

Investigation and Prosecution

500.1 VERSION

Review Date	Effective Date	Approving Authority
08/11/2020	07/09/18	Eric D. English, Chief of Police

500.2 POLICY AND PURPOSE

The purpose of this policy is to set guidelines and requirements pertaining to the handling and dispositions of criminal investigations. The Harrisonburg Police Department shall investigate crimes thoroughly and with due diligence, and evaluate and prepare criminal cases for appropriate clearance or submission to a prosecutor. The investigative process is divided into preliminary and follow up stages. Responsibility for follow up investigation will be determined by the nature of the criminal act and the need for further investigation.

500.3 ACCOUNTABILITY STATEMENT

All employees are expected to fully comply with the guidelines and timelines set forth in this policy. Responsibility rests with the supervisor to ensure that any violations of policy are investigated and appropriate training, counseling and/or disciplinary action is initiated. This directive is for internal use only, and does not enlarge an employee's civil liability in any way. It should not be construed as the creation of a higher standard of safety or care in an evidentiary sense, with respect to third party claims. Violation of this directive, if proven, can only form the basis of a complaint by this department, and then only in a non-judicial administrative setting.

500.4 DEFINITIONS

R.U.S.H Charge Drug Task Force - The R.U.S.H Drug Task Force is a multi-jurisdictional narcotics task force comprised of agents from the Virginia State Police, Harrisonburg Police Department, and Rockingham County Sheriff's Office designed to educate the community and help stem the flow of illegal narcotics through the City of Harrisonburg and Rockingham County.

C.H.A.R.G.E Gang Task Force - The C.H.A.R.G.E. Gang Task Force Unit responds to the proliferation of gangs and their impact in the community, assist in their exposure and suppression through intelligence gathering, criminal investigations, community awareness, and training.

500.5 INITIAL INVESTIGATION

500.5.1 OFFICER RESPONSIBILITIES

An officer responsible for an initial investigation shall complete no less than the following:

- (a) Make a preliminary determination of whether a crime has been committed by completing, at a minimum:
 1. An initial statement from any witnesses or complainants
 2. A cursory examination for evidence

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3. Documentation of any pertinent conditions, events and remarks
 4. Establish venue
- (b) If information indicates a crime has occurred, the officer shall:
1. Preserve the scene and any evidence as required to complete the initial and follow-up investigation
 2. Determine whether additional investigative resources (e.g., investigators or scene processing) are necessary and request assistance as required
 3. If assistance is warranted, or if the incident is not routine, notify a supervisor or the Patrol Commander
 4. Make reasonable attempts to locate, identify and interview all available victims, complainants, witnesses and suspects
 5. If appropriate, collect any evidence
 6. Take any appropriate law enforcement action
 7. Complete and submit the appropriate reports and documentation

500.5.2 PATROL SUPERVISOR RESPONSIBILITIES

- (a) The patrol supervisor shall render assistance to officers under their supervision through instructional guidance and direction. The patrol supervisor shall also arrange for additional assistance that may be required from other Departmental resources due to case circumstances.
- (b) Incidents may either be retained at the officer level for disposition and/or assignment or turned over to (TOT) Major Crimes for assignment or copied "for information only." Considerations for supervisors when determining case follow-up are:
1. The time required to complete the investigation; for patrol officers this means within a two or three day cycle of work
 2. The knowledge and training required to properly investigate the crime, based on the severity of the incident.
- (c) It shall be the responsibility of the patrol supervisor to ensure that an adequate and complete preliminary investigation has been made and to review and either approve or return to the reporting officer for correction all initial and supplemental reports prepared by officers under their supervision.

500.5.3 FORENSIC TECHNICIANS TEAM

In those situations where the patrol officer requests a member of the Forensic Evidence Team (FET) or Evidence Technician (ET) to respond to the particular crime scene, the officer's immediate supervisor shall respond to the scene to determine if there are items of evidentiary value present that the officer does not have the capability and cannot obtain the means to collect. If this situation exists, the on scene supervisor may make the request for the Forensic Technician to respond.

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In cases where Major Crimes is requested to conduct the investigation, the first-line supervisor or the Major Crimes supervisor should determine if the nature and the magnitude of the crime scene warrant the FET or whether it is within the scope of the patrol officer's capabilities and responsibilities. In cases where Major Crimes is requested to conduct the investigation and the crime scene is not identifiable, the first line supervisor shall consult with the on-call Major Crimes Unit supervisor or lead detective prior to requesting the Forensic Technician.

Until the arrival of the FET, the officer assigned to the case shall ensure that action is taken to preserve the evidence until it can be collected.

