



FUGITIVE INVESTIGATIONS

Criminal Investigations

8.7 Confidential Sources and Investigative Use of Persons in Custody

CONFIDENTIAL SOURCES

- A. Purpose:** Sets forth the Marshals Service (USMS) policy concerning the use of confidential sources in furtherance of criminal, fugitive, and protective investigations.
- B. Authority:** The Director's authority to direct and supervise all activities of the USMS is set forth in 28 USC 561(g) and 28 CFR 0.111. The authority for the appropriation of funds necessary to carry out the functions of the USMS is set forth in 28 USC 561(i). The authority to pay "awards for information or assistance directly relating to violations of the criminal drug laws of the United States" is set forth in 28 USC 524(c)(l)(B). The authority to pay awards of up to \$25,000 "as a reward or rewards for the capture of anyone who is charged with a violation of criminal laws of the United States or any state or of the District of Columbia" is set forth in 18 USC 3059. Additional authority is derived from 18 USC 3059A and 3059B. Department of Justice policy concerning the use of confidential informants and cooperating individuals is set forth in Office of Investigative Agency Policies Resolution 18.
- C. Policy**
1. **Use of Confidential Sources Authorized:** The USMS may use confidential sources in furtherance of criminal, fugitive, and protective investigations, subject to applicable laws, rules, and regulations. Questions concerning whether or not a subject meets the definition of a confidential source shall be directed to the Investigative Operations Division (IOD), Domestic Investigations Branch (DIB).
 2. **Establishment of Confidential Source Files:** Each district shall establish and maintain a confidential source file for each confidential source utilized in the district. Confidential source files shall be stored in at least a Class 6 General Services Administration approved security container, or in a locked container in a USMS vault. Confidential source files shall not be stored in the same container as investigative files. Access to confidential source files shall be restricted to those USMS personnel with a bona fide need to know.
 3. **Suitability Determination**
 - a. Prior to utilizing a person as a confidential informant or cooperating individual, and prior to paying any source of information, a supervisor shall make a suitability determination based, at a minimum, upon the following factors, and shall document in the confidential source file that the suitability determination has been made:
 - (1) The person's age
 - (2) Whether the person has a criminal history, is reasonably believed to be the subject or target of a pending criminal investigation, is reasonably believed to pose a danger to the public or other criminal threat, or is reasonably believed to pose a risk of flight
 - (3) The person's alien status, if applicable

b2

- (4) Whether the person is a substance abuser or has a history of substance abuse
- (5) Whether the person is related to an employee of any law enforcement agency
- (6) Whether the person is a public official, law enforcement officer, member of the military services, a representative of the news media, or a party to privileged communications (e.g., a member of the clergy, a physician, or a lawyer)
- (7) The person's reliability and truthfulness, including the person's motivation
- (8) The extent to which the person's information is relevant to a present or potential investigation and can be corroborated
- (9) The USMS record, if any, of the person's past performance as a cooperating individual or confidential informant
- (10) Whether there is reason to believe that the person is presently serving as a cooperating individual or confidential informant for another law enforcement agency
- (11) When there is reason to believe that the person has previously served as a cooperating individual or confidential informant for another law enforcement agency, whether that law enforcement agency terminated that relationship for cause
- (12) The nature and importance of the information to a present or potential investigation
- (13) The risk that the person may adversely affect an investigation or potential prosecution
- (14) The risk of physical harm that may occur to the person, his or her immediate family, or close associates as a result of assisting the USMS

b. The U.S. Marshal (USM) or Chief Deputy U.S. Marshal (CDUSM) shall ensure that a semi-annual review is conducted of the suitability of each active confidential informant or cooperating individual. The supervisor conducting the review shall document in the confidential source file whether the person should be continued, deactivated, or terminated for cause as a confidential source.

c. If an active cooperating individual or confidential informant is arrested or believed to have engaged in unauthorized, unlawful conduct other than a traffic or petty offense, continued use of the person must be reviewed by the USM or CDUSM. Additionally, if more than one Federal law enforcement agency is involved in an investigation utilizing such person, coordination among all of the relevant agencies' senior field managers should occur. In situations where a prosecutor is participating in the conduct of the underlying investigation utilizing the person, or working with the person in connection with a prosecution, the controlling Deputy U.S. Marshal (DUSM) (or other participating Federal law enforcement agency) must immediately inform the prosecutor of the arrest or nature and extent of the alleged unauthorized, unlawful conduct.

