

Oakland Police Department Office of Internal Accountability



4th Quarterly Report October - December 2022

Oakland Police Department
Office of Internal Accountability

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Introduction

The Office of Internal Accountability's (OIA) 4th Quarterly Report for 2022 includes an inspection of search warrant packets and an inspection of use of force investigation timelines. The Department's Search Warrant Policy (Departmental Training Bulletin I-F, Search Warrants) requires OIA to conduct an annual review of search warrants. For this 2022 inspection, OIA focused on four areas identified in its 2021 inspection where there was opportunity for improvement. OIA also reviewed use of force investigation timelines for incidents that occurred in the 4th quarter of 2022 to determine if OPD has improved in the timeliness of investigations and the documentation of extensions compared to the previous year.

Both inspections this quarter are part of OPD's ongoing efforts to self-assess its processes and practices using past performance as a benchmark for improvement.

Respectfully,

A handwritten signature in black ink, appearing to read 'Cliff Wong', with a long horizontal flourish extending to the right.

Deputy Chief Clifford Wong
Bureau of Risk Management
Oakland Police Department

Annual Review of Oakland Police Department (OPD) Search Warrants

By Mehiya K. Thomas

Objectives

1. Determine whether affiants submitted all required search warrant forms to the Criminal Investigation Division (CID) Search Warrant Coordinator in a timely manner.
2. Determine whether the search warrant affidavits included a “hero sheet” that reflected the affiant’s background, training, and experience.
3. For residential and vehicle searches, determine if the Search Warrant Inventory form that was provided to the person whose home or vehicle was searched was included in the search warrant packet.
4. Determine whether the search warrants were served and returned to the Superior Court within 10 days of issuance.

Key Findings

Finding #2

On April 20, 2022, the Department published a Chief of Police (COP) Memorandum requiring search warrant and return packets be submitted to CID within 30 days of being signed by a magistrate and in mid-June 2022, CID began date stamping search warrants upon receipt. Of the 157 search warrants approved by a magistrate in June and July 2022 and submitted to CID, 126 had a date stamp. The average time between magistrate approval and CID receipt (date stamp) was 22 days. However, for search warrants submitted to CID after 30 days, there was rarely documentation of the reason for the delay.

Finding #5

There were 10 search warrant packets for which the Auditor was unable to determine when they were returned to the Court and 3 packets that

were submitted to the Court only after the Auditor requested the return date from the affiants. Of the remaining 66 packets, the Auditor was able to confirm that 46 (70%) were returned to Superior Court within 10 days from the date of magistrate approval, as required. There were 20 search warrants returned to the Court between 11 and 83 days from the date of approval.

Key Recommendations

- OIA recommends the Department assess whether 30 days is an appropriate timeline to submit search warrant packets to CID for all search warrant types, given search warrant service on providers for electronic records may not result in timely return of records. Once assessed, the Department should update its search warrant policy with due dates for search warrant packet submission to CID, requirements for documenting delays, and monitoring requirements for commanders.
- OIA recommends the Department update its search warrant policy to include language about documenting delays in returning search warrants to the Court, as well as monitoring requirements for commanders to ensure that subordinate affiants are following search warrant due dates. Additionally, OIA recommends the Department update its policy to require that all search warrant packets include the Superior Court electronic inventory and return form and determine if form TF-3079-1 is necessary for all search warrant types, particularly electronic communications.

Executive Summary

On September 13, 2022, the Office of Internal Accountability (OIA) initiated its annual review of the Oakland Police Department's Search Warrants as mandated in Departmental Training Bulletin I-F, *Search Warrants*. The inspection focused on areas identified in the prior OIA review as needing improvement. OIA's prior search warrant inspection was published in 2021 and included a review of 2020 search warrants. As a result of that inspection, the Department issued an Information Bulletin and a Chief's Memorandum in April 2022 to address some of the findings. For the current annual inspection, the Audit Team reviewed search warrants approved in the first seven months of 2022, the most current time period when the inspection was initiated, to ensure some of the period reviewed occurred after the Department took corrective measures.