500.5.4 CONTACT WITH INVOLVED PARTIES

If a case is to be turned over to Major Crimes, the suspect(s) should not be interviewed by the patrol officer conducting the preliminary investigation unless approved by the detective or Major Crimes supervisor. Once a case has been assigned to a Detective for follow-up investigation, all contact with the victim, complainant or witness regarding the investigation shall be coordinated with the assigned Detective or Major Crimes supervisor.

500.6 CUSTODIAL INTERROGATION REQUIREMENTS

Suspects who are in custody and subjected to an interrogation shall be given the *Miranda* warning, unless an exception applies (ie, public safety). Interview or interrogation of a juvenile shall be in accordance with the Temporary Custody of Juveniles Policy. Any requests by the arrestee to have his/her counsel notified or to be present must be accommodated.

500.6.1 AUDIO/VIDEO RECORDINGS

Any custodial interrogation of an individual who is suspected of having committed any violent felony offense should be recorded (audio or video with audio as available) in its entirety. Regardless of where the interrogation occurs, reasonable effort should be made to secure functional recording equipment to accomplish such recordings.

Consideration should also be given to recording a custodial interrogation, or any investigative interview, for any other offense when it is reasonable to believe it would be appropriate and beneficial to the investigation and is otherwise allowed by law.

No recording of a custodial interrogation should be destroyed or altered without written authorization from the prosecuting attorney and the Major Crimes Unit Supervisor. Copies of recorded interrogations or interviews may be made in the same or a different format as the original recording, provided the copies are true, accurate and complete, and are made only for authorized and legitimate law enforcement purposes.

Recordings should not take the place of a thorough report and investigative interviews. Written statements from suspects should continue to be obtained when applicable.

Refer to the Audio/Video Recorders Policy

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500.7 COMPUTERS AND DIGITAL EVIDENCE

The collection, preservation, transportation and storage of computers, cell phones and other digital devices may require specialized handling to preserve the value of the related evidence. If it is anticipated that computers or similar equipment will be seized, officers should request that computer forensic examiners assist with seizing computers and related evidence. If a forensic examiner is unavailable, officers should take reasonable steps to prepare for such seizure and use the resources that are available.

500.8 INVESTIGATIVE USE OF SOCIAL MEDIA AND INTERNET SOURCES

Use of social media and any other internet source to access information for the purpose of criminal investigation shall comply with applicable laws and policies regarding privacy, civil rights and civil liberties. Information gathered via the internet should only be accessed by employees while on-duty and for purposes related to the mission of this department. If an employee encounters information relevant to a criminal investigation while off-duty or while using his/her own equipment, the employee should note the dates, times and locations of the information and report the discovery to his/her supervisor as soon as practicable. The employee, or others who have been assigned to do so, should attempt to replicate the finding when on-duty and using department equipment.

Information obtained via the internet should not be archived or stored in any manner other than department-established record keeping systems (see the Records Maintenance and Release Policy).

Only officers that have completed approved training in such operations by the Harrisonburg Police Department will be authorized to create and use accounts in proactive undercover or covert online investigative tactics. Supervisory permission by the Criminal Investigations Division Commander is required to initiating any such investigation and or social media accounts. When submitting approval, the detective must submit a request with (222-UNDERCOVER IDENTITY WORKSHEET.pdf) and (223-Consent for Named LEO to Use Picture.pdf).

500.8.1 ACCESS RESTRICTIONS

Information that can be accessed from any department computer, without the need of an account, password, email address, alias or other identifier (unrestricted websites), may be accessed and used for legitimate investigative purposes without supervisory approval.

Accessing information from any internet source that requires the use or creation of an account, password, email address, alias or other identifier, or the use of nongovernment IP addresses, requires supervisor approval prior to access. The supervisor will review the justification for accessing the information and consult with legal counsel as necessary to identify any policy or legal restrictions. Any such access and the supervisor approval shall be documented in the related investigative report.

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Accessing information that requires the use of a third party's account or online identifier requires supervisor approval and the consent of the third party. The consent must be voluntary and shall be documented in the related investigative report.

Information gathered from any internet source should be evaluated for its validity, authenticity, accuracy, reliability and documented in the related report. Corroborative evidence should be sought and documented in the related investigative report. Documentation should include the source of information and the dates and times that the information was gathered.

500.8.2 INTERCEPTING ELECTRONIC COMMUNICATION

Intercepting social media communications in real time may be subject to federal and state wiretap laws. Officers should seek legal counsel before any such interception.

500.9 IDENTITY THEFT

A report should be taken any time a person living within the City of Harrisonburg reports that he/she has been a victim of identity theft. This includes (Va. Code § 18.2-186.3:1):

- (a) Taking a report, even if the location of the crime is outside the jurisdiction of this department or has not been determined.
- (b) Providing the victim with the appropriate information, as set forth in the Victim and Witness Assistance Policy. Department members should encourage the individual to review the material and should assist with any questions.

