



Police Review Commission (PRC)

SUBCOMMITTEE ON WARRANT SERVICE POLICY

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

**Tuesday, March 2, 2021
6:30 p.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/87070468124>. 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 **870 7046 8124**. 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. General discussion regarding revisions or additions to the policy.
- b. Draft revised or new language for the policy.

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

5. SCHEDULE NEXT MEETING DATE

6. ADJOURNMENT

Communications Disclaimer

Communications to the Police Review Commission, like all communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the PRC Secretary for further information. City offices are currently closed and cannot accept written communications in person.



Communication Access Information (A.R.1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

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.

Questions/Comments by Kitt Saginor 2/22/21
DRAFT 606 WARRANT SERVICE

606.3 SEARCH WARRANTS

Any no-knock search warrant application shall be approved in writing by the Chief of Police or their designee prior to being submitted to the courts for approval.

Comment: This applies the requirement only to SEARCH warrants. Next section, 606.4, about ARREST warrants does not include this restriction.

606.4 ARREST WARRANTS

Comment: There's nothing in this section about using the risk assessment form for ARREST warrants, that was in the SEARCH warrant section above.

If an officer reasonably believes that serving an arrest warrant may pose a higher risk...

Comment: This section specifies ARREST warrants, so it won't apply to SEARCH warrants? But the paragraph in 606.3 for no-knock SEARCH warrants – won't those be high-risk?

If the warrant is not classified as high risk, the supervisor should weigh the risk of entry into a residence to make an arrest against other alternatives, such as arresting the person outside the residence where circumstances may pose a lower risk.

Comment: These alternatives are suggested for a warrant that is NOT high risk, shouldn't such alternatives also be considered for an arrest warrant may be high risk? Perhaps change the order within this section?

606.6 HIGH RISK WARRANT SERVICE

Comment: This section for HIGH RISK, I don't see comparable directions for LOW-RISK – for example (h) leaving copy of warrant, (i) documenting condition of property– are those steps taken only for HIGH RISK?

~~DELETED~~ (d) Reasonable efforts are made during the search to maintain or restore the condition of the location.

Comment: Why is this deleted?

606.7 DETENTIONS DURING WARRANT SERVICE

~~DELETED~~ As soon as it can be determined that an individual is not subject to the scope of a warrant and that no further reasonable suspicion or safety concerns exist to justify detention, the person should be promptly released.

Comment: Why is this deleted?

606.11.1 The Warrant Detail Responsibilities

Arrest warrants that do not include the following information will not be entered into AWS

Comment: and will not be served??

606.11.2 Courtesy Notice

The Warrant Detail shall send a courtesy notice...

Comment: When is the courtesy notice sent? Before execution of the warrant? After? is there a deadline for how long afterwards?

Notes on Arrest statistics. Kitt Saginor, Feb. 24, 2021

Since the experts who spoke to the Warrant Service subcommittee encouraged us to look at data when considering policy revisions, I've perused the [City of Berkeley Open Data](#) site for relevant statistics. The dataset *Berkeley PD Log – Arrests* provides statistics for adult arrests made within about a 30 day period. I did not find information about which arrests result from warrants served to homes or offices, but nonetheless found numbers informative for our work.

There were 124 Adult Arrest records posted for January 24th through February 20th. Here is the breakout by race for these:

- Asian - 3 or 2.4%
- Black - 61 or 49.2%**
- Hispanic - 21 or 16.9%
- Other - 5 or 4.0 %
- White - 34 or 27.4%

Of these, 15 had the Arrest Type COURT FILED (WARRANT)
Here is the breakout by race for these 15:

- Asian - 0
- Black - 10 or 66.7%**
- Hispanic - 2 or 13.3%
- White - 3 or 20.0%

Also of these 15 with COURT FILED (WARRANT), the Statute notes said that:

- 11 had Outside Felony Warrants (8 Black, 2 Hispanic, 1 White)
- 2 had Outside Misdemeanor Warrants (1 Hispanic, 1 White)
- 2 had BPD Felony Warrants (1 Black, 1 White)
- 2 had BPD Misdemeanor Warrants (1 Black, 1 White)
- This totals 17 because two people had more than one Warrant

I was unable to determine whether these resulted from warrants served or were persons encountered in public places who had outstanding warrants.

Because the Department has in the past suggested that interactions with persons from outside Berkeley's borders are a major factor for the overrepresentation of African Americans in BPD statistics, I looked for – but did not find – information about whether arrestees were Berkeley residents. However, I note that another current dataset – *Berkeley PD Stop Data* from RIPA, allows comparison of all persons stopped vs Berkeley Residents stopped.

All Stops in BPD Stop Data (2/24/21)		
Black/African American	924	40%
White	773	34%
Hispanic/Latino	316	14%
Asian	121	5%
(Other)	158	7%

Berkeley residents in BPD Stop Data (2/24/21)		
Black/African American	618	40%
White	577	37%
Hispanic/Latino	179	12%
Asian	79	5%
(Other)	100	7%

In considering policy for warrant service going forward, the subcommittee should keep in mind that BPD arrest policies will be experienced by African Americans at overwhelmingly higher rates than White or Asian residents.