OIA's prior review determined improvement was needed in the documentation of affiant's training, background, and experience in DUI search warrants, retention of the correct search warrant inventory and return form, and timeliness of submitting search warrant packets to the Criminal Investigation Division (CID) Search Warrant Coordinator. OIA was unable to determine if search warrants were being returned to the Alameda County Superior Court¹ within 10 days.²

As a result of the findings and in response to the recommendations in the prior inspection, the Department issued two documents to its members:

1. An Information Bulletin, *Criminal Investigation Division Search Warrant Reminders*, published on April 20, 2022, reminding officers of search warrant policy requirements, and
2. A Chief of Police (COP) Memorandum, *Timeline for Search Warrant Packets*, published on April 20, 2022, directing search warrants be submitted to CID within 30 days of magistrate approval.

For the current inspection, OIA examined a sample of 79 search warrant and affidavit packets from January 1, 2022, to July 31, 2022, to ensure the search warrant packets were complete (including the correct inventory and return form), were served and returned to the Court within 10 days, and included the affiant's background, training, and experience. OIA also reviewed the magistrate approval dates and the CID review dates for all search warrants between January 1, 2020, and July 31, 2022 and the CID date stamp date for search warrants submitted to CID after mid-June 2022 to determine if there had been improvement in the timely submission of packets to CID.

OIA found improvement in the use and retention of the correct inventory and return forms for residential and vehicle searches, and in the accountability for affiants that did not include their training, background and experience in their search warrants. OIA also found improvement in the timely

¹ The Alameda County Superior Court ("Court") is the receiving body for warrants. The Alameda County Sheriff's Department administers the portal via which electronic returns are returned to the Court.

² The prior OIA review also found five affiants and one reviewing supervisor had not taken the Search Warrant Fundamentals (WEB) Course and recommended that mechanisms be put in place to ensure all officers receive required search warrant training prior to authoring or reviewing a search warrant. However, this recommendation was not included in the scope of this 2022 review.

submission of search warrant packets to CID, although reasons for delays in submission were not being documented for search warrants submitted to CID after 30 days. The review revealed that, among 66 search warrants wherein a return date was located, 20 (30%) were returned to the Superior Court after the 10-day timeline requirement. For the 20 search warrants returned to the Court after 10 days, there was no documentation in the search warrant packets explaining the reason for the delay.

OIA recommends the Department update its search warrant policy with due dates, documentation requirements for delays and monitoring requirements for commanders.

Background

The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. One mechanism used by law enforcement to assure that a search is reasonable is a search warrant. Departmental Training Bulletin I-F, *Search Warrants*, defines a *search warrant* as “an order in writing, in the name of the people, signed by a magistrate,³ directed to a peace officer, commanding him or her to search for a person or persons, a thing or things, or personal property.”⁴ It defines a *search warrant affidavit* as a “legal document signed under penalty of perjury containing the facts upon which probable cause is based.”⁵ In order for officers to search a residence, a vehicle, a cell phone, a social media account, or to take a blood draw for driving under the influence (DUI), an affiant⁶ must obtain a written *search warrant* that establishes probable cause, describes the evidence being sought, and specifies the areas to be searched.

The Department’s search warrant policy (Training Bulletin I-F, *Search Warrants*, effective date 22 Mar 16), requires OIA to conduct an annual audit of search warrants and associated documents. In 2021, OIA conducted a review of the Oakland Police Department’s 2020 search warrants, which focused on the completeness and accuracy, the review and approval, and the serving of the search warrants and affidavits in a timely manner. Additionally, the review examined proper documentation of evidence seized, video recordings of residential search warrants, and required search warrant training. During the inspection, OIA determined that overall, the Department was complying with policy, but found a few areas in need of improvement. The findings, recommendations, and status are listed below.

³ In this context, magistrate simply refers to a Judge.

⁴ Training Bulletin I-F, II. B. Pg. 1

⁵ Training Bulletin I-F, II. C. Pg. 1

⁶ Training Bulletin I-F, II. A. Pg. 1, “An affiant is the person who authors the search warrant and who declares under penalty of perjury that the information contained in the affidavit, based upon his/her personal knowledge, and including all incorporated documents, is true.”