4. **Special Approval Requirements**

a. **Juveniles:** Before utilizing juveniles as confidential sources, a deputy shall obtain, and document, the consent of the juvenile's parent(s) or legal guardian. The preferred method is to obtain the written consent of the parent or legal guardian.

b. **Persons on Federal/State Probation or Supervised Release:** Prior to utilizing a Federal or state probationer, parolee, or supervised releasee as a confidential source, a supervisor shall determine if the use of that person in such a capacity would violate the

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terms and conditions of person's probation, parole, or supervised release. Supervisors are encouraged to consult with the appropriate prosecutors prior to making such a determination. The determination shall be documented in the confidential source file. If it is determined that there would be a violation of probation, parole, or supervised release, prior to using the person as a confidential source, a supervisor shall obtain the permission of the relevant probation, parole, or supervised release official which, likewise, shall be documented in the confidential source file. If permission is denied, or it is inappropriate to contact the appropriate official, the USMS may, nevertheless, obtain authorization for such use from the appropriate court or a supervisor of the appropriate probation, parole, or supervised release official.

- c. **Witness Security (WitSec) Program Participants:** The use of WitSec participants as confidential sources requires the prior approval of the Assistant Director for Investigations and the Department of Justice (DOJ), Office of Enforcement Operations (OEO). All requests to use any current or past WitSec participant as a confidential source shall be directed to the Branch Chief, DIU, who will coordinate a review with WitSec and OEO. No interview shall be conducted, nor any contact made, with any WitSec participant, without the prior approval of the Branch Chief, DIU, or his or her superior.
- d. **Prisoners in the Custody of the USMS and Bureau of Prisons (BOP):**
 - (1) All requests for the use of an inmate in the custody of the USMS or BOP, or who are under BOP supervision (including prisoners assigned to halfway houses and community treatment centers), for investigative purposes must be approved by the Chief, DIU and OEO.
 - (2) If the inmate is a witness or a defendant in any legal action, documentation concerning the review and consent of the appropriate U.S. Attorney must accompany the initial request to IOD. The documentation must include the name of the U.S. Attorney or Assistant U.S. Attorney who reviewed and approved the request.
 - (3) None of the requirements of this section apply in the case of routine interviews of prisoners in a custodial setting. Furthermore, OEO approval is not required for the use by the USMS of a USMS prisoner to make telephone calls in furtherance of a USMS investigation in a custodial setting.
- e. **State or Local Prisoners:** The USMS shall comply with any applicable state or local laws, rules, and regulations pertaining to the use of state or local prisoners as confidential sources. Prior to using a state or local prisoner as a confidential source, the USMS should consult with the local U.S. Attorney's Office (USAO) and the appropriate state or local prosecuting authority.
- f. **Defendants in a Criminal Case:** If the subject is a defendant in a Federal criminal case, the USMS must obtain the approval of the appropriate U.S. Attorney (USA) or Assistant U.S. Attorney (AUSA) for use of the defendant as a confidential source. If the subject is a defendant in a state or local criminal case, the USMS must consult with the local USAO prior to using the defendant as a confidential source. The USMS should also consider consulting with the appropriate state or local prosecuting authority for defendants in state and local criminal cases.

5. **Technical Aids for the Detection of Deception:** At the discretion and approval of the USM or CDUSM, and with the consent of the person being assessed, technical aids for the detection of deception (such as a polygraph) may be used to assess the credibility of a confidential source or a potential confidential source. If technical aids for the detection of deception are used, examiners must be graduates of institutions providing training for this purpose. The use of any technical aids for the detection of deception shall be documented in a *Report of Investigation*, Form USM-11 and retained in the district confidential source file. A copy of the report shall also be forwarded to IOD for inclusion in the headquarters confidential source file.

