



Police Review Commission (PRC)

SUBCOMMITTEE ON WARRANT SERVICE POLICY

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

**Tuesday, April 6, 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 Website: 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, for the March 16 and March 2 meetings, at: <https://www.cityofberkeley.info/ContentDisplay.aspx?id=12962>)

5. SCHEDULE NEXT MEETING DATE

6. ADJOURNMENT

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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.

PRC Subcommittee on Warrant Service Policy

Meeting Summary by Kathy Lee

March 16, 2021

Via Zoom

Called to order at 6:30 p.m.

Present:

Subcommittee members: Comms. Ramsey (Chair) [IR], Calavita [KC], Chang [MC], public member Saginor [KS], Moore [HM] (7:15-ish)

PRC staff: Kathy Lee

BPD reps: Lts. Montgomery [DL], Turner [MT], Lindenau [DL]

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

Agenda approved by general consent

No public comment

OLD BUSINESS

1. Whether complete ban on no-knock or not

Subcomm -- Question whether, if NK hasn't been used by BPD in 30 years, and haven't heard anyone articulate circumstances under which one would be needed (other than exigencies, which is an exception to a warrant requirement), why not a ban?

BPD – Can't predict every future possible scenario. Could be faced with unique set of experiences where NK would be needed, and want to preserve that option. 30 years of not using = 30 years of not abusing. Shows that BPD uses proper discretion. BPD recognizes the potential danger with NK. Are cases where NK can reduce danger. Also, take intrusion into home and safety of occupants very seriously.

Subcomm - value in having a ban is a signal to community that we're not going to do this. A trust issue. Banning sends a positive message. Also, as time goes on, less valuable tool because point is to surprise occupant and with technological advances, don't know if will actually surprise.

BPD - fact that we haven't used shows good judgment and should earn trust of community.

Subcomm – Perhaps developing “guard rails” -- specifying in policy when NK could never be used, such as for narcotic evidence, would change Subcommittee members' minds about a total ban.

BPD willing to take back and discuss with Dept. whether could expressly state NK could not be used for narcotics evidence, and come back with proposed language for next time.

Topic tabled and to be continued

2. Quick-knock entries; whether minimum wait time should be prescribed.

BPD - Don't know how you come up a wait time because every location is different. They don't ask for QK warrants. (Lt. DM - never heard “QK” before this subcommittee.)

Whenever serving a search warrant, always give reasonable amount of time to come to the door, and amount of time changes depending on scenario faced with when come to door.

Subcomm - Could you establish a minimum of 30 seconds?

BPD - exceptions and exigencies would swallow the rule. IRL reacting to what's happening in front of you; so situational that courts haven't prescribed an amount of time. A mistake to think a minimum time enhances safety.

Majority of subcommittee does not favor a minimum wait time; prefer reasonable amount of time under totality of circumstances. Policy 606 currently doesn't say anything about timing.

BPD to return with some language to this effect.

KS - NK is discussed under search warrants, but not arrest warrants.

BPD agrees should be fixed.

[KL to send BPD the list of comments prepared by KS (were included in March 2 agenda packet).]

3. Night/early morning warrants

BPD -- most "night warrants" actually sought for 5 – 6 am, in order to contact suspects when still at home. True middle of night warrants are rare. Sometimes an incident will end up at a residence at midnight or 1 pm; BPD will freeze scene and go seek search warrant.

Subcomm – unsure if Policy needs revision or data collection is the key.

BPD to return with possible limiting language.

(Per BPD, no longer do drug raids. Narcotics unit disbanded about two years ago, so no more pure narcotics warrants.)

4. Data collection

KC proposed list of what kind of data to collect:

- number of warrant requests
- number served
- type served
- how many NK entries
- how many night warrants and what time
- number served outside home v. inside
- by race/neighborhood/type

BPD Hard to go produce going backwards, though some data already collected. Can talk about going forward.

5. Compensation for damage during searches

BPD – Currently can make a claim for damage during a search through the City Attorney's Office [CAO]. They would evaluate and potentially authorize compensation. Process and

requirements are managed through the CAO; not internal to BPD. Criteria spelled out in State law; also case law re when agency must compensate. Can get more info on that.

Subcomm - Language about minimizing damage in 606.6(d) was deleted ["Reasonable efforts are made during the search to maintain or restore the condition of the location."]

BPD - As a practical matter difficult or impossible to restore premises to pre-search condition. Also, want to minimize time spent in residence.

Discussion re including info on how to file a claim with Return of service. Subcomm suggests including info on how to file a claim with CAO. BPD wary of overwhelming CAO. Subcomm thinks can phrase such that doesn't overpromise.

BPD to consult with CAO.

6. Sanctity of life.

Subcomm thinks a statement about sanctity of life is important. Appropriate to put in 606.2.

BPD - sanctity of life is in use of force policy; when sanctity of life at play, can't imagine when wouldn't be implicating UOF policy. Want to avoid duplication. In transition to Lexipol trying to resolve issues of some things being in multiple places.

Subcomm - but policies in part are for the public and they don't necessarily cross check. Not a huge cost to repeating, for the public benefit. Help build public trust. Particularly important if BPD wants to preserve NK warrants.

BPD will take back to Dept.

Next meeting in three weeks - week of April 5.

Meeting adjourned at 8:37 p.m.

