

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 16, 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/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.

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Email: [prc@cityofberkeley.info](mailto:prc@cityofberkeley.info) Website: [www.cityofberkeley.info/prc/](http://www.cityofberkeley.info/prc/)

#### 4. OLD BUSINESS (discussion and action)

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

a. Draft revised or new language for the policy, with particular focus on these topics:

- 1) Whether there should be a complete ban on no-knock warrants or not.
- 2) Quick-knock entries; whether a minimum wait time should be prescribed.
- 3) Night / early-morning service.
- 4) Data collection (especially numbers of no-knock entries).
- 5) Compensation for damage done during searches.
- 6) Add some language re sanctity of life.

*(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](mailto:prc@cityofberkeley.info).

## WARRANT SERVICE POLICY SUBCOMMITTEE

### AGENDA PACKET for March 16, 2021 meeting

1. Draft Policy 606, Warrant Service
2. General Order S-6, Search Warrants
3. General Order C-16, Reports Involving Possible City Liability
4. Policy Briefing: Search Warrants – Nashville, TN, Metropolitan Police Dept., with cover email
5. Meeting notes from March 2, 2021 meeting
6. Meeting notes from Feb. 22, 2021 meeting

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## Warrant Service

### 606.1 PURPOSE AND SCOPE

This policy establishes guidelines for the planning and serving of arrest and search warrants by members of this department. It is understood that this policy cannot address every variable or circumstance that can arise in the service of a search or arrest warrant, as these tasks can involve rapidly evolving and unique circumstances.

This policy is intended to be used in conjunction with the Operations Planning and Deconfliction Policy, which has additional guidance on planning and serving high-risk warrants.

This policy is not intended to address the service of search warrants on locations or property already secured or routine field warrant arrests by patrol officers.

### 606.2 POLICY

It is the policy of the Berkeley Police Department to balance the safety needs of the public, the safety of department members, privacy interests and other relevant factors when making decisions related to the service of search and arrest warrants.

### ~~606.3 OPERATIONS DIRECTOR~~

~~The operations director (see the Operations Planning and Deconfliction Policy) shall review all risk assessment forms with the involved supervisor to determine the risk level of the warrant service.~~

~~The operations director will also have the responsibility to coordinate service of those warrants that are categorized as high risk. Deconfliction, risk assessment, operational planning, briefing and debriefing should follow guidelines in the Operations Planning and Deconfliction Policy.~~

### ~~606.4~~606.3 SEARCH WARRANTS

Officers should receive authorization from a supervisor before preparing a search warrant application. Once authorization is received, the officer will prepare the affidavit and search warrant ~~and submit the documents to a supervisor for review and approval. , consulting with the applicable prosecuting attorney as needed. The supervisor He/she will also~~ complete the risk assessment form and submit it, along with the Operation Plan warrant affidavit, to the appropriate supervisor ~~and the operations director~~ for review and classification of risk (see the Operations Planning and Deconfliction Policy).

**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**

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#### **606.5606.4 ARREST WARRANTS**

If an officer reasonably believes that serving an arrest warrant may pose a higher risk than commonly faced on a daily basis, the officer should ~~notify complete the risk assessment form and submit it to~~ the appropriate supervisor ~~of the need and the operations director~~ for review and classification of risk (see the Operations Planning and Deconfliction Policy).

If the warrant is classified as high risk, ~~the supervisor should contact the Bureau Lieutenant or Division Captain to arrange a consultation with the Special Response Team (SRT) Commander. service will be coordinated by the operations director.~~ 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.

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#### **606.6606.5 WARRANT PREPARATION**

An officer who prepares a warrant should ensure the documentation in support of the warrant contains as applicable:

- (a) Probable cause to support the search or arrest, including relevant dates and times to demonstrate timeliness and facts to support any request for nighttime warrant execution.
- (b) A clear explanation of the affiant's training, experience and relevant education.
- (c) Adequately supported opinions, when relevant, that are not left to unsubstantiated conclusions.
- (d) A nexus between the place to be searched and the persons or items central to the investigation. The facts supporting this nexus should be clear and current. For example, the affidavit shall explain why there is probable cause to believe that a particular person is currently residing at a particular location or that the items sought are present at a particular location.
- (e) Full disclosure of known or suspected residents at the involved location and any indication of separate living spaces at the involved location. For example, it should be disclosed that several people may be renting bedrooms at a single location, even if the exact location of the rooms is not known.
- (f) A specific description of the location to be searched, including photographs of the location, if reasonably available.
- (g) A sufficient description of the items to be seized.
- ~~(h)~~ Full disclosure of any known exculpatory information relevant to the warrant application (refer to the Brady Material Disclosure Policy).

#### **606.7606.6 HIGH-RISK WARRANT SERVICE**

The ~~SRT Commander operations director~~ or ~~his/her the authorized~~ designee shall ~~review coordinate the service of~~ warrants that are categorized as high risk and shall ~~confer with the Operations Division Captain have sole authority in to determinedetermining~~ the manner in which the warrant will be served, including the number of officers deployed. Only the Chief of Police, or

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his/her designee, may authorize the use of SRT.

