

SUBJECT: PERKINS OPERATIONS

DATE: FEBRUARY 7, 2017

Over the past few years, Perkins Operations have become more prolific within Los Angeles County.(1) A properly conducted Perkins Operation is a vital investigative tool that can yield valuable information, both inculpatory and exculpatory, without compromising the constitutional rights of a target. The purpose of this Special Directive is to establish uniform procedures for the appropriate use of this important investigative tool, to safeguard the constitutional rights of all defendants, to ensure the safety of all parties involved in the operation, and to promote the ethical and fair prosecution of criminal cases.

Effective immediately, each deputy shall review his/her open cases to determine if a Perkins Operation was conducted. If a Perkins Operation was conducted, the deputy shall submit the Perkins Pretrial Discovery Checklist to the Perkins Coordinator within 10 working days of this Special Directive.

The soon to be published 2017 version of the Legal Policies Manual is revised in Chapter 3 (Crime Charging – Special Policies) and a new Chapter 27 is added (Perkins Operations) as follows (LPM §§ 3.12, 27.01, 27.02, 27.03, 27.04, 27.05, 27.06, 27.07):

3.12 PERKINS OPERATIONS – FILING PROCEDURES

When reviewing a case for filing, the filing deputy shall inquire of the law enforcement officer if a Perkins Operation was conducted. If a Perkins Operation was conducted, the filing deputy shall make a notation in either the Statement of Facts or Attorney Notes.

Except in extraordinary circumstances, if insufficient evidence exists to file the case without the Perkins statement, the filing deputy shall listen to the Perkins recording before filing the case. If sufficient evidence exists to file the case without the Perkins statement, the filing deputy does not need to listen to the recording. The filing deputy does not need to listen to the entire recording; the filing deputy need

only listen to the incriminating statement(s) of the suspect. Further, a filing based only on a Perkins statement, without corroboration, requires Head Deputy approval.

Whenever a case involving a Perkins Operation is presented for filing, the filing deputy shall immediately complete a Perkins Filing Checklist (see SD 17-03 for the Perkins Filing Checklist) and email a copy to the Perkins Coordinator (PerkinsCoordinator@da.lacounty.gov). The Perkins Filing Checklist shall be completed and emailed to the Perkins Coordinator whether or not the case is filed. Similarly, law enforcement officers should notify the Perkins Coordinator whenever they conduct a Perkins Operation even when a case is not presented for filing.

Due to the security considerations inherent in any Perkins Operation, the filing officer need not disclose the identity of the Perkins Agent to the filing deputy. The filing deputy, however, shall instruct the filing officer to immediately contact the Perkins Coordinator to provide the identity of the Perkins Agent to the Perkins Coordinator. This will ensure compliance with the obligations set forth in Penal Code §§ 1054 et seq. and *Brady v. Maryland* (1963) 373 US 83.

If the Perkins Operation is not disclosed in the reports provided at the time of filing, the filing deputy shall instruct the investigating officer to prepare a supplemental report detailing, at a minimum, that a Perkins Operation was conducted, the date and general location of the operation, and a summary of the Perkins statement. This supplemental report and a copy of the recording of the Perkins statement shall be provided by the investigating officer to the handling deputy. The handling deputy is responsible for providing this supplemental report and recording to the defense in accordance with Penal Code §§ 1054 et seq. and *Brady v. Maryland*. Any statement of a defendant made during a Perkins Operation shall be provided to the defense.

If the Perkins Operation was conducted post-arraignment or post-indictment, it may violate *Massiah v. U.S.* (1964) 377 US 201. The statement, and any information obtained as a result of the statement, may therefore be inadmissible as to the crime on which the defendant has been arraigned or indicted. Any such operation shall be immediately reported to the Perkins Coordinator.

Due to safety considerations, any Perkins discovery provided to the filing deputy shall not be included in the original defense discovery packet. This discovery shall first be reviewed by the handling deputy for any safety or security issues and shall be provided to the defense by the handling deputy in accordance with Penal Code §§ 1054 et seq. and Brady v. Maryland. The specific procedures for handling cases involving Perkins Operations are covered in Chapter 27.

CHAPTER 27

PERKINS OPERATIONS

27.01 MISSION STATEMENT/PURPOSE

The purpose of this Perkins protocol is to establish uniform procedures for the appropriate use of this important investigative tool, to safeguard the constitutional rights of all defendants, to ensure the safety of all parties involved in the operation, and to promote the ethical and fair prosecution of criminal cases. In order to optimize the use of limited resources and minimize security concerns, except in unusual situations Perkins Operations should only be used in cases involving homicide or other crimes for which the penalty is life in prison.

27.02 DEFINITIONS

Perkins Operation: Undercover operation based on the United States Supreme Court case of Illinois v. Perkins (1990) 496 US 292. In a Perkins Operation, an undercover officer or Perkins Agent is fitted with a recording device or enters a recorded environment and engages a target in conversation at the request of law enforcement in an attempt to gain information regarding criminal activity. A Perkins Operation differs from a "listening post" situation in which the agent simply listens to what is said but does not attempt to engage the target in a conversation to gain information, and also differs from a jailhouse informant situation as defined below. Different rules apply to Perkins Operations, "listening post" situations, and jailhouse informants.