A report should also be taken if a person living outside department jurisdiction reports an identity theft that may have been committed or facilitated within this jurisdiction (e.g., use of a post office box in Harrisonburg to facilitate the crime).

An officer investigating a case of identity theft should ensure that the case is referred to the appropriate agency if it is determined that this department should not be the investigating agency (e.g., an identity theft ring working from out of state). The victim should be advised that the case is being transferred to the agency of jurisdiction. The appropriate entries should be made into any databases that have been authorized for department use and are specific to this type of investigation.

500.10 MODIFICATION OF CHARGES FILED

Officers shall not make agreements to dismiss or modify criminal charges without prior consultation with a prosecutor and according to the guidance of the officer's supervisor.

500.11 SURVEILLANCE OR UNDERCOVER EQUIPMENT

The Department will provide a procedure for the authorization, distribution and use of surveillance or undercover equipment owned or issued by the Harrisonburg Police Department.

500.12 FIREARMS

Any employee who seizes a firearm shall make reasonable efforts to promptly identify and trace the history of the firearm and report required information to the National Tracing Center of the

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Bureau of Alcohol, Tobacco, Firearms and Explosives within the U.S. Department of Justice (Va. Code § 52–25.1; 19 VAC 30-115-10).

If reporting a firearm may compromise an on-going investigation, employees should consult with a supervisor to determine if the report and request for a trace should be delayed. Even if a delay is appropriate, the report and request shall be made prior to the conclusion of the investigation (19 VAC 30-115-10).

500.13 RESPONSIBILITY FOR CONDUCTING FOLLOW UP INVESTIGATIONS

- (a) The Major Crimes Unit is primarily responsible for the investigation of major felony offenses. While the classification of the offense alone should not dictate which unit conducts the follow-up investigation, incidents assigned to Major Crimes typically include the following offenses:
1. Abduction
 2. Auto theft where the value of stolen property is greater than \$1,000
 3. Blackmail/extortion
 4. Bomb threats
 5. Bribery
 6. Burglary cases where the total value of stolen property is greater than \$1,000 or when the same offender or group of offenders is associated with numerous burglaries
 7. Child abuse
 8. Child pornography
 9. Computer related crimes
 10. Deaths, other than attended
 11. Embezzlement, fraud, and identity theft
 12. Felonious assaults/malicious wounding
 13. Felony check cases involving suspected counterfeit checks
 14. Grand larceny - \$1000.00 minimum or extensive widespread
 15. Homicide
 16. Human Trafficking
 17. Incidents related to possible terrorist activity
 18. Missing person/runaway
 19. Narcotics distribution
 20. Rape/felony sex offenses
 21. Robbery

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- 22. Vandalism – involving extensive or widespread damage to property
- 23. Vice offenses
- (b) Supplemental reports shall be submitted by investigating officers in accordance with Departmental policy.
- (c) Whenever a patrol officer conducts the follow-up investigation for an offense which is normally the responsibility of Major Crimes, a copy of the preliminary report and all supplements shall be forwarded for information only to Major Crimes.
- (d) In all suspicious deaths, the Major Crimes Unit shall be responsible for the overall/ follow-up investigation. A copy of all death reports, regardless of whether or not a detective is involved, shall be forwarded to the Major Crimes Unit.
- (e) An officer may request assistance of a detective for any portion of an investigation without the case being reassigned.

500.14 FOLLOW-UP INVESTIGATIONS

There are numerous steps to be followed when conducting a follow up investigation. The following list should be considered as a general guideline only. Additionally, all of the steps may not be necessary to a particular investigation. All steps shall be conducted in compliance with applicable laws and constitutional requirements.

- (a) Review and analyze all previous reports prepared in the preliminary phase.
- (b) Conduct additional interviews and interrogations.
- (c) Arrange polygraph examinations.
- (d) Review Departmental records.
- (e) Seek additional information (from uniformed officers, informants, etc.).
- (f) Review results of laboratory examinations.
- (g) Arrange for dissemination of information as appropriate.
- (h) Plan, organize, and conduct searches.
- (i) Arrange for surveillance.
- (j) Collect and preserve physical evidence.
- (k) Determine involvement of suspects in other crimes.
- (l) Check suspects' criminal histories.
- (m) Conduct in-person and photographic lineups.
- (n) Identify and arrest suspect(s).
- (o) Prepare case files for court presentation.
- (p) Assist in prosecution.

Periodic contact shall be made with crime victims to determine if any further information can be learned and to notify them of any changes in case status. Contacts may be made either by

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telephone or in person. Notification of a change in case status should coincide with the status change. All contacts shall be documented in the Incident Report or subsequent Supplementary Reports.

