

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ILLINOIS NATIONAL GUARD
COUNTERDRUG TASK FORCE
AND
AURORA POLICE DEPARTMENT

SUBJECT: Memorandum of Understanding between the Illinois National Guard Counterdrug Task Force and the Aurora Police Department

1. PURPOSE: This memorandum of understanding (MOU) sets forth policies, procedures, and guidelines agreed to by the Illinois National Guard, Counterdrug Task Force (hereinafter "ILNG CDTF") and the Aurora Police Department (APD), Special Agent in Charge, (hereinafter "Agency") governing the ILNG CDTF cooperation and support of Agency's drug-related criminal investigations in the State of Illinois pursuant to Title 32, United States Code (U.S.C.) § 112, and other applicable federal and state statutes. It is understood among parties to this MOU that Agency requests for ILNG CDTF assistance may include multi-agency, federal, state, and local cooperative law enforcement efforts.

2. AUTHORITY:

- a. CNGBI 3100.01A; 22 June 2015
- b. NGR 500-2/ANGI 10-801;
- c. Homeland Security Act of 2002, as amended, 116 Stat. 2135, Pub. L. No. 107-296, Nov. 25, 2002, §§ 102(b) and 875(c);
- d. Controlled Substance Act, 21 U.S.C § 873(a), Cooperative Arrangements;
- e. The Illinois Constitution, Article VII, Local Government, §10;
- f. The Intergovernmental Cooperation Act, 5 ILCS 220;
- g. Illinois National Guard State Counterdrug Support Plan; and
- h. Illinois National Guard Counterdrug Task Force SOP.

3. PLANNED DEPLOYMENT OF PERSONNEL:

a. Request for Support: As the ILNG CDTF is not a law enforcement agency, any involvement of the ILNG CDTF in support of drug law enforcement must be in response to a law enforcement agency request for support.

b. Support Role: It is clearly understood by both parties to this MOU that ILNG CDTF personnel are not sworn police officers and those personnel who are assigned to work with the Agency are only assigned in a support role to provide field intelligence gathering and analysis.

c. Limitations: All ILNG CDTF personnel will be limited to providing counterdrug support within the territorial limits of the United States pursuant to 32 U.S.C. Section 112. Any and all ILNG CDTF support outside the State of Illinois must be in direct support of the APD based investigations, compliance with applicable state law, and pursuant to an interstate MOU executed by the agencies in the different states.

SUBJECT: Memorandum of Understanding between the Illinois National Guard Counterdrug Task Force and the Aurora Police Department

d. Equipment: The APD may request the participation of ILNG CDTF personnel and/or ILNG CDTF equipment for operations approved in the ILNG CDTF support plan, and the ILNG CDTF may honor such requests so long as the deployment of these resources does not adversely impact the ILNG's readiness to respond to state or national defense emergencies.

4. REPORTING:

a. ILNG CDTF personnel will provide to their headquarters statistical results for inclusion in required reports/records; Results include quantity and value of seized drugs and/or real property.

b. ILNG CDTF personnel will provide a weekly report to ILNG CDTF Operations summarizing their work production for inclusion in required reports/records/databases. The weekly report will not include any case-specific information.

c. The ILNG CDTF will maintain Intelligence Oversight and Operational Security (OPSEC) compliance on all reporting, in accordance with NGR 500-2/ANGI 10-801.

d. Information provided to the ILNG CDTF by the Agency will not be released to any other governmental or non-governmental organization unless authorized by the Agency in writing.

5. COMMAND AND CONTROL:

a. The Governor of the State of Illinois is the commander in chief of the Illinois National Guard. The ILNG CDTF is responsible for submitting the Governor's plan for counterdrug support and managing the program.

b. ILNG CDTF personnel will be under the direct supervision of the supported Agency for all assigned duties. ILNG CDTF members will also maintain an ILNG CDTF chain of command. ILNG CDTF chain of command will take precedence at all times.

c. The ILNG CDTF will handle all personnel management processes.

d. Unless otherwise prohibited, ILNG CDTF personnel will comply with the requirements of APD policies, regulations, and procedures applicable to the support provided. Personnel issues will be brought to the attention of the Counterdrug Coordinator. Failure to adhere to APD policies and procedures will be grounds for removal from the assignment. All disciplinary matters will be coordinated between the Counterdrug Coordinator and the APD Supervisor.

