

Policy 2800 - Custody Intelligence Unit (CIU)

2800 – Custody Intelligence Unit plan

Custody Intelligence Unit Objectives:

The goal of the Custody Intelligence Unit is to analyze information, and take action as necessary, in order to maintain the safety and security of the Orange County Jail System. CIU will provide investigative support to OCSD investigative units and city, state, and federal law enforcement agencies; investigate crimes committed within the Orange County Jail system; properly document and manage confidential informants and sources of information within OCSD jail facilities; coordinate in-custody operations; collect intelligence related to jail security; prepare intelligence/security briefings and training as necessary; and respond to subpoenas and court orders requiring discovery as required.

2800.1 – Composition

- a) Special Services Bureau Captain
 - 1. A Captain who manages and oversees the Custody Intelligence Unit
 - 2. Reports directly to the Assistant Sheriff of Custody Operations
- b) Staffing
 - 1. [REDACTED] Sergeant
 - 2. [REDACTED] Investigators
 - 3. [REDACTED] Investigative Assistants

2800.2 – Primary Duties

- a) Evaluate information related to matters of jail safety and security and take action as required.
- b) Manage all confidential informants and sources of information throughout the Orange County Jail System.
- c) Coordinate with the District Attorney's Office and Law Enforcement agencies regarding all in-custody operations occurring within the Orange County Jail System.
- d) Manage all mail, telephone, and visiting covers throughout the Orange County Jail System.
- e) Collect, analyze, maintain files, and disseminate information as necessary on the illicit activities of criminal organizations and/or individuals operating within the Orange County Jail System while developing and maintaining liaisons with local, state, and federal agencies regarding intelligence matters.
- f) Investigate crimes which occur within the Orange County Jail System.

2800.3 – Informant Management

The proper use of informants and sources of information is a component of effective law enforcement and is permissible in the Custody Operations Command. Informants do not belong to an individual deputy or investigator, but are agents of the Department and act on its behalf. It is the responsibility of all Sheriff's personnel to ensure compliance with OCSD policy and all constitutional, statutory, and case law when utilizing confidential jail informants and sources of information.

The use of informants within the Custody Operations Command will comply with Orange County Sheriff's Department policy 608 (Confidential Informants).

- a) Confidential Informant Definitions
 - 1. Anytime a person is directed by a deputy/investigator for any reason, whether on one occasion or on a continuous basis, to secure information on criminal activity;
 - 2. Anytime a person is offered, promised or receives compensation, either in the form of financial compensation or any other benefit, for information or any task performed;
 - 3. Anytime a person is offered, promised or receives a Letter of Consideration on a pending criminal case.
- b) Types of Informants
 - 1. In-custody Informant - An In-custody Informant is an inmate who provides information or testifies about matters another defendant told him/her while both were in custody. (Penal Code sections 1127a, 1191.25, and 4001)

2. Defendant Informant – A Defendant Informant is an informant who has a pending criminal matter, including probation and/or parole violations. A Defendant Informant also includes an individual who has been prosecuted, convicted and is awaiting sentencing. A Defendant Informant provides information in exchange for a benefit or consideration, such as a Letter of Consideration, in their pending criminal matter.
 3. Confidential Jail Informant - A Confidential Jail Informant is an inmate who acts under the specific direction of a deputy/investigator to secure information related to inmate/criminal activity or is offered, promised, or receives a benefit, financial compensation, or a letter of consideration on a pending criminal case; for information or any task performed.
- c) Informant Screening
1. When a Deputy has contact with an inmate who expresses a desire to be an informant, the following protocols shall be followed:
 - i. 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.
 - ii. 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.
 - iii. If the information is jail-related and it is determined Custody Operations personnel should manage the informant, the handling deputy will coordinate with CIU prior to contacting the Orange County Informant Index (OCCI) Coordinator to receive approval to use the informant.
 - iv. Any time an informant is used in the jail, Sheriff's personnel will work in conjunction with CIU to review the proposed use of the informant to ensure it does not involve eliciting information from the target regarding the target's current criminal case.
 - v. Deputies within the jail system who handle/manage informants shall comply with OCSD Policy 608 and CCOM policy 2800.3.
 - vi. Informants will have the approval of the CIU Sergeant, and be signed up per OCSD policy 608.5 prior to utilization. However, if a new, unsigned informant can provide information that is critical to a major and quickly developing investigation, the informant can be used prior to being signed up with the approval of the CIU Sergeant or the deputy's immediate supervisor. The informant shall be signed up as soon as practical after the investigation is initiated.
 - vii. Any benefit or consideration given to an informant in any Orange County Jail will be reported to the informant's handler and documented in the informant's file per OCSD policy 608.
 - viii. All information provided by an informant and an outcome from the action taken related to that information will be documented on an intra-department memo addressed to the CIU Sergeant. This memo will be kept in the informant's file, which will be maintained by the CIU Sergeant.