The member responsible for directing the service should ensure the following as applicable:

- (a) When practicable and when doing so does not cause unreasonable risk, video or photographic documentation is made of the condition of the location prior to execution of a search warrant. The images should include the surrounding area and persons present.
- (b) The warrant service is audio- and video-recorded when practicable and reasonable to do so.
- (c) Evidence is handled and collected only by those members who are designated to do so. All other members involved in the service of the warrant should alert one of the designated members to the presence of potential evidence and not touch or disturb the items.
- (d) ~~Reasonable efforts are made during the search to maintain or restore the condition of the location. Searches are conducted in a thorough, organized and systematic manner. Focus should be on leaving nothing undiscovered within the limit/scope sanctioned by the warrant, without causing unnecessary damage to the location or property.~~
- (e) Persons who are detained as part of the warrant service are handled appropriately under the circumstances.
- (f) Reasonable care provisions are made for children and dependent adults (see the Child and Dependent Adult Safety Policy).
- (g) A Search Warrant Receipt ~~list~~ is made containing a list of all items seized and a copy is provided to the person in charge of the premises if present or otherwise left in a conspicuous place.
- (h) A copy of the search warrant is left at the location.
- (i) The condition of the property is documented with video recording or photographs after the search.
- (i)(j) Any damage incurred as a result of the search, such as a breached door, is photographed and documented.

#### **606.8606.7 DETENTIONS DURING WARRANT SERVICE**

Officers must be sensitive to the safety risks of all persons involved with the service of a warrant. Depending on circumstances and facts present, it may be appropriate to control movements of any or all persons present at a warrant service, including those who may not be the subject of a warrant or suspected in the case. However, officers must be mindful that only reasonable force may be used and weapons should be displayed no longer than the officer reasonably believes is necessary (see the Use of Force Policy).

~~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 further detention, the person should be promptly released.~~

Officers should, when and to the extent reasonable, accommodate the privacy and personal needs of people who have been detained.

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### **606.9606.8 ACTIONS AFTER WARRANT SERVICE**

The supervisor shall ensure that all affidavits, warrants, receipts and returns, regardless of any associated cases, are filed with the issuing judge or magistrate as soon as reasonably possible, but in any event no later than any date specified on the warrant.

### **606.10606.9 OUTSIDE AGENCIES AND CROSS-JURISDICTIONAL WARRANTS**

The ~~Watch Commander operations director~~ will ensure that cooperative efforts with other agencies in the service of warrants conform to existing mutual aid agreements or other memorandums of understanding and will work cooperatively to mitigate risks including, but not limited to, the following:

- Identity of team members
- Roles and responsibilities
- Familiarity with equipment
- Rules of engagement
- Asset forfeiture procedures

Any outside agency requesting assistance in the service of a warrant within this jurisdiction should be referred to the ~~Watch Commander operations director~~. The ~~Watch Commander director~~ should review ~~and confirm~~ the warrant, including the warrant location, and should discuss the service with the appropriate supervisor from the other agency. The ~~Watch Commander director~~ should ensure that members of the Berkeley Police Department are utilized appropriately. Any concerns regarding the requested use of Berkeley Police Department members should be brought to the attention of the ~~Division Captain, Chief of Police or the authorized designee~~. The actual service of the warrant will remain the responsibility of the agency requesting assistance.

~~If the operations director is unavailable, the Watch Commander should assume this role.~~

If officers intend to serve a warrant outside Berkeley Police Department jurisdiction, the ~~case officer operations director~~ should provide reasonable advance notice to the applicable agency, request assistance as needed and work cooperatively on operational planning and the mitigation of risks detailed in this policy.

Officers will remain subject to the policies of the Berkeley Police Department when assisting outside agencies or serving a warrant outside Berkeley Police Department jurisdiction.

### **606.10 MEDIA ACCESS**

No advance information regarding warrant service operations shall be released without the approval of the Chief of Police. Any media inquiries or press release after the fact shall be handled in accordance with the ~~News~~ Media Relations Policy.

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### **606.11 WARRANT DETAIL**

#### **607.11.1 The Warrant Detail Responsibilities**

The Warrant Detail shall be responsible for the service coordination of adult arrest warrants.

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Planned service of arrest warrants should be prioritized by the type of warrant (original, bench, traffic) and severity of offense (felony, misdemeanor, infraction).

(a) Notwithstanding standard considerations, service of arrest warrants involving potentially dangerous offenders should be given priority.

#### The Automated Warrant System (AWS)

Arrest warrants issued by the Alameda County Superior Court and assigned to the Berkeley Police Department shall be processed into AWS by the Support Services Bureau.

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

1. Date and time received;
2. Date of issuance by the Court;
3. Nature of document (i.e., offense);
4. Source of document (i.e., original or bench warrant);
5. Court docket/warrant number;
6. Amount of bail; and,
- 4.7. Whether or not endorsed for night service.

#### 606.11.2 Jail and Communication Center Responsibilities

The Communication Center shall be responsible for warrant confirmation liaison with, and communication of teletype abstracts to, outside agencies serving local arrest warrants.

Jail staff shall be responsible for the update of computer records (i.e., AWS, CLETS) regarding the service of arrest warrants and related custodial status of the subject person who is booked into the Jail.

Jail and Communication Center personnel shall forward all records that relate to the service of arrest warrants to the Warrant Detail.

#### 607.11.2 Due diligence

The Warrant Detail shall have administrative due diligence responsibility regarding the service of adult arrest warrants assigned to, or requested of, this department.

- (a) When the subject of a local arrest warrant lives in a jurisdiction other than Berkeley, the Warrant Detail may communicate the warrant information to and request service assistance from the involved outside agency.
- (b) When notified of warrant service activity, the Warrant Detail shall update AWS or, if it's an outside agency warrant, communicate the service activity to the responsible agency.

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(c) As necessary, the Warrant Detail shall assist the Youth Services Detail in managing administrative due diligence activity regarding the service of juvenile arrest warrants.

