

Survey to Chief APOs

Issue: Active Offenders acting in capacity of a confidential informant

Question (from Wayne County)

Our District Court Administrator would like to know if there are other Probation Departments out there that allow such a practice where offenders are allowed to act as a CI for police. We are trying to evaluate the appropriateness of this practice going forward. Our department currently allows such a practice.

Franklin County

Franklin County has historically allowed individuals to work with our Drug Task Force as informants with the Chiefs approval on a discretionary basis. We have no policy or procedure written.

Lancaster County

Lancaster does allow this with my or one of my deputies approval. I work closely with our Drug Task Force commander on these. (see addendum)

Lehigh County

Lehigh County does allow defendants to work as C.I.'s. As Chief, I determine if the defendant is allowed to do so and they must sign the attached form along with the PO and department utilizing their service. The form acknowledges they will not receive any special promises, favors or deals and the agreement is only good for 6 months (not unlimited).

Westmoreland County

(see addendum)

ARTICLE A15

COOPERATIVE WITNESS/CONFIDENTIAL INFORMANT

Section A15.1 The purpose of this article is to establish guidelines for APPS staff upon receiving a request from law enforcement to work with an offender supervised by Adult Probation & Parole Services (APPS) as a cooperative witness/confidential informant.

APPS staff shall cooperate with all law enforcement agencies in efforts to apprehend offenders known or suspected to be involved in criminal activities, through use of supervised offenders as Cooperative Witnesses/Confidential Informants, unless the safety of said offenders or the community is jeopardized. With the exception of instances when there is a compelling immediate need, an offender under the supervision of APPS is prohibited from being used as a Cooperative Witness/Confidential Informant by law enforcement agencies except by special authorization from the Director of APPS.

Section A15.2 Definition of a Cooperative Witness/Confidential Informant:

APPS defines a Cooperative Witness/Confidential Informant as an individual who assists law enforcement in one of the following ways:

Provides intelligence information as to criminal activity with the understanding that his identity will not be disclosed and that he will not be required to testify in court.

Engages in the purchase of narcotic drugs or other controlled substances with marked money provided by the law enforcement agency, which closely monitors, electronically records or photographs the transaction, with the expectation that the informant will eventually testify in court.

Engages in telephonic or face-to-face conversations with persons being investigated for possible criminal activity, where the conversations are electronically recorded (by audio or by both audio and video) after prior approval under the Wiretap Act.

Section A15.3 Use of Offenders as a Cooperative Witness/Confidential Informant

When a law enforcement agency makes an initial inquiry/request to any APPS employee regarding the use of an offender as a Cooperative Witness/Confidential Informant, the Requesting Agency shall be informed of the following procedures:

Law Enforcement Agency Requests

The Director of APPS will consider requests to use an offender under the jurisdiction of the APPS as a Cooperative Witness/Confidential Informant from the following: a District Attorney (includes police departments); an United States Attorney or Assistant United States Attorney; the State Attorney General or his/her designee; or, the Commissioner of the Pennsylvania State Police.

Content of the Request

All requests for use of an offender as a Cooperative Witness/ Confidential Informant must contain the following information:

The specific law enforcement agency that the offender will assist.

The agency contact person.

The general nature and extent of the cooperation requested.

Whether the offender will be required to travel out of Lancaster County.

Whether the Requesting Agency intends to place the offender in the Federal Witness Security Program or PA Attorney General's Witness Protection Program.

The willingness of the Requesting Agency to actively supervise the offender, with the understanding that the APPS is ultimately responsible for the supervision of the offender.

Addendum: Lancaster County Cooperative Witness/Confidential Informant Policy

The Requesting Agency's agreement to fully abide by the APPS requirements regarding the Use of a Cooperative Witness and/or Confidential Informant as stated in the instructions.

An executed APPS Agreement Concerning Use of Offender as a Cooperative Witness/Confidential Informant (Form A15.3). Original signatures must be on the form.

Section A15.4 Processing the Requests

All requests to use an offender, as a Cooperative Witness/Confidential Informant, shall be made in writing, marked "CONFIDENTIAL" and submitted to the Director, Adult Probation & Parole Services, 40 E. King Street, 3rd Floor, Lancaster PA 17608.