It is the responsibility of the Criminal Investigations Division Commander to establish a case file management system for the Department's criminal investigation function. The system shall encompass the following:

- (a) Case status control
- (b) Case coordinator for each case
- (c) The types of records to be maintained
- (d) Rules defining accessibility to the files

500.15 DISCONTINUATION OF INVESTIGATIONS

The investigation of a criminal case or efforts to seek prosecution should only be discontinued if one of the following applies:

- (a) All reasonable investigative efforts have been exhausted, there is no reasonable belief that the person who committed the crime can be identified and the incident has been documented appropriately.
- (b) The case has been submitted to the appropriate prosecutor but no charges have been filed. Further investigation is not reasonable nor has the prosecutor requested further investigation.
- (c) The case has been submitted to the appropriate prosecutor; charges have been filed; further investigation is not reasonable, warranted or requested; and there is no need to take the suspect into custody.
- (d) Suspects have been arrested, there are no other suspects, and further investigation is either not warranted or requested.
- (e) Investigation has proved that a crime was not committed (see the Sexual Assault Investigations Policy for special considerations in these cases).
- (f) The case proceeds through the Restorative Justice process, as an alternative to civil or criminal trial.

The Domestic or Family Violence, Child Abuse, Sexual Assault Investigations and Adult Abuse policies may also require an arrest or submittal of a case to a prosecutor.

500.16 CRIMINAL ORGANIZATIONS

Although primary responsibility for the investigation of organized crime, vice, narcotics, and gang activity belongs to the Major Crimes Unit, RUSH, and the CHARGE UNIT, it will be the responsibility of every Department member to support the enforcement of these illegal activities.

When any employee of the Department receives information concerning organized crime or vice activities, they shall forward the information to the appropriate Task Force. The officers that are

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assigned to the RUSH Drug Task Force verbally communicate to their supervisor on the activities that will be completed that week. The supervisor of the RUSH Drug Task Force, then sends a weekly report to the Chief of Police to include our officers. The reporting officer shall not conduct a preliminary investigation into the matter. The appropriate Task Force Supervisor will insure the complaint is recorded and investigated to the fullest extent possible. The supervisor will at a minimum:

- (a) Confer with the appropriate local, state, or federal law enforcement agency of jurisdiction over the activity.
- (b) Assign for additional follow-up and/or investigation with the Drug or Gang Task Force and/or the Major Crimes Commander.

The report and any records that pertain to the incident shall be kept in the affected Task Force supervisor's or his/her designee's secured filing cabinet. The report and records will not be entered into the central record system until such time as it is deemed appropriate.

Incident Reports containing drug or gang activity will be copied and forwarded to the affected Task Force for receiving, processing, investigating and maintaining.

The Major Crimes Commander, RUSH Drug Task Force Coordinator and the CHARGE Coordinator or designee will have oversight and responsibility for all investigations conducted by their respective commands. The Commander/Coordinator or their designee shall include oversight of undercover, decoy, surveillance and raid operations as included in various types of investigations. The Department's Policy Manual and the RUSH Task Force Manual outlines when the SWAT Team should be utilized in support of command objectives.

500.16.1 SEIZURE/FORFEITURE OF ASSETS

Certain investigations will result in the confiscation and eventual forfeiture of assets. The RUSH Drug Task Force is responsible for insuring that proper procedure is followed in these processes according to their Task Force Manual. Investigations involving asset forfeiture will be handled by the respective agency or Task Force involved. RUSH DTF members will process their forfeitures in accordance with the RUSH DTF manual. All seizures initiated by the HPD will be processed in accordance with the HPD asset forfeiture policy.

A patrol officer or detective making such a seizure should forward the appropriate information (i.e. incident or case report) to the forfeiture coordinator who will complete the DCJS Asset Seizure Reporting Form (DCJS 998).

- (a) The coordinator will review the form with the Commonwealth's Attorney's Office to insure acceptance of the case. Once the case is approved to move forward towards forfeiture, the coordinator will establish and maintain a file. In addition, the coordinator will be responsible for the:
 - 1. Processing of paperwork.
 - 2. Management of the seized property.

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3. Monitoring of the proceeds from the forfeiture assets and insure compliance with all state and federal guidelines for asset forfeiture.
- (b) The coordinator should establish a working relationship with other municipal offices such as:
1. The Commonwealth's Attorney
 2. Department of Taxation
 3. Clerk of the Courts
 4. The Department of Motor Vehicles
 5. Refer to:
 - (a) Department of Criminal Justice Services Forfeited Asset Sharing Manual
 - (b) VA Code Sections 19.2-396.1---- 19.2-396.14
 - (c) Federal Codes and guidelines