607.11.3 Courtesy Notice

The Warrant Detail shall send a courtesy notice regarding the issuance of an arrest warrant assigned for service by this department to the address indicated on the warrant. the Warrant Detail should research for a current or accurate address for the subject of an arrest warrant.

**606.11606.12 TRAINING**

The Personnel and Training Sergeant should ensure officers receive periodic training on this policy and associated topics, such as legal issues, warrant preparation, warrant service and reporting requirements.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 27, 2005

GENERAL ORDER S-6

SUBJECT: SEARCH WARRANTS

### PURPOSE

- 1 - The purpose of this General Order is to establish policies and procedures regarding the preparation and execution of search warrants.

### DEFINITION

- 2 - A search warrant is a legal order, signed by a magistrate, allowing the search of a specified person and/or place. A search warrant consists of three parts -- the affidavit to support the issuance of the search warrant; the actual warrant, which is a court order to perform a specific search, and the return of service, which is a receipt for all items seized during the course of the search.

### POLICY

- 3 - It is the policy of the Berkeley Police Department that all search warrants be obtained and served in compliance with prescribed procedures. Detailed guidelines and instructions for obtaining and processing all search warrants are contained in designated chapters in both the Special Enforcement Unit Procedural Manual and the Detective Bureau Manual. It is the policy of the Berkeley Police Department to videotape or photograph structures (i.e., residences, apartments, businesses, etc.) to document the condition of the structure before and after the service of these types of search warrants.

### LEGAL

- 4 - Per Penal Code Section 1523, "a search warrant is an order in writing, in the name of the people, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, and bring it before the magistrate."
  - (a) Property seized must be subject to seizure (1524 PC). Items seized must be stolen or embezzled property, contraband or evidence of a crime.
  - (b) The property sought must be described with particularity.
- 5 - Penal Code Section 1531 allows the officer to "break open any outer door or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant if, after notice of his authority and purpose, he is refused admittance."
- 6 - Unless the search warrant is authorized for night service by a magistrate, the warrant shall only be served between the hours of 0700 to 2200 hours.
- 7 - Penal Code Section 1535 requires a detailed receipt be provided for the property seized pursuant to the search warrant.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 27, 2005

GENERAL ORDER S-6

- 8 - If the videotape/photographs are to be used as evidence in the criminal prosecution, judicial approval for videotaping/photographing must be obtained in the search warrant prior to the execution of the warrant.

### PRELIMINARY PROCEDURES

- 9 - The "case officer" is responsible for coordinating the investigation which relates to the search warrant. Generally, the case officer is the one who has prepared the affidavit and obtained the warrant.
- 10 - Prior to any briefing or service of a search warrant, the case officer should prepare an operation plan, including personnel and equipment assignments, strategies and tactics for search and entry, and emergency/contingency plans.
- 11 - The case officer shall review the plan with a supervisory officer, obtaining approval before proceeding. A supervisor should be present during the briefing and actual warrant service.
- 12 - The case officer is responsible for notifying the Communications Center and the Patrol Division Watch Commander prior to serving the search warrant.
  - (a) If a warrant is to be served in another jurisdiction, the Watch Commander for that agency should also be notified.
- 13 - A briefing with all personnel involved in the actual search process shall be conducted by the case officer. This review shall address the overall operations plan.

### SEARCH PROCEDURES

- 14 - The on-scene supervisor is responsible for directing the efforts of all personnel involved during the actual service of the search warrant, insuring adherence to the guidelines contained in the aforementioned procedural manuals.
  - (a) If there is no supervisor present on the scene, the case officer assumes the supervisory responsibilities delineated in this order.
- 15 - The supervisor is responsible for determining the manner in which entry itself is to be effected, including all aspects involved in "knock and announce," and "no knock" search warrant services.
  - (a) The supervisor also has the responsibility of making the determination of when forced entry should be attempted given the totality of the circumstance involving the specific search warrant.
- 16 - The ultimate goal behind every search is to locate all possible items of evidence, contraband, stolen or embezzled property.

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: May 27, 2005

GENERAL ORDER S-6

- (a) During all searches, it is essential to keep in mind that no evidence is so important as to unnecessarily warrant injury and/or death of a human being.
- 17 - Searches should be conducted in a thorough, organized and systematic manner. Focus should be on leaving nothing undiscovered within the limit/scope sanctioned by the warrant, **without causing unnecessary damage to the location or property.**
- 18 - Immediately upon entry, the entire premises are to be secured, moving all occupants within the specified location into a central area. No occupant shall be left unattended during service of the search warrant.
  - (a) The on-scene supervisor shall determine the extent of the personal search conducted on each occupant present during the search warrant service.
    - (i) The case officer, whenever possible, should be the "designated finder" in the searching process. Other officers may be assigned to assist the designated finder in this search system. Conformity and accountability are the primary reasons for this process.
  - (b) It is the responsibility of the on-scene supervisor to insure specific personnel assignments have been made relative to rooms or areas to be searched. The supervisor shall document the locations searched by assigned personnel, referencing this information under the assigned case number.
  - (c) After entering the structure to be searched the person assigned to videotape/photograph the service of the search warrant is responsible for filming the condition of the premises both prior to and after the search.
- 19 - The on-scene supervisor shall insure any damage to property incurred during service of the search warrant is repaired or secured in compliance with the mandates set forth in General Order C-16.
- 20 - The on-scene supervisor shall insure that a copy of the search warrant and handwritten inventory is given to the subject of the search if that person is present. If no one is present during the search, he/she shall insure that a copy of this information is left at the search location.
  - (a) The case officer shall insure the search warrant, affidavit and return of service are completed and processed back to the designated court within the time frames mandated by the Penal Code.
- 21- At the conclusion of the service of the search warrant, the case officer is responsible for insuring that the videotape/photographs of the event have been marked with the appropriate case number and placed in the property room, if they are to be utilized as evidence. Otherwise, the videotape/photographs shall

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**DATE ISSUED: May 27, 2005**

**GENERAL ORDER S-6**

be stored with the case file in Special Enforcement Unit, Detective Division, or Traffic Division for at least one year.

