

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE KENTUCKY NATIONAL GUARD COUNTERDRUG TASK FORCE (KyCDTF)
AND
THE LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT (LFUCG)

Subject: Kentucky National Guard Counterdrug Task Force (KyCDTF) Support of the Lexington Police Department (LPD)

1. REFERENCES.

a. National Guard Drug Interdiction and Counterdrug Activities, 32 U.S. Code § 112 (2013).

b. National Guard Training or Other Duty in Addition to Drill and Annual Training, 32 US Code § 502(f) (2011).

c. Chief National Guard Bureau Instruction (CNGBI) 3100.01A, National Guard Counter Drug Support, 22 June 2015.

d. Posse Comitatus Act of 1875, 18 U.S.C § 1385.

e. Department of Defense 5240 1-R, Activities of DOD Intelligence Components that Affect United States Persons, 26 April 2017.

f. Federal Tort Claims Act of 1948, 28 U.S.C. Pt VI, Ch. 171, and 28 U.S.C. § 1346(b), Sections 2401 and 2671-2680, 25 June 1948.

g. Department of Defense Directive 5210.56, Use of Deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties, 18 November 2016.

h. State of Kentucky Drug Interdiction and Counterdrug Activities Plan for Fiscal Year 2018.

2. PURPOSE. This Memorandum of Understanding (MOU) stipulates policies, procedures, and guidelines regarding the KyCDTF counterdrug (CD) support to the LPD. The mission of the KyCDTF is to assist Federal, State, and Local law enforcement agencies (LEAs), as well as Community Based Organizations, in the elimination of illegal drug activity in the State of Kentucky through education, suppression, and interdiction.

Subject: Kentucky National Guard Counterdrug Task Force (KyCDTF) Support of the Lexington Police Department (LPD)

3. STATUTORY AUTHORITY. The Governor, as Commander-in-Chief of the Kentucky National Guard, in accordance with 32 U.S.C. 112, has authorized the Kentucky National Guard to carry weapons and operate government vehicles to support Federal, State, and Local law enforcement agencies in the interdiction, eradication, and suppression of all illegal drugs and illegal drug activities. This MOU is applicable to KyCDTF personnel providing support to the LPD or a LPD-led Multi-Jurisdictional Drug Task Force (MJDTF) in a U.S. Code Title 32 status, Section 502f, in accordance with the FY 2009 Defense Authorization and Appropriation Act which authorizes and provides funding for National Guard support to civilian CD operations.

4. NATIONAL GUARD MISSIONS. KyCDTF support will not adversely affect training and readiness to perform other National Guard Federal or State missions as designated by the Adjutant General.

5. COMMAND AND CONTROL. KyCDTF personnel assigned to support the LPD will be under the tactical control of the LPD Officer in Charge or his designated representative while performing missions in support of the agency. KyCDTF personnel will follow the chain-of-command established by the LPD and abide by its policies and procedures. The KyCDTF Counterdrug Coordinator (CDC) retains command of all KyCDTF personnel and is the final approval authority for all mission support requests involving assigned personnel and/or equipment.

6. SCOPE OF OPERATIONS. The KyCDTF will provide airmen or soldier(s) to the LPD for the purpose of providing administrative, operational, investigative, and/or counterdrug information support. The primary mission will fall under mission category 2 B, Investigative Case & Analyst Support and/or 5A, Surface Reconnaissance. All mission requests involving KyCDTF personnel and/or equipment must be requested in writing and approved by the CDC. KyCDTF will be armed at the request of the LEA. This request should be on the initial mission request and is subject to CDC approval.

a. 2B, Investigative Case & Analyst Support. Personnel working under mission category 2B will assist LEAs in the establishment of counterdrug intelligence system/databases; provide intelligence analysis and operation support designed to enhance the effectiveness of the supported agency and release law enforcement officers for drug enforcement duties; and provide assistance to LEAs in developing investigations and cases for prosecution. Activities include, but are not limited to, inputting, reviewing, and analyzing collected LEA information, and providing legal, paralegal, and auditing assistance. This category of support excludes such tasks as

Subject: Kentucky National Guard Counterdrug Task Force (KyCDTF) Support of the Lexington Police Department (LPD)

secretarial, janitorial, or receptionist duties.

b. 5A, Surface Reconnaissance. Personnel working under mission category 5A will execute tasks to support or assist LEAs in the suppression and interdiction of illegal drug activity. Personnel serving in the 5A role will Reconnoiter or perform area observation by land or water to detect and report illegal drug activities that include, but are not limited to, cultivated marijuana, suspected isolated drug trafficking airstrips, drug drop zones, drug trafficking corridors, illegal drug laboratories, suspicious aircraft, watercraft, or motor vehicles. National Guard personnel are prohibited from pursuing or targeting specific persons for surveillance. National Guard personnel will not maintain or store gathered information in National Guard facilities or databases. Information will be reported as designated by the supported LEA.

