



CITY OF PORTLAND, OREGON



Bureau of Police

Tom Potter, Mayor

Rosanne M. Sizer, Chief of Police

1111 S.W. 2nd Avenue • Portland, OR 97204 • Phone: 503-823-0000 • Fax: 503-823-0342

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EXECUTIVE ORDER

DATE: October 1, 2008

TO: All Members

RE: DIR 640.95 Undercover Safety and Operation Procedures

This directive has been significantly revised to reflect additional requirements for members, supervisors, RU managers and DVD. This directive is included for your review.

640.95 UNDERCOVER SAFETY AND OPERATION PROCEDURES

Index: Title

Refer: ORS 165.542 Reports Required Concerning Use of Electronic Listening Device
ORS 181.852 Disclosure of Information About Certain Employees of Law Enforcement Agencies
ORS 475.992 Controlled Substance Offenses
DIR 316.00 Alcohol Use
DIR 316.10 Drug/Controlled Substance Use
DIR 600.00 Use of Aircraft
DIR 640.90 Patrol Branch Covert Assignments
DIR 660.10 Property and Evidence Procedures
DIR 660.30 Evidence Funds Use and Accounting
DIR 660.33 Informants

POLICY (640.95)

Undercover operations, investigations and missions are inherently dangerous. The use of sworn members in a covert role in an investigation will be limited to those instances where the use of other investigative tools (i.e., Confidential Reliable Informants (CRI), surveillance, and citizen information) is not practical or would compromise the integrity of the investigation. The overriding concern in any undercover operation is for the safety of the undercover member. A sergeant or above will supervise all undercover operations. It is essential that adequate cover officers are present during any undercover operation.

PROCEDURE (640.95)

Directive Specific Definition

Undercover member: A sworn member who is working in plainclothes and in a covert manner with the goal of making personal contact with another person in a criminal investigation.

Member Responsibilities (640.95)

An undercover member may work alone or with any number of undercover members. The undercover member should insure that he/she does not have any items of clothing, equipment or any other item visible that would readily identify him/her as a sworn member. When in a covert role, the member is subject to the following:

- a. At no time will an officer consume controlled substances as a part of the undercover role. If a situation arises where the undercover member is being forced to use controlled substances, he/she should refuse. If the suspect persists, the member(s) will extract his/herself from the situation and terminate contact.
- b. A member working in an undercover role should be armed. If there is a specific reason the member cannot be armed, approval from the RU manager (or designee) will be obtained before the member works unarmed.
- c. Members should avoid drinking alcohol when working undercover. In such situations and whenever possible, members will consume non-alcoholic beverages. If the need arises, a member may drink alcohol but should refrain from drinking in excess. Immediately after the operation the member will report to his/her supervisor that alcohol was consumed. In the event a member consumed alcohol, he/she will take no police action after consuming alcohol and the member will remain at his/her RU until the effects of the alcohol are gone.
- d. Members should attempt to use audio recording devices while working undercover. If this is not practical or there is a legal reason for not recording, the member will seek supervisory approval prior to the commencement of the operation (DVD is available to assist with listening devices). Members working undercover in a prostitution mission will use audio recording devices during the entire mission, but only record those persons whom they have probable cause to believe are about to commit the crime of prostitution.
- e. An undercover member will not engage in sexual contact. A member will not expose his/her genitals or commit criminal offenses, to convince others that he/she is not associated with law enforcement. A sworn member in a decoy role will not expose his/her private body parts, which includes female breasts, or touch the private body parts, which includes female breasts, of a john/prostitute. A sworn member in a decoy role will document in his/her report any unsolicited touching of the member's private body parts by a john/prostitute. A sworn member will immediately disengage from any unsolicited touching by a john/prostitute and comment in his/her report how that was accomplished.
- f. An undercover member will not commit criminal offenses for the purpose of disguising that he/she is a police officer. A controlled delivery of illegal drugs with the purpose of arresting the suspect and recovering the illegal drugs and/or the display of illegal drugs to a suspect to further an investigation are not criminal offenses.
- g. A member working in an undercover role will not be the case officer for the investigation. The case officer, along with the supervisor, will be responsible for coordination of the operation. The undercover member's primary responsibility is to act in the covert role.
- h. The undercover member should not become involved in an arrest while acting in a covert capacity. If a situation arises that an undercover member must take police action, he/she should extract him/herself as soon as cover members arrive and take control.
- i. For safety reasons, an undercover member should avoid entering a suspect's vehicle. If it is necessary to get into a suspect's vehicle, resources will be in position to prevent the