6. SCOPE OF OPERATION:

a. The ILNG CDTF will provide counterdrug support to federal, state, and local law enforcement agencies (LEAs) as it relates to APD operations in Illinois.

SUBJECT: Memorandum of Understanding between the Illinois National Guard Counterdrug Task Force and the Aurora Police Department

(1) Personnel engaged in counterdrug support activities for which federal funding is provided by 32 U.S.C. § 502(f) and 32 U.S.C. § 112 must be acting in support of the LEAs or community-based organizations (CBO) found to have a valid counterdrug nexus.

(2) Missions provided to the Agency will be in accordance with NGR 500-2/ANGI 10-801 (2-7) and the ILNG CDTF state plan. The primary mission for APD is mission 2B, Investigative Case and Analyst Support, see below for further definition.

(3) The ILNG CDTF may provide, as appropriate and available, one or more of the below listed services or resources in response to a request for assistance from the Agency and in accordance with the State of Illinois' Governor's Counterdrug Support Plan and NGR 500-2/ANGI 10-801:

(a) Mission Category # 2- Technical Support

Mission 2A. Linguist Support (Translator Support)

Assist the APD with translation of information stored in electronic media, audio/video tapes, and written and/or printed in seized documents. ILNG CDTF personnel will not participate in active/real time Title III conversation monitoring or directly participate in interrogation activities.

Mission 2B. Investigative Case and Analyst Support

Assist the APD with various intelligence gathering and data analysis including but not limited to charting, graphing, mapping, document exploitation, commodity-financial analysis, toll analysis, case construction, and criminal analysis. All intelligence activities must be conducted in accordance with appropriate Department of Defense (DOD) regulations. ILNG CDTF personnel will not store final investigative work product in National Guard facilities or databases.

Mission 2C. Operational/Investigative Case Support

Assist the APD with operations away from the designated APD Field Office. Such operation assistance will include providing field intelligence at various postal facilities during interdiction operations as well as residential locations related to investigations. ILNG CDTF personnel will also coordinate with and at times meet with analysts from other LEAs at their field offices.

Mission 2D. Communications Support

Mission 2G. Counter Threat Finance Support

Mission 2H. Map and Imagery Analysis

(b) Mission Category # 3 - General Support

Mission 3A. Domestic Cannabis Suppression/Eradication Operations Support

Support LEA domestic cannabis suppression and eradication operations. This includes, but is not limited to, aerial support, logistic support, communications support, intelligence, planning support, operational staff coordination, and eradication operations but not destruction of marijuana contraband.

Mission 3B. Transportation Support

Mission 3C. Maintenance/Logistical Support

(c) Mission Category # 4 - Counterdrug-Related Training: Training LEA/Military

SUBJECT: Memorandum of Understanding between the Illinois National Guard Counterdrug Task Force and the Aurora Police Department

Personnel

(d) Mission Category #5 - Reconnaissance/Observation (Special Training Required)

Mission 5A. Surface Reconnaissance (Special Training Required)

Conduct reconnaissance/observation of airspace for illegal drug activities which includes, but is not limited to cultivation of marijuana or the delivery of illegal drugs. Reconnaissance may be directed toward suspected drug drop zones, watercraft, and motor vehicles.

Mission 5B. Aerial Reconnaissance (Special Training Required)

Conduct reconnaissance/observation of airspace for illegal drug activities which includes, but is not limited to cultivation of marijuana or the delivery of illegal drugs. Reconnaissance may be directed toward suspected drug trafficking airstrips, drop zones, corridors or suspicious aircraft/watercraft/motor vehicles. A Law Enforcement Officer (LEO) must be present or in direct contact for all aviation Forward Looking Infrared/ Infrared (FLIR/IR) sensor missions. LEOs are authorized to fly on aircraft during validated and approved missions provided the purpose is to facilitate counterdrug activities. Missions may require site security for aircraft and ground radar. Approved equipment and techniques include, but are not limited to aerial visual techniques, including infrared/thermal imagery, and photography.

(e) Mission Category #6 – Civil Operations

Mission 6A. Education Programs

Mission 6B. Military Unique Tactics to Community Strategies

Mission 6C. Civil Operations Support to Coalitions

b. Arrests, Seizures, and Evidence:

(1) ILNG CDTF personnel will not participate in law enforcement activities such as arrests, seizures, search warrant entries into structures, or searches of either persons or locations. (See IAW NGR 500-2/ANGI 10-801 and ILNG CDTF SOP)

(2) ILNG CDTF members have only the arrest powers of ordinary citizens; they may make arrests or conduct searches to the extent authorized by state law when exigent circumstances arise. Utilization of any step in the rules for use of force will be taken only when:

(a) it is necessary to protect police officers, military personnel, self-defense or other persons from death or serious injury.