6. **Registration of Confidential Sources:** After a suitability determination has been made by a

b2

supervisor, all confidential sources shall be registered in accordance with the procedures outlined in this directive, *Procedures Concerning the Use of Confidential Sources*. At the discretion of the Assistant Director, IOD, some or all of the registration requirements may be waived when circumstances demonstrate an unusual investigative need or an extraordinary need for security. Any waivers granted shall be documented and retained in the IOD confidential source file.

7. **Required Instructions for Confidential Sources**

- a. The following instructions shall be provided to each cooperating individual and confidential informant at the outset of the confidential source relationship, and to each paid source of information at the time of payment. The confidential source:
- (1) Shall not engage in any unlawful acts, except as specifically authorized by representatives of the USMS, and is subject to prosecution for any unauthorized, unlawful acts
 - (2) Shall provide truthful and complete information at all times
 - (3) Shall abide by the instructions of the USMS and must not take or seek to take any independent action on behalf of the United States Government (USG)
 - (4) Will not be an agent or employee of the USG and may not represent himself or herself as such
 - (5) Shall not engage in witness tampering, witness intimidation, entrapment, or the fabrication, alteration, or destruction of evidence
 - (6) Shall be liable for any taxes that may be owed on monies the USG pays to him or her
 - (7) Shall not receive a guarantee of any rewards, payments, or other compensation
- b. Other instructions:
- (1) When a confidential source is cooperating with the USMS in exchange for consideration by a prosecuting office(s), upon request of the confidential source, the controlling deputy shall advise the prosecuting office(s) of the nature and extent of the confidential source's assistance to the USMS, but cannot make any prosecutive or sentencing promises
 - (2) In cases involving foreign nationals, no promises or representations can be made regarding alien status and/or their right to remain in the United States
 - (3) The USG will strive to protect the confidential source's identity, but cannot guarantee that it will not be divulged
 - (4) The confidential source may not enter into any contracts or incur any obligations on behalf of the USG, except as specifically instructed and approved by the USMS
 - (5) For confidential informants and cooperating individuals, the controlling investigator shall review the above instructions with the person in written form.

8. **Notification of Deactivation or Termination of Relationship for Cause:** If the USMS determines that a confidential source should be deactivated, or that his or he relationship should be terminated for cause, the confidential source shall be notified if he or she can be located through reasonable efforts. Such notification shall be documented in writing in the district confidential source file, and a copy of this documentation shall be forwarded to IOD for inclusion in the headquarters confidential source file. Notification of termination of a confidential source for cause shall be witnessed by at least two deputies, whenever possible.

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9. **Confidential Source Handling;** All confidential source contacts shall be conducted in a strictly professional manner. Business or social contacts between USMS employees and confidential sources are prohibited. Contacts with confidential sources will be such that their knowledge of USMS facilities, operations, activities, and personnel is kept to the minimum necessary for their successful utilization. The USM, CDUSM, or Branch Chief of DIU may reassign a confidential source to the control of another deputy or office. At least two deputies must be capable of contacting a confidential source. Whenever practical, [REDACTED] deputies will be present at all contacts with the confidential source. All significant contacts with the confidential source and all significant information obtained from the confidential source will be documented in a Form USM- 11.

