Date of Issue September 12, 2024	POLICY MANUAL – CHAPTER A MN POST POLICY MANDATES	
Date of Revision September 12, 2024	**Authority:** Chief of Police	**POLICY # 122**
Annual Review **Month: January**	**SUBJECT:**	**CONFIDENTIAL INFORMANTS**

POLICY

It is the policy of the Elko New Market Police Department to establish procedures and protocols that take necessary precautions concerning the recruitment, control, and use of confidential informants.

I. DEFINITIONS

A. Confidential Informant (CI): A person who cooperates with a law enforcement agency confidentially in order to protect the person or the agency's intelligence gathering or investigative efforts and;

1. seeks to avoid arrest or prosecution for a crime, mitigate punishment for a crime in which a sentence will be or has been imposed, or receive a monetary or other benefit; and
2. is able, by reason of the person's familiarity or close association with suspected criminals, to:
    i. make a controlled buy or controlled sale of contraband, controlled substance, or other items that are material to a criminal investigation;
    ii. supply regular or constant information about suspected or actual criminal activities to a law enforcement agency; or
    iii. otherwise provide information important to ongoing criminal intelligence gathering or criminal investigative efforts.

B. Controlled Buy: means the purchase of contraband, controlled substances, or other items that are material to a criminal investigation from a target offender that is initiated, managed, overseen, or participated in by law enforcement personnel with the knowledge of a confidential informant.

C. Controlled Sale: means the sale of contraband, controlled substances, or other items that are material to a criminal investigation to a target offender that is initiated, managed, overseen, or participated in by law enforcement personnel with the knowledge of a confidential informant.

D. Mental Harm: means a psychological injury that is not necessarily permanent but results in visibly demonstrable manifestations of a disorder of thought or mood that impairs a person's judgment or behavior.

E. Target Offender: means the person suspected by law enforcement personnel to be implicated in criminal acts by the activities of a confidential informant.

F. Confidential Informant File*:* means a file maintained to document all information that pertains to a confidential informant.

G. Unreliable Informant File: means a file containing information pertaining to an individual who has failed at following an established written confidential informant agreement and has been determined to be generally unfit to serve as a confidential informant.

H. Compelling Public Interest*:* means, for purposes of this policy, situations in which failure to act would result or likely result in loss of life, serious injury, or have some serious negative consequence for persons, property, or public safety and therefore demand action.

I. Overseeing agent*:* means the officer primarily responsible for supervision and management of a confidential informant.

II. PROCEDURES

A. Initial Suitability Determination

An initial suitability determination must be conducted on any individual being considered for a role as a CI. The initial suitability determination includes the following:

1. An officer requesting use of an individual as a CI must complete an Initial Suitability Report. The report must be submitted to the appropriate individual or entity, as determined by the agency chief executive, to review for potential selection as a CI. The report must include sufficient detail regarding the risks and benefits of using the individual so that a sound determination can be made. The following information must be addressed in the report, where applicable:
    a. Age, sex, and residence
    b. Employment status or occupation
    c. Affiliation with legitimate businesses and illegal or suspicious enterprises
    d. Extent to which potential information, associations, or other assistance could benefit a present or future investigation
    e. Relationship with the target of an investigation
    f. Motivation in providing information or assistance
    g. Risk of adversely affecting an existing or future investigation
    h. Extent to which provided information can be corroborated
    i. Prior record as a witness
    j. Criminal history, to include whether he or she is the subject of a pending investigation, is under arrest, or has been charged with a crime
    k. Risk to the public or as a flight risk
    l. Consultation with the individual's probation, parole, or supervised release agent, if any

m. Consideration and documentation of the individual's diagnosis of mental illness, substance use disorder, traumatic brain injury, or disability; and consideration and documentation of the individual's history of mental illness, substance use disorder, traumatic brain injury or disability

n. Relationship to anyone in law enforcement

o. Risk of physical harm to the potential CI or their immediate family or relatives for cooperating with law enforcement

p. Prior or current service as a CI with this or another law enforcement organization

2. Prior to an individual's use as a CI, a supervisor or other designated authority must review the Initial Suitability Report and determine if the individual is authorized to serve as a CI.