7. OPERATIONAL RESTRICTIONS. All information activities must be conducted in accordance with appropriate DOD regulations.

a. The National Guard will not maintain or store final products in National Guard facilities or databases. Information gathered by KyCDTF personnel will be reported to the supported law enforcement officer on site.

b. National Guard personnel are prohibited from pursuing or targeting specific persons for surveillance.

c. A law enforcement officer (LEO) must be present or in direct contact with KyCDTF personnel during mission execution.

8. FORCE PROTECTION AND RULES FOR USE OF FORCE.

a. KyCDTF personnel and equipment will not be subject to a known hostile fire environment; all terrain must be defensible by civilian law enforcement officers.

b. If KyCDTF personnel become exposed to a hostile threat or environment, they will disengage and withdraw from the area while giving due consideration to their own safety and that of other law enforcement officers and civilians who may be present.

c. KyCDTF members are not to be sent or directed into a known hostile environment where information indicates there is a high probability of encountering hostile fire or other life threatening situations.

d. KyCDTF personnel will not act as the affiant on a search warrant or an arrest

Subject: Kentucky National Guard Counterdrug Task Force (KyCDDTF) Support of the Lexington Police Department (LPD)

warrant; buy drugs or other contraband in an undercover capacity; act alone in providing cover or support in any operation; or engage in high speed pursuits.

e. KyCDDTF personnel approved to carry firearms will carry only authorized KyCDDTF assigned weapons in accordance with military qualification standards established by the Kentucky Army National Guard and LPD qualification standards.

f. Supported LEAs are responsible for obtaining warrants required for searches or for determining the need for searches, inspections, and observations that do not require warrants. This responsibility includes the determination of any potential legal restrictions upon the use of thermal imaging or sense enhancing systems

g. The Posse Commitatus Act (18 USC 1385) does not apply to National Guard personnel on duty under authority of Title 32. As a matter of policy, however, National guard personnel will not, except for exigent circumstances or as otherwise authorized by law or regulation, directly participate in the arrest of suspects, conduct searches which include direct contact of National Guard members with suspects or the general public, or become involved in the chain of custody for any evidence.

(1) Exigent circumstances are situations, in which immediate action is necessary to protect or defend police officers, KyCDDTF personnel, or other persons from death or injury; to prevent the loss or destruction of evidence or property; or to prevent the escape of a suspect. In these cases, KyCDDTF personnel may use only the minimum force necessary.

h. KyCDDTF personnel in Title 32 may use minimum force (restrain, detain, subdue) for the defense of themselves or other persons, to protect property, or prevent loss/destruction of evidence and

i. KyCDDTF have the right to use deadly force in order to protect themselves or other persons, including fellow soldiers and law enforcement officers, from what they reasonably believe to be a threat of imminent death or serious physical injury.

(1) Deadly force may not be used solely to prevent the escape of a fleeing suspect.

(2) Firearms may not be discharged solely to disable a moving vehicle.

(3) If feasible, and to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to

Subject: Kentucky National Guard Counterdrug Task Force (KyCDTF) Support of the Lexington Police Department (LPD)

the use of deadly force.

(4) Warning shots are not permitted.

(5) Officers will be trained in alternative methods and tactics for handling resisting suspects which must be used when the use of deadly force is not authorized.

9. REPORTING PROCEDURES.

a. KyCDTF personnel assigned to the LPD will report on a daily basis as dictated by the LPD Officer in Charge. Hours of operation will be in accordance with the LPD and mission requirements. KyCDTF personnel will complete mission documentation as required by the Counterdrug Coordinator and submit all documentation in a timely manner through the established KyCDTF channels.

b. The KyCDTF has statistical reporting requirements to the National Guard Bureau, including, but not limited to, number of arrests, type and quantity of drugs and other property seized, and areas where drug activities take place. Personnel with internet capabilities will enter their collected statistical data into the Fulltime Support Management Control System (FTSMCS). Documentation (journal or after action report (AAR)) will be forwarded to the KyCDTF Headquarters at JRC London to be verified.