10. **Monetary Payments to Confidential Sources**

- a. All single payments of up to and including \$2,500 to a confidential source, with the exception of investigative expenses paid in accordance with existing policies, require the prior approval of an IOD Branch Chief. Single payments of more than \$2,500 and not exceeding \$10,000 require the prior approval of the Chief of Criminal Investigations, IOD. Single payments in excess of \$10,000 and not exceeding \$25,000 require the prior approval of the Assistant Director, IOD. Aggregate payments to a confidential source in excess of \$100,000 per fiscal year, or \$200,000 during any time period, require the review and approval of the Assistant Director, IOD, and shall comply with the requirements of Office of Investigative Agency Policies Resolution 18.
- b. Monies paid by the USMS to a confidential source in the form of fees and awards shall be commensurate with the value, as determined by the USMS, of the information he or she provided or the assistance he or she rendered to the USMS. Reimbursements of expenses incurred by a confidential source shall be based upon actual expenses incurred.
- c. To the extent practicable, a deputy shall refrain from speculating with confidential sources as to the amounts of payments or rewards, particularly when the confidential source has not yet provided the information or completed the activity promised.
- d. Under no circumstances shall any payments to a confidential source be contingent upon the conviction or punishment of any individual. Payments may be contingent upon the apprehension of a fugitive.
- e. All Federal, state, or local law enforcement officers, and all employees of the Department of Justice, are prohibited from receiving confidential source awards of any kind.
- f. In situations where a prosecutor is participating in the conduct of the underlying investigation utilizing the confidential source, or working with the confidential source in connection with a prosecution, payments to the confidential source shall be coordinated with the prosecutor.
- g. Payments should normally be made after the confidential source has provided the information or performed the services for which he or she is being paid. Generally, confidential sources should be paid in fugitive cases after the fugitive has been arrested. However, IOD may authorize payment of confidential sources prior to the arrest of the fugitive or the accomplishment of the law enforcement objective.

11. **Protecting the Identity of Confidential Sources**

- a. When information is furnished to the USMS by a confidential source, neither the identity of the confidential source, nor the methods of obtaining the information, shall be divulged to anyone other than a law enforcement official with a bona fide need to know without the prior written approval of the confidential source or the Branch Chief, DIU (or his or her superior).
- b. Confidential sources shall be protected in the following manner with regard to USMS reports of investigation:
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- (1) Neither the identity of a confidential source, nor information which would tend to disclose the identity of the confidential source (i.e., the sister of the fugitive stated ...), shall be included in reports of investigation documenting information provided by the confidential source. Confidential sources shall be referred to by confidential source code number under these circumstances.
 - (2) If a confidential source provides information concerning several cases, a separate report shall be prepared for each case. If multiple confidential sources provide information concerning the same case, a separate report shall be provided for each confidential source.
 - (3) Confidential source reports shall be filed in the relevant investigative file.
 - (4) Reports of investigation documenting information provided by unpaid confidential sources of information may contain the name of the source; however, the report shall also indicate that the source of information requested confidentiality, or that confidentiality was expressly promised to the source by the USMS. Reports which fail to include this statement may be subject to disclosure pursuant to the Freedom of Information Act (5 USC 552).
- c. Confidential sources shall not be used as witnesses, placed in a position in which they may become witnesses, or otherwise identified in legal, quasi-legal, or administrative proceedings by the USMS without (a) their consent, or (b) the prior written approval of the Branch Chief, DIU.
 - d. If a deputy has promised a confidential source or source of information that he or she would keep the person's identity confidential, and the deputy is asked to disclose the person's identity during any legal, quasi-legal, or administrative proceeding, the employee shall not disclose the identity of the confidential source. Instead, the employee shall advise the presiding official that he or she cannot disclose the information on the grounds that it was a privileged communication given in confidence to an officer of the Government pursuant to *Scher v. United States*, 305 U.S. 251 (1938).
 - e. Confidential source names and code numbers shall be redacted from all documents furnished to a prosecutor, whether for use by the prosecutor or for release pursuant to the *Federal Rules of Criminal Procedure (FRCrP)*. Confidential source names and code numbers qualify for exemption from discovery and inspection rules as "internal government documents" under *FRCrP Rule 16(a)(2)*.
 - f. Prosecutors may be provided payment totals in the form of a memorandum from the USM or CDUSM only for the case for which the confidential source is to testify. Payment totals for other cases for which the confidential source has been paid may be furnished after obtaining the approval of the Assistant Director, IOD, and the General Counsel.

12. Representations on Behalf of Confidential Sources

- a. A deputy shall obtain the approval of the USM or CDUSM prior to making representations at any legal, quasi-legal, or administrative proceedings on behalf of an active, former, or potential confidential source, or an associate of such.
- b. If representations are made on behalf of a confidential source in any proceeding over which the USMS does not have primary jurisdiction, the deputy shall notify and, if possible, coordinate recommendations with the agency that has primary prosecutive jurisdiction.

