

Truro Police Department

VICE, DRUGS AND ORGANIZED CRIME

Policy Number: OPS 6.18
REFERENCE:

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Accreditation Standards: 42.2.1(e); 43.1.1; 43.1.2; 43.1.3; 43.1.4; 43.1.5; 43.1.6

Mass. Gen. Law:

Other: ¹*Com. v. Miller*, 361 Mass. 644, 282 N.E.2d 394 (1972); *Com. v. D'Onofrio*, 396 Mass. 711, 488 N.E.2d 410 (1986) ¹*Illinois v. Perkins*, 496 U.S. 292, 110 S.Ct. 2394 (1990)

I. General considerations and guidelines

The standard police practice of relying on confidential informants, who are often persons of dubious character and questionable motives, is sometimes supplemented by the assignment of police officers as undercover agents. The complexities of modern police service and the sophisticated methods of modern criminals often demand a specialized police response depending upon the problems and concerns of the particular community.

Police undercover agents are specialists who confidentially solicit, collect and report criminal information, primarily on organized crime, vice or drug crimes. Police undercover work is an intelligence process that converts criminal data into useful information for police purposes.

It is the primary task of police undercover agents to gather criminal information, not to personally apprehend criminal offenders. The police undercover agent must concentrate on the investigation being conducted by his/her department, and contact with any other state, federal or local law enforcement agency during the course of the undercover assignment should be reported to the agent's commanding officer.

Police undercover agents must be more concerned with overall criminal involvement than with individual criminal acts. The sensitive nature of their assignments requires that undercover agents report directly to the Chief of Police or a supervisory officer designated by the Chief and the Chief may prefer that their reports be made orally, rather than in writing as a necessary safeguard. Any written reports that undercover agents do make should be securely and confidentially filed under the direct control of the Chief.

Police undercover agents must be able to unobtrusively frequent places where known criminals congregate and to observe their activities and their associations. Police undercover work is an inherently dangerous assignment and must be carefully supervised and controlled by the Chief of Police. The specific duties and assignments of police undercover agents must be carefully shielded to protect their personal safety.

Surveillance is described as the covert observation of places, persons and vehicles for the purpose of obtaining information concerning the identities or activities of subjects. In surveillance, unlike most other investigative techniques, the initiative is held by the subject or suspect. Without advance knowledge of the subject's plans, officers must be governed by the subject's movements. In other words, the officers react rather than act. The initiative can be seized only by determining in advance the subject's plans. An informant, in some instances, can be of value in interpreting surveillance information for the police. In as much as surveillance is expensive (personnel and equipment), each case should be individually considered. This tool is not an end in itself. It is simply another method of obtaining evidence and information.

II. POLICY

- A. It is the policy of this department that surveillance activities and undercover officers shall be used as necessary to gather intelligence to suppress criminal activities.

III. PROCEDURE

A. Vice, Drug and Organized Crime Complaints [43.1.1]

1. RECEIPT: All vice, drug and organized crime complaints shall be forwarded to the Investigator and shall include all available information, including contact information of the complainant. *(revised June 1, 2003)*
2. PROCESSING: The officer-in-charge at the time the complaint is received shall make a determination as to any immediate action to be taken.
3. A record shall be maintained of all information conveyed to and received from outside agencies. The Investigator shall maintain these records.
4. The Investigator shall brief the Lieutenant and/or Chief of Police concerning any on-going investigations. Officers assigned to these cases shall also brief the Lieutenant and/or Chief of Police. *[43.1.6] (revised June 1, 2003)*
5. The Truro Police Department will not conduct decoy or raid operations. The department will utilize the expertise of other law enforcement agencies in said operations. *(Revised April 7, 2005)*

B. Surveillance [43.1.5]**1. Reasons for Conducting Surveillance:**

- a. To detect and prevent crime;
- b. To locate a wanted fugitive by observing known hangouts and associates;
- c. To learn contacts and movements of a particular suspect or group;
- d. To learn the identity of confederates;
- e. To secure probable cause for the issuance of a search warrant;
- f. To recover stolen property;
- g. To develop information of an intelligence nature to justify or confirm suspicion;
- h. To identify people and their affiliation with a person under investigation; and
- i. To obtain information for use in interrogations.

