



January 6<sup>th</sup>, 2023

Tina Skahill  
Executive Director  
Office of Constitutional Policing and Reform  
Chicago Police Department  
3510 South Michigan Avenue  
Chicago, Illinois 60653

Re: Chicago Police Department Search Warrant Directive (S04-19)

Dear Executive Director Skahill,

COPA thanks CPD for an opportunity to consider its current search warrant policy (S04-19) and provide feedback. COPA recognizes CPD has made several positive revisions to its search warrant policy since 2020. However, COPA suggests there are remaining gaps and areas to elaborate on based on its reading of the current policy and its understanding of past issues and recommendations as well as existing best practices and research. COPA suggests the following:

1. **Organize the document by search warrant steps.** COPA suggests reorganization of the information in the policy into sections based on actions members take throughout the search warrant process to aid in intuitive understanding, recall, and searching of the policy. This may include: 1) Deciding to seek a search warrant, 2) Applying for/seeking a search warrant approval 3) Approving a search warrant, 4) Serving a search warrant – subdivided into team development and preparation and searching and civilian interaction, 5) Post-service tasks and assessment, and finally 6) Records and data management.
2. **Refine the purpose of a search warrant.** The specific purpose/s of a search warrant should be explicitly stated in this policy at the outset so that members and civilians understand how a search warrant is defined and the context where a search warrant should/might be sought. This could go at the very beginning or in the proposed section 1) Deciding to seek a search warrant. The current purpose section describes the purpose of the directive, but not the purpose of seeking, approving, or serving a search warrant in the first place. This level of specificity could also be an opportunity to state the seriousness of entering someone’s home (or property) without their expressed permission, the values described in existing Section II, Subsection A and B, and describe alternatives to search warrants that must be exhausted before a search warrant is considered. The last of these could furthermore be developed into a “prohibitions” section that outlines when a member will expressly *not* seek a search warrant.
3. **Define success.** Wrong raids are defined in Section II, Subsection K. Consider further how to define a successful search warrant service as opposed to an unsuccessful search warrant service (e.g., the target of a search warrant is not found). While it may not fit under classification as a wrong raid, it would be important to know when search warrant service is not achieving its intended goal so that policy or training can be adjusted to remedy issues with effectiveness.

4. **Expand opportunities to learn from successes as well as failures.** Require an after action review (AAR) for *all* search warrants as a matter of standard practice to learn from successes and not just “wrong raids.” Consider an approach like the one outlined in the National Police Foundation’s evidence-informed publication “How to Conduct an After Action Review,” which also suggests an AAR can serve the purpose of being better prepared for future incidents, adapting to evolving threat environments, improving cross-unit or system communication, bringing closure for members involved, and fostering transparency and accountability.<sup>1</sup>
5. **Further clarify wearing of BWC.** Specify whether members serving a local search warrant for an outside agency are still required to wear a BWC.
6. **Document justification for uniform exceptions.** Where uniform requirements are waived, there should be documented, verifiable justification (e.g., descriptions, photos/videos) that becomes part of the search warrant file. The inherent danger to both officers and civilians when it is not abundantly clear that a member represents CPD is great enough to require detailed documentation of the decision to not be uniformed during search warrant service.
7. **Define “current.”** Specify if there is a cutoff determining when information used to seek a search warrant is considered “current” and not likely to have changed (Section VI, Subsection C, Paragraph 1).
8. **State acceptable information verification practices.** Specify the methods and sources of information verification (and what combination) are acceptable when preparing a search warrant, whether it be human intelligence, city, state, or national agency records, law enforcement records, surveillance information, social media, etc. (Section VI).
9. **Reduce ambiguity in providing search warrant documentation.** A member of the search team should also be directed specifically to “leave behind” a copy of the search warrant after presenting it to the person named in the warrant (or person in charge of the premises), avoiding ambiguity about whether it can be taken back from them (Section IX, Subsection D, Paragraph 1, Subparagraph e).
10. **Clarify/expand definition of vulnerable populations.** In addition to children, vulnerable populations would also consist of those with a debilitating mental or physical disability, or other serious health condition. Also, CPD should consider specifying treatment of those in a vulnerable state (e.g., in a state of undress, sick, or injured) (Section IX, Subsection E, Paragraph 3).
11. **Require continuous assessment of necessity for restraints.** Where it is mentioned that members will assess the necessity to apply restraining devices (handcuffs) to subjects during the service of a search warrant, it should be specified that this be a continuous assessment of current factors in a situation (Section II, Subsection B, Paragraph 2).
12. **Clarify conduct during search warrant service.** Specify that the actual search, once inside a location, is to be as minimally invasive and destructive as possible, similar to the manner of forcible entry (Section II, Subsection B, Paragraph 3).
13. **Highlight policy updates during training.** Immediately following final revisions to the policy, COPA recommends that officer training not only fully explain the most current policy, but also highlight major changes from the last policy. This will enable special attention on learning and incorporating updated procedures for those well-versed in any old policy.