10. SAFETY.

a. All KyCDTF members will be thoroughly briefed on the Rules on the Use of Force and safety policy prior to commencement of any operation in accordance with this MOU, CNGBI 3100.01A, the KyCDTF Policy and Procedures manual, Operations Orders and the Standard Operating Procedures. The Counterdrug Coordinator is the approving authority for all Risk Assessments completed for all operations. The KyCDTF member is required to cease operations if safety policy is being violated or he/she feels that the operation/mission is unsafe.

b. Report all unsafe scenarios to the safety officer as soon as possible. Each KyCDTF member will have a copy of the pre-accident plan at their work site and will brief their supported agency on its use.

11. OPERATIONS SECURITY AND PUBLIC AFFAIRS.

a. The LPD will appropriately classify operations and make public information releases.

Subject: Kentucky National Guard Counterdrug Task Force (KyCDDTF) Support of the Lexington Police Department (LPD)

b. The LPD will not release information regarding KYNG units, individuals, specific locations, and dates/times about operations unless approved by the Kentucky National Guard Public Information Officer.

c. The KYNG will not release information regarding LPD units, individuals, specific locations, and dates/times about operations unless approved by the LPD.

d. Information provided to KyCDDTF personnel will not be released except when required by law.

e. Freedom of Information requests will be referred to the LPD for action.

f. KYNG personnel considered for assignment to LPD shall possess, at a minimum, clearances for access to national security information at the SECRET or INTERIM SECRET level based on the National Agency Check with Inquiries (NACI) or more in depth type of background investigation. This includes personnel to be assigned as intelligence analysts and liaison officers. Security approval for members of the KYNG to access LPD facilities and information will be provide in accordance with LPD regulations and/ or guidance from LPD's Chief of Police or his designee.

12. LIABILITIES.

a. KyCDDTF acknowledges that the United States is liable for the negligent or wrongful acts or omissions of KyCDDTF personnel, while acting on active duty in Title 32 status, to the extent permitted by the FTCA, 28 U.S.C. § 1346(b), sections 2401 and 2671-2680. Any claim by third parties for personal injury, death, or property damage allegedly caused by KyCDDTF personnel, will be processed through the Kentucky National Guard Office of the Staff Judge Advocate (OSJA).

b. LFUCG and the LPD acknowledge that LFUCG is liable for the negligent or wrongful acts of its agents and employees acting within the scope of employment to the extent permitted by state law.

c. Responsibility and liability for loss and damage of KyCDDTF equipment will be determined by a Financial Liability Investigation of Property Loss (FLIPL) or report of survey.

13. ASSET FORFEITURE/SHARING- To the extent permitted by law, KyCDDTF will be given consideration for all asset seizure actions based on participation. Amounts will be determined on a case-by-case basis for the LPD.

Subject: Kentucky National Guard Counterdrug Task Force (KyCETF) Support of the Lexington Police Department (LPD)

14. EFFECTIVE DATE.

a. This MOU shall commence upon its execution by both parties. This agreement shall remain effective, unless terminated early by either party by advance written notice within 30 days to the other party.

b. Revisions, amendments, and modifications to this MOU may be made upon the approval of all agencies, and shall become effective upon the signed date of approval unless otherwise specified.

c. Renegotiation of this agreement must take place when laws, regulations, or support requirements change in such a manner that the agreement cannot be executed.

d. LPD understands that continuation of the support agreed to by the KYNG in this document is contingent upon congressionally appropriated fiscal year funding allocations.

15. RENEGOTIATION. Renegotiation of this MOU must take place when laws, regulations, or support requirements change in such a manner that the agreement cannot be executed.



GARY W. LEWIS
COL, AV
Counter Drug Coordinator
Dated: 8 Nov 18



LAWRENCE WEATHERS
Chief of Police
Lexington Police Department
Dated: OCT 25 2018





NATALIE LEWELLEN
LTC, JA
Staff Judge Advocate KYNG
Dated: 8 Nov 18




BY:
Attorney
LFUCG Department of Law
Dated: OCT 25 2018

Subject: Kentucky National Guard Counterdrug Task Force (KyCDTF) Support of the Lexington Police Department (LPD)


STEPHEN R HOGAN
Major General
The Adjutant General
Dated: 28 Nov 2018


JIM GRAY
Mayor
LFUCG
Dated: OCT 25 2018


ANDY BESHEAR
Attorney General
Commonwealth of Kentucky
Dated: 1-8-2019