

WALK THE TALK

A Report on Search Warrants and Officer Conduct

March 22, 2011

Summary

The 2010-2011 Grand Jury (GJ) received citizen complaints regarding officer misconduct while conducting searches, and allegations involving inappropriate officer conduct. After conducting an overview of the search warrant process, Officer Code of Conduct and Ethics, training, supervision and disciplinary policy, the GJ determined that the complaints were valid.

Court decisions, regarding search and seizure, frequently change case law and are subject to interpretation. Search and seizure decisions can be very complex and fact-driven. There are thousands of state and federal cases that discuss and refine search and seizure principles.

Citizens have a reasonable expectation of privacy. In order to conduct a search, law enforcement is legally required to have: a valid search warrant, an exigent circumstance, or valid consent.

Search warrants are required for a residence, areas of a business closed to the public, and locked compartments of a vehicle. Parolees and probationers do not have a right to privacy and are subject to search at any time.

When an officer conducts a search, a hard-copy of the warrant is not required to be shown or left at the scene of the search. Forced entry may occur if no immediate response is received to a door knock and officer identification, to prevent destruction of evidence.

California Penal Code §3012(e) requires the Department of Justice (DOJ) to collect, compile, and publish in its annual report, the number of citizen complaints received by law enforcement agencies.

Method

The 2010-2011 GJ interviewed City, County and State law enforcement personnel, obtained and reviewed Policies and Procedures, General Orders, California Penal Code, Code of Conduct, Code of Ethics manuals, and organizational charts.

Background

The Mendocino Major Crimes Task Force (Task Force) operates under the California Department of Justice, Bureau of Narcotics Enforcement, who funds the Commander's

salary and the office rent. Each local law enforcement agency contributes \$3500 annually for office administration and supplies. The Mendocino County Probation Department (MCPD) no longer contributes \$3500 to the Task Force.

Findings – General

1. Search warrants served and executed by Federal, State, and local law enforcement agencies, are necessary to search private property.
2. State agencies and local law enforcement include the following:

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| Mendocino Major Crimes Task Force (Task Force) Dept. of Justice, Bureau of Narcotic Enforcement | Mendocino County Sheriff Office (MCSO) |
| Fort Bragg Police Department (FBPD) | Willits Police Department (WPD) |
| Ukiah Police Department (UPD) | Mendocino County Probation Department (MCPD) |
| California Highway Patrol (CHP) | Bureau of Land Management (BLM) |
| California Fish & Game Department (CF&G) | CAL FIRE, DMV, ABC, and others |

Findings - Search Warrant Process

3. There are three main bodies of the search warrant process: Affidavit in support of the search warrant, the search warrant, and the return of the search warrant.
4. The search warrant procedure involves investigation, documentation, affidavit preparation, execution, and return to the court including a list of any property taken, and status of that property.
5. All search warrants require probable cause: search for person(s), search for evidence, or combined search for person(s) and evidence.
6. For safety, it is advisable that an officer does not serve a warrant alone.
7. An officer may not physically enter any area where an individual has a reasonable expectation of privacy to conduct a search or seizure without one or more of the following: a valid search warrant, exigent circumstances, or a valid consent.
8. Exigent circumstances may include any of the following:

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| medical emergency | imminent danger of injury or death |
| officer safety, as a suspect may be armed | serious damage to property |
| imminent escape of a suspect | prevention of destruction of evidence |

9. A search by consent is only valid if all of the following criteria are met:

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| voluntary | given by a person with authority |
| does not exceed the scope of consent | valid consent can be withdrawn at any time |

10. When valid consent has been obtained, entry into a location is permitted for the purpose of conducting a search for any item reasonably believed relevant to any investigation.

11. A condition of County probation may or may not include a search and seizure consent clause; however, a condition for State parole is that the person, his/her property or residence can be searched at any time without a warrant.
12. Depending on the circumstances, expectation of privacy requiring search warrants is: highest (dwelling), medium (area of business closed to the public), and lowest (a vehicle, with the exclusion of any locked area).
13. A search warrant is obtained by an officer after completing an application/sworn affidavit with a description of the property or person to be searched, probable cause, and evidence expected to be found. The sworn affidavit must be reviewed and signed by a judge before a warrant is issued.
14. It is not required that an officer have a hard-copy of the search warrant in hand. There is no immediate remedy for a citizen to dispute the execution of a search warrant while the search is in progress.
15. When officers arrive at a residence to serve a search warrant, they knock on the door and announce themselves (MCSO General Order section 342.00), unless exigent circumstances prevent announcing their presence (Policy 200). If there is no response to the knock within a reasonable time, forced entry may take place. The officers' concern is the delay may allow the destruction of evidence.
16. Depending on the circumstances, it is not required that the warrant be shown or a copy be left with the person whose property is searched; however, Penal Code §1535 states that a receipt is required for any items taken.
17. Court decisions dictate the process and authority for sealing a Search Warrant Affidavit, which is generally done to protect information sources from harm or to avoid compromising further investigations.
18. Law enforcement has conducted searches at incorrect property addresses.