3. Any prospective or current CI must be excluded from engaging in a controlled buy or sale of a controlled substance if the prospective or current CI:

   a. is receiving in-patient treatment or partial-hospitalization treatment administered by a licensed service provider for a substance use disorder or mental illness; or

   b. is participating in a treatment-based drug court program or treatment court; except that

   c. the prospective or current CI may provide confidential information while receiving treatment, participating in a treatment-based drug court program or treatment court.

4. Documentation and special consideration must be made of the risks involved in engaging a prospective or current CI in the controlled buy or sale of a controlled substance if the individual is known, or has reported, to have experienced a drug overdose in the previous 12 months.

5. Any prospective or current CI who is known to abuse substances, or is at risk for abusing substances, should be provided referral to prevention or treatment services.

6. Any prospective or current CI that has a physical or mental illness that impairs the ability of the individual to understand instructions and make informed decisions should be referred to a mental health professional or other appropriate medical professional, or a case manager/social worker from the county social services agency, or other substance abuse and mental health services.

7. Each CI's suitability must be reviewed every 6 months, at a minimum, during which time the CI's overseeing agent must submit a Continuing Suitability Report addressing the foregoing issues in III.A.1.a–p, and III.A.3-6, where applicable. An initial suitability determination must be conducted on a reactivated CI regardless of the length of inactivity.

8. Any information that may negatively affect a CI's suitability during the course of their use must be documented in the CI's file and forwarded to the appropriate authorized personnel as soon as possible.

9. Supervisors must review informant files regularly with the overseeing agent and must attend debriefings of CIs periodically as part of the informant management

process. If a CI is active for more than 12 months, a supervisory meeting with the CI must be conducted without the overseeing agent.

10. CI contracts must be terminated, and the CI file placed in inactive status when the CI has not been utilized for 6 months or more.

B. Exigent Confidential Informants

1. Certain circumstance arise when an individual who has been arrested is willing to immediately cooperate and perform investigative activities under the direction of an overseeing agent. In these circumstances, the initial suitability determination can be deferred and an individual may be utilized as a CI for a period not to exceed 12 hours from the time of arrest if:
    a. The individual is not excluded from utilization as a CI under III.A(3)(a-c) of this policy; and
    b. There is compelling public interest or exigent circumstances exist that demand immediate utilization of the individual as a CI and any delay would significantly and negatively affect any investigation; and
    c. A supervisor has reviewed and approved the individual for utilization as a CI under these circumstances.
2. Upon the conclusion of the 12-hour window, or at any time before, an initial suitability determination must be conducted before the individual engages in any further CI activities.

C. Special CI Approval Requirements

Certain individuals who are being considered for use as a CI require special review and approval. In all instances, the agency's chief executive or their designee and the office of the prosecutor or county attorney should be consulted prior to the use of these individuals as CIs. These individuals include the following:

1. Juveniles
    a. Use of a juvenile under the age of 18 for participating in a controlled buy or sale of a controlled substance or contraband may be undertaken only with the written authorization of the individual's parent(s) or guardian(s), except that the juvenile informant may provide confidential information.
    b. Authorization for such use should be granted only when a compelling public interest can be demonstrated, *except that*
    c. Juveniles under the guardianship of the State may not be used as a CI.
2. Individuals obligated by legal privilege of confidentiality.
3. Government officials.

D. General Guidelines for Overseeing CIs

General guidelines for overseeing CIs are as follows:

