

Police Review Commission (PRC)

SUBCOMMITTEE ON WARRANT SERVICE POLICY

Commissioners: Izzy Ramsey (Chair), Kitty Calavita, Michael Chang, Hans Moore
Public member: Kitt Saginor

**Monday, February 22, 2021
10:30 a.m.**

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Section 3 of Executive Order N-29-20, issued by Governor Newsom on March 17, 2020, and to ensure the health and safety of the public by limiting human contact that could spread the COVID-19 virus, this meeting of the City of Berkeley Police Review Commission's Subcommittee on Police Acquisition & Use of Controlled Equipment Ordinance will be conducted exclusively through teleconference and Zoom videoconference and there will not be a physical meeting location available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/84233073529>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial **1 669 900 6833** and enter Meeting ID **842 3307 3529**. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized by the Chair.

- 1. CALL TO ORDER**
- 2. APPROVAL OF AGENDA**
- 3. PUBLIC COMMENT**

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

The Police Review Commission (PRC) was created to provide independent civilian oversight of the Berkeley Police Department. It reviews and makes recommendations on police department policies, and investigates complaints made by members of the public against police officers. For more information, contact the PRC Office.

1947 Center Street, 1st Floor, Berkeley, CA 94704 • Tel: (510) 981-4950 • TDD: (510) 981-6903 • Fax: (510) 981-4955
Email: prc@cityofberkeley.info Website: www.cityofberkeley.info/prc/

4. OLD BUSINESS (discussion and action)

Review Berkeley Police Department draft Policy 606, Service of Warrants.

- a. Presentation by Prof. Christy Lopez and other experts on best practices for service of warrants.
- b. Discussion of draft Policy 606.

*(See materials posted for this subcommittee at:
<https://www.cityofberkeley.info/ContentDisplay.aspx?id=12962>)*

5. SCHEDULE NEXT MEETING DATE

6. ADJOURNMENT

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Communication Access Information (A.R.1.12)

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SB 343 Disclaimer

Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available to the public by being posted on the Police Review Commission's web page within three business days of the meeting.

Contact the Police Review Commission at (510) 981-4950 or prc@cityofberkeley.info.

No-Knock Warrants and Police Raids

POLICY ASSESSMENT JANUARY 2021

In most cases, police seeking to apprehend suspects and recover evidence inside a private home or business are legally required to knock and announce themselves before entering. But the allowable time between knocking and entering may be short. The U.S. Supreme Court has upheld the right of officers to forcibly enter 15 to 20 seconds after announcing their presence, so-called “quick-knock” warrants.

In some instances, when it is conceivable that unannounced entry will prevent suspects from fleeing, help preserve evidence, and/or protect the safety of innocent parties or officers, law enforcement requests and judges may issue a “no-knock warrant.” No-knock warrants are often executed in the middle of the night to enhance the element of surprise.

Jurisdictions that prohibit or severely restrict no-knock warrants do so to reduce the risk of harm such surprise intrusions may cause to occupants and officers. Even without a warrant, however, officers may lawfully conduct searches and seizures in the case of emergent exigent circumstances.

SUMMARY ASSESSMENT

- + Jurisdictions should prohibit or severely restrict the use of no-knock warrants and unannounced police raids. Even when well-planned and orchestrated through the collection and assessment of detailed intelligence, they can be dangerous to occupants and officers. Quick-knock warrants pose many of same risks as no-knock warrants, particularly when conducted in the middle of the night, and therefore should also be prohibited.
 - + Police raids of occupied premises should be restricted to cases of clear and present danger or imminent threat to life, such as hostage situations and terrorist activities, and should be backed by verified intelligence from credible sources. Such exigencies should be assessed and documented both prior to the warrant service as well as at the scene and at the time of potential entry.
 - + For all police search warrants, information about who is present in the home, including children and uninvolved individuals, should be verified multiple times to prevent officers from entering the wrong premise or causing injury to uninvolved people. This intelligence and other risks associated with warrant service should be informed by a thorough threat assessment.
 - + To promote transparency and accountability, agencies should routinely publish data about warrant requests, the share that are granted by judges, and their service activities and outcomes.
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Current Practice and Research

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures and requires that search warrants be supported by probable cause. While standard search warrants require officers to make their presence known prior to entering a premise, officers may seek a no-knock warrant from a judge to allow them to lawfully enter a business or residence without advance notice or the permission of occupants. Such warrants are allowable under exigent circumstances – cases in which unannounced and, typically, forcible entry is deemed necessary to prevent harm to officers or others, the escape of a suspect, or the destruction of evidence.