References: Detective Bureau Procedural Manual  
Special Enforcement Unit Procedural Manual  
General Order C-16  
Training and Information Bulletin No. 124

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 28, 2005

GENERAL ORDER C-16

### SUBJECT: REPORTS INVOLVING POSSIBLE CITY LIABILITY

- 1 - The purpose of this General Order is to establish procedures to be followed in situations involving potential City liability.

#### POLICY

- 2 - It is the policy of the Berkeley Police Department to investigate all police-related incidents where potential City liability is involved.

#### WHAT IS CITY LIABILITY?

- 3 - Possible City liability includes, but is not limited to:
  - (a) Falls of persons on City sidewalks, curbs, streets or other City property, or in buildings owned or leased by the City.
  - (b) Injury or damage alleged or sustained by overhanging trees, shrubbery, or by other property under City control.
  - (c) **Accidents and collisions involving City equipment and vehicles.**
  - (d) Injuries alleged or sustained by prisoners under arrest or in custody.
  - (e) Injuries to persons or damage to private property resulting from police action (e.g., forced entry on search warrants).
    - (1) If in doubt, the incident should be investigated as though it involves City liability.

#### PROCEDURES

- 4 - Immediate notification shall be made to:
  - (a) The City Attorney, even at home, if considered necessary by the Duty Command Officer when any injury is serious and likely to cause death.
  - (b) The City department concerned if during regular office hours.
  - (c) A Sergeant or the appropriate Commanding Officer when any case involves police personnel, equipment, or procedures.
    - (1) In situations where property is damaged (e.g., a search warrant where a door was forced open, or exigent circumstances requiring forced entry, etc.) and no resident is home, it is the responsibility of the handling officer to ensure that the property is secured. This may involve the notification of Public Works to provide a City crew to secure the property. When it can be anticipated that damage will

## BERKELEY POLICE DEPARTMENT

DATE ISSUED: February 28, 2005

GENERAL ORDER C-16

occur, arrangements should be made with Public Works in advance for a crew to be available (on standby).

- (2) Follow-up with the owner or occupant of the property shall be made either later in the day, or the next day to determine if the damage has been repaired.
- (3) In all cases of damaged property a separate numbered report shall be completed. Information concerning the damaged property and security of same shall be described in the report.

### INVESTIGATION AND REPORT-CONTENT

- 5 - A numbered report shall be completed in all cases involving potential City liability.
  - (a) Photographs shall be taken in all cases unless prevented by a lack of cooperation by complainants or victims.
  - (b) It is the policy of the Berkeley Police Department to videotape or photograph structures (i.e., residences, apartments, businesses, etc.) to document the conditions of the structure before and after service of search warrants. Procedures for search warrant videotaping and photography are covered in G.O. S-6.
- 6- A factual description shall be given of the alleged condition which caused the injury or damage. If no defect is discernible, it' should be so stated.
- 7 - The name and address of the insurance carrier for the other vehicle should be included in cases of accidents involving City owned vehicles.
- 8 - **With the exception of vehicle collisions**, the subject of liability or responsibility shall not be discussed nor dealt with. All reports shall be factual and officer's opinions omitted.
- 9 - **Collisions involving City vehicles, including police vehicles, shall be thoroughly investigated based on the guidelines of General Orders E-3, P-12 and T-16 and, whenever possible, include the investigating officer's opinion/conclusion regarding the primary collision factor and any contributing causative factors.**

### REPORT DISTRIBUTION

- 10 - The employee completing the report shall insure that copies are routed to the City Attorney and Risk Manager, including photographs, diagrams, statements or other attachments, if applicable.
- 11 - The Division Commander shall receive a copy of every report investigated under paragraph 3(d) and (e).

**BERKELEY POLICE DEPARTMENT**

**DATE ISSUED: February 28, 2005**

**GENERAL ORDER C-16**

- 12 - It shall be the responsibility of the officer or employee typing or transcribing the reports to insure that they are properly distributed.
- (a) Those for the City Attorney and Risk Manager shall be placed in the mailbox of the Chief of Police for forwarding.

HAZARDS AND DEFECTS

- 13 - Reports concerning hazard and defective or dangerous conditions, whether received from citizens or observed by officers, shall be detailed on a "Notice of Defective Condition", Form 262-8, Blanket Case #(year)-00020, and routed:
- (a) Original to the Department concerned.
- (b) Duplicate to the Records Bureau for filing with the blanket report.
- 14 - Serious conditions shall be immediately reported to the Department concerned with a follow-up by the form.

References: General Orders C-15, C-17, E-2, E-3, 0-7, P-12, P-24, R-3, R -19, V-4, S-6 and T-16

## Norris, Byron

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**From:** Thompson, Brensey (Community Oversight Board) <Brensey.Thompson@nashville.gov>  
**Sent:** Friday, March 05, 2021 8:38 AM  
**To:** Norris, Byron  
**Subject:** Home Searches  
**Attachments:** RCT-SearchWarrantRevision.pdf

**WARNING:** This email originated outside of City of Berkeley.  
**DO NOT CLICK ON** links or attachments unless you trust the sender and know the content is safe.