1. CIs must be treated as assets of the agency, not the individual overseeing agent.

2. No promises or guarantees of preferential treatment within the criminal justice system will be made to any informant without prior approval from the prosecuting authority.
3. CIs must not be used without authorization of the agency through procedures identified in this policy.
4. CIs must not be used to gather information purely of a political nature or for other information-gathering efforts that are not connected with a criminal investigation.
5. Under no circumstances must an informant be allowed access to restricted areas or investigators' work areas within a law enforcement agency.
6. All CIs must sign and abide by the provisions of the agency's CI agreement.
7. Any physical or mental illness that impairs the CI's ability to knowingly contract or otherwise protect the informant's self-interest must be taken into consideration before the CI signs the agreement.
8. The CI's overseeing agent must discuss each of the provisions of the agreement with the CI, with particular emphasis on the following:
    a. CIs may voluntarily initiate deactivation, whereupon the protocols outlined in section E of this policy must be followed.
    b. CIs are not law enforcement officers. They have no arrest powers, are not permitted to conduct searches and seizures, and may not carry a weapon while performing activities as a CI.
    c. CIs found engaging in any illegal activity beyond what is authorized by the agency and conducted while under the supervision of an overseeing agent, will be subject to prosecution.
    d. CIs are prohibited from engaging in actions or activities that could be deemed entrapment. The meaning of the term and implications of such actions must be explained to each CI.
    e. CIs are prohibited from engaging in self-initiated information or intelligence gathering without agency direction and approval. The CI must not take any actions in furtherance of an investigation without receiving specific instruction(s) from the overseeing agent or agency.
    f. Every reasonable effort will be taken to ensure the confidentiality of the CI but, upon judicial order, he or she may be required to testify in open court.
    g. CIs may be directed to wear a listening and recording device.
    h. CIs must be required to submit to a search before and after a controlled purchase.
    i. CIs who participate in unplanned or unanticipated activities or meet with a subject(s) under investigation in a location outside of the jurisdictional boundary of the handling agency must promptly report that activity or meeting to their overseeing agents.
9. CI activity outside jurisdictional boundaries:
    a. Investigators handling CIs who engage in operational activity in locations outside the jurisdictional boundaries of the agency must coordinate with

counterparts in law enforcement agencies that have jurisdiction in that location where the CI will operate before any activity occurs, or in a timely manner after unanticipated activity occurs and is brought to the attention of the overseeing agent.

b. Any decision to defer or delay notice to or coordinate with an outside agency having jurisdiction in the area where a CI has or may operate must be documented, reviewed, and approved by the agency's chief executive or their designee.

10. Officers must take the utmost care to avoid conveying any confidential investigative information to a CI, such as the identity of other CIs, surveillance activities, or search warrants, other than what is necessary and appropriate for operational purposes.
11. No member of this agency must knowingly maintain a social relationship with a CI, or otherwise become personally involved with a CI beyond actions required in the performance of duty.
12. Members of this agency must not solicit, accept gratuities from, or engage in any private business transaction with a CI.
13. Meetings with a CI must be conducted in private with another officer or agent present and with at least one officer or agent of the same sex, except when not practical. The meeting location should minimize the potential for discovery of the informant's cooperation and provide sufficient space to complete necessary administrative duties. The meetings must be documented and subsequently entered into the individual's CI file.
14. Overseeing agents must develop and follow a communications strategy and plan with the CI that minimizes, to the greatest extent possible, the risk of discovery or compromise of the relationship between the agency and the CI. This plan should also aim to prevent the detection, compromise, or interception of communications between the overseeing agent and the CI.
15. Procedures must be instituted to assist CIs with concealing their identity and maintaining their safety. Care should be given not to expose CIs to unnecessary safety risks.
16. Preceding or following every buy or sale of controlled substances, overseeing agents must screen the CI for any personal safety or mental health concerns, risk of substance abuse, and/or potential relapse in any substance abuse recovery.
    a. At the request of the CI, or if the overseeing agent deems it necessary, reasonable efforts should be taken to provide the CI with referral to substance abuse and/or mental health services.
    b. Overseeing agents must document:
        i. the screening,
        ii. any referral to services provided to, or requested by, the CI, and
        iii. any refusal by the CI to participate in the screening and/or any refusal by the CI to accept referral to services. Reasons for the CI's refusal must be documented, where applicable.
    c. No part of this subsection supersedes MN Stat. 253B.05, sub.2.

17. Reasonable protective measures must be provided for a CI when any member of this agency knows or should have known of a risk or threat of harm to a person serving as a CI and the risk or threat of harm is a result of the informant's service to this agency.
18. Overseeing agents must:
    a. evaluate and document the criminal history and propensity for violence of target offenders; and
    b. to the extent allowed, provide this information to the CI if there is a reasonable risk or threat of harm to the CI as a result of the CI's interaction with the target offender.
19. Reasonable efforts and precautions must be made to help protect the identity of a CI during the time the person is acting as an informant.
20. Whenever possible, officers must corroborate information provided by a CI and document efforts to do so.
21. The name of a CI must not be included in an affidavit for a warrant unless judicial authority is obtained to seal the document from the public record or the CI is a subject of the investigation upon which the affidavit is based.
22. Overseeing agents are responsible for ensuring that information of potential value to other elements of the agency is provided promptly to authorized supervisory personnel and/or other law enforcement agencies as appropriate.
23. Individuals leaving employment with the agency have a continuing obligation to maintain as confidential the identity of any CI and the information he or she provided unless obligated to reveal such identity or information by law or court order.

