

JAILHOUSE INFORMANT POLICY

Because some jail or prison inmates have obtained information about crimes surreptitiously from public officials or sources and falsely attributed it to defendants in an effort to bolster the credibility of other offered information, Criminal Division supervisors and deputies must use discretion and care in determining whether and how to use information provided by such informants, lest a miscarriage of justice occur.

It is the policy of the Criminal Division not to use such information except as specified below. This policy applies to any information offered to the prosecution by an incarcerated person, whether confined in a local, state or federal facility.

1. Testimonial use of information provided by jailhouse informants must be approved by the Senior Assistant Attorney General. The Senior Assistant shall consider whether any of the following circumstances exists:
 - a. The informant passed a polygraph test conducted for the purpose of determining his veracity, and administered by a California Department of Justice polygrapher or by a law enforcement agency polygrapher whose examination has been reviewed by a California Department of Justice polygrapher who is satisfied that the examination was reliable.
 - b. There is an intelligible tape recording of the declarant making the statements reported by the informant.
 - c. There is corroborative evidence.
 - d. The informant has a demonstrable record of reliability or has provided information that could not reasonably have been obtained from public sources.
 - e. It is in the interests of justice that the informant be permitted or required to testify; the reasons for this conclusion shall be stated in writing in a memorandum for record.

2. Investigative use of information provided by jailhouse informants, to include use in securing arrest and search warrants, must be approved by the Senior Assistant Attorney General, a Supervising Deputy Attorney General, or a Trial Coordinator. Supervising Deputies and Trial Coordinators should consult the Senior Assistant in advance when appropriate, and in any event must promptly inform the Senior Assistant of the decision and its circumstances. In determining whether to authorize investigative use, the supervisor shall consider whether any of the following circumstances exists:
 - a. The information can be demonstrated to be sufficiently reliable to support a warrant;

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- b. The nature of the source of the information, and any information undermining the reliability of the information, has been disclosed to any judicial officer asked to review it;
 - c. The gravity of the offense compels investigation notwithstanding doubts as to reliability;
 - d. Corroborative information might reasonably be obtained by investigation.
3. Administrative use of information provided by jailhouse informants, to include reports made to prison or jail authorities or other appropriate persons, must be approved by the Senior Assistant Attorney General, a Supervising Deputy Attorney General, or a Trial Coordinator, who shall determine whether such use is reasonable. Any such report shall include a cautionary warning identifying the nature of the source, and stating whether the informant has or has not been determined to be reliable. Any Supervising Deputy or Trial Coordinator approving such use shall inform the Senior Assistant in sensitive cases.