

 <p>KENTUCKY CORRECTIONS Policies and Procedures</p>	Policy Number	Total Pages
	9.18	4
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	September 13, 2010	January 3, 2011
References/Authority KRS 196.035, 197.020 Hensley v. Wilson, 850 F.2d 269 (6th Cir. 1988)	Subject INFORMANTS	

I. DEFINITIONS

“Informant” means one who provides information or accusations against another person or persons.

II. POLICY and PROCEDURES

- A. Information provided by an informant may be used for both investigative and administrative purposes within the Department of Corrections. This information shall not be obtained in exchange for the promise of a favor or preferential treatment.
1. If information provided by the informant jeopardizes his personal safety or the safety of others, an internal change in housing assignment or transfer to another institution may be authorized.
 2. Employees of Corrections shall not intercede in any court action against an informant or promise an informant protection from prosecution for any violation of the law; however, if prosecution is being contemplated or has commenced against an informant, and that informant has provided reliable information that assists authorities in investigative or administrative matters directly related to this prosecution, the Warden may bring this to the attention of the appropriate prosecutor.
 3. Corrections Policies and Procedures shall not be waived in any administrative action for the purpose of rewards or favors.
 4. If an outside law enforcement agency requests to use an inmate as an informant, a written agreement shall be made between the law enforcement agency and the Department of Corrections that specifies the conditions under which the inmate may be used as an informant, including but not limited to a definite time period. An agreement shall not be put into effect until approval is given by the Commissioner. Recommendations for

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informant agreements to the Commissioner shall be made by the Deputy Commissioner of Adult Institutions. The Deputy Commissioner's recommendation shall be forwarded to the Commissioner for review and signature. Only the Commissioner may approve this type of agreement.

- B. Uncorroborated confidential information from a single informant shall be insufficient as the sole basis for an Adjustment Committee finding that an inmate committed a prohibited act, unless the circumstances of the incident and the knowledge possessed by the confidential informant convince the committee that the confidential informant's information is reliable. In an unwitnessed assault, for example, the statement of a seriously injured assault victim may be sufficient evidence to support an Adjustment Committee finding without corroborating evidence.
- C. Uncorroborated confidential information from a single informant shall be insufficient as the sole basis for performing a strip search on an employee or a visitor unless the circumstances of the incident, the knowledge possessed by the confidential informant, or the established reliability of the confidential informant convince the Warden, Deputy Warden or Duty Officer that there is probable cause that a felony has or may be in the process of being committed. Then, a strip search may be authorized following the procedures outlined in CPP 9.8.
- D. Correctional Institutions: Use of informant information in Adjustment Committee hearings.
 - 1. If information provided by an inmate, in the judgment of the Adjustment Committee, may subject the inmate to possible retaliation for providing this information, the committee may receive the information in confidence without confrontation or cross-examination by the accused inmate.
 - 2. The accused inmate shall be given written notice of the general nature of the confidential information, omitting those details that may tend to identify the inmate who gave the confidential information, 24 hours in advance of the adjustment or classification committee hearing.
 - 3. Ordinarily, an adjustment officer or committee decision that an inmate committed a prohibited act shall be supported by more than one reliable confidential source, unless the circumstances of the incident and the knowledge possessed by the confidential informant convince the officer or committee that the confidential informant's information is reliable. (See Section II, E (6) for establishing reliability of informant). If there is only one source, the confidential informant information shall be corroborated by independently verified factual evidence linking the inmate charged to the prohibited act.

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4. All confidential information presented to the officer or committee shall be in writing and shall state facts and the manner in which the confidential informant arrived at knowledge of those facts.
 - a. If possible, the statement shall be signed by the confidential informant.
 - b. If the confidential informant does not write a statement, the staff member receiving the information shall provide that information in writing and in the language as close to the confidential informant's as possible (actual words of confidential informant if possible).
5. The identity of the confidential informant shall be known, at a minimum, by the adjustment officer or chairperson of the adjustment committee, and at the chairperson's discretion, may be revealed to the other committee members. The substance of the confidential informant information shall be available to all members of the adjustment committee.
6. The reliability of a confidential informant shall be established before the adjustment officer or committee may use the information provided to support a finding.
 - a. Reliability may be determined by a record of past reliability or by other factors that reasonably convince the adjustment officer or committee of the confidential informant's reliability.
 - b. The staff member providing the information to the officer or committee shall include a written statement of:
 1. the frequency with which the confidential informant has provided information;
 2. the period of time during which the confidential informant has provided information; and
 3. the degree of accuracy of that information.
 - c. If reliability is based on factors other than a history of reliability, those other factors supporting a determination of reliability shall be clearly specified.

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- d. Staff shall have an affirmative obligation to determine whether there may be any basis for concluding that the confidential informant may be providing false information.

7. Information to be included in the adjustment officer or committee report:

- a. The adjustment officer or committee chairperson shall include, in the record of the hearing, a statement of the basis for finding that the information provided by the confidential informant is reliable.
- b. A confidential informant's statement shall, at a minimum, be summarized in the adjustment officer's or committee report.
- c. The report shall identify the specific information relied on by the adjustment officer or committee.
- d. If the adjustment officer or committee decides that information given by a single confidential informant is sufficient for finding that the inmate committed the prohibited act, the adjustment officer or committee report shall include a statement giving the rationale for that decision.

8. Information to be kept confidential.

- a. If the adjustment officer or chairperson of the adjustment committee determines that including the information listed above in the adjustment officer's or committee report may reveal the identity of the confidential informant, the adjustment officer or chairperson shall ensure that a separate confidential report is prepared.
- b. This separate report shall not be placed in the inmate central file, but shall be retained in a secure location that is inaccessible to inmates, but available to appropriate staff for purposes of later administrative or judicial review.
- c. The separate confidential report shall contain:
 - 1. A copy of the confidential informant's statements.
 - 2. A statement identifying the specific information relied on by the adjustment officer or committee.