Hello,

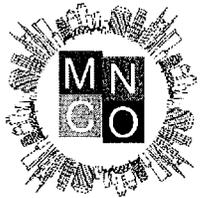
I'm attaching the new MNP language on search warrants that hasn't been added to the Manual yet.. it does include the word "reasonable" a lot more than the old policy in reference to time & damage.

Additionally there is §4.20.050W(2) which covers care of property and states:

### 2. Other Property

Employees shall exercise all due precautions to prevent theft, loss, or damage to property recovered by or entrusted to them in the course of official business. In the event that the theft, loss, or damage is due to a willful or negligent act or omission by the employee, appropriate restitution shall be made. *(Category varies by severity of offense, Category E- B)*

That provision would be used for the investigation if an officer were alleged to cause unnecessary damage during a search warrant.



METRO NASHVILLE  
COMMUNITY OVERSIGHT

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METROPOLITAN POLICE DEPARTMENT  
NASHVILLE, TENNESSEE

# Roll Call Training: Policy Briefing

MNPD FORM 101  
Rev. Feb. 2020

<b>SUBJECT:</b> <b>Search Warrants</b> MNPD Manual, 5.10.030 & 5.10.040	<b>REVISED:</b>	<b>RESCINDS:</b> <i>RCT: Search Warrants Approval  Required, dated August 19, 2020</i>
<b>REFERENCE:</b> MNPD Manual, Search Warrant, 5.10.030, 5.10.040, & 5.10.050	<b>EFFECTIVE DATE:</b> December 8, 2020	<b>DISTRIBUTION:</b>  <p style="text-align: center;"><b>All Personnel</b></p>

## I. PURPOSE

The purpose of this roll call training document is to notify all employees regarding a change to MNPD Manual, 5.10.030 & 5.10.040, pending formal revision to the Manual. Employees are further reminded to review 5.10.050 regarding search warrant tracking form and the requirements of those provisions.

In accordance with the current requirements, supervisors shall ensure all employees under their command are aware of this document and acknowledging they have received notice of the information and accept responsibility to follow the directive(s) contained herein.

## II. KEY POINTS TO COVER DURING ROLL CALL TRAINING

MNPD Manual, 5.10.030 & 5.10.040 are deleted in their entirety and replaced with the following:

### 5.10.030 Search Warrant Application

#### A. Process

Within the MNPD, only sworn employees may apply for a search warrant. Such employees shall ensure compliance with Tennessee law and all applicable MNPD policies and procedures.

#### B. Supervisor Review

1. Applications for search warrants shall be reviewed by a sworn supervisor prior to submission to a magistrate or judge for review and approval. Supervisors, in reviewing search warrants, are encouraged to use the resources available across the department (e.g. supervisors in SID, CID, Legal Resources, Police Legal Advisor, or (if assisting with the case) an assistant district attorney.
2. In reviewing search warrant applications to determine whether sufficient probable cause exists to support the issuance of a warrant, supervisors shall, at a minimum, consider:
  - a. Staleness – The timeline of occurrence of the relevant facts being relied upon in order to establish probable cause for the issuance of the warrant must be established. If the information is too old, it is considered stale and cannot constitute probable cause.

- b. Nexus – Is there a sufficient nexus between the item(s) to be searched for and the place to be searched? Does the affidavit establish probable cause to believe that the items subject to seizure (i.e., evidence, contraband, fruits of crime, etc.) are *currently* in the place to be searched?
  - c. Scope – Is the scope of the warrant limited to the search of items for which the affidavit establishes there is probable cause to believe are located at the place to be searched? If the warrant is overly broad, it is considered a general warrant and invalid.
  - d. Hearsay – Does the affidavit satisfy the basis of knowledge prong and the veracity prong such that, under the totality of the circumstances, a magistrate would find there is a fair probability that contraband or evidence of a crime will be found in a particular place?
  - e. Description – Does the search warrant describe the place to be searched to the exclusion of all others? The warrant should provide a sufficient description such that an officer with no knowledge of the case can accurately locate the place to be searched. Does the warrant describe the things to be seized to the exclusion of all others? If the warrant is for the seizure of an item such as controlled substances, then a more general description will suffice. If the warrant has been issued to recover a particular item (e.g., a stolen phone, a gun used in a homicide, etc.), then the warrant should sufficiently describe that item such that no other items will be taken by mistake.
  - f. Necessity – Prior to seeking a search warrant, officers will assess the need to obtain a search warrant, weighing factors such as the reason for the search, the intrusiveness of the search, safety of the officers and the public, and whether there were reasonable and less drastic alternatives to accomplish the investigative goals (e.g., consent). Officers should also take reasonable steps to minimize the intrusiveness of a search warrant execution (e.g., obtaining consent where there is no threat to evidence or safety, using keys to minimize damage, etc.).
- C. Search warrant applications should generally be presented to the Judges of the General Sessions and Criminal Courts. In the event a judge cannot be located and a delay to find a judge would impair the investigation, commissioners/magistrates assigned to Night Court may be utilized.
- D. When a search warrant is presented to a judge or magistrate for review and approval, and such approval is denied, copies of the search warrant and affidavit shall be forwarded to Legal Resources. Only after a review of the search warrant has been completed by Legal Resources or the Police Legal Advisor, and a finding that probable cause exists to support the issuance, may the search warrant be submitted to a different judge or magistrate.