OIA Review of 2020 Search Warrants		
Finding	Recommendation	Status
The Department’s policy does not address the time-period for affiants submitting search warrant packets to CID after the date of service and therefore some search warrant packets are being submitted several months after the warrant was served, delaying CID’s review for errors.	The Department should determine an appropriate time-period for submission of search warrant packets to CID and update policy with a submission time-period requirement.	The Chief of Police issued a Memorandum, <i>Timeline for Search Warrant Packets</i> , published on April 20, 2022, stating, “Members who are the Affiant of a search warrant shall submit the search warrant packet to the CID Search Warrant Coordinator within 30 days of the search warrant being signed by a judge.”
The affidavits were complete, with the exception of the affiants’ training, background, and experience, which were missing from the 13 DUI search warrants and two search warrants for the purpose of confiscating deadly weapons possessed by a person experiencing a mental health crisis, despite no exception in policy allowing this information to be omitted.	The Department should ensure all search warrants include the affiant’s training, background, and experience, unless the Department determines the information is not required for certain search warrant types, and if so, policy should be updated to codify any exceptions to the requirement.	The Department issued an Information Bulletin (IB), <i>Criminal Investigation Division Search Warrant Reminders</i> , published on April 20, 2022, stating, “Members shall include a ‘hero sheet’ or ‘hero statement’ in all Search Warrant Affidavits authored. This includes DUI Search Warrants.”
The affiants are not always including the Department’s search warrant inventory and return form in the search warrant packets submitted to CID, rather, in seven cases, they only included the Superior Court’s electronic search warrant inventory and return form, resulting in some search warrant packets missing a copy of the inventory form that is provided to the person from whom the items were seized.	The Department should ensure the correct search warrant inventory and return form is referenced in policy and in PowerDMS, and CID should include a check for this form during their required review of search warrant packets.	The Department issued an Information Bulletin (IB), <i>Criminal Investigation Division Search Warrant Reminders</i> , published on April 20, 2022, stating, “When evidence is seized in a search warrant, members shall complete and submit a copy of the Oakland Police Department Search Warrant Inventory and Return Form (TF-3079-1) in their search warrant return packet to CID. If property is seized, a copy of the Search Warrant Inventory is provided to the person from whom it was taken, or in whose possession it was found. In the absence of a person, a copy of the Search Warrant Inventory and Return (TF-3079-1) shall be left at the location (Penal Code 1535).”

<p>All search warrants were served within 10 days from the date of issuance (unless there was a holiday), as required by the Superior Court, but OIA was unable to determine if the search warrants were returned to the Court within 10 days.</p>	<p>The Department should remind affiants that search warrant returns must be submitted to the Court within 10 days of search warrant issuance.</p>	<p>The Department issued an Information Bulletin (IB), <i>Criminal Investigation Division Search Warrant Reminders</i>, published on April 20, 2022, stating, “Members shall submit their search warrant return to the County of Alameda Superior Court within 10 days from the date of search warrant issuance.”</p>
<p>Upon reviewing the Search Warrant Fundamentals (WEB) Course Attendance Report, the Auditor confirmed that 89% of affiants (officers), 94% of reviewing supervisors, and 100% of reviewing commanders in the sample had completed the required online, three-hour course offered via the Commission on Peace Officer Standards and Training (POST) Learning Portal website. There were five affiants and one reviewing sergeant who did not attend the required Search Warrant Fundamentals training course prior to authoring/reviewing a search warrant.</p>	<p>The Department should set forth internal mechanisms to ensure all officers receive the required search warrant training prior to authoring or reviewing a search warrant.</p>	<p>The Department issued an Information Bulletin (IB), <i>Criminal Investigation Division Search Warrant Reminders</i>, published on April 20, 2022, stating, “Members shall complete search warrant training prior to authoring or reviewing/approving a search warrant. Per Training Bulletin, I-F: Search Warrants (dated 22 Mar 16), XIII, A, “All sworn members shall complete the online “Search Warrant Fundamentals” course through the POST Learning Portal website.” The Training Division will track and ensure compliance with members completing the required search warrant POST Learning Portal training.”</p>

