

46.4 Offenders as Confidential Informants.

An offender under the probation and pretrial service office's supervision may not serve as an informant for a law enforcement agency without a court order modifying the conditions of supervision and permitting the offender to serve as an informant.

(a) Request for Use as Confidential Informant.

The procedure for obtaining an order modifying conditions of supervision and permitting the offender to serve as a confidential informant follows.

(1) Presenting Request.

The law enforcement agency's request must be presented through the government's attorney and submitted ex parte to the magistrate or district judge assigned to the case. In an emergency, any magistrate or district judge in this district may consider the request for modification.

(2) Notice to Probation and Pretrial Services Office.

Except in the case of an emergency, the government's attorney must submit a written request to the Chief United States Probation and Pretrial Services Officer 14 days before the law enforcement agency proposes to use the offender as an informant. The written request shall include:

- (A) the instructions the agency will provide to the offender for carrying out the proposed assistance;
- (B) information regarding the significance of the intended target of the investigation;
- (C) an evaluation of the risk posed to the offender by using the offender as a confidential informant;
- (D) the specific time period of the offender's proposed services as a confidential informant;
- (E) any projected monetary compensation to the offender; and
- (F) an explanation of why the potential benefit to the government outweighs the risk created by the offender's re-involvement with criminal associates.

(b) Use of Offender as a Confidential Informant.

(1) Notice to Agency and Defendant.

The probation and pretrial services office must discuss the requirements of Nebraska Criminal Rule 46.4(b)(2) with the designated case officer for the law enforcement agency requesting the offender's assistance in an investigation. The requirements in Nebraska Criminal Rule 46.4(b)(2) must also be included in any written agreement between the defendant, the defense attorney, the government's attorney, and the investigating agency.

(2) Requirements and Restrictions.

(A) Unauthorized Criminal Activity.

The offender must not participate in any activity that would constitute a crime under state or federal laws without authority and approval of a law enforcement agency.

(B) Safety.

The offender must not be used in any manner that might jeopardize the offender's safety without prior court approval.

(C) Instruction Changes.

Any development that would require any significant change in the operating instructions or conditions of supervision must be brought to the probation and pretrial services officer's attention and submitted to the court for approval.

(D) Length of Participation.

The time period for participation as an informant must not exceed 90 days without prior court approval. If circumstances develop that indicate the need for an extension beyond 90 days, the government must request the court in writing for an extension.

(E) Notice of Completion.

When the offender's services as a confidential informant are complete, the probation and pretrial services officer must specifically advise the offender in writing that the offender (1)

is no longer authorized to act as an informant and (2) must refrain from all associations or activities previously authorized for the performance of this service. The offender must provide a written receipt of this notice.

(F) Reports.

The probation and pretrial services officer must send the court (1) periodic reports as necessary to make changes in the agreement and (2) a closing progress report.

(G) Notice of Violations.

While the offender serves as an informant, the sponsoring agency must promptly inform the court, directly or through the probation and pretrial services office, of any violations of the cooperation agreement, including any other criminal activity. The sponsoring agency must also immediately inform the probation and pretrial services officer when the sponsoring agency believes that the probation and pretrial services officer may be in danger due to the offender's activity.