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<sup>1</sup> National Police Foundation. 2020. *How to Conduct an After Action Review*. Washington, DC: Office of Community Oriented Policing Services.

14. **Simplify language around the required level of approval for search warrants.** It appears confusing when the policy states “All department search warrants will require approval by a sworn Department member the rank of deputy chief or above...” (Section VIII). In fact, search warrants “that do not involve real property or locations where occupants could be present...” require approval only by a sworn member the rank of lieutenant or above. This might be more simply stated that all search warrants require approval by lieutenant or above, and then an explanation that depending on the type and circumstances of a search warrant being sought the level of approval escalates to deputy chief (for those of real property or locations where occupants could be present), or bureau chief – not a designee (for John Doe or No-Knock warrants). This could be easier to digest if there – was also a table or list of search warrant classifications broken down by definition/approval level where “place to be searched” or “level of risk” are shown as key determining factors of the approval level required. Refer to existing visual aids depicting CPD’s use of force options model<sup>2</sup> and guidelines for arrestee screening and monitoring as examples.<sup>3</sup>

In addition to the above suggestions, COPA has published prior feedback on iterations of CPD’s search warrant policy (See Attachment A for a full summary). Below are the most relevant recommendations from those past correspondences, summarized and/or expanded in some way.

15. **Target training to a small group of experts.** Focus efforts on establishing high quality training about acquiring and executing search warrants for a small number of key trainers and mentors. Adapt a rigorous train-the-trainer model<sup>4</sup> to spread knowledge department-wide and experiential learning strategies to enhance training quality and knowledge retention.<sup>5</sup> This could complement the recommendation to identify and strictly regulate which units and officers are allowed to serve as affiants for search warrants, or, to require a certification process comprised of training, years of experience, and other suitable performance metrics, by which an officer can be qualified to serve as an affiant.
16. **Streamline the search warrant approval process.** Tether at least one supervisor to the affiant officer through all stages to reduce communication issues. Also, consider a dedicated search warrant unit or desk staff that can provide guidance and consistency by utilizing highly trained and knowledgeable search warrant experts to walk members through the process, facilitate quality review by supervisors, coordinate across units, and update processes as after-action reviews and policy revisions necessitate.<sup>6</sup>
17. **Track search warrant approvals.** Electronically track the processing of requests for search warrants made to supervisors, including who made it and why, who assessed risk and approved it, whether the outcome of the executed search warrant was successful or not, and if not, why

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<sup>2</sup> <http://directives.chicagopolice.org/forms/CPD-11.960.pdf>

<sup>3</sup> <http://directives.chicagopolice.org/forms/CPD-11.523.pdf>

<sup>4</sup> [https://www.cdc.gov/healthyschools/professional\\_development/documents/17\\_279600\\_TrainersModel-FactSheet\\_v3\\_508Final.pdf](https://www.cdc.gov/healthyschools/professional_development/documents/17_279600_TrainersModel-FactSheet_v3_508Final.pdf)

<sup>5</sup> [https://www.niu.edu/citl/resources/guides/instructional-guide/experiential-learning.shtml#:~:text=%E2%80%9CExperiential%20%5Blearning%5D%20is%20a,2\)](https://www.niu.edu/citl/resources/guides/instructional-guide/experiential-learning.shtml#:~:text=%E2%80%9CExperiential%20%5Blearning%5D%20is%20a,2))

<sup>6</sup> See COPA’s letter to CPD about a revised search warrant policy on 02/26/2021

not. At minimum, this means dated digital scans of paper copies of requests, written summaries, planning and approval documents, and any after-action reports.<sup>7</sup>

One key event that publicly sparked an interest in revisions to CPD's existing search warrant policy was a "wrong raid" of Anjanette Young's home that occurred in February of 2019 (COPA case log number 2021-0004600). A rigorous analysis of the current search warrant policy should examine whether following the proposed policy (as currently revised) could have potentially prevented such an incident (and similar ones) from occurring and whether any ambiguities in the policy would have led to the same, or similar, situation. COPA was not able to conduct this kind of review in the time allotted, but it recommends the department do it themselves, work collaboratively, or provide more time for COPA to do such a review. Furthermore, COPA is open to discussion with CPD about capacity building and planning toward the goal of operationalizing the above recommendations.