In the case of interest by multiple agencies, the request shall be submitted by a designated Requestor.

The Director of APPS shall review all requests and shall determine if all necessary information is included with the request.

The Director will contact the following, according to his discretion, as necessary:

Appropriate APPS Management and corresponding Probation Officer to determine the current case status and any staff concerns or opinions regarding the request. The APPS Director will inform the requesting agency in the event of disclosure below the program director level. As a matter of practice, the Director will involve the absolute minimum number of appropriate staff in making determinations during the processing of requests.

The Sentencing Judge to determine whether the court approves or disapproves of the law enforcement agency's request and/or other appropriate case action needs to be negotiated.

For Inter-State cases: Sending State via Interstate Compact to determine whether: the sending state approves or disapproves of the law enforcement agency's request and/or other appropriate case action needs to be negotiated.

Addendum: Lancaster County Cooperative Witness/Confidential Informant Policy

For Inter-County cases: Sending County to determine whether: the sending state approves or disapproves of the law enforcement agency's request and/or other appropriate case action needs to be negotiated.

The Director of APPS shall then evaluate all information available before determining final approval/rejection. The decision shall be made based on all available information and may require a representative of the Requesting Agency to provide additional information. The appearance of a representative shall not negate the need for a written request.

Section A15.5 Processing the Decision

The Director of APPS, or designee, as appropriate, shall transmit the decision regarding authorization, rejection or modified restrictions of requested activities, in writing:

To the requesting law enforcement agency.

To the APPS Program Director of the applicable program, unless there are compelling reasons to also disclose the decision to the applicable supervisor and/or the supervising probation officer, in which case the requesting agency shall be notified, as per the same.

Section A15.6 Additional Requests

If the Requesting Agency wishes to use the offender outside the scope of the original approval, an additional request must be submitted. The Requesting Agency shall not assign authorization to use the offender as a Cooperative Witness/Confidential Informant to another law enforcement agency.

Section A15.7 Progress Reports from the Requesting Agency

At Court directive and/or as deemed necessary by the Director of APPS, during the period of use of a Cooperative Witness/Confidential Informant, the Director of APPS may require that the Requesting Agency provide periodic status updates on the progress of said involvements.

Section A15.8 Termination of a Cooperative Witness/Confidential Informant Agreement

If an APPS staff member becomes aware of the termination of the use of a client as a Cooperative Witness/Confidential

Addendum: Lancaster County Cooperative Witness/Confidential Informant Policy

Informant, notification of said termination must be forwarded to the Director through the chain of command.

The APPS Director may request a summary of the client's cooperation with law enforcement.

If an APPS staff member becomes aware of or a Requesting Agency places an offender in the Federal Witness Security Program shall immediately notify the Director of APPS. Upon confirmation, the Director of APPS, shall provide all case material for control and communication with the United States Marshal's Service.

Section A15.9 Compelling Immediate Need for Use of Offender as a Cooperative Witness/Confidential Informant

In compelling instances, when circumstances (i.e. closing window of opportunity) requires the immediate use of an offender as a Cooperative Witness/Confidential Informant, appropriate law enforcement may proceed without engaging the prescribed approval process. In such instances, the Director of APPS must be informed of such action within two business days via a notice of advisement (Form A15.9). This notice is to be marked "CONFIDENTIAL" and submitted to the Director, Adult Probation & Parole Services, 40 E. King Street, 3rd Floor, Lancaster PA 17608.

Following compelling immediate use, if there is an ongoing need for the Cooperative Witness/Confidential Informant, the Requesting Agency shall submit an applicable request.

Section A15.10 APPS Staff responsibilities related to the unauthorized use of an offender as a cooperative witness/confidential informant

When any APPS staff member becomes aware of an offender's Confidential Witness and/or Confidential Informant activity and the law enforcement agency has not requested prior APPS approval, the Director of APPS shall be notified immediately, by telephone, via the chain of command. Until a formal request has been received and approved, the offender must not participate in informant activity, and a special condition or a written instruction will be imposed, as appropriate. The Director, or Deputy Director, shall then advise the involved law enforcement agency to submit an appropriate request for authorization to use the offender as a Cooperative Witness/Confidential Informant.