13. Debriefing of Confidential Sources

- a. After registering a cooperating individual or confidential informant and documenting the review of the required instructions, the controlling deputy shall fully debrief the person concerning his or her knowledge of criminal or unlawful activities.

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- b. If a confidential source furnishes information which reflects adversely on the integrity of a USMS employee of any other Federal, state, or local agency, the adverse information shall be referred to the USM or CDUSM prior to any dissemination of the information outside of the USMS. The USM or CDUSM shall, in turn, consult with the Chief, Office of Internal Affairs, in an effort to determine whether a referral to the involved agency should take place, and whether the referral should be made at the district or headquarters level.
- c. When a confidential source is likely to provide information that is subject to a legal claim of privilege, the controlling deputy will ensure that there is prior coordination with an appropriate prosecuting attorney.

D. Procedures for the Use of Confidential Sources

1. **Requests for authorization to use a Federal prisoner:** in the custody of the USMS or BOP as a confidential source should be submitted to IOD in the form of a USM-11, Report of Investigation containing the following information (in an emergency, verbal authorizations may be granted):
 - a. Prisoner identifying data: Name of prisoner, location of prisoner's current place of detention, Fugitive Identification Number (if applicable), date of birth, place of birth, social security number, register number, and FBI number (if known)
 - b. Court disposition and charges: Current status of prisoner's court cases
 - c. Necessity: Explanation of why prisoner is needed to act as a confidential source
 - d. Target(s): Name and identifiers for the target(s) of the investigation If target(s) are fugitives, include the warrant information.
 - e. Relationship: Explaining the relationship between the prisoner and the target(s).
 - f. Activity: Explain specifically what the confidential source is needed to do, and what the prisoner's custodial situation will be.
 - g. Security Measures: Explain what security measures will be in place to prevent the escape of the inmate.
 - h. Length of Time: Estimated duration of the operation involving the inmate.
 - i. Prisoner/Witness: Indicate likelihood of inmate becoming a witness as a result of the planned operation.
 - j. Designation: If convicted or pled guilty, where the inmate has been designated to serve his/her sentence. If the inmate's case has not yet been adjudicated, please indicate this in the report.
 - k. AUSA assigned: Provide the name, district, and telephone number for the Assistant U.S. Attorney (AUSA) assigned to the case. Indicate in the report whether or not the AUSA has endorsed the operation.
 - l. Progress Report: Indicate that "An interim progress report will be submitted in the event that continuance of the activity is necessary; and a detailed progress report will be submitted at the conclusion of the activity."
 - m. Court Order: Indicate that The court order authorizing this request will be forwarded to your office if this request is granted."
2. **Registration of USMS confidential sources:** shall consist, at a minimum of the following:
 - a. Criminal History Records: All confidential sources being established will be checked in the National Crime Information Center (NCIC) for the existence of criminal history records

b2

and outstanding wanted person (or other person file) records.

- b. Fingerprints: Where a verified Federal Bureau of Investigation (FBI) number is not available, the confidential source must be fingerprinted. Districts must submit a completed fingerprint card to the FBI. Do not enter the confidential source code number on the fingerprint card. Enter "criminal inquiry" in the space entitled "charge."
- c. Photograph: A recent photograph of the confidential source shall be maintained in the file.
- d. *Confidential Source Registration and Suitability Determination, USM-559*: The controlling investigator shall complete a Confidential Source Registration and Suitability Determination form (USM-559) and forward a signed copy to the IOD, Domestic Investigations Branch. The signed original shall be maintained in the district confidential source file.
- e. Required Instructions for Confidential Sources: Cooperating individuals and confidential informants shall be required to sign a *Required Instructions for Unpaid Confidential Sources, USM-558* at the outset of the confidential source relationship. If a confidential source refuses to sign the form, the controlling investigator should, with a witness present, read the contents of the form to the confidential source. Afterwards, the investigator should mark "subject refused to sign" on the form, and the investigator and the witness should sign and date the form.