d) Sources of Information

1. 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 has not requested, been offered, nor received any benefit or consideration in return for the information. A Source of Information is not considered an informant.
2. When a deputy receives information from a (SOI) the following protocols shall be followed:
 - i. The deputy will be responsible for debriefing the potential SOI and vetting the information. If the information appears credible and the deputy wishes to act upon the information, he/she will notify the CIU Sergeant.
 - ii. The CIU Sergeant will confirm the SOI does not meet the definition of an informant.

- iii. All Sources of Information will be issued a Source Control Number (SCN). This is a permanent number that is specific to the individual SOI. The SCN consists of the letters SCN, followed by the last two digits of the current calendar year, a hyphen, and a sequential number [REDACTED] All SOI files will be maintained by the CIU Sergeant. The file will be tracked via the SCN. All information provided by the SOI and an outcome from the action taken related to that information will be documented on an intra-department memo addressed to the CIU Sergeant. This memo will be kept in the SOI's file.
 - iv. A copy of any Department Report generated as a result of information provided by the SOI will be maintained in the SOI file.
 - v. The SOI file will contain a copy of the sources CII, FBI, Driver's License, contact information, and a recent photograph.
 - vi. If an SOI provides information to Sheriff's personnel on more than one occasion, the CIU Sergeant will be notified. The CIU Sergeant will review the SOI file and interview the SOI in order to determine if the SOI is actually giving information in an attempt to gain favor with the Court, which could be a benefit to the SOI, to be used during the penalty phase of his/her criminal case. If so, the SOI should be treated as a de facto Informant and handled accordingly.
- e) Documentation and Criminal Case Filing
- 1. Whenever information obtained from a CI or SOI results in a criminal case being forwarded to the District Attorney's Office for filing, the District Attorney's Office must be notified of the CI or SOI's involvement in the case. In order to ensure the District Attorney's Office is notified of the CI or SOI's participation in a timely and proper manner, deputies assigned to the Custody Operations Command shall do the following:
 - i. Upon completion, the original initial crime report and/or related original follow-up report(s) will be forwarded to the CIU for review.
 - ii. The deputy who wrote the report will brief the CIU investigator regarding the CI or SOI's involvement in the case.
 - iii. Once reviewed, the deputy will have the report signed and approved by their immediate supervisor. After supervisor approval, the deputy will return the original reports to the CIU.
 - iv. The CIU investigator will confirm the information provided by the CI or SOI has been properly documented in the CI's file or the SOI's file.
 - v. The CIU investigator will prepare the criminal case and present it to the District Attorney's Office for filing. The CIU investigator will brief the filing deputy district attorney regarding the use of the CI or SOI.
 - vi. The CIU Sergeant will ensure all associated reports are forwarded to the Support Services Division, Records and Information Services Bureau.
 - vii. When a deputy is required to testify in any subsequent court proceedings, the deputy will contact the deputy district attorney named in the subpoena and confer with him/her regarding the use of the CI or SOI prior to taking the stand and testifying.

2800.4 – In-custody Operations

In-custody operations include, but are not limited to, the placement of an undercover agent or informant in the jail (commonly referred to as a Perkins Operation) or covert audio/video recording within the Custody Operations Command. This does not include the covert recording of visits and phone calls.