Undercover Officer (UCO): Law enforcement officer who is placed in proximity to a target in order to obtain information. The target must be unaware that the UCO is a law enforcement officer. The UCO engages in conduct or conversation with the target in an attempt to obtain information.

Perkins Agent (PA): Non-law enforcement individual working at the request of law enforcement who is placed in proximity to a target in order to obtain information. The PA engages in conduct or conversation with the target in an attempt to obtain information.

Jailhouse Informant: As defined in Legal Policies Manual Chapter 19, a person in custody who receives a communication from another person in custody about a crime committed by the latter and who chooses to convey this information to authorities (emphasis added). A jailhouse informant differs from a PA in several significant respects. Whereas a jailhouse informant is always in custody, a PA may not be in custody; any operation involving PAs are instigated by law enforcement; the PA always works at the request of law enforcement; and conversations between PAs and targets are recorded. The reliability concerns inherent in a jailhouse informant situation are therefore virtually nonexistent in a Perkins Operation.

Consideration: Any benefit received by, or promised to, a PA, directly or indirectly, in exchange for his/her work in a Perkins Operation, including but not limited to money, security-related expenses, leniency in any case, and any special benefits while in custody.

Corroboration: Any evidence that supports the information obtained by the PA during the Perkins Operation.

Perkins Coordinator: Assistant Head Deputy specifically assigned to compile and maintain all Perkins-related information, including motions, discovery packets, and any other confidential information related to the PAs. The Perkins Coordinator also acts as a liaison with the PA's law enforcement handler, provides training to deputies and other law enforcement personnel, handles referrals from Head Deputies on Perkins issues, refers issues to the Perkins Committee, and answers questions from prosecutors or other law enforcement

officers related to legal or practical issues in Perkins Operations.
(PerkinsCoordinator@da.lacounty.gov)

Perkins Committee: A three-person committee consisting of the Perkins Coordinator, the Head Deputy of the Hardcore Gang Division, and the Director of Specialized Prosecutions. The Perkins Committee is responsible for:

- Authorizing the handling deputy's request to use the PA as a witness at any hearing.
- Authorizing the use of Perkins information when the operation was conducted after the filing of a complaint.
- Approving any substantial deviations from this protocol.

27.03 FILING PROCEDURES

When reviewing a case for filing, the filing deputy shall inquire of the law enforcement officer if a Perkins Operation was conducted. If a Perkins Operation was conducted, the filing deputy shall make a notation in either the Statement of Facts or Attorney Notes.

Except in extraordinary circumstances, if insufficient evidence exists to file the case without the Perkins statement, the filing deputy shall listen to the Perkins recording before filing the case. If sufficient evidence exists to file the case without the Perkins statement, the filing deputy does not need to listen to the recording. The filing deputy does not need to listen to the entire recording; the filing deputy need only listen to the incriminating statement(s) of the suspect. Further, a filing based only on a Perkins statement, without corroboration, requires Head Deputy approval.

Whenever a case involving a Perkins Operation is presented for filing, the filing deputy shall immediately complete a Perkins Filing Checklist (see SD 17-03 for the Perkins Filing Checklist) and email a copy to the Perkins Coordinator (PerkinsCoordinator@da.lacounty.gov). The Perkins Filing Checklist shall be completed and emailed to the Perkins Coordinator whether or not the case is filed. Similarly, law enforcement officers should notify the Perkins Coordinator whenever they conduct a Perkins Operation even when a case is not presented for filing.

Due to the security considerations inherent in any Perkins Operation, the filing officer need not disclose the identity of the Perkins Agent to the filing deputy. The filing deputy, however, shall instruct the filing officer to immediately contact the Perkins Coordinator to provide the identity of the Perkins Agent to the Perkins Coordinator. This will ensure compliance with the obligations set forth in Penal Code §§ 1054 et seq. and Brady v. Maryland (1963) 373 US 83.

If the Perkins Operation is not disclosed in the reports provided at the time of filing, the filing deputy shall instruct the investigating officer to prepare a supplemental report detailing, at a minimum, that a Perkins Operation was conducted, the date and general location of the operation, and a summary of the Perkins statement. This supplemental report and a copy of the recording of the Perkins statement shall be provided by the investigating officer to the handling deputy. The handling deputy is responsible for providing this supplemental report and recording to the defense in accordance with Penal Code §§ 1054 et seq. and Brady v. Maryland. Any statement of a defendant made during a Perkins Operation shall be provided to the defense.

If the Perkins Operation was conducted post-arraignment or post-indictment, it may violate Massiah v. U.S. (1964) 377 US 201. The statement, and any information obtained as a result of the statement, may therefore be inadmissible as to the crime on which the defendant has been arraigned or indicted. Any such operation shall be immediately reported to the Perkins Coordinator.