Respectfully,



Justin Escamilla  
Deputy Chief of Policy, Research and Analysis Division  
Civilian Office of Police Accountability

cc:

Dana O'malley, General Counsel, Chicago Police Department  
Matthew Burke, Deputy Director of Litigation, Chicago Police Department  
Scott Spears, Assistant General Counsel, Chicago Police Department  
Andrea Kersten, Chief Administrator, Civilian Office of Police Accountability

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<sup>7</sup> See COPA's letter to CPD about a revised search warrant policy on 03/24/2021

## Attachment A

### **March 24, 2021 - Search Warrant Special Order (S04-19):**

Below is a paraphrased summary of what COPA recommended as enhancements to the policy reviewed at the time.

- A) Be clearer and more succinct in writing. The way the policy is written is not easily understood. Reorganize content for better comprehension. Use outside sources as templates, including New York City Police Department's policy.
- B) Include more specifics on the process of seeking a search warrant. Require written assessment about the goal of a search warrant and what the possible alternatives are. Supplement this with a cost-benefit analysis and a guided checklist outlining how to systematically verify the quality and truthfulness of information collected to support the warrant. Establish minimum standards that must be met for the pursuit and execution of a search warrant. Establish a tracked supervisor review process, including risk factors they must see ruled out or confirmed. Establish criteria that supervisor review/approval must meet. Specify consequences for supervisor reviews that did not meet minimum criteria before approval.
- C) Focus efforts on establishing high quality training about acquiring and executing search warrants for a small number of key trainers and mentors.
- D) Specify explicitly a minimum amount of time that a member should wait before entering during a knock and announce search and what factors should be considered if that time varies.
- E) Describe any special procedures to be followed when interacting with a warrant subject or witness when they are in a vulnerable state or vulnerable population.
- F) Electronically track the processing of requests for search warrants made to supervisors, including who made it and why, who assessed risk and approved it, whether the outcome of the executed search warrant was successful or not, and if not, why not. At minimum, this means dated digital scans of paper copies of requests, written summaries, planning and approval documents, and any after-action reports.
- G) Expand after-action reviews often done after "wrong raids" to include all search warrant service. Establish the structure of these reviews as well as through what channels key insights that need to be adopted go.
- H) Intentionally connect the development and approval phase of a search warrant with its service and post-service phase. Siloed search warrant phases diffuse responsibility and risk miscommunication, repeated mistakes, and inaccurate assumptions. Tether at least one supervisor to the affiant officer through all stages. Also, consider a dedicated search warrant unit or desk staff that can provide guidance and consistency by utilizing highly trained and knowledgeable search warrant experts to walk members through the process, facilitate quality review by supervisors, coordinate across units, and update processes as after-action reviews and policy revisions necessitate.

(See 2021-03-24-COPA-Letter\_Revised-SW-Policy, p. 1)

### **March 24, 2021 – Needs Assessment for Chicago Police Department 2022 Training Plan**

Below is a paraphrased summary of what COPA recommended as training needs at the time.

- A) Unit-specific trainings on search warrant execution
- B) Convey expectations about the structure of after-action reviews and describe how what is learned will be used to improve the search warrant process

(See 2021-03-24-CPD-2022-Training-Plan-Response, p. 2)

### **January 28, 2021 – Advisory Letter Regarding SWAT After-Action Reviews and Reports**

Below is a paraphrased summary of what COPA recommended related to SWAT teams executing search warrants at the time.

- A) Explicitly require retention of all notes or other documents that officers create or use in developing or drafting other departmental reports - no matter how much of the notes or documents are incorporated in a final report.
- B) The SWAT Team's SOPs need to make clear that the requirement for an after-action review is unique from the completion of reports that document the Team's actions. Ensure the SWAT unit's procedures reinforce the objectives of a viable after-action review process, which is to develop actionable recommendations for the improvement of Department policy, operations, culture, and training to mitigate risk, align with best practices, and/or reflect to the public that the Department is leveraging insight from its prior efforts.
- C) Enhance policy to incorporate the objectives of viable after-action review processes for all search warrant executions, in addition to those involving the SWAT Team and high-risk situations.