3. **Authorization to Pay Confidential Source**

- a. Fugitive cases must be entered in the Warrant information Network (WIN) prior to the authorization of a confidential source payment by IOD.
- b. All requests to pay confidential sources shall be approved by district management and submitted to the IOD, Domestic Investigations Branch (DIB) using a *Request to Pay Confidential Source, USM-301*. Neither the identity of the confidential source, nor information which tends to reveal the identity of the confidential source (e.g., "The confidential source, the girlfriend of the fugitive, advised that the fugitive's telephone number is"), shall be disclosed in the USM-301 or the supporting USM-11. Guidelines for confidential source payment amounts for fugitive cases are provided below:
 - (1) Fifteen Most Wanted / Major Case Fugitives: \$1,000.
 - (2) Warrant Information Network (WIN) Category I Fugitives: \$500 to \$1,000.
 - (3) WIN Category 2 Fugitives: \$250 to \$500.
 - (4) WIN Category 3 Fugitives: \$250.
- c. After a confidential source payment is authorized by IOD, IOD will forward an authorization to pay the confidential source to the district. Once the district receives the authorization, the district may pay the confidential source in accordance with the following procedures.

4. **Payments to Confidential Sources**

- a. Upon receipt of an authorization to pay a confidential source from IOD, the investigator who will make the payment shall prepare a *Voucher for Payment of Confidential Sources, USM-306-A*. The district shall provide the funds to the investigator, and he or she shall make arrangements to pay the confidential source in a secure location.
- b. The investigator shall pay the confidential source in the form of cash only, unless an alternate form of payment has been authorized, in advance, by a Branch Chief of IOD. The payment shall be witnessed by at least one other law enforcement officer. At the time of payment, the investigator shall have the confidential source sign a *Declaration by*

b2

Confidential Source and Receipt for Cash, USM-306-B. Upon completion of payment, the investigator and the witness shall also sign the original USM-306-B and either the original USM-306-A or a copy thereof. In the event of extraordinary circumstances, the witness requirement may be waived by the Assistant Director for Investigations. If granted, the waiver shall be documented in the confidential source file.

- c. After payment, the USM-306-A shall be returned to the district administrative officer for retention in the district's financial files. The original USM-306-B shall be retained in the confidential source file, and a copy shall be forwarded to IOD.
- d. All payments of funds to registered confidential sources, including the payment of informant-related investigative expenses, shall be recorded in the *Confidential Source Payment Record, USM-307*. A separate USM-307 shall be maintained for each active confidential source each fiscal year.
- e. All funds disbursed to confidential sources (with the exception of investigative expenses) should be charged against:
 - (1) object class 2553
 - (2) payable from the U.S. Marshal S & E appropriation (15-0324)
 - (3) district confidential source payments authorized by IOD will be reimbursed by headquarters.

E. Definitions

1. **Confidential Source:** An individual who provides information concerning criminal or other unlawful activity to a designated representative of a Federal law enforcement agency and who (1) is paid by the USMS for that information (or reimbursed for expenses associated with gathering the information) or (2) works under the direction and control of a designated representative of a Federal law enforcement agency. United States military personnel and employees of law enforcement agencies who are working solely in their official capacity with a Federal law enforcement agency do not qualify as confidential sources. Certain types of confidential sources, defined below, require a higher level of administrative and operational control as described throughout this directive:
 - a. **Cooperating Individual:** An individual who provides information concerning criminal or other unlawful activity to a designated representative of a Federal law enforcement agency and (1) works under the direction and control of a designated representative of a Federal law enforcement agency, or (2) is paid more than \$2,500 within one fiscal year. United States military personnel and employees of law enforcement agencies who are working solely in their official capacity with a Federal law enforcement agency do not qualify as cooperating individuals.
 - b. **Confidential Informant:** A cooperating individual who has a reasonable expectation of confidentiality or anonymity. Any confidential source working under the direction or control of a designated representative of a Federal law enforcement agency, or paid in excess of \$2,500 within one fiscal year meets the higher standard. For the purposes of this policy directive, all confidential informants and cooperating individuals are confidential sources. However, a confidential source who is not operating under the direction or control of the USMS and who is paid less than or equal to \$2,500 within a fiscal year is not a cooperating individual or confidential informant. A person who provides information to the USMS is not considered to be operating under the direction or control of the USMS as long as the person is solely providing information to which he or she normally has access, and which he or she is providing voluntarily. Questions concerning whether a confidential source is working under the direction or control of a designated representative of a Federal law enforcement agency shall be referred to the Branch Chief, DIU.
 - c. **Confidential Source Code Number:** A number issued by IOD and used to identify a

confidential source. Confidential source code numbers are constructed as follows:

- (1) first two characters shall be "CS"
 - (2) next two characters shall be the last two digits of the fiscal year during which the number was issued
 - (3) next two characters shall be the district number
 - (4) final four characters shall be the sequential number.
2. **Juvenile:** A person under eighteen years of age.
 3. **Supervisor:** A Supervisory Deputy U.S. Marshal, Senior Inspector, or other GS-13 or higher operational official of the USMS.
 4. **Senior Field Manager:** A U.S. Marshal, Chief Deputy U.S. Marshal, or Federal law enforcement agency operational field manager of the GS-15 rank or higher.
 5. **Controlling Deputy:** The USMS criminal investigator with primary responsibility for the handling of a confidential source.
 6. **Case Number:** The Warrant Information Network (WIN) Fugitive Identification (FID) number, WIN warrant number, or other unique number which identifies the case for which an investigative expense was incurred.

INVESTIGATIVE USE OF PERSONS IN CUSTODY

- A. **Purpose:** This directive sets forth the policy and procedures for requests to use, for investigative purposes, persons who are in the custody of the United States Marshals Service (USMS) or the Bureau of Prisons (BOP), or who are under BOP supervision, or to target such individuals in covert investigations. These guidelines are established solely for internal USMS guidance. They do not create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigative prerogatives of the DOJ.
- B. **Authority:** Department of Justice as contained in the United States Attorney's Manual, 9 Criminal Division, 9-21.050, Utilization of Persons in Custody of BOP or USMS for Investigative Purposes, or as Targets of Investigative Activity.
- C. **Policy:** The Office of Enforcement Operations (OEO), Department of Justice, must approve the utilization of any person in the custody of the USMS or BOP for investigative purposes or as targets of investigative activity. **ALL** requests must be submitted to the Office of Enforcement Operations for review and **prior** approval. Such requests must first be approved by the designated official(s) at the agency's headquarters level, and then submitted in writing, by personnel at the agency's headquarters to the Chief, Special Operations Unit, OEO, Criminal Division, U.S. Department of Justice, P.O. Box 7600, Washington, D.C. 20044-7600.
 1. If there are exigent circumstances requiring an immediate response from OEO, oral requests for approval will be accepted from personnel at the agency's headquarters. However, confirmation of the request and appropriate supporting information must be submitted to OEO in writing as soon as possible after approval.
 2. As part of the review process, OEO coordinates with personnel at the headquarters of all appropriate agencies (BOP, USMS, other investigative agencies). Upon approval or denial of the request, OEO advises the requesting agency's headquarters of the decision.
 3. In situations in which OEO has approved the request, but the person whose release is being sought for investigative purposes is being held in the USMS or BOP custody, *by an order of the court*, the Assistant United States Attorney must obtain a court order authorizing the release from custody by the USMS or BOP to the approved investigative agency. The order will be sealed.

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NO court order shall be obtained transferring the custody of an individual from the USMS or BOP to an investigative agency without the prior approval of OEO. Persons released from the custody of the USMS, will be done so in accordance with existing policy, to include the documented transfer of same on a USM-41, Prisoner Remand or Order to Deliver and Receipt for United States Prisoners.