Findings - The Task Force

19. The Task Force, created in 1984, operates under the direction of the County Law Enforcement Executive Board and is supervised by the DOJ, which funds the Commander's salary and office rent.
20. The primary goal of the Task Force is to investigate major crimes, which may include homicide, rape, eradication, cultivation, production, distribution and sales of illegal marijuana, methamphetamine, and other illegal drugs.
21. The Task Force team includes the Commander and the following:

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| two Deputies and one canine from MCSO | one Officer from UPD |
| one Officer from FBPD | one Officer from CHP |
| one Secretary | one Evidence Technician |

22. WPD and Mendocino County Probation Department do not contribute an officer to the Task Force at this time, but do serve on the Task Force Executive Committee.
23. Each law enforcement parent agency that assigns an officer to the Task Force is responsible for the behavior and actions of their assignee.
24. The Task Force Commander is responsible for the immediate supervision of the officers assigned to the Task Force, without authority to discipline or terminate any

team officer for misconduct. The Commander can make recommendations to the parent agency.

25. The Task Force accepts and investigates all verbal complaints, but refers formal complaints to the parent agency of the officer involved.
26. The Task Force served 143 search warrants in 2009. Investigation and documentation for each search warrant required an average of 15 hours of officer time to complete the procedure.

Findings – Training, Conduct, and Supervision

27. Officers receive training at the police academy and mandated training continues throughout their service. A rigorous background check and psychological tests are required for all new recruits.
28. Experienced officers applying for a position with another law enforcement agency are subject to an extensive background search, which will include a review of their administrative files (performance/evaluations).
29. California Penal Code §13012(e) requires the DOJ to collect, compile, and publish in its annual report, the number of citizens’ formal complaints received by law enforcement agencies.
30. Officers are held to a higher standard of behavior than the general public. Each local law enforcement agency has similar policies for conduct, ethics, and behavior. Officer misconduct includes: lying, theft or embezzlement, use of profanity, speeding without emergency lights, use of excessive force, intoxication while on duty, absenteeism, tardiness, sleeping on duty, and violating safe working practices.
31. Officers who engage in misconduct are subject to progressive discipline:

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| oral/written reprimand | administrative leave | suspension without pay |
| time off/additional training | demotion | termination |

32. An officer can be terminated for lying or committing serious crimes. An officer subject to severe disciplinary action is entitled to an administrative *Skelly* hearing, after Internal Affairs completes an investigation.
33. An excerpt from the Ukiah Police Department, *Search Protocol*, Policy 322, states members of the Department¹:

- will conduct person searches with dignity and courtesy,
- will conduct property searches in a manner that will return the condition of the property to its pre-search status, when possible,
- when the person to be searched is of the opposite sex of the officer, an officer of the same gender should be summoned to the scene to conduct the search, if available,
- if no same gender officer is available, then the supervisor or another officer will witness the search; the searching officer will use the back side of their hand to search the person,

¹ The GJ chose to use this excerpt on search protocol as an example; other law enforcement agencies policies are similar.

- the officer will explain to the person being searched the reason for the search and how the officer will conduct the search.

34. Each officer of a higher rank supervises subordinate officers.
35. A supervising officer will exercise responsibly the discretion vested in his position regarding the conduct of the subordinate officer.
36. The manner and style of supervision varies among supervisory officers; this discretion may lead to confusion among officers.
37. Recently, the County paid a \$35,000 settlement to a person who suffered an injury when a search was conducted at an incorrect address.

Recommendations

The Grand Jury recommends that:

1. law enforcement review their *Code of Conduct and Ethics* on a quarterly basis and annually participate in sensitivity training and random psychological testing. (Findings 27, 31-33)
2. the Task Force Commander immediately report any complaints of misconduct to the parent agency. (Findings 23-25, 30-33)
3. law enforcement officers treat all persons with dignity, respect, and courtesy at all times with conditions permitting. (Findings 33, 37)
4. the Task Force team explore the use of video recorders to be worn and activated at all times, except while conducting sensitive investigations. (Finding 26)

Discussion

It is a common misconception that a search warrant must be shown prior to entering a residence or that a copy of the warrant must be left at the scene by law enforcement. This misconception was the basis for one of the complaints that the Grand Jury accepted for investigation. Television gives the public the impression that officers carry search warrants in hand, present it as they are executing the warrant, and explain why the warrant is being served.

It is unrealistic to expect law enforcement officers to explain to the person why his/her property is being searched, and how the search will be conducted in every circumstance; however, citizens should be treated with courtesy and respect.

Verbal or written complaints about officer misconduct are reported to the appropriate law enforcement agency, District Attorney, Sheriff, Chiefs of Police, or Tribal Police. Complainants are interviewed, but rarely choose to make a formal complaint, due to fear of reprisal or have changed their mind after venting their frustrations.

Most officers are honest and professional. They discharge their duties in a respectful manner, consistent with their sworn oath of office. Unfortunately, a few rogue officers' unethical behavior places a black cloud over all officers.

Law enforcement continues to meet the challenge of maintaining public safety as their priority, despite drastic budget and staff reductions caused by the harsh economic climate.

Required Responses

Mendocino County Sheriff (Findings 1-18, 27-36; Recommendations 1-3)

Chief of Police, Fort Bragg Police Department (Findings 1-18, 27-36; Recommendations 1-3)

Chief of Police, Ukiah Police Department (Findings 1-18, 27-37; Recommendations 1-3)

Chief of Police, Willits Police Department (Findings 1-18, 27-36; Recommendations 1-3)

Commander, Mendocino Major Crimes Task Force (All Findings; All Recommendations)

Requested Responses

Captain, California Highway Patrol (Findings 1-18, 27-36; Recommendations 1-3)