After COPA followed up on March 31st, 2021, CPD responded on April 7<sup>th</sup>, 2021, and explained a lack of ability to adopt point A above due to not being able to scan and upload copies of paper documents generated in the field nor store the paper files in a paper file location. The department then explained that an existing revision to the SWAT search warrant policy incorporated much of COPA's recommendation on point B above. Point C was not addressed in detail.

Following up on the response on July 9<sup>th</sup>, 2021, COPA acknowledged additional clarity was provided on the process for conducting after-action reviews in special order S05-19, as well as an implied requirements that officers create and retain records distinctly about after-action reviews. COPA also noted after-action reviews were being limited to "wrong raids." COPA believed at the time that the cost and effort to maintain all paper records related to after-action reviews was significantly outweighed by the benefits.

(See 2021-07-09-SWAT-Advisory, p. 7)

### **July 26, 2021 – Report on Non-Compliance with Body-Worn Camera Regulations**

- A) In response to COPA's recommendation to issue BWC to every sworn Department member when not engaged in confidential duties, CPD mentions ongoing assessments about issuing BWC to members who participate in the performance of activities pertaining to search warrants within the Bureau of Counterterrorism and S.W.A.T. Also stated was that search warrant policy had been revised to state all members participating in the service of a search warrant will have a functioning BWC. It was unclear to what degree this was accomplished at the time.

(See 2021-07-26-BWC-Report-Package, p. 28)

**October 1, 2020 – COPA’s Review of CPD 4th Amendment Training**

- A) COPA noted that content focused only on the execution of valid search warrants and that training should also address the nature and sufficiency of evidence required to obtain a search warrant, as well as expand discussion on best practices for ensuring safety of civilians and officers via rigorous vetting of information contained in the affidavit and warrant.

(See CPD-4th-Amendment-2020-Training-Response\_Redacted, p. 1)

**September 30, 2019 - Report on the Chicago Police Department Response to COPA Advisory Letter Recommendations IN RE: Member Failure to Activate Body Worn Cameras in Incidents Resulting in Firearm Discharge**

- A) COPA informally recommended requiring all members executing search warrants to wear and have BWC turned on for the entirety of the search

(See Report-on-CPD-Response-to-COPA-Advisory-Letter-IN-RE-OIS-BWC, p. 1)

**February 26, 2021 – Re: Chicago Police Department’s Search Warrant Community Working Group**

- A) COPA acknowledged that search warrants are a necessary and valid law enforcement tool that can be critical in maintaining public safety and b) that CPD has capacity and internal expertise to lawfully utilize this tool. After reviewing CPD’s then most recent training on search warrants, the 2020 revision to CPD search warrant policies, speaking to command staff, and interviewing a multitude of officers in disciplinary investigations, COPA identified critical policy gaps in the areas of 1) qualifications of affiant officers, 2) evaluating the law enforcement interest (i.e., value), 3) documentation of affiant’s investigation, 4) supervisor role, and 5) handcuffing during search warrant execution.
- B) COPA suggested tactical teams carrying out search warrant investigations are ill-equipped and inadequately trained to perform much of the investigative work necessary to independently corroborate information provided by a “John Doe” informant. COPA asked CPD to consider restricting which units/officers may serve as affiants for search warrants or require a restrictive certification process comprised of training, years of experience, and other relevant performance metrics.
- C) COPA recommended CPD affirmatively evaluate the legitimacy of any law enforcement interest and weigh the risk of harm to all parties when determining whether a search warrant is the most appropriate tactic to achieve the goal.
- D) COPA recommended requiring proper documentation of the search warrant process from start to finish and establishing clear guidance regarding the storage and maintenance of those documents.
- E) COPA noted that the roles and duties of supervisors per the existing Special Order invited circumstances in which the search warrant supervisor who leads the execution team has little or no knowledge of or role in the acquisition of that search warrant. This diffusion of responsibility can result in a failure to provide meaningful support and guidance to an affiant officer and constrains the ability to hold officers accountable for misconduct.

F) COPA urged the Department to include a requirement that officers evaluate the necessity of applying handcuffs, considering especially the length of time the handcuffs remain in place.

(See SW-Letter-to-Supt-Brown-CPD-SW-Considerations-2.26.21, p. 1)