- a. Categories: The use of a person in the custody of the USMS or BOP in an ongoing investigation or as the subject of an investigation is classified into three categories:
 - (1) Federal investigative agency's use of a person in custody
 - (2) USMS use of a person in custody
 - (3) State and local law enforcement agency's use of a person in custody
- b. Federal Investigative Agency Use of a Person in Custody of USMS or BOP (including the United States Attorney's Office, USAO): **It is the responsibility of the requesting agency, NOT the USMS to obtain OEO approval** and any court order for the use of a person in the custody of the USMS or BOP, or to target such individuals in covert investigations. OEO will inform the requesting agency if a court order is needed. Court orders should be sealed by the court for the security of both the prisoner and investigation. **No** court order shall be obtained releasing a person from custody without the prior approval of OEO.
- c. USMS Use of a Person in Custody: All USMS investigations involving the use of a person in custody must first be approved by the Assistant Director, Investigative Operations Division (IOD). IOD will submit approved requests to OEO. USMS districts are not authorized to forward requests directly to OEO.
- d. State and Local Use of Person in Custody of USMS or BOP: Requests by state and local law enforcement for use of a person in custody of USMS or BOP will be made by the USAO. It is the responsibility of the USAO to obtain prior OEO approval and required court order.

D. Procedures

1. Federal Investigative Agency or USAO Use of Person in Custody

- a. **In all cases to include emergency requests** the USMS will not release a person from custody without OEO approval. The requesting agency or USAO will obtain OEO approval and the required court order. In all cases, prior to the release of a person from custody, the USMS will require a memorandum from the requesting agency or USAO. The memorandum must be signed by the United States Attorney or his/her designee, or Special Agent in Charge (SAC) and contain the following:
 - (1) A statement that OEO approval has been obtained
 - (2) Length of time the prisoner will be out of USMS custody
 - (3) Whether the prisoner will be taken out of the district
- b. In all cases, the USMS will brief the receiving agents of any security and relevant personal issues such as:
 - (1) Escape history
 - (2) Medical and mental health (suicide) issues
 - (3) Any other pertinent intelligence
 - (4) Identify points of contact and methods of communication to address any

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unexpected or after hour events

2. **USMS Use of a Person In Custody**

a. USMS use of a person in custody must first be approved by the Assistant Director of IOD. IOD will forward all approved requests to OEO. Requests to IOD will be submitted on a USM-11, *Report of Investigation* and include the following information:

- (1) Prisoner's name and the name and location of facility
- (2) Identifying data
- (3) Court disposition and charges
- (4) Necessity of utilizing the person in custody
- (5) Target(s) of the investigation
- (6) Relationship of person being utilized to the targets
- (7) Activity
- (8) Security measures
- (9) Length of time person will be utilized
- (10) Whether person will be used as a witness
- (11) Names of government agents and agency
- (12) Name and contact number of AUSA
- (13) Whether the person is represented by legal counsel
- (14) Is the subject being considered for the USMS Witness Security Program

b. Emergency use of a person in custody by USMS: Districts will make telephonic request to IOD who will make oral request to OEO. Districts will submit the required USM-11 within 24 hours of the request.

3. **State and Local Use of a Person in Custody of USMS or BOP**

a. USMS will not release a person in custody for investigative purposes without OEO approval. The USAO will obtain OEO approval and required court order. USMS will require a memorandum from the USAO stating the following:

- (1) Statement that OEO approval has been obtained
- (2) Length of time person will be out of USMS custody
- (3) Whether the person will be taken out of district
- (4) Agency and name of agents who will assume custody of the person

b. In all cases, the USMS will brief the receiving agents of any security and relevant personal issues such as:

- (1) Escape history
- (2) Medical and mental health (suicide) issues

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- (3) Any other pertinent intelligence
- (4) Identify points of contact and methods of communication to address any unexpected or after hour events

4. **USMS Receipt of Court Order with No OEO Approval:** When a District knowingly receives a court order without the required OEO approval it will immediately inform the USAO and/or issuing Judge detailing the circumstances and policy. If the matter is not readily resolved, the District will *immediately* contact IOD. IOD will notify OEO and direct the District's response.

E. Responsibilities

1. **U.S. Marshal/District:** Will obtain a signed memorandum from investigating agency or USAO stating OEO approval has been obtained prior to releasing a person in custody and provide progress reports to IOD. Will inform receiving agents of any relevant prisoner history.
2. **Investigative Operations Division:** Will review and approve all requests for use of a person in custody, forward approved requests to OEO, and assure operational compliance to OEO directions.

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