E. Search Warrant Type – Minimum Requirements for Application & Supervisory Review

1. Search Warrants Requesting No-Knock Service or Execution  
No officer shall seek application for a search warrant wherein a “no-knock” service or execution is requested.
2. Search Warrants Involving a Residence or Building Where Forced Entry is Reasonably Expected or Anticipated or Body Cavity Searches  
No officer shall seek application for a search warrant under this category without the explicit prior approval of no less than a Deputy Chief of Police.
3. All Other Search Warrants  
No officer shall seek application for a search warrant under this category without the explicit prior approval of a sworn supervisor who has completed the departmentally approved search warrant review training program.

**5.10.040 Execution and Return with Inventory**

A. Prior to executing a search warrant, officers shall consider the following factors:

1. Threat assessment – Prior to the execution of a search warrant for a premises, a Threat Assessment form (MNPDP Form 375) shall be completed. The decision matrix shall be used to determine which component will execute the warrant.
2. Time – Proper consideration should be given to the time of execution of the search warrant. Is the planned execution time reasonable? Is there a time when the person in control of the premises is likely to be present and can admit officers so that damaging the property is unnecessary? If the search warrant is for a premises and doesn't involve a threat to the loss of evidence or safety of the officer or others, then the warrant should generally be executed during daytime hours.
3. Personal searches – If the search of persons is anticipated, officers of either sex should be on hand to accommodate personal searches.
4. Security – Consideration should be given to the steps necessary to secure the premises following the execution of the search warrant if forced entry is required (e.g., calling apartment maintenance, replacing a damaged lock on a storage unit, etc.).
5. Visibility – Officers executing the search warrant should be properly attired in uniform or other clothing that clearly indicates they are a law enforcement officer with the MNPDP. When a warrant is to be executed on a premises by a non-uniformed unit, at least one uniformed officer should be present and visible, unless there is an articulable threat in doing so. Where feasible, a marked unit should be positioned so as to be visible to the occupants of any premises subject to the execution of the search warrant.

B. During the execution of the search warrant, officers shall consider the following factors:

1. Knock and Announce – In conformance with constitutional requirements, absent reasonable suspicion of exigent circumstances, officers must comply the requirement to knock and announce the officer's presence and purpose.

2. Wait time – The knock and announce rule requires officers to wait a reasonable period of time to be voluntarily admitted into the location before forced entry may be made.
  3. Forced entry – Any damage sustained during the execution of a search warrant must be reasonably necessary. Care should be taken to avoid unnecessarily causing damage to property. Consideration should be given to steps which may reduce the need to force entry (e.g., waiting until someone is on hand who can provide access to the location, obtaining a key to the location, etc.)
- C. The search warrant may only be executed by the officer, or one of the officers, to whom it is directed. Other persons may aid such officer at the officer's request, but the officer must be present and participate in the execution.
  - D. If, after notice of his or her authority and purpose, an officer is not granted admittance, or in the absence of anyone with authority to grant admittance, the officer with a search warrant may break open any door or window of a building or vehicle, or any part thereof, described to be searched in the warrant to the extent that it is reasonably necessary to execute the warrant and does not unnecessarily damage the property.
  - E. The warrant must be executed within five calendar days after its date of issuance.
  - F. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at a place from which the property was taken.
  - G. The return shall be made promptly and shall be accompanied by a written inventory of any property taken.

The return, along with a copy of the search warrant and supporting affidavits shall be sent to Legal Resources who shall maintain such copies as a confidential open case. Legal Resources shall review the documents for training purposes and maintain an analysis which summarizes statistical information and such analysis shall not contain any confidential information.

***Officers are further encouraged, for any questions or concerns, to check with your supervisory chain of command, the Legal Resources Section, or a police legal advisor.***

## **PRC Subcommittee on Warrant Service Policy**

Meeting Notes by Kathy Lee  
March 2, 2021  
Via Zoom

Meeting called to order at 6:33 p.m.

Present:

Subcommittee members: Comms. Ramsey (Chair), Calavita, Chang, public member Saginor.

PRC staff: Kathy Lee, Byron Norris

Absent: Comm. Hans Moore; Lts. Montgomery and Turner (schedule conflicts)

Agenda approved by general consent

No public comment

### **OLD BUSINESS**

Chair Ramsey asked the Subcommittee to talk about objectives in reviewing the policy; stick to general discussions since no BPD representatives were able to be present tonight, and don't want to rehash everything.

Subcommittee members agreed on the following areas of Policy 606 to be discussed:

1. Whether there should be a complete ban on no-knock warrants or not.
2. Quick-knock entries; whether a minimum wait time should be prescribed.
3. Night / early-morning service.
4. Data collection (especially numbers of no-knock entries).
5. Compensation for damage done during searches.
6. Add some language re sanctity of life.

Some of the thoughts expressed on the above:

1. Ban no-knock warrants? One subcommittee member was initially in favor of banning no-knock, but reconsidering. Quick-knocks might replace no-knocks. On the other hand, sends a positive message to the community to ban. Won't change actual practice, since used so rarely. Others thought, if not needed in 30 years, then a ban wouldn't make a difference. Also, banning no-knock warrants doesn't mean banning no-knock entries in exigent circumstances.

2. Regulate or ban use of quick-knocks? BPD seemed to indicate they don't use them. (Should confirm this.) Hesitant to assign a specific amount of time, like 30 seconds, as depends on circumstances such as size of residence. Courts also hesitant to specify time. Maybe policy should spell out considerations/circumstances under which shouldn't wait?

3. Night / early-morning service. Perhaps expressly allowing, say, within two hours of sunrise.

4. Data collection and no-knock entries. Consensus that the issue of no-knock entries was really one of data collection. In BPD's interest to collect and publish data, to bring transparency and alleviate community concerns. Possible categories, in addition to number of no-knock entries: number of warrants requested / served; number of no-knock requests; number of night warrants requested / served; number served inside v. outside; distinguish between arrest and search warrants; number of warrants sought based on race and location.