- a) Orange County Sheriff's Department Operation: Any OCSD unit wishing to conduct an in-custody operation will obtain prior approval from the Sheriff or his/her designee.
 - 1. The deputy/investigator conducting the operation 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 personnel will review the proposed operation 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 right to counsel attaches when a criminal complaint is filed against the defendant or the defendant is indicted by the Grand Jury.
 - i. The CIU Sergeant, in consultation with the Special Services Bureau Captain, will also review the proposed operation to ensure it is compliant with the law.
 - ii. If there are legal questions regarding the proposed operation, guidance will be sought from County Counsel and/or the District Attorney's Office.
 3. A master department report (DR) number will be drawn for each operation.
 4. Any inmate movement required to assist in the operation will be approved by the Classification Sergeant and documented on the classification tread.
 5. The CIU will generate, update and maintain an in-custody operation file. The file will be kept in [REDACTED] in [REDACTED]. The file will include a copy of the executed In-Custody Operation agreement or approval letter, a copy of any operational plans, documentation of any and all movement generated by the operation and a copy of any and all reports generated by OCSD jail personnel as a result of the operation. The file will also contain the name and contact information for any and all informants used in the operation and the case agent/handler's name and contact information.
 6. CIU will maintain a case log which will document the beginning and ending date and time of the operation.
 7. The file will be maintained for a period of three years from the termination of the operation. If any cases result from the operation, 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.
- b) Outside Agency Request: Any outside agency requesting the assistance of the OCSD with an in-custody operation involving the use of an informant or undercover agent will submit an In-Custody Operation Agreement and abide by all terms and conditions of the agreement. The agreement will be reviewed and approved by the Assistant Sheriff of Custody Operations or his/her designee and the Sheriff or his/her designee prior to any action being taken by members of the OCSD. Any outside agency requesting the assistance of the OCSD with the covert recording of any area within the Custody Operations Command will coordinate the operation with CIU. Prior to any action being taken the agency will obtain written approval from the Assistant Sheriff of Custody Operations or his/her designee.
1. The agency conducting the operation 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 personnel will review the proposed operation 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 right to counsel attaches when a criminal complaint is filed against the defendant or the defendant is indicted by the grand jury.
 - i. The CIU Sergeant, in consultation with the Special Services Bureau Captain, will also review the proposed operation to ensure it is compliant with the law.
 - ii. If there are legal questions regarding the proposed operation, guidance will be sought from County Counsel and/or the District Attorney's Office.
 3. A master department report (DR) number will be drawn for each operation. All OCSD reports and evidence for the operation will be maintained under that DR.
 4. Any inmate movement required to assist in the operation will be approved by the Classification Sergeant and documented on the classification tread.

5. The Custody Intelligence Unit will generate, update and maintain an in-custody operation file. The file will be [REDACTED]. The file will include a copy of the executed In-Custody Operation agreement or approval letter, a copy of any operational plans, documentation of any and all movement generated by the operation and a copy of any and all reports generated by OCSD jail personnel as a result of the operation. The file will also contain the name and contact information for any and all informants used in the operation and the case agent/handler's name and contact information.
6. CIU will maintain a case log which will document the beginning and ending date and time of the operation.
7. The file will be maintained for a period of three years from the termination of the operation. If any cases result from the operation, 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.

2800.5 – Communication Covers

- a) A Communication Cover is an authorization from the Custody Operations Assistant Sheriff allowing a specific inmate's incoming and outgoing non-legal mail; non-official visits; and non-official telephone calls to be recorded, copied, or monitored by Sheriff's staff.
 1. Communications between an inmate and their attorney, doctor, or clergy will not be recorded, copied, or monitored by any Sheriff's personnel.
- b) Law enforcement personnel may submit a written request for a communication cover to the Custody Operations Assistant Sheriff. The request will include a justification for the communication cover. OCSD personnel will submit their request on an Intra-Department memorandum. Outside agencies will submit their requests on their department letter head.
 1. A communication cover may be authorized to maintain the security of the facility (i.e., threats to inmates, staff, or possible escape risk), or ongoing criminal activity involving public safety, (e.g., extortion, threat of assault or harm, witness intimidation, contract death threats, narcotics activity, etc.).
 2. After receiving the returned request, the Custody Intelligence Unit (CIU) Sergeant or his/her designee will notify the requestor of the approval or denial of the communication cover. This notification will also provide pickup and maintenance information.
 3. If approved, the Mailroom will make a copy of the inmate's incoming and outgoing mail and forward the original to the addressee. CIU staff will pick up the copies from the respective mailroom. Visits will be recorded by assigned staff and collected by the CIU. Recordings of telephone calls will be made by CIU staff.
 - i. CIU staff will schedule and coordinate the pick-up or delivery of these items to the approved requestor.
 4. Approved communication covers will be valid for three months. Requests to extend the communication cover another three months must be submitted upon or prior to the expiration of the current authorization.
 5. Communication covers must be picked up regularly. If a pick-up has not been made for two weeks, it will be assumed that the urgent justification for the communication cover no longer exists and the communication cover will be discontinued.