Supreme Court Weighs Limits of 'Hot Pursuit' by Police

The court has said that the police need no warrants to enter the homes of fleeing felons. Does that exception also apply to people suspected of minor crimes?

By **Adam Liptak**

- Feb. 24, 2021

WASHINGTON — The Supreme Court has said that police officers do not need a warrant to enter a home when they are in “hot pursuit of a fleeing felon.” But the justices seemed puzzled, troubled and torn on Wednesday about whether the protection given to individuals in their homes by the Fourth Amendment also allows warrantless entries when officers pursue people suspected of crimes as minor as playing a car stereo too loudly.

“This is a tough case,” said Justice Stephen G. Breyer, adding that it presented the court with “a cruel trilemma.” He listed three possible resolutions and suggested that none was satisfactory.

A ruling that the hot pursuit of all crimes justifies entry, he said, means that “the home isn’t the castle at all for the most trivial of things.” On the other hand, he said, “hot pursuit is really serving an important purpose.”

The third alternative — drawing a distinction between felonies and misdemeanors — would create confusion and anomalies, he said.

The case concerned Arthur Lange, who had retired to Sonoma, Calif., after a career in commercial real estate. Driving home around 10 p.m. in the fall of 2016, with the windows down, loud music on and occasionally honking the car’s horn, he caught the attention of a state highway patrol officer.

The officer, Aaron Weikert, believing that Mr. Lange had committed noise infractions, followed him and, as he neared his home, activated the patrol car’s overhead lights.

Mr. Lange drove into his garage, and as its door began to descend, Officer Weikert stopped the door with his foot, forced it to reopen and confronted Mr. Lange, who appeared to be intoxicated. A blood test later showed that his blood-alcohol level was more than three times the legal limit.

Mr. Lange was charged with driving under the influence, a misdemeanor, and playing music too loudly, an infraction. He moved to suppress the evidence against him, arguing that Officer Weikert’s entry into his home had violated the Fourth Amendment, which prohibits unreasonable searches and seizures. A state appeals court ruled against him.

Jeffrey L. Fisher, a lawyer for Mr. Lange, said Officer Weikert had alternatives other than intruding into the garage, including knocking on the front door. “But if a homeowner in this situation insists,” Mr. Fisher said, “it is not too much to ask for officers to procure a warrant before breaching the Fourth Amendment’s most sacrosanct space.”

Chief Justice John G. Roberts Jr. said those options “really put the police in a dangerous situation.” Once inside their homes, he said, suspects can destroy evidence, arm themselves and summon confederates.

Mr. Lange said he had not seen the patrol car's flashing lights, did not know he had been ordered to stop and so could not be said to be fleeing. Justice Samuel A. Alito Jr., who had reviewed video taken by Officer Weikert's dashboard camera, said that appeared likely.

"The video shows there was no chase and Mr. Lange really didn't flee," Justice Alito said.

Justice Alito said the court could resolve the case by ruling that there had been no pursuit at all, hot or otherwise, regardless of whether the crime in question was a felony or a misdemeanor.

"The argument very simply is that hot pursuit has to be hot and it has to be a pursuit," he said.

Justice Clarence Thomas, too, seemed reluctant to characterize the encounter in Sonoma as a hot pursuit. He called it a "meandering pursuit."

Justice Neil M. Gorsuch, on the other hand, said he was not inclined to base the court's ruling on "what makes a pursuit hot instead of limits on the seriousness of the suspected crime."

Several justices said that line separating felonies from misdemeanors was a murky one that varied by state and did not reflect the risks to police officers.

Justice Elena Kagan said that labeling a crime a felony or a misdemeanor says little about whether the suspect was dangerous. Most domestic violence offenses are misdemeanors, she said, while most white-collar frauds are felonies.

In an unusual move, California did not defend the lower court's decision in its favor and instead urged the Supreme Court to rule that only felonies justify entries without warrants.

Because neither side supported the appeals court's ruling, the justices appointed Amanda K. Rice, a former law clerk to Justice Kagan, to argue that misdemeanors justify warrantless entries. Ms. Rice said the court should treat all crimes the same.

"The hot pursuit exception justifies warrantless home entry in a narrow class of cases where a suspect tries to thwart a lawful public arrest by outracing an officer to a dwelling," she said.

Near the end of the argument, Justice Breyer said the case may not present a "cruel trilemma" after all. There was a fourth option, he said, which was "almost always" to allow warrantless entries in hot pursuit but to leave open the possibility that some intrusions are unreasonable.

That position resembled the one advanced by Erica L. Ross, who argued on behalf of the federal government in the case, *Lange v. California*, No. 20-18.