Due to safety considerations, any Perkins discovery provided to the filing deputy shall not be included in the original defense discovery packet. This discovery shall first be reviewed by the handling deputy for any safety or security issues and shall be provided to the defense by the handling deputy in accordance with Penal Code §§ 1054 et seq. and Brady v. Maryland.

27.04 GENERAL PROCEDURES

Due to safety and security considerations, the handling deputy shall carefully weigh whether or not to call the PA as a witness. In a standard Perkins Operation, the PA will not need to testify because the investigating officer can lay the foundation for the recorded

conversation between the PA and the target. Certain foundational issues, however, such as poor audio quality, may require the use of the PA as a witness.

Before the handling deputy may use the PA as a witness, the handling deputy shall obtain prior approval from the Perkins Committee. All requests to use a PA as a witness shall be submitted in writing. Approval by the Perkins Committee is required before the PA can be called to testify at any proceeding.

Because of the inherent reliability of the Perkins information, including but not limited to the fact that the operation was recorded, PAs are not jailhouse informants and do not fall within the requirements of Legal Policies Manual Chapter 19. Moreover, a PA is not an in-custody informant within the meaning of Penal Code § 1127a and is not subject to the provisions of Penal Code §§ 1111.5, 1127a, or 4001.1, based on the purpose and legislative history of those sections. Sample motions on these issues can be obtained from the Perkins Coordinator.

A Perkins Operation conducted after the filing of the complaint shall be referred by the handling deputy through the Perkins Coordinator to the Perkins Committee before the Perkins statement can be used.

The handling deputy shall insist that all motions by the defense related to Perkins Operations be noticed in writing and shall submit written Points and Authorities in response. The Perkins Coordinator can provide sample briefs on common Perkins issues.

If a defense attorney requests the name of a PA for a conflict check, the request shall be referred to the Perkins Coordinator for assistance. The Perkins Coordinator shall be notified of any change in defense attorneys to avoid potential conflict issues.

27.05 DISCOVERY

The handling deputy is responsible for providing discovery in accordance with Penal Code §§ 1054 et seq. and Brady v. Maryland.

Due to safety and security considerations, the handling deputy shall listen to the Perkins recording before providing the recording to

defense. If there are concerns regarding safety issues, the quality of the recording, Brady issues, or if the recording contains confidential or privileged information, the handling deputy shall immediately notify the Perkins Coordinator.

The handling deputy shall inform the Perkins Coordinator whenever the defense is seeking the identity of the PA to ensure that the appropriate opposition paperwork is filed. The name of the PA shall only be disclosed if required by Penal Code §§ 1054 et seq., Brady v. Maryland, or court order. If the PA is not called as a witness, disclosure of the identity of the PA is not required under Penal Code §1054.1, and the handling deputy need only provide the recording of the Perkins operation to the defense. If the court orders disclosure of the PA's identity over the handling deputy's objection, the handling deputy shall consider requesting a brief continuance to consult with his/her Head Deputy and the Perkins Coordinator.

The handling deputy shall immediately notify the Perkins Coordinator if the name of the PA is disclosed to the defense. The handling deputy shall not write the name of the PA in the DA file or in any report. All references to the identity of the PA shall be subject to a protective order.

If the PA is to be called as a witness at any proceeding, after approval for the testimony is obtained from the Perkins Committee, the handling deputy shall contact the Perkins Coordinator for the discovery packet. The discovery packet will include the name and DOB of the PA; transcripts of prior testimony; any pending cases or cases in which the PA is subject to probation or parole; any felony convictions or crimes of moral turpitude; any consideration, plea agreements, or letters of consideration; and any other evidence required by Penal Code §§ 1054 et seq. or Brady v. Maryland. To ensure the safety of the PA, the discovery packet shall only be disclosed with a protective order and shall be Bates-stamped and watermarked.

Recordings of Perkins Operations conducted by the PA in other filed cases in Los Angeles County are available for the defense to review upon request. The recordings will not be copied due to safety considerations.

27.06 GENERAL INFORMATION

The following information shall be provided to the Perkins Coordinator (PerkinsCoordinator@da.lacounty.gov) on any case presented for filing involving a Perkins Operation:

- By the filing deputy at time of review:
 1. A copy of the Perkins Filing Checklist (see SD 17-03 for the Perkins Filing Checklist).
 2. Any information regarding the PA if provided by the filing officer.

- By the handling deputy within 30 working days following the preliminary hearing:
 1. The Perkins Pretrial Discovery Checklist (see SD 17-03 for the Perkins Pretrial Discovery Checklist) and related information.
 2. Any requests by the defense for any information on the PA.

- By the handling deputy at the conclusion of the case:
 1. The Perkins Case Closing Checklist (see SD 17-03 for the Perkins Case Closing Checklist).
 2. Any possible Brady information.

27.07 CONCLUSION

A properly conducted Perkins Operation is a vital investigative tool that can yield valuable information without compromising the constitutional rights of a suspect or defendant. There is a critical need for consistency in the handling of Perkins Operations; the integrity of this office and the integrity of our system of justice depends on it. The goal of this protocol is to provide consistency and transparency in the procedures used while ensuring the safety and security of all parties involved.