Police raids are a type of search involving forcible entry, typically by a SWAT team operating in the middle of the night to enhance the element of surprise. Raids may or may not involve a no-knock warrant, but do require reasonable suspicion of exigent circumstances. In addition, the U.S. Supreme Court ruled in *U.S. v. Banks* (2003) that officers may enter a premise after a 15- to 20-second notice of intent to enter. This ruling, allowing for quick-knock warrants, blurs the legal line between no-knock warrants and standard knock warrants and suffers from serious enforceability problems.

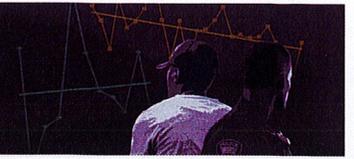
As of 2020, most states allow no-knock warrants in some form. Oregon is one notable exception, prohibiting them for all reasons. Florida bars no-knock warrants except when an occupant fails to acknowledge or comply with a standard knock warrant. Utah bans no-knock warrants that are based solely on suspicion of drug possession. As of January 2021, state bills and local ordinances banning or restricting no-knock warrants were introduced in 22 states, and 20 cities. On the local level, 15 cities, including Orlando (FL), Louisville (KY), Santa Fe (NM), and Indianapolis (IN) have passed no-knock warrant bans or severe restrictions.

There are no national statistics on the number and type of search warrants executed over time. Most of what is known about the prevalence of warrant executions and trends in their delivery comes from data on SWAT deployments. A public records review of 818 SWAT deployments conducted by 20 local law enforcement agencies across 11 states between 2010 and 2013 found that 62% were for drug searches; of those, forced entry was employed in 60% of the deployments (ACLU, 2014). Another study found that the most common use of SWAT teams was to execute search warrants, with 91% of all SWAT deployments involving execution of a search warrant and 68% percent involving forcible entry (Mummolo, 2018).

No studies have examined the impact of banning no-knock warrants on key outcomes such as reducing fatalities and injuries of officers and members of the public. But evaluations of the impact of police raids, which typically involve no-knock warrants, on crime include two rigorous experiments. One study assessed the impact of randomly assigning city blocks in Kansas City, MO, to receive forcible police raids involving dramatic, highly visible armed entry while other blocks were subject to routine policing practices. Researchers found no statistically significant impacts on violent crime (Sherman et al., 1995). Another study assessed the impact of randomized deployment of police paramilitary units to raid known Buffalo, NY, drug houses over a two-week period in 2012 (Phillips, 2016). Evaluators detected slight increases in calls for service and drug arrests following the raids, but no significant impacts on serious violent or property crimes.

A third evaluation employed a less rigorous methodology, examining 9,000 law enforcement agencies along with all of those in Maryland to compare outcomes in crime and officer assaults between agencies that established or eliminated a SWAT team during a period of time in the 2000s. The study found no statistically significant impact of SWAT deployment on either crime or officer assaults (Mummolo, 2018).

Descriptive research suggests that the costs of forcible entry searches likely outweigh the benefits. One study found that SWAT teams recovered weapons in about one in three deployments and found no contraband of any kind in 65% of deployments for drug searches (ACLU, 2014). In addition to these relatively low rates of



evidence recovery, police raids involving unannounced entry carry significant risk of property damage and injury for officers and occupants. A New York Times investigation found that 81 civilians and 13 law enforcement officers died in forcible-entry search warrant raids from 2010 to 2016; officers represented 10% of those who died during standard knock searches and 20% of fatalities associated with no-knock warrants (Sack, 2017). Moreover, such police raids may be racially disparate; in one study, 42% of households raided under SWAT search warrants had Black occupants (ACLU, 2014). The potential for “wrong door” raids, in which officers mistakenly raid the wrong premise, is also real, with approximately 10% of New York Police Department raids in 2003 occurring at the wrong location (Lind, 2015).