(3) The supported Agency and ILNG CDTF supervisors will ensure that all supported operations are designed and conducted in such a manner as to reduce the likelihood of arrests or searches by ILNG CDTF personnel.

(4) ILNG CDTF personnel will not physically handle case evidence or otherwise be involved in the chain of custody of any evidence.

c. Uniforms: ILNG CDTF personnel will wear appropriate military uniforms while performing counterdrug support duty unless this requirement has been explicitly waived by

SUBJECT: Memorandum of Understanding between the Illinois National Guard Counterdrug Task Force and the Aurora Police Department

the ILNG CDTF Counterdrug Coordinator (CDC) or his designated representative.

d. Surveillance: ILNG CDTF personnel will not be utilized or participate in unauthorized surveillance activities.

e. Sensitive Information: ILNG CDTF personnel will handle sensitive information pursuant to Operational Security procedures of NGR 500-2, paragraphs 3-7, 3-8, and 3-10 through 3-12.

(1) Information or data obtained by the ILNG CDTF as a result of work done in support of the Agency will be passed on immediately to the Agency, and will not be stored or maintained by ILNG CDTF personnel or in ILNG CDTF facilities. The Agency will establish practices and procedures for reporting such information and will be responsible for follow-through regarding such information.

(2) Information gathered by members of the ILNG CDTF will be given adequate classification consideration.

f. Funding:

(1) The support and coordination provided by the ILNG CDTF, pursuant to this MOU, will be funded federally from 32 U.S.C. § 112 and no reimbursement by the Agency will be required. However, any loan of equipment for missions that may incur financial obligations from Agency, should be coordinated and approved between the parties prior to mission accomplishment.

(2) All ILNG CDTF support is subject to available funding.

7. FORCE PROTECTION RULES FOR USE OF FORCE:

a. Rules of Force will be IAW NGR 500-2, para 3-3, and applicable ILNG Rules for the Use of Force as approved by the Illinois Attorney General's office.

b. ILNG CDTF members will not be placed into situations that could be life threatening since they have not received the appropriate law enforcement training for this type of situation. ILNG CDTF personnel will not be armed during counterdrug support operations. ILNG CDTF personnel shall abide by the Rules of Force pursuant to IAW NGR 500-2, paragraph 3-3, and all other applicable ILNG Rules of Force approved by the Illinois Attorney General's Office.

8. PUBLIC AFFAIRS:

a. Release of Information: Information released to the media concerning ILNG CDTF assistance to the Agency or ILNG CDTF participation in drug law enforcement missions will be coordinated between the Agency and ILNG CDTF public affairs/information officers. ILNG CDTF support information will be treated as "For Official Use Only." Any questions on this matter will be directed to the Department of Military Affairs PAO at (217) 761-3569.

SUBJECT: Memorandum of Understanding between the Illinois National Guard Counterdrug Task Force and the Aurora Police Department

Participating ILNG CDTF personnel or specific units will not be identified by name, address, or photograph unless cleared through the ILNG CDTF CDC who will be responsible for obtaining a release through applicable ILNG CDTF channels.

b. Dissemination of Information: The lead party for dissemination of information will be the Agency. Therefore, members of the ILNG CDTF will refer all questions from the media to the Agency for reply. However, the ILNG public affairs office may provide guidance on issues specific to the ILNG CDTF as appropriate.

c. Media Interaction: The ILNG public affairs office (PAO) may provide guidance to the APD on media issues specific to the ILNG CDTF support. ILNG CDTF personnel will not speak to the media without ILNG CDTF approval and consultation with the APD. Any media inquiries to the ILNG CDTF will be directed to the Department of Military Affairs PAO at (217) 761-3569. Participating ILNG CDTF personnel will not be identified by name, address, or photograph unless cleared through the ILNG CDTF CDC who will be responsible for obtaining a release through the proper ILNG CDTF channels.