2. Preparation for Surveillance

- a. The success of any surveillance operation depends on its covert nature. Preparation for such an undertaking should be as thorough as possible.
- b. Consideration of officers needed (both active and relief), together with the equipment needed, must be decided in advance.
- c. The use of code words, methods of summoning aid, methods of access and egress from the location and manner of dress should all be discussed.
- d. Officers should make a preliminary survey of the task to prepare for contingencies that may suddenly arise by becoming familiar with all facts of the case and the purpose of the surveillance. Officers must understand their assignments and have knowledge of the planned communications methods.
- e. A complete inventory of all equipment used for surveillance shall be made prior to and after the action. [43.1.4]

- f. It is important that officers involved know:
 - i. The suspect's full name, nicknames and aliases;
 - ii. Residence and business addresses and telephone numbers;
 - iii. Subject's complete physical description;
 - iv. Information regarding his/her walking habits, mannerisms and peculiarities;
 - v. Types of clothing and color preferences;
 - vi. Jewelry, habits and haunts;
 - vii. Daily routine;
 - viii. Identities and descriptions of friends/associates, doctors/dentists (and their business and telephone numbers);
 - ix. Dining and recreation preferences;
 - x. Identity of types of vehicles the subject uses, including registration numbers, make, model, color, individual characteristics or any other distinctive marks;
 - xi. Subject's driving habits.

3. *SURVEILLANCE OF PLACES*

- a. In criminal investigations, the crimes which usually require this type of surveillance are: gambling, prostitution, acting as a fence, the illegal sale of alcohol or controlled substances and certain "sting" operations.
- b. A careful survey of the surrounding area should precede any surveillance of a place. The character of the neighborhood, the residents and any transients should be noted. The observation point should be selected after careful study.

- c. Two types of place surveillance will suggest themselves:
 - i. Using a nearby location and remaining concealed.
 - ii. Posing as a person who would normally conduct business in such an area.

4. *TAILING OR SHADOWING:*

- a. A tail or tailing is the close observation of any individual or vehicle in movement from place to place. Tailing has the same connotation as shadowing.
- b. The following are the conventional requirements for an investigator selected to tail a person:
 - i. Average size, build and general appearance;
 - ii. No noticeable peculiarities in appearance or mannerism;
 - iii. No conspicuous jewelry or clothing;
 - iv. Perseverance and patience to wait (and wait and wait);
 - v. The appearance of attending strictly to his own business;
 - vi. Resourceful, versatile and quick wits;
 - vii. A good talker with the ability to improvise; and
 - viii. Training in one or two good “covers.”

5. *Notes and Log Book*

- a. Since the activities observed during surveillance may later become part of the evidence in a trial, or perhaps become the basis of a subsequent interrogation, it is highly important that a record of observations should be made.
- b. A log, a chronological record of the activities of both the officer and the target, shall be made for each surveillance.

C. Undercover Operations [43.1.5]**1. Selection of Undercover Agents**

- a. The Chief of Police must have complete confidence in any officer that [s]he selects and assigns to undercover duty.
- b. To be considered for such an assignment, a police officer must possess special characteristics and aptitudes, including the following:
 - i. A high level of personal integrity;
 - ii. A high degree of intelligence and common sense;
 - iii. Demonstrated reliability in the performance of previous police assignments;
 - iv. A high standard of physical fitness and mental alertness;
 - v. An observant, inquisitive nature and a retentive memory;
 - vi. A high degree of self-assurance and self-reliance;
 - vii. A persuasive, convincing manner which wins the confidence of people;
 - viii. The ability to blend into the surroundings without attracting undue attention; and
 - ix. An exceptional ability to react effectively in unexpected situations.

2. Undercover Assignments

- a. Undercover assignments should be established only when there is a demonstrated need and should be maintained for only as long as that need is justified.
 - i. Smaller departments may need part-time undercover assignments to concentrate on a particular crime problem.