- suspect from moving the vehicle from the operational area. Contingency plans to rescue the undercover member will be included in the operational plan. In a prostitution mission, the undercover member is never allowed to get in the suspect vehicle.
- j. Supervisors should consider using the Air Support Unit in undercover operations to assist with the safety of the undercover member.
 - k. If there is more than one suspect in a case, consideration should be given to having more than one undercover member. Member safety should be the driving factor in determining how many undercover members to use.
 - l. If a CRI is used to introduce an undercover member to a suspect, the case officer, undercover member and the CRI will coordinate the covert role play. The CRI will be given detailed instructions to ensure the safety of the undercover member. The CRI and the undercover member should rehearse his/her roles so that there is no confusion when the covert operation commences. Care should be given to avoid giving the CRI confidential information regarding the undercover member, the suspect or the case.
 - m. Communications must be clear and concise between the undercover member and cover members during covert operations. Visual and audio signals will be included in the operational plan, as well as telephones, radios and pagers. Pager codes and signals should be worked out ahead of time so that the cover team can communicate on multiple levels with the undercover member. Predetermined signals will be established and briefed prior to the mission so that everyone involved in the operation is cognizant of the signals.
 - n. Any member, regardless of rank, can terminate an undercover operation if he/she sees or hears something that compromises the safety of any member involved in an undercover operation.
 - o. No probationary officer will work in an undercover capacity unless approved by the Training Division and appropriate Branch chief. Exceptions should be under exceptional circumstances and be vital to the completion of a specific case.
 - p. For safety reasons an undercover officer will perform their undercover duties in a public place or a public business and will not enter a residence to perform undercover operations because of the dangers entering a location controlled by a subject of an investigation. An RU manager can approve an undercover officer to enter a residence only if a full review of all safety concerns are completed and weighed to ensure the safety of the officer and strict safety conditions are imposed on the undercover operation (i.e., mandatory body-wire worn by the undercover officer and a mandatory five person extraction team is available on site to rescue the undercover officer as needed).

Supervisors Responsibilities (640.95)

Supervisors will ensure that the undercover operation is thoroughly planned and that the safety of the undercover member is the primary focus during the planning process. When conducting undercover operations supervisors should consider the following:

- a. All undercover operations will have a written operational plan that is approved by a sergeant or above.
- b. Supervisors will ensure that there is appropriate cover present for any undercover operation. All surveillance and cover officers will be present for the operational briefing prior to the planned operation.

- c. Communications will be outlined in the operational plan and will include: radio nets, telephone links, and visual/audio signals for the undercover member. This information will be included during the pre-operation briefing.
- d. Contingency plans for rescuing the undercover member will be included in the written operational plan and this information will be included in the pre-operation briefing.
- e. The unit supervisor conducting the operation should notify a supervisor in the precinct/jurisdiction of an undercover operation. When practical, uniform members working in the area should be notified of the undercover operation. The notification should include a description of the undercover member and the clothes he/she is wearing.
- f. If the undercover member is going to be unarmed, the supervisor must seek RU manager's approval before the operation commences.
- g. In some undercover situations, it may be necessary for members to consume alcoholic beverages. In the event alcoholic beverages are consumed, members will not consume an amount which would impair to any degree their ability to perform their duty. In the event a member consumes alcohol, the supervisor will modify the member's duty status in the event that the member is impaired by alcohol to any perceptible degree. The evaluation will be based on specific, concurrent, articulable observations made by a trained supervisor concerning the appearance, behavior, speech or body odors of the member in order to ensure that he/she takes no police action while under the influence of alcohol and that reporting requirements are adhered to. Additionally, supervisors are responsible to see members do not drive a vehicle while still under the effects of alcohol.
- h. If the undercover member is not wearing audio recording equipment, the supervisor will ensure that the operation occurs in a public area with good visibility.
- i. The supervisor will confirm that the Electronic Listening Device report form is completed and delivered to the District Attorney's office within 30 days of the recording of the verbal conversation as required by ORS 165.542 unless prior judicial authorization to record a verbal conversation (s) has been granted.
- j. Undercover members should be encouraged to voice his/her level of comfort when asked to work in a covert capacity. At no time will a supervisor assign a member to work in a covert role if the member is uncomfortable with the operation plan or his/her ability to perform in a covert role.
- k. The supervisor will coordinate with the Air Support Unit when using an airplane during undercover operations.
- l. No undercover operation will be executed until the Oregon State Intelligence Network (OSIN) has been notified and the operation has been de-conflicted. It will be the supervisor's responsibility to ensure this occurs prior to the operation.
- m. All undercover operations will be debriefed as soon as practical.
- n. Supervisors should complete the training in the use of the recording equipment.

RU Manager Responsibilities (640.95)

- a. RU manager will ensure that supervisors are responsible for planning undercover operations and that the safety of the undercover member is a primary concern. Managers will determine when it is appropriate for a member to work in an undercover role without a firearm.
- b. RU manager will ensure that the precinct has the proper audio equipment (body wire) devices available for the undercover mission.

- c. RU manager will ensure that all recording equipment will be purchased from the recommended list obtained through the DVD technicians.
- d. RU manager will ensure that all recording equipment will be maintained by each division.
- e. RU manager will ensure that all officers and supervisors involved in the use of the recording equipment have been trained by DVD technicians in the proper use of the equipment.

DVD Responsibilities (640.95)

- a. All recording equipment used in an undercover prostitution mission will be selected by the DVD technicians.
 - b. DVD technicians will provide the training to all sworn members who will be using this equipment during the mission.
 - c. No other recording equipment will be used on an undercover mission or a prostitution mission unless it is approved by a supervisor from the DVD technician group.
 - d. After the DVD technicians have trained the members in the use of the recording equipment and the downloading of the recording, the member will be able to use the equipment at the division where they are assigned. The supervisors should also complete the training in the use of the recording equipment.
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FOR MORE INFORMATION:

Please contact Marsha Palmer, Strategic Services Division, at 503-823-0264.

ROSANNE M. SIZER
Chief of Police

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