E. Establishment of an Informant File System

An informant file system must be established as follows:

1. The agency chief executive must designate a file supervisor who must be responsible for developing and maintaining master CI files and an indexing system.
2. A file must be maintained on each CI deemed suitable by the agency.
3. An additional Unreliable Informant File must be established for CIs deemed unsuitable during initial suitability determinations or at a later time.
4. Each file must be coded with an assigned informant control number for identification within the indexing system and must include the following information, where applicable:
    a. Name, aliases, and date of birth
    b. Height, weight, hair color, eye color, race, sex, scars, tattoos, or other distinguishing features
    c. Emergency contact information
    d. Name of the officer initiating use of the informant and any subsequent overseeing agents

e. Photograph and criminal history record
f. Current home address and telephone number(s)
g. Residential addresses in the last five years
h. Current employer, position, address, and telephone number
i. Social media accounts
j. Marital status and number of children
k. Vehicles owned and their registration numbers
l. Places frequented
m. Gang affiliations or other organizational affiliations
n. Briefs of information provided by the CI and the CI's subsequent reliability
o. Special skills and hobbies
p. Special areas of criminal expertise or knowledge
q. A copy of the signed informant agreement

5. CI files must be maintained in a separate and secured area.
6. The file supervisor must ensure that information concerning CIs is strictly controlled and distributed only to officers and other authorities who have a need and a right to such information.
7. CI File Review
    a. Sworn personnel may review an individual's CI file only upon the approval of the agency's chief executive or their designee.
    b. The requesting officer must submit a written request explaining the need for review. A copy of this request, with the officer's name, must be maintained in the individual's CI file.
    c. Officers must not remove, copy, or disseminate information from the CI file.
    d. CI files must be reviewed only in designated areas of the law enforcement facility and returned as soon as possible to their secure file location.
    e. All disclosures or access to CI files must be recorded by the file supervisor, to include information such as the requesting officer or agency, the purpose of access or disclosure, the information conveyed, and the date and time of access or dissemination.
    f. No portion of an individual's CI file must be entered into any other electronic or related database without controls sufficient to exclude access to all but authorized personnel with a need and a right to know.

F. Deactivation of Confidential Informants

A CI deactivation procedure must be established as follows:

1. The overseeing agent must complete a deactivation form that includes, at minimum, the following:
    a. The name of the agency.
    b. The name of the CI.
    c. The control number of the CI, where applicable.
    d. The date of deactivation.
    e. The reason for deactivation.
    f. A notification that contractual agreements regarding monetary re-numeration, criminal justice assistance, or other considerations, specified or not, are terminated.
    g. A notification that the agency will provide and assist the CI with referral to health services for assistance with any substance abuse disorder and/or physical, mental, or emotional health concerns, as requested or accepted by the CI.
    h. A signature by the CI or documentation indicating the reason(s) why the CI was unable or unwilling to sign the form.
    i. A signature by the overseeing agent.
2. All reasonable efforts must be taken to maintain the safety and anonymity of the CI after deactivation.

G. Monetary Payments

Monetary payments must be managed as follows:

1. All monetary compensation paid to CIs must be commensurate with the value of the information or assistance provided to the agency.
2. All CI payments must be approved in advance by the officer in charge of confidential funds.
3. Officers must provide accounting of monies received and documentation for confidential funds expended. Any documentation of monies paid or received should not contain the true identity of the informant but should use the CI's control number.
4. Two officers must be present when making payments or providing funds to CIs.
5. The appropriate individual, as designated by the agency's chief executive, must ensure that the process for authorization, disbursement, and documentation of CI payments, as well as the accounting and reconciliation of confidential funds, is consistent with agency policy.
6. If a CI is authorized to work with another law enforcement or prosecutorial agency, financial payments must be coordinated between the agencies in a manner that is proportionate to the assistance rendered to each agency and consistent with provision III.F.1. of this policy.
7. Written records of receipts are retained, or justification for the exception is documented when a written receipt is not available.