

RHODE ISLAND DEPARTMENT OF ATTORNEY GENERAL

RULES AND REGULATIONS FOR

REVERSE UNDERCOVER/PROPRIETARY OPERATIONS

I. INTRODUCTION:

- a. "Reverse Undercover" is a generic term for any variation of the traditional drug buyer approach in which the undercover agent instead poses as the seller of drugs. It also encompasses those approaches in which the agent poses as a seller of essential chemical precursor products from an undercover "storefront" operation, of an essential service such as in a money laundering operation.
- b. Reverse operations generally are of a more complex nature, consumer greater resources, involve relatively new or untested points of law, and in other respects require close coordination with the prosecutor and with other law enforcement organizations. For these reasons, reverse operations will only be conducted with the prior approval of the Attorney General (AG) and in accordance with the guidelines set forth in these rules and regulations:
- c. The R.I. Uniform Controlled Substance Act, Chapters 21-28-1 et. seq. as amended by the R.I. General Assembly, January, 1991, requires that the Department of Attorney General promulgate rules and regulations for the administration of reverse undercover operations. These rules and regulations do not confer any legal rights to individuals arrested under this amendment, but do establish guidelines for law enforcement organizations using reverse undercover or proprietary operations. The guidelines will in part address prosecution concerns about the defenses for entrapment such as the subjective predisposition test, the objective police conduct test, and due process violations. These guidelines may be amended as necessary to facilitate the objectives of this chapter.
- d. Although reverse undercover operations generally are productive in terms of asset seizures, asset seizures alone are not sufficient grounds for the use of this approach. The objective must be to immobilize violators, with asset seizures being just one facet of a proposed investigation. Focusing on identified targets of trafficking organizations that may also be contemplating a reverse operation on the same or related targets.
- e. Reverse undercover operations will be directed against identified, traffickers or trafficking organizations as determined by the law enforcement organization and the Attorney General. Reverse operations will not be used in the fashion of a general "advertisement", with little idea as to whom may appear. The only exceptions to this may be in "storefront" operations of reverse proprietary operations involving the sale of precursor chemicals, in money laundering operations where it may not be possible to screen suspected potential violators in

advance or situations where violators hold positions of trust in the criminal justice System and their use of substances undermines the integrity of the criminal justice System.

## II. USE OF CONTROLLED SUBSTANCE/PLANNING AND APPROVAL:

- a. A reverse undercover operation may or may not require the use of controlled substances. Where controlled substances are required the policies and procedures set forth in the following shall apply. "Use" as distinct from "furnish", means any situation where controlled substances are shown or "flushed" without ever leaving the control of the undercover law enforcement officer or where the controlled substance is to be supplied in a tightly controlled setting with recovery imminent through seizure and arrest.
- b. "Furnish" means to actually give a controlled substance to a violator. In extraordinary circumstances where a small amount of drugs are given to a violator, there must be a clear indication that this approach will implicate the individual(s) involved and that the controlled substances furnished shall only be a small sample sufficient to test or necessary to establish the bonafides of the undercover officer. The weight, and when practicable the purity, of the sample must be determined and approved before any controlled substance is furnished. Where possible, sham narcotics (controlled substances) should be used. Sham narcotics shall never be used in a manner where there is any possibility they may be ingested or released into the general commerce or traffic. Sham narcotics for the purposes of these guidelines are defined as imitation narcotics created to mimic the real narcotic substances in terms of physical characteristics and their ability to pass the kind of chemical testing likely to be used by illicit traffickers.
- c. The Attorney General or an Assistant Attorney General designated by the Attorney General must review and approve the investigations involving reverse operations prior to any arrests or seizures.
- d. The investigative agency must draft and adhere to a written operational investigative plan which will be reviewed and approved by the highest ranking authority in a law enforcement organization or his designate. The investigative plan in brief will cover the following topics:
  1. Identify the target(s) and substantiate their importance.
  2. Describe the background and the current status of the investigation.
  3. Identify other law enforcement organizations involved in the investigation and outline the level of cooperation and coordination.