APPROVED by the Board of Judges, October 11, 2005



WESTMORELAND COUNTY ADULT PROBATION AND PAROLE

SUBJECT: Cooperative Witnesses and Confidential Informants

POLICY:

In order to reduce further criminality by assisting the enforcement and prosecution arms of the criminal justice system and in the spirit of harmonious inter-agency law enforcement cooperation, it shall be the policy of the Westmoreland County Adult Probation/Parole Office to permit approved individuals under Court ordered supervision to serve, under controlled conditions, as cooperative witnesses or confidential informants.

PROCEDURE:

- For the purpose of informing offenders, the following information is listed on the probation, parole, Intermediate Punishment and ARD conditions:

“YOU ARE REQUIRED TO OBTAIN PRIOR WRITTEN PERMISSION FROM THE ADULT PROBATION DEPARTMENT BEFORE ACTING AS OR CONTINUING TO ACT AS A COOPERATIVE WITNESS OR CONFIDENTIAL INFORMANT. YOU ARE REQUIRED TO PROVIDE THE INFORMATION NECESSARY FOR VERIFICATION OF YOUR PARTICIPATION IN THESE CAPACITIES.”

- All requests from offenders or agencies for offenders to act in these capacities will be investigated and verified by the assigned supervising Officer within 10 working days of the request.

- Once a substantial effort has been made to complete this investigation, the Officer will prepare a written report using the attached form with a recommendation for approval or denial. The Officer can also recommend supplemental supervision conditions during this time period such as additional reporting appointments or more frequent urine testing. That report will be forwarded to the Officer's Supervisor for approval or denial based on the information and recommendations provided and the offender's history of compliance while on supervision.
- If the request is granted, the offender will be issued written permission to act in these capacities and will also be informed in writing of any additional supervision requirements being placed in effect. The requesting agency will also be informed in writing if the request is denied. (The attached form will be used for all of the above.)
- Law enforcement agencies/Officers may appeal a denial of permission in writing directly to the Chief Probation Officer or his designee.
- Generally, in order to preserve the integrity and security of the programs, offenders being supervised on active house arrest/electronic monitoring will not be granted permission to act as a cooperative witness or confidential informant. Exceptions may be granted on a case by case basis by the Chief Probation Officer or his designee. Should a house arrest/electronic monitoring offender be approved to act in these capacities, the law enforcement agency contact is responsible to inform the Intermediate Punishment Supervisor of any planned offender activity no later than 24 hours before the event. If this notification is not made and the HA/EM offender participates in these activities, permission to serve in these capacities will be withdrawn.
- At no time will staff members disregard standing policies and procedures in the supervision of offenders acting in these capacities. All normal procedures and supervision efforts will be followed including appropriate sanctions and court violation proceedings.

- Should any offender acting in these capacities fail to abide by the conditions of his/her supervision or any additional measures put in place as a result of their actions, the offender's permission to continue as such will be withdrawn. Should the offender be removed from those capacities, the cooperating law enforcement agency/Officer will be informed of the event and the reasons for it within one business day.
- In order to maintain the integrity of law enforcement investigations and to enhance the safety of the Officers and offenders, all information regarding an offender's participation or requested participation in these capacities will be treated as **LAW ENFORCEMENT SENSITIVE** and will not be discussed or disclosed outside the Officer's normal supervision chain. This information will be disseminated only on a **NEED TO KNOW BASIS**.
- At no time will any offender be encouraged, forced or coerced into acting in these capacities. All offenders acting in these capacities participate on a voluntary basis without promise of remuneration or any other further consideration by the department.
- At no time will any offender be permitted to serve in these capacities for more than one law enforcement agency at any given time.
- Department staff is prohibited from directly participating in activities involving offenders acting as confidential informants or cooperative witnesses unless said involvement is requested by the outside agency and approved by the Chief Probation Officer or his designee.
- The requesting agency is responsible to notify the assigned Officer of the conclusion of the offender's participation in the specified activities. A new request will be required for any additional or subsequent participation.

