


SPECIAL DIRECTIVE 17-04

TO: ALL DEPUTY DISTRICT ATTORNEYS

FROM: JOHN K. SPILLANE 
Chief Deputy District Attorney

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.

¹ A *Perkins* Operation is based on the United States Supreme Court case of *Illinois v. Perkins* (1990) 496 US 292.

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 17-04 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 17-04 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 17-04 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 17-04 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 17-04 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.

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Attachments

Perkins Filing Checklist

Case Number¹:

DR / Report Number:

Defendant Name(s):

Charge(s):

Victim(s):

Date of Incident:

Date of Operation:

Investigating Officer:

Cell Phone Number:

Agency:

Filing DA:

Is there sufficient evidence to file the case **without** the *Perkins* Operation? Yes No

If no, the filing DDA **shall** listen to the *Perkins* recording before filing the case.

Is there corroboration of the *Perkins* information? Yes No

If no, Head Deputy approval is required to file the case.

Was the defendant advised of his *Miranda* Rights? Yes No

If yes, was the advisement before, or during, the *Perkins* Operation? Yes No

If yes, did he invoke any of his *Miranda* Rights? Yes No

Does the defendant have any open cases? Yes No

If yes, list the case number(s) _____

Is the recording of the *Perkins* Operation included in the filing packet? Yes No

If yes, do **not** include the recording in the initial defense discovery packet.

Is the *Perkins* Operation summarized in a report? Yes No

If no, have the I/O generate a supplemental report regarding the *Perkins* Operation as outlined in LPM 3.12 and LPM 27.03.

Have you listened to the audio recording of the *Perkins* Operation? Yes No

If yes, are there any issues of quality, foreign language, etc.? Yes No

If yes, what are the issues? _____

Please email this *Perkins* Filing Checklist to the *Perkins* Coordinator at
PerkinsCoordinator@da.lacounty.gov

Do not include the name of the PA in the DA File.

¹ If the case is declined for filing or deferred for further investigation, the reviewing deputy shall still provide this form to the *Perkins* Coordinator and use the DA Case Number vs. the Court Case Number.

Perkins Pretrial Discovery Checklist

Case Number:

Defendant Name(s):

Investigating Officer:

Cell Phone Number:

Handling DA:

Please review the entire *Perkins* Operation recording prior to providing the recording to the defense and prior to completion of this checklist.

All *Perkins* Operation recordings of statements of a defendant shall be turned over to the defense pursuant to Penal Code §§ 1054 et seq. and *Brady v. Maryland*.

Was the complaint filed prior to the *Perkins* Operation? Yes No

If yes, notify the *Perkins* Coordinator immediately.

Is the *Perkins* Operation summarized in a report? Yes No

If no, have the I/O generate a supplemental report regarding the *Perkins* Operation as outlined in LPM 3.12 and LPM 27.03.

Is the testimony of the PA necessary for a successful prosecution? Yes No

If yes, prepare a *Perkins* Committee Approval Memorandum.

Are there issues with the *Perkins* Operation, the recording, or the PA? Yes No

If yes, provide a brief description (sound quality, non-verbal communication, necessary redactions, safety issues, possible *Brady* information, etc.):

Please email this *Perkins* Pretrial Discovery Checklist and the information listed below to the *Perkins* Coordinator at PerkinsCoordinator@da.lacounty.gov

1. Summary of the facts of the case.
2. Recording of the *Perkins* Operation and transcript if available.
3. Report(s) memorializing the *Perkins* Operation.
4. Any payment receipt or contract signed by the PA.
5. Any report memorializing the information provided to the PA prior to the operation.

Please do not write the name of the PA in the DA file.

Perkins Case Closing Checklist

Case Number:

Defendant Name(s):

Handling DA:

Please prepare this checklist at the completion of each case in which a *Perkins* Operation was conducted.

Was the *Perkins* Operation introduced in the preliminary hearing or trial? Yes No

Did the PA testify? Yes No

If yes, obtain a transcript and provide it to the *Perkins* Coordinator.

Were any motions filed regarding the *Perkins* operation? Yes No

If yes, forward the motions to the *Perkins* Coordinator.

Did any court make a ruling regarding the *Perkins* Operation? Yes No

If yes, provide a brief description below and include a transcript, if available:

Are there additional issues with the *Perkins* Operation, the recording, or the PA not addressed in the Pretrial Discovery Checklist? Yes No

If yes, provide a brief description (sound quality, non-verbal communication, necessary redactions, safety issues, possible *Brady* information, etc.):

Did the defense present any evidence regarding the *Perkins* Operation? Yes No

If yes, provide a copy of the transcript to the *Perkins* Coordinator.

Please email this *Perkins* Case Closing Checklist and the information listed below to the *Perkins* Coordinator at PerkinsCoordinator@da.lacounty.gov

1. Transcript of the *Perkins* Operation recording (if not previously provided).
2. Motions filed by either the defense or the People regarding the *Perkins* Operation.
3. Transcript of any significant court ruling regarding the *Perkins* Operation.
4. If the PA testified, the transcript of that testimony.
5. All information and/or transcripts regarding any defense witness called to testify regarding the PA or the *Perkins* Operation.