Critical Policy Elements

- + Even when no-knock warrants are banned, opportunities for warrantless forcible entries for emergent exigencies remain. Agencies that aspire to reduce the risk of harm associated with unannounced and forcible entries should develop and train on clear policies that curb their use. A Threat Assessment Matrix can guide officers in planning for and executing unannounced and forcible entries in accordance with the degree of danger to officers and civilians alike.¹
- + Law enforcement should avoid entry into homes or businesses while they are occupied, instead employing covert surveillance to discern safe times to enter. Doing so will reduce risk of evidence destruction and harm to officers and occupants.
- + Nighttime raids involving standard knock warrants should be restricted to emergency exigent circumstances associated with the immediate threat to the well-being of innocent parties.
- + Officers should be held accountable by their agencies for providing inaccurate or poorly validated information when seeking warrants, and judges should be held accountable by the state entity that governs judicial qualification and inquiries for improperly issued warrants based on lack of sufficient documentation or probable cause justification.
- + Unless they are engaged in covert operations, officers should be in standard dress uniform when executing warrants, particularly at premises that are known to be occupied, in order to be clearly identifiable as law enforcement and remove the impression that the execution of search warrants is a burglary (in the case of plainclothes officers) or military exercise (in the case of officers wearing battle uniforms). This practice minimizes the potential for officer harm from occupants using deadly force against assumed intruders. When a threat assessment determines that it is appropriate for a SWAT team to execute the warrant, those suitably attired and equipped officers should execute the warrant.
- + Law enforcement should make every effort to ensure that the intelligence associated with the location and identity of occupants is accurate to avoid forcible entry of the incorrect residence or harm to uninvolved individuals.
- + Agencies should publish data about warrant requests, service activities, and outcomes, disseminating summary statistics for the past two to five years and continually publishing such information on an annual basis.²
- + When officers execute a search warrant and do not identify contraband or arrest an individual at the premises, the police department should compensate the owner and/or occupants of the home for any damage done unless subsequent discovery confirms criminal activity. To facilitate that restoration, officers should be required to video record the condition of the premise prior to and after the search.



Expected Impacts

PREVENTING MISUSE OF FORCE

Prohibiting or severely restricting forcible, unannounced entries of premises by law enforcement, particularly entries occurring in the pre-dawn hours, will limit the likelihood of police raids, thereby reducing the potential for excessive use of force and harm to occupants.

ENHANCING TRANSPARENCY AND ACCOUNTABILITY

Since both no-knock and standard knock warrants are issued by a judge in secrecy, banning no-knock warrants makes them less frequent but has no direct impact on transparency or accountability. Agencies should, however, increase transparency by publishing annual statistics on warrant service activities and outcomes.

STRENGTHENING COMMUNITY TRUST

If no-knock warrant bans are accompanied by a reduction in the number of forcible entries by law enforcement, community trust in police may improve. Trust may also improve if bans reduce the incidence of “wrong-knock warrants” – cases in which officers forcibly enter the wrong premise either in error or based on flawed intelligence.

REDUCING RACIAL DISPARITIES

Some research indicates that police raids occur disproportionately at households occupied by Black residents. It is unclear whether a ban on no-knock warrants would reduce this disparity given remaining opportunities for police to conduct warrantless entries.

ENSURING OFFICER SAFETY

Requiring officers to conduct most searches in standard dress uniform, during waking hours, and after verifying intelligence about the residence and its occupants, and requiring that officers announce their presence as law enforcement prior to entry, should minimize confusion and self-defense measures on the part of occupants that could put officers in harm's way.

PROMOTING PUBLIC SAFETY

Given that research finds no relationship between police raids and reduced crime, there is no reason to believe that banning search warrants will have either a positive or negative direct impact on public safety. While it is likely that more evidence will be destroyed as a result of minimizing forcible and unannounced warrant executions, the potential gains to public safety and justice are relatively small. By contrast, the risks of serious injury or death to occupants, and the resulting impact on police legitimacy, are large and outweigh the downsides.

References

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End Notes

1 For an overview of threat assessment matrixes, see: <http://nebula.wsimg.com/d52a3501bbd58ac9db0ac0acef5a200f?AccessKeyId=60FF4035FAC52CC390C3&disposition=0&alloworigin=1>

2 In Maryland, legislation required agencies operating SWAT teams to report specific activation and deployment information on a semi-annual basis; these data were made publicly available from 2010, the first year of enactment, through 2014, when the law sunsetted.

About The Task Force

The independent **Task Force on Policing** was launched in November 2020 by the **Council on Criminal Justice**. Its mission is to identify the policies and practices most likely to reduce violent encounters between officers and the public and improve the fairness and effectiveness of American policing. The **11 Task Force members** represent a diverse range of perspectives and experience and include law enforcement leaders, civil rights advocates, researchers, a former mayor, and community members who have lost loved ones to police violence. The Council staffs the Task Force, and the **Crime Lab** at the University of Chicago's Harris School of Public Policy is serving as its research partner.

The Task Force on Policing thanks Dylan Fitzpatrick, Sean Malinowski, and Riddhima Mishra from the Crime Lab for their contributions to this brief.

