



March 24, 2021

David O. Brown
Superintendent
Chicago Police Department
3510 South Michigan Avenue
Chicago, Illinois 60653

Re: Revised Search Warrant Special Order S04-19

Dear Superintendent Brown:

Following on my February 26, 2021 letter conveying recommendations to address critical policy gaps related to the acquisition and service of search warrants, and in furtherance of COPA's mission to issue meaningful notifications to the Department that advance the culture of policing within the City of Chicago, COPA is offering the following input on the Department's revised Search Warrant Special Order (S04-19).

ABSENCE OF STANDARDS TO GUIDE BEHAVIOR

Clarity. The Department's proposed revisions to its Search Warrants directive are extensive and difficult to comprehend. Department members must be able to rely on the directive as an intelligible guide, and the public should be able to understand expectations surrounding search warrant processes with little difficulty. Instead of working largely from the layout of the current, January 2020, version of S04-19, evaluate options for reorganizing content to improve comprehension. COPA encourages the Department to draw on search warrant policies from other outside sources to glean valuable insight and refine the Department's approach to its own directive. For example, COPA found aspects of the New York City Police Department's policy to be particularly clear and succinct relative to search warrant development.

Efficient Use of Departmental Resources. The proposed revisions to the directive do not speak to the importance of risk assessment in the search warrant context. The service of search warrants is a significantly intrusive event that presents a number of inherent dangers for both Department members and the public. In light of these issues, the Department must significantly enhance its processes for evaluating, balancing, and documenting the probable benefits of service (e.g., the removal contraband or weapons, the arrest of wanted persons, or the recovery of evidence) against its probable costs (e.g., the significant potential for controversy and, with it, the erosion of public trust, the possibility of injury or violence, the risk of legal liability for wrong raids, and the trauma for those involved). While search warrants play an important role in effective policing, the

Department needs to do more to encourage members to draw on alternative tools in their efforts to curb criminal activity in the City. Additionally, the search warrant process requires allocation of considerable resources in terms of the number of members and hours involved and has the potential to take away from other public safety functions and law enforcement activities. Therefore, COPA recommends the Department ensure the directive:

- Introduces a requirement for Department members to make continuing re-assessments of the competing interests at stake in search warrant cases, to determine whether a decision to persist with the search warrant investigation, application, or service properly balances those interests, and to document this evaluation in writing;¹ and
- Requires command staff to review subordinate Department members' written risk assessments in advance of providing their own written approval.

Search Warrant Development. The proposed revisions do not sufficiently convey Department expectations relative to the development of applications for search warrants. Presently, to determine how to proceed in preliminary investigations, it has been COPA's observation that affiant officers and immediate supervisors often rely on their own experience and informal guidance from senior Department members. While the revisions enumerate categories of information that members must verify as part of these investigations, they do not delineate procedural steps for members to follow (i.e., the revisions speak to the "what" but not the "how" of verifying, corroborating, and preserving information used in the development of a search warrant). Therefore, COPA recommends the Department ensure the directive:

- Identifies in explicit terms the methods and resources members should use to verify information they receive from informants, and requires the Department to develop a checklist or guide for members to follow;²
- Establishes minimum steps Department members must take in all cases before they may conclude that requisite information in support of a search warrant application is verified;
- Enhances oversight responsibilities for supervisors whose subordinate members serve as affiants on search warrant applications. This may be accomplished by requiring the immediate supervisor to monitor the affiant officer from the moment the latter determines that probable cause has been established; requiring the immediate supervisor to evaluate the information gathered by the affiant officer as he or she acquires it; requiring the immediate supervisor to participate in any surveillance of the target location; including language that adds accountability to the immediate supervisor for deficiencies in the quality of affiant officer's investigation;³ and
- Stipulates in explicit terms the criteria that supervisors should use in determining whether to approve or reject a search warrant package prepared by subordinates.

¹ See also COPA's 2/26/21 letter to Superintendent Brown addressing *Evaluating the Law Enforcement Interest*.

² See, e.g., *NYPD Patrol Guide*, Procedure No. 212-7 at 5-7 (Jun. 01, 2016).

³ See *id.*

Training. COPA recognizes that policies alone are not sufficient and must be complimented by robust training in order to reform Department practices and member behavior. However, successfully engaging and meaningfully training Department members on the nuance of this directive across the entirety of the Department presents immense, potentially insurmountable, challenges. In order to create the greatest opportunity for consistent comprehension of Department expectations, COPA encourages the Department to consider training to a targeted and manageable group of members (rather than to the masses, Department-wide). Therefore, COPA recommends the Department ensure the directive:

- Establishes reasonable training thresholds which prioritize comprehensive coverage and in-depth treatment of the subject matter over efforts to maximize the number of members who receive the training; and
- Requires relevant training programs to prepare members for the actual experience of the field through the use of case studies and simulations instead of merely regurgitating key provisions within Departmental policies.

Knock-and-Announce. The directive does not sufficiently address standards for “reasonable opportunity” for occupants to allow Department members to enter the target location before making forcible entry. To be sure, deriving a single, clear standard from Fourth Amendment jurisprudence is a challenging endeavor.⁴ However, the standards of the Fourth Amendment are mere minimums, and the Department is empowered to develop its own standard within the bounds of the Fourth Amendment that balances the need for safety, timely forcible entry to prevent destruction of evidence, and privacy interests of occupants. Therefore, COPA recommends the Department ensure the directive:

- Defines in explicit language the minimum amount of time members must wait to satisfy the knock-and-announce rule (provided, of course, that any such time-period exceeds the constitutional minimum); and
- Requires members to document the amount of time they waited (when the knock-and-announce rule is applicable) in written report.