- c. In smaller departments, where all department members are generally well-known to the public, consideration should be given to obtaining the services of a police officer from another law enforcement agency to conduct necessary undercover operations for a specific purpose and for a limited period of time.

3. *Procedural Safeguards*

a. *Funds* [43.1.3]

- i. Funds allocated for undercover operations must be carefully disbursed, recorded and controlled in accordance with procedures established by the Chief of Police.

b. *Electronic Surveillance*

- i. In addition to the adoption of effective disguises and false identities, police undercover agents also utilize electronic surveillance and videotaping techniques. If sufficient funds are not available for the acquisition of this sophisticated equipment, the Chief of Police should contact the District Attorney's, the Attorney General's, the U.S. Attorney's office, the State Police or appropriate federal law enforcement agency to inquire about obtaining use of this equipment.
- ii. All undercover operations utilizing electronic surveillance should be closely coordinated with the office of the local District Attorney or U.S. Attorney, or Attorney General.
- iii. All undercover operations utilizing electronic or mechanical devices to intercept, overhear or record any oral or wire communication must comply with the provisions of Chapter 272, section 99. Given the complicated provisions and intricate procedures set out in that statute, electronic or mechanical eavesdropping or surveillance should not be undertaken unless all devices and procedures have been reviewed by the office of the District Attorney, Attorney General, or the U.S. Attorney.
- iii. A complete inventory of all equipment used for undercover operations shall be made prior to and after the action.
[43.1.4]

c. Undercover Activities

- i. A police undercover agent must guard against making any unethical arrangement, or any unlawful agreement, or in any way condoning the commission of a crime, in return for criminal information regardless of its potential value.
- ii. A police undercover agent must be careful not to compromise his/her position as a police officer or to discredit the reputation of the police department in carrying out his/her duties.
- iii. A police undercover agent must take care to avoid any allegations of entrapment in gathering criminal evidence. (Entrapment is defined as actions taken by a law enforcement officer to induce another person to commit a crime through persuasion or enticement when such other person was not predisposed to do so.)
- iv. Police undercover agents should be systematically rotated back to their regular duties. This is particularly important in the case of officers assigned to undercover vice and narcotics investigations.

d. Review of Undercover Operations

- i. Undercover operations shall be periodically analyzed to determine their effectiveness and to justify their continuance.
- ii. An undercover assignment should be terminated when its purpose has been achieved or when the specific crime problem can be controlled by regular police operations.
- iii. An undercover operation should be a means toward a specific goal and should not be permitted to become a self-perpetuating permanent assignment.

e. Disguises:

- i. In assuming and maintaining undercover identities, an officer may legally:
 - [a] Use a disguise;

- [b] Tell the suspect and others false information about his/her name and address;
- [c] Lie about his/her employment or background; and
- [d] Use other falsities, tricks and deception as are necessary to further his/her undercover identity.ⁱ

f. Constitutional Considerations

- i. Police undercover agents must keep in mind that they remain subject to constitutional constraints.
- ii. Once adversarial judicial proceedings have commenced against a suspect, undercover agents shall not deliberately elicit information from the suspect regarding offenses for which the judicial proceeding has commenced.
- iii. The U.S. Supreme Court has carved out an exception to the Miranda requirement which allows an undercover law enforcement officer posing as a fellow inmate to ask questions that could elicit an incriminating response, without having to provide Miranda warnings.ⁱⁱ However, whether Massachusetts will adopt this exception is yet to be seen.
- iv. A police undercover agent shall not attend an attorney-client conference if the agent's purpose is to gather material from the conference to be used in the prosecution.

D. Records [43.1.2]

- 1. Records for active vice, drug and organized crime investigations shall be maintained separately and securely from the central records system.
- 2. Access shall be limited to the following authorized personnel: The Chief of Police, or his designee, and the Prosecutor/Investigator.

ⁱ*Com. v. Miller*, 361 Mass. 644, 282 N.E.2d 394 (1972); *Com. v. D'Onofrio*, 396 Mass. 711, 488 N.E.2d 410 (1986)

ⁱⁱ*Illinois v. Perkins*, 496 U.S. 292, 110 S.Ct. 2394 (1990)