5. Compensation for damage. Prof. Lopez talked about effect of ransacking and trauma. PRC had a couple of cases in which complainants subject to search of residence concerned about disruption and damage to home. Original Policy 606.6(d) requires reasonable efforts to maintain or restore the condition of the location. But deleted and replaced with other language, that searches be conducted in systematic manner . . . without causing unnecessary damage to the location or property. Policy should spell out 1) procedure to follow; and 2) whether compensation available for damage. Problematic – hiding evidence could lead to extensive damage. Funding source? See G.O. S-6, para. 19.

6. Sanctity of life. Consider adding a statement to this effect. This is one of the more dangerous or difficult things that officers do, so it's not just that sanctity of the lives of search targets, bystanders, and witnesses, but of officers as well.

Chair Ramsey asked PRC Officer to make sure BPA is invited, in writing, to future meetings.

Meeting was adjourned at 7:39 p.m.

Meeting Notes by Kathy Lee  
PRC Subcommittee on Warrant Service Policy  
Feb. 22, 2021  
Via Zoom

Meeting called to order at 10:33 a.m.

Present:

Subcommittee members: Comms. Ramsey (Chair) [IR], Calavita [KC], Chang [MC], public member Saginor [KS].

BPD representatives: Lieutenants Montgomery [Lt. DM] and Turner [Lt. MT]

PRC staff: Kathy Lee, Byron Norris

Guest speaker: Professor Christy Lopez, Georgetown Law School

Absent: Comm. Hans Moore

*(NK = no-knock; QK = quick-knock)*

Agenda approved by general consent.

No public comment.

## NEW BUSINESS

Prof. Lopez:

Background: Her work in this area been focused on particular critical, high-profile incidents, some as part of police dept. investigations. Look at both what went wrong and what are the systems that encourage behavior or lack of guidance/training that might've contributed to problematic conduct. Teach criminal procedure to law students; write about it. Co-chair of D.C. Police Reform Commission. Continually learning, as so much going on.

Frankly, there hasn't been a lot of hard research. Not clear whether we know if allowing NK makes police more or less safe. Argument has been, need NK to keep officers safe, but many PDs have gotten away from NK. Haven't seen rigorous evaluation that makes one confident that we should completely ban or allow with restrictions. Important: whatever you do do, not only require data collection but require that it be analyzed by Dept. and externally, so can see how different warrant executions play out.

Quick-knock v. NK. Partly speculation, partly based on review of incidents: worry that if prohibit NK will find it hard to restrict QK. For all intents and purposes, a very quick-knock same as NK. Very similar without similar constraints. Might be safer to allow NK with a lot of restrictions and make QK not so quick, e.g., 30 seconds or longer. Sense is that NK so hard to get so go for QK.

Limits of the law. Like that you have Chief approving NK. Very important and often that alone changes frequency of use. Hope there'll be a lot in training and in policy about proportionality. Even if the law permits execution of warrant in certain way, consider the [harm efficiency]? of executing that warrant. May mean prohibiting certain [types of . . .] Case-by-case proportionality assessment as important as probable cause. Haven't made it part of the fabric of law. It's part of the reasonableness but that's often not made explicit.

"Remedies." Some reform efforts: If nothing found in execution of warrant, should compensate individual for damage done to home. Unclear why a city shouldn't pay for any damages during execution of warrant regardless of whether contraband is found. Damage to home isn't supposed to be part of the punishment. Why do we accept that? Understand this risk you take in engaging unlawful behavior. A lot of persons living in the home didn't and didn't have true choice and often end up bearing the costs. Unclear why we normalize damaging home without compensating.

Exclusionary rule. Supreme Court in 2006, under 4<sup>th</sup> Amendment, violation of NK can result in evidence being excluded. Introduce that in dept. by policy or law. But caution that many scholars think exercising exclusionary rule may water down 4<sup>th</sup> amendment law. Practice of excluding evidence may not move 4<sup>th</sup> Amendment law in a more protective direction.

KC: Like recommendation of extending time for QK. Does this vary by time of day? E.g. same at 3:00 a.m.? Prof. Lopez: Not sure length of wait time is the issue. Need strong restrictions on night warrant; as important as NK. Some might not awaken as quickly as others. Hard to know what amount of time makes sense in middle of night.

IR to Lt. DM: Info about QK warrants? Lt. DM: Before this subcommittee, never heard of notion of QK. All their warrants full knock and notice – reasonable amount of time for person to get out of bed and go to door. Could be times when accelerated due to circumstances, like exigency. Courts in all case law shy away from giving a number that's reasonable. Sometimes validate a particular timeframe. Very circumstantial, e.g. 800 sq ft apt. v. 4000 sq.ft. house. Reasonableness depends on distance to door.

Prof. Lopez: Everything Lt. DM said resonates with her. Courts don't state a time. But officers want to know, so tend to get translated into policy, e.g. QK 15 seconds to 30. Specific but problematic. Even if not called QK, what you're talking about is how long do you wait and what kind of guidance is given to officers? Most important thing is training on the factors.