9. SAFETY:

a. All Operations will be conducted in accordance with applicable safety regulations. Safety considerations will be IAW NGR-500-2, paragraph 3-2 and 4-1 through 4-4.

b. ILNG CDTF members will not participate in an operation that has the probability of becoming a life threatening situation to all those involved.

c. The Agency will not direct any ILNG CDTF personnel to engage in any operation that has the probability of becoming a life threatening situation.

d. The Agency will make every known effort to prevent ILNG CDTF personnel from having any contact with suspects.

e. At a minimum, prior to any operation, the ILNG CDTF Non-Commissioned Officer in Charge (NCOIC) will complete a Deliberate Risk Assessment, on a DA Form 2977, Worksheet for signature of the appropriate approving authority. Safety is paramount for all counterdrug operations and activities. All safety requirements set forth in the ILNG CDTF Safety standard operating procedures, as well as the ILNG CDTF CDC's Safety Philosophy, must be adhered to while conducting operations.

10. RESPONSIBILITIES:

a. The ILNG CDTF will:

(1) ensure that ILNG CDTF personnel are given all necessary training and tools needed prior to assignment;

(2) coordinate with the Counterdrug Support Office and local LEAs regarding the criminal background checks of ILNG CDTF soldiers supporting the Agency; and

SUBJECT: Memorandum of Understanding between the Illinois National Guard Counterdrug Task Force and the Aurora Police Department

(3) assume full responsibility for salary, benefits, personnel records, and other administrative actions of ILNG CDTF personnel supporting the Agency.

b. The Agency will:

(1) obtain search warrants, landowner access permits, and other documents required for the purpose of Counterdrug Operations;

(2) provide necessary training to ILNG CDTF personnel appropriate to the mission;

(3) provide ILNG CDTF with adequate workspace, parking, and equipment necessary to perform counterdrug support missions.

(4) provide an annual evaluation on the assigned ILNG CDTF member that has been placed in your agency, the ILNG CDTF will provide the evaluation in electronic format to your agency prior to end of year due date.

(5) nothing in this MOU implies that Congress will appropriate funds for activities under this MOU.

11. LIABILITIES: The Agency acknowledges that the United States of America may be liable for the negligent, wrongful acts, or omissions of its agents and employees while acting within the scope of their employment to the extent permitted by the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346. The FTCA is also applicable to ILNG CDTF personnel engaged within the scope of their counterdrug duties, serving under Title 32 orders, in support of the Agency.

12. RENEGOTIATION:

a. ILNG CDTF personnel are initially deployed to support the Agency based upon specific requests for these members to perform specific job skills in specific areas. Any deviation from the initial approved request should be coordinated and approved in writing with the ILNG CDTF CDC.

b. This MOU constitutes the entire agreement between the Agency and the ILNG CDTF. Any modifications, additions, or deletions shall be in writing and signed by both parties. In the event that any provision of this MOU be determined to be unenforceable, that provision shall be deleted from the MOU, and this MOU shall remain in force without such unenforceable provision.

13. EFFECTIVE DATE OF AGREEMENT: This MOU will be effective upon signatures by all parties and will remain in effect until terminated by any party on 30 days written notice or revised in writing by mutual consent of the parties. Upon signature, this MOU supersedes any previously signed agreement which is inconsistent with this MOU.

14. TERMINATION OF SUPPORT: ILNG CDTF personnel will not be directed or permitted

SUBJECT: Memorandum of Understanding between the Illinois National Guard Counterdrug Task Force and the Aurora Police Department

to conduct support activities that violate ILNG CDTF directives or guidance. Use of ILNG CDTF personnel contrary to this MOU or applicable regulations is a basis for immediate termination of support.

15. ASSET FORFEITURE AND AGREEMENT: In accordance with law, federal regulations, and the provisions of the Department of Justice Asset Forfeiture (DoJ AF), which oversees the Department of Justice Forfeiture Fund, the ILNG CDTF may share in forfeited assets based upon their contribution to the investigation or seizure, in accordance with federal law. If the ILNG CDTF is authorized to participate in the Treasury Forfeiture Fund's Equitable Sharing Program, APD will recommend to DoJ AF that the ILNG CDTF receive an equitable share.

The Adjutant General hereby certifies that all counterdrug operations included in the MOU be conducted at a time when the personnel involved are not in Federal service. The Adjutant General further certifies that participation by ILNG CDTF personnel in those operations is service in addition to training required under 32 USC § 112.

KRISTEN ZIMAN
Aurora Police Department
Chief of Police

ALISON L. JACOBS
MAJ, LG, IL ARNG
Counterdrug Coordinator

(Date)

(Date)

RICHARD R. NEELY
Brigadier General, IL ARNG
The Adjutant General, Illinois

(Date)