4. If controlled substances are to be used (real or sham), discuss how the drugs will be used, how much will be required and whether or not a sample will be provided to the target.
5. Describe security measures that will be employed to protect the officers and the drugs.

### III. OBTAINING AND ACCOUNTING FOR CONTROLLED SUBSTANCES:

- a. To obtain a controlled substance such as marijuana, cocaine, or heroin (but not limited to these substances), the requesting agency should indicate the case number, the toxicology number, the name of the previous defendant (if applicable), the type of drug requested and the order of destruction (if applicable). In all instances, the requester must adhere to state and federal requirements for chain of custody of evidence. Subsequent use must not be in conflict with any disposal orders issued by the court.
- b. Controlled substances used in reverse operations should come from evidence in closed state cases or from evidence in closed federal cases. U.S. Customs and DEA can be used on request to supply some controlled substances for reverse operations.
- c. Transfers of narcotics from federal agencies must be permanent and the controlled substances should not be returned and must be destroyed according to the rules of the receiving state or local agency.
- d. Controlled substances must be weighed, tested, and specifically identified prior to and following an operation.
- e. The officer to whom a controlled substance is released will be held responsible for its safekeeping and its prompt return to evidence as soon as the need for the controlled substance has ended. (As per R.I.G.L. 21-28-5.07) If the reverse operation is successful, the controlled substance used becomes evidence in the new case and must be handled according to departmental regulations. Unused controlled substances that have not taken on evidentiary value will be returned to evidence, documented and destroyed according to state law provisions.
- f. The logistics of the operation should be designed such that the controlled substances are out of evidence the shortest possible time (preferably less than 24 hours). While a controlled substance is in use, the security measures necessary to assure safekeeping and integrity of the drugs and the safety of undercover personnel will rank on a par with the highest projective of the investigation. In all instances it is the officer's responsibility to insure proper documentation of the chain of custody for controlled substances used in reverse operations.

#### IV. MARIJUANA

- a. Marijuana used in reverse undercover operations will be drawn from earlier seizures as per R.I.G.L. 21-28-5.07. Agencies and/or agents applying for marijuana must insure that these exhibits are no longer needed as evidence in an earlier case (refer to Section III) (As per R.I.G.L. 21-28-5.07.1).

#### V. COCAINE, HEROIN AND OTHER CONTROLLED SUBSTANCES:

- a. When an operation requires the use of any of these drugs, it is important that these drugs be handled with care as per Section III. All drugs under this section should be issued under seal and that seal should remain intact until the drug is actually required and released. The drugs should be resealed as soon as possible after use. The logistics of the operation should be planned such that the drug is out of laboratory custody or agency custody for the shortest possible time. Rigid security measures must be taken to safeguard the drug while in use. The officer to whom the drugs are released will be held responsible for the safekeeping, integrity, and the chain of custody of drugs used in reverse operations.
- b. At the conclusion of its use, the drug will be returned to the laboratory under seal for retesting and quantification before being reentered into a law enforcement agency evidence system.

#### VI. COORDINATION OF INVESTIGATION:

In order to prevent reverse undercover operations from clashing with each other, it is essential that reverse operations be coordinated with other state, local, and federal law enforcement agencies operating in an area. To prevent separate law enforcement organizations from targeting the same individuals and to prevent a law enforcement agency from conducting reverse stings on undercover officers from another law enforcement agency, all Rhode Island law enforcement organizations must first notify the Attorney General of the pending reverse operation. The controlling law enforcement agency and the Attorney General will then coordinate with other agencies insofar as possible without compromising or sacrificing the security of the proposed reverse operation.

- VII. The reverse sting order shall remain under seal at a location designated by the Presiding Justice. The reverse sting order may be executed only within ten (10) days after its date. If the Order is not executed the Attorney General or an Assistant Attorney General designated by the Attorney General shall be notified and the police copy of the Order returned to the Attorney General or his designate forthwith.

APPROVED AND ADOPTED:

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SHELDON WHITEHOUSE, ATTORNEY GENERAL

DATED: January 5, 1999