KC to Lt. DM: Re night warrants, you said large percentage not really middle of night but early morning? Lt. DM: Yes, cutoff is 7:00 a.m. so need night warrant for service at 5:00 a.m. Can't think of many instances purposefully served middle of night. Typically 5 or 6 a.m. Are instances where situation brings them to a home in middle of night, like murder, where secure scene and then request a warrant. But that's not a planned event, like most search and arrest warrants. Vast majority of night service is so they can get there just before 7 a.m. KC: When training on warrants, what being said about timing? Lt. DM: Training: enough time to come and answer the door. On other side, what are risks? Gun case? Narcotics? Can evidence be destroyed? E.g. flush drugs down toilet. No more narcotics bureau so no drug search warrants in past 2 years. Teaching detectives to give reasonable amount of time, and be loud and clear. Where risk, call-out via phone call or bullhorn. When risk higher, going away from traditional knock and announce.

Prof. Lopez: Glad to hear Berkeley not serving warrants for preservation of evidence. To her, surprise entry rarely worth the risk to officers and those in the home. In most places, nighttime warrants not so much because person is home, but to surprise person. Other departments think surprise is safer, so that's reason for seeking night warrants. Can

execute search warrants when person not home and at work; safer as they're not going to shoot you. Is it good or not to surprise people?

Lt. DM: Depends on threat assessment; specifics of the case. Very fact-dependent. Not asking for NK. Do serve at night service to get suspect at home; if capture suspect with gun, safer to find at home than at burger place around the corner. Put a lot of analysis and thought into how to serve, with emphasis on safety.

KS to Prof. Lopez: Re comment if NK banned will increase use of QK – why? Prof. Lopez: don't know that's true; she worries about that. If want to surprise but NK not available, might use QK as a surrogate. Sometimes you might want to surprise people. Lack of NK might influence agency to use another method to gain surprise.

KS: Technology changing so less certain that one can surprise, e.g. alarms, cameras. Have you seen that playing a part in decision-making? Prof. Lopez: her sense – technology will make element of surprise more and more elusive for law enforcement. So instead of relying on surprise, think of ways to not surprise people and keep them safe.

MC: How proportionality works to balance issue of surprise: Prof. Lopez: Proportionality comes into play in context of evidence destruction. Dangerous enough to burst into a home; to do so to preserve evidence of a crime, factors must be pretty extreme and probably not proportional. Would never premise the element of surprise based on ability to preserve evidence; doesn't seem to be an issue in Berkeley. Officer and occupant safety is much more important. If less safe for individuals in the home, when do you take that risk? But unsure if that analysis needed if it's not safe for anyone. Whatever you do, collect data so we can see how it works. Officers have strong beliefs either way, but not based on data. Problem is warrants been exponentially used for drug cases in the past couple decades. If not doing in Berkeley can have different conversation. If limit or ban for drug cases, you've eliminated a lot of the problem. And it's a leadership issue: what is your chief approving or not. More important than training or policy.

IR: Your view on total ban of NK? Could go other way based on evidence. Wouldn't ban entirely because worry QK used in their place. Would ban in drug cases except in extraordinary cases; ban to prevent destruction of evidence. Wouldn't ban unless have data. Contrary to her usual instincts. Wouldn't ban, and would make quick-knocks less quick.

MC to Lt. DM: BPD doesn't have narcotics bureau? Eliminated couple years ago for staffing reasons and changes in drug laws. MC: would that minimize tactical pressures to use no-knock and quick-knock? Lt. DM: yes. In his experience not in a hurry. Sometimes people don't come to the door no matter how long you knock. Then at some point have to decide notice is adequate and decide whether to breach. Evidence preservation not a common issue.

IR: Does BPD support DEA or other federal authorities in drug cases? Lt. DM: Rare. Last time was 2006, when brought DEA in after the fact because case so large. But they never call and ask BPD to help serve. If they did, would send Special Response Team. Lt. MT: Agree with Lt. DM, unaware anytime helped DEA since 2005. On SRT, have gone towards contain and call out. Rarely serve where really want to make entry. Training to

slow things down and contain and call. Only time make dynamic entry only if life of someone inside is in danger.

KC to Lt DM: Does BPD collect data on no-knock entry? For exigent or other circumstances. Lt. DM: No. Type of entry is in police report. Have to explain how obtained evidence so it's admissible. KC: How frequently use no-knock entry? Lt. DM: plan to satisfy notice requirements, but when arrive may have to adjust if circumstances require. Not rare nor frequent. Common to force entry due to no compliance, but that's not a speed issue. KC: so we really need data. Lt. DM: issue can be collect all data and 100 per year, hard to make good public policy decisions based on a small data set. A lot of safety precautions taken. Think we're already using best practices and mitigating a lot of risk that this subcommittee concerned about. KC: one task is what do you already to as best practice and make sure it's in the policy. DM: agree. But also can't describe in advance all situations. Better to have officers thinking through the issues – goals to keep other occupants, officers safe.

MC to Lts: Understand best practices in place; PRC wants to memorialize those in procedure and align with training. And need data-tracking.

Lt. MT to Prof. Lopez: More standard for policies state a specific time for knock and announce? No, they don't include, but trainers will say, e.g., there's no number but generally use 15 seconds. Courts too. Some pushing for minimum 30 seconds. Important to track the actual NK entries.

IR to Lts: Any additional amendments to policy in light of what experts say? Lt. DM was thinking about that. Agree with Comm. Chang that should memorialize best practices. Experts think BPD is on track with best practices. May need to bring Sgt. LeDoux in.

Lt. DM to KS: Per Support Services Captain, no more than one month? 3 months? of arrest data online because after that it becomes criminal history info, so HAS to be removed.

KC: Markup of 606 with comments by "SS" – Prof. Stoughton? KL: Yes. KC: By next time can BPD weigh in on those comments? Lt. DM: Yes.

IR agrees with KS that should have discussion about goals of the Warrant Service Policy in general before start proposing language.

Meeting adjourned 11:33 a.m.