De-Escalation and Situational Awareness. De-escalation is a tool available for use in all law enforcement activities (i.e., not reserved for obviously problematic situations, such as “wrong raids”). COPA is encouraged by revisions to S04-19 that direct Department members to maintain a sensitive approach when children are present, and that all Department members are to treat all persons with courtesy and respect. However, these provisions lack tangibility and do not go far enough to aid Department members in applying these concepts in practice. While the law affords Department members wide latitude in the service of search warrants and related detentions, Department regulations should impose more rigorous standards for its members and require that they evaluate the necessity of a particular police action—even when legally permissible—in light of the totality of the circumstances. Public scrutiny surrounding the necessity and duration of handcuffing occupants within the target location in recent high profile incidents serves as a prime

⁴ See, e.g., *Michigan v. Hudson*, 547 U.S. 586, 590 (2006) (declining *in dicta* to articulate a bright line rule for how much time must pass before officers can use force to enter a residence).

example of member action that has undermined public trust in the Department.⁵ Therefore, COPA recommends the Department ensure the directive:

- Addresses with specificity the proper procedures to be followed when a warrant subject or witness is encountered while in a vulnerable state within the target location, with those who have infirmities, or who are medically required to take prescription medications at specific intervals; and
- Empowers Department members, particularly on-scene supervisors, to make adjustments to standard detention procedures, such as the application of handcuffs, based on factors including the duration of the encounter, location of the detained persons, and other details that a reasonable member might draw upon to conclude a person is not likely to flee or harm themselves, Department members, or the public.⁶

SUFFICIENCY OF END-PROCESS ACCOUNTABILITY AND REVIEW

Recordkeeping. The revised directive does not convey expectations for recordkeeping in key areas. Robust recordkeeping processes are critical to a well-functioning system of oversight and accountability. It is also problematic that, under the proposed changes, the process remains largely paper-driven. Therefore, COPA recommends the Department ensure the directive:

- Requires members to retain draft materials and written feedback during supervisor review process;⁷
- Provides additional guidance on centralized recordkeeping and relaxes obstacles to acquiring records for both internal auditors and external investigators.

Outcomes, After-Action Reviews, and Transparency. The proposed revisions do not establish a clear feedback loop for command staff that initially approve the search warrant package. Additionally, the Department stands to benefit from expanded application of the after-action review process beyond instances of “wrong raids.” After-action review outcomes offer opportunities for enhanced transparency with the public (i.e., incremental improvements in training and policy developed through self-identified successes and failings may be reflected in quarterly and annual reports). Therefore, COPA recommends the Department ensure the directive:

- Provides a feedback loop regarding search warrant outcomes for approving command staff;

⁵ See, e.g., Log # 1089790 (Though handcuffing a 10-year-old detained for suspicion of unlawfully possessing a weapon was initially appropriate, it quickly became apparent that the juvenile was not armed and there existed no clear safety concern to the public or officers involved. Officers failed to re-assess the necessity of restraints and acknowledge the potential for trauma).

⁶ See also COPA’s 2/26/21 letter to Superintendent Brown addressing Handcuffing During Execution of Search Warrants.

⁷ See also COPA’s 2/26/21 letter to Superintendent Brown addressing Documentation of Affiant’s Investigation (i.e., all drafts should be maintained).

- Expands the requirement for after-actions reviews to include *all* search warrant service, not just “wrong raids”;
- Articulates standards for how members should conduct after-action reviews (with an emphasis on identifying opportunities to improve future Departmental actions); and
- Establish requirements to document after-action review outcomes.

DIFFUSE RESPONSIBILITY

Siloing. The revised directive suffers from “siloing” (i.e., processes that operate independently which inhibits sharing and continuity of information). Generally, the directive creates one silo for the search warrant development and approval phase and another for the service and post-service phase. In other words, aside from the affiant officer, the personnel involved in one phase are not necessarily involved in the other phase. Therefore, COPA recommends the Department ensure the directive:

- Tethers at least one supervisor to the affiant officer through all stages of the search warrant process—including the investigation, development of the application, service, and post-service procedures and documentation.⁸

Dedicated Search Warrant Unit. COPA encourages the Department consider further revisions to the directive and operational adjustments that minimize diffuse responsibility among the various involved Department members and approval chains. In short, the model reflected in the revised directive appears cumbersome and susceptible to inconsistency. Formation of a unit dedicated to shepherding affiant officers and their immediate supervisors through the search warrant development, approval, service, and post-service processes would serve to: (1) centralize valuable knowledge and skills related to search warrants;⁹ (2) create consistency in development efforts (i.e., access to and familiarity with relevant databases, as well as liaise with external agencies); (3) create efficiency and continuity in approvals through exempt-level command staff; (4) streamline intra-Department coordination efforts; (5) enable training to a targeted and manageable group of Department members; and (6) reduce the overall number of Department members involved.

COPA would welcome the opportunity to engage in further dialogue and provide more context and information in support of our comments above. Should you have questions or want to discuss this further, please do not hesitate to contact me directly.

Respectfully,



Sydney R. Roberts
Chief Administrator

⁸ See also COPA’s 2/26/21 letter to Superintendent Brown addressing *Search Warrant Supervisor Role*.

⁹ See also COPA’s 2/26/21 letter to Superintendent Brown addressing *Qualifications of Affiant Officers*.

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