

Survey to Chief APOs

Issue: ICE Policies/Procedures

Question (from Adams County):

Are there any counties willing to share any ICE related policies and/or procedures they have in place currently?

As many probably already know, AOPC recently distributed a survey to President Judges and Court Administration in response to a study done through Temple University's Sheller Center. They were collecting information about county probation/parole policies and practices. They did this in reaction to Temple University's Sheller Center issuing a report in June questioning practices of county probation departments in interactions with Immigration and Customs Enforcement (ICE) officials. This has sparked some discussion here in Adams County.

We currently do not have any related policies/procedures, so any help would be greatly appreciated!

Allegheny County

We do not have a formal policy. It is our practice to cooperate with all LE including ICE.

Bradford County

Bradford County also cooperates with ICE as it does with all LE agencies.

Bucks County

No policy. Would provide them with the same assistance as any other law enforcement agency.

Carbon County

Carbon County does not have any policy but ICE would be treated like any other Law Enforcement Agency

Delaware County

No policy. Would provide them with the same assistance as any other law enforcement agency.

Erie County

Erie County cooperates with ICE as it does with all LE agencies.

Lancaster County

Lancaster does not have a policy specific to our collaboration with ICE. We do work with/cooperate with ICE routinely, especially our officers whose caseloads are 100% Spanish-speaking.

The closest written policy is our policy regarding cooperation with LE agencies (see Appendix). However, this is more specific to LE agencies requesting to use our clients as CIs (confidential informants) which is a routine thing with Lancaster Drug Task Force. We referenced this policy when we completed the same survey.

Lebanon County

No policy. Would provide them with the same assistance as any other law enforcement agency.

Lehigh County

We are the same as most... we do not have a policy, but we treat ICE just like any other Law Enforcement agency.

Luzerne County

No policy but ICE would be treated like any other Law Enforcement Agency

Montgomery County (see Appendix)

Please be advised that when a convicted offender and only a convicted offender reports for their first interview with us and we discover he/she is not a US citizen, we notify ICE that the offender was born outside of the United States. We send the attached form.

Our Policy provides that we cooperate with all law enforcement agencies. To that end, APO only notifies ICE of convicted offenders. ICE performs their own investigations as to what action to take regarding that offender's conviction. We do not detain for ICE, however, ICE obviously may know more about their status and history better than we do.

It is our responsibility to report this to ICE. If a non US Citizen offender was not reported to ICE, and that offender was under Montgomery County's community supervision and committed an egregious offense and the original offense was deportable, and if we were the ones that failed to report, I'd hate to see the aftermath.

Philadelphia County

Philadelphia does not currently have a formal policy in place.

Snyder County

We do not have any policies here in Snyder County, however, we would provide them with the same assistance we would any other LEO.

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.

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.

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

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



**U.S. Immigration
and Customs
Enforcement**

**MONTGOMERY COUNTY ADULT PROBATION
& PAROLE CRIMINAL ALIEN NOTIFICATION**

The below listed individual is currently on probation or parole in Montgomery County. This individual has indicated they were born outside of the United States. Below is information related to the subject.

DATE:

NAME:

DATE OF BIRTH:

COUNTRY OF BIRTH:

ALIEN REGISTRATION NUMBER:

CONVICTION DATE/LENGTH OF PROBATION:

COURT DOCKET NUMBER:

CURRENT ADDRESS:

PROBATION OFFICER:

CONTACT INFORMATION:

ICE contact information:

Ian Spino Officer

DHS/ICE/ERO

114 N. 8th st.

Philadelphia, PA 19107

Office: 215-656-7164

Desk: 267-479-3752

Ian.Spino@ice.dhs.gov