massiah v. United States*, 377 U.S. 201 (1964). The Sixth Amendment's right to counsel attaches when a criminal complaint is filed against the defendant or the defendant is indicted by the grand jury.

Orange County Sheriff-Coroner Department

Orange County SD Policy Manual

Informants/Sources of Information

4. [REDACTED] will be approved by the Undersheriff or his/her designee and documented in the jail management system.
5. [REDACTED]
[REDACTED] The file will include a copy of the executed [REDACTED] agreement or approval letter, a copy of any [REDACTED] [REDACTED] documentation of any and [REDACTED] and a copy of any and all reports generated by OCSD jail personnel as a result of the operation.
6. The CIU Sergeant will maintain a case log which will document the beginning and ending date and time of the [REDACTED]
7. The file will be maintained for a period of three years from the termination of [REDACTED]. If any cases result from [REDACTED], the file will not be destroyed until the court proceedings and any appeal are final. The CIU Sergeant will be responsible for confirming with the prosecutorial agency that the case is final and that the defendant's appellate rights have expired.