

UTILIZATION OF INFORMANTS AND OPERATORS

The District Attorney's Office considers ethics and professionalism to be of paramount importance. We have an obligation pursuant to *Brady v. Maryland* to disclose to the defense anytime a witness has been an informant in the past, is currently acting as an informant, or has expressed a desire to be an informant in the future. This requires excellent communication between law enforcement and the District Attorney's Office, as well as between prosecutors within our office. This also requires excellent record keeping on the part of law enforcement officers utilizing informants. Clear and complete written records need to be maintained documenting the utilization of the informant.

These informant policy guidelines serve to allow additional flexibility for the officers working with informants. Close or marginal cases will arise in which the applicability of the guidelines may be difficult to determine. In such questionable cases, it is requested that the officer operating under these guidelines refer such questions to a Chief Deputy District Attorney for approval, rather than interpreting the policy to mean approval by this office is not necessary.

THE USE OF INFORMANTS WHERE NO CASE HAS BEEN FILED

If a person is arrested or contacted by law enforcement and the individual has indicated a desire to provide information in exchange for money or some type of leniency by the agency or the District Attorney, the following rules shall be followed:

- a) If the person is arrested for possession of controlled substances and the amount does not exceed one-half ounce (or, in the case of marijuana, one pound), the agency may strike any kind of bargain seen as desirable by the agency without the approval of the District Attorney, unless such informant activity is prohibited by some other section of this policy (e.g., the arrestee has an attorney on another case; has no-snitch probation clause, is currently on probation, etc.). If the person is arrested for cultivation of marijuana and the officer is going to handle it as a simple possession (five small plants, for example), this same policy applies.

If the person is arrested or is a suspect in any other felony case, no matter what the charge, no promise of leniency shall be made without the approval of the District Attorney. If the person has prior convictions for serious or violent felonies, family violence, driving under the influence or is a sex registrant, no promise of leniency shall be made without prior approval of the District Attorney. The agency shall not make a deal with the suspect to withhold the filing of paperwork in exchange for information or informant activity without the approval of the District Attorney.

- b) If the potential informant is on probation, the law enforcement agency must seek District Attorney approval. Generally, the Office will not work with defendants on probation for those listed offenses. (See *Obtaining the Approval of the District Attorney*.)
- c) In unfiled misdemeanor cases, with the exceptions noted below, the agency may strike any kind of bargain seen as desirable by the agency without the approval of the District Attorney. The agency may not strike a bargain with a suspect on part of a case and refer the other part of the case for prosecution, i.e., a suspect who is arrested for being under the influence of a controlled substance and for domestic violence cannot work off the being under the influence count, while the domestic violence count is referred for prosecution.
- d) In driving while under the influence of alcohol/drugs cases, child support cases, family violence cases, cases where restitution is involved and misdemeanor sex offense cases, (647(a), 314 P.C.), the agency shall secure the approval of the District Attorney. (See *Obtaining the Approval of the District Attorney*.)
- e) Any time an informant becomes a material witness on any case, including a case that is unrelated to the informant agreement, it is the agency's responsibility to notify the District Attorney's Office of the person's status as an informant and to provide the District Attorney's Office with an accounting of all benefits received by the informant.
- f) The DDA will make every effort to protect the identity of the informant to the extent allowed by law and the agreement. This may mean not calling the informant as a witness depending on the importance of the case. Also, on close cases this means the DDA may meet with the assigned judge in camera to obtain guidance on whether to discover the witness's role as an informant.

FILED CASES

In all cases where a complaint has been filed, the District Attorney shall approve all informant agreements.

REPRESENTED INFORMANTS

In those cases where law enforcement feels it cannot deal with or trust the defendant's attorney, then the defendant or suspect cannot be used as an informant. Law enforcement shall not interfere in the attorney-client relationship by encouraging or suggesting that the potential informant switch attorneys.

In cases where the defendant or suspect purports not to be represented by an attorney, law enforcement is advised to obtain either a written or taped verification of that fact as protection for future litigation, and to check with the District Attorney or examine the court file to be sure the suspect is unrepresented.

PROBATION “NO-SNITCH” CLAUSES

If a defendant is on probation under terms prohibiting informant activity, then the defendant cannot be used as an informant. Any exception to this rule must be approved by the Chief Deputy District Attorney and the court.

USE OF JUVENILES AS INFORMANTS

The use of juveniles as informants is strongly discouraged. However, if the use of a juvenile informant is a critical need, it can be done with the approval of the department head of the law enforcement agency, by a Chief Deputy District Attorney, and by the parent or guardian.

DRUG COURT, PROP 36/OTHER TREATMENT COURTS AND USE OF INFORMERS

An informant cannot be currently participating in the Drug Court, Prop. 36, Veteran’s Court, Mental Health, Dual Diagnosis Court, and/or other Treatment Courts.

AGREEMENTS WITH INFORMANTS WHO FACE SIGNIFICANT CHARGES

Generally, the use of informants to work off serious and violent crimes, family violence cases, DUI cases, and any charges that could require 290 registration is not allowed. Any informant agreement that involves a defendant receiving leniency on a crime described above should be approved by the Chief Deputy District Attorney.

RESTITUTION

If an informant wants to obtain leniency on a case in which he or she owes restitution to the victim, the informant **must** pay the victim restitution as a condition of any agreement. This includes both filed and unfiled charges. The District Attorney must consider the potential impact on the victim prior to approving any informant agreement.

WRITTEN AGREEMENTS

In all cases, it is expected that a written agreement be obtained setting forth the specific conditions of the agreement upon which the individual works as an informant.

KEEPING TRACK OF INFORMANTS & BENEFITS

The law enforcement agency shall take reasonable and necessary steps to keep tabs on the whereabouts of the informant. The agency shall also keep detailed and accurate records of benefits conferred upon the informant. Benefits include, but are not limited to:

Dismissing charges

Rejecting charges

Holding back charges/delay in filing charges

Securing an O.R. release

Providing money

Food, housing, and/or cell phones

Dismissing traffic tickets

Benefits given to third party on behalf of informant

Any immigration assistance

Communicating with parole or probation officers to provide leniency on violations.

DISCOVERY

Promises, offers, benefits, and inducements extended to prosecution witnesses constitute evidence favorable to the defendant pursuant to *Brady v. Maryland*. Every effort must be made by law enforcement to keep the assigned prosecutor aware of the existence benefits conferred and tapes, photos, notes, follow-up reports, and reports of related cases. All questions about whether certain items are discoverable should be referred to the assigned prosecuting attorney.

RESPONSIBILITIES OF THE DISTRICT ATTORNEY

Evidence Code Sections 1040, et seq.

Deputy District Attorneys are responsible for knowing the law involving confidentiality of official information and identity of cooperating individuals, and shall be familiar with Evidence Code sections 1040, 1041, and 1042.

File Security

It shall be the duty of the District Attorney's Office to maintain a separate system of files, with limited and controlled access to house the Informant Index. Lists of informants provided to the District Attorney's Office by law enforcement will reside on a secure computer drive, accessible to the elected District Attorney or to the Chief Deputy DA in charge of *Brady* compliance.

Access to the Informant Index files shall be limited to the Chief Deputy DA in charge of *Brady* compliance.

OBTAINING THE APPROVAL OF THE DISTRICT ATTORNEY

In order to secure the approval of the District Attorney for the use of an informant in the above situations, and to obtain help from the District Attorney with regard to probation modifications, the agency shall contact one of the prosecutors handling Major Narcotics or Criminal Street Gangs or the Chief Deputy District Attorney who oversees narcotics or criminal street gang prosecutions.