Policy Requirements for Obtaining and Documenting a Search Warrant

The Department’s Training Bulletin I-F, *Search Warrants*, dated March 22, 2016, requires the following process for requesting, documenting, and reviewing search warrants:

1. Search Warrant Documents Authored by Affiant

When an affiant has probable cause to believe a crime has been committed and/or that certain property has a connection with a crime and is currently present at a specified location, the affiant must author the following forms to seize the property or evidence.

- **Search Warrant Affidavit**—a legal document signed under penalty of perjury containing the facts that indicate there is probable cause to believe a crime has been committed, and certain property or evidence of that crime is present at the location to be searched
- **Search Warrant**—a written order, to be signed by a magistrate, listing a person(s), thing(s), or personal property to be searched

- **Search Warrant Sealing Order** (if requested by the affiant)—a request, approved by the magistrate, to conceal official information that would compromise the investigation and to protect the public interest (i.e., a confidential informant, etc.)⁷

In addition, the search warrant affidavit must include a “hero sheet” which reflects the accurate background, training, and experience of the affiant.⁸

2. Affiant Obtains Approval to Submit Search Warrant Documentation to the Magistrate

Once the affiant authors the Search Warrant Affidavit and Search Warrant, and, if applicable a Search Warrant Sealing Order, the affiant must complete a Search Warrant Approval Tracking Sheet (TF-3343, Revised April 2016) and submit the form along with the completed search warrant documentation to a supervisor and commander for review.

When the supervisor and commander deem the search warrant documentation complete and accurate, they document their review and approval of the search warrant and affidavit on the Search Warrant Approval Tracking Sheet. Subsequently, the affiant is permitted to submit the Search Warrant and Search Warrant Affidavit and, if applicable, the Search Warrant Sealing Order and sealed document, to a magistrate for review and signature. Due to the immediate dissipation of the blood alcohol or drugs in the body, and reduce the likelihood of losing evidence, Commander approval is not required for DUI search warrants.⁹

3. Search Warrant Service Documented

Training Bulletin I-F, *Search Warrants*, requires the affiant to complete the Search Warrant Inventory and Return form (TF-3079-1) and, if necessary, the Search Warrant Inventory and Return Continuation form (TF-3079-2), when evidence is seized, and provide a copy to the person from whom the evidence was taken. In the absence of a person, a copy of the completed Search Warrant Inventory and Return form (TF-3079-1) shall be left at the location (Penal Code 1535).¹⁰

Additionally, policy requires that any search warrant service shall be documented in a crime report regardless of whether evidence is recovered. The officer shall document any known damage resulting from the search warrant service (e.g., broken doors, safes, fences).¹¹

4. Completed Search Warrant Records Reviewed and Retained

Upon completion of the search warrant service, the affiant, or designee, submits the Court’s search warrant return packet to the Court Clerk at any County of Alameda Superior Court Clerk

⁷ SUPERIOR COURT OF CALIFORNIA County of Alameda, Search Warrant Sealing Order. [Microsoft Word - SW Sealing Order.docx \(alcoda.org\)](#)

⁸ Training Bulletin I-F, *Search Warrant Checklist*. B. Affidavit. Pg. 10

⁹ Training Bulletin I-F, VII. B. Pg. 5

¹⁰ Training Bulletin I-F, VIII. C. Pg. 7

¹¹ Training Bulletin I-F, IX. E. Pg. 7

within 10 days from the date of issuance. If the 10th day is a court holiday or weekend, the next court day is permitted. After 10 days, the warrant, unless executed, is void.¹²

The affiant also forwards the following search warrant forms to the CID Commander and Search Warrant Coordinator for review:

- The original Search Warrant Approval Tracking Sheet (TF-3343)
- A copy of the Search Warrant
- A copy of the Affidavit
- A copy of the Search Warrant Inventory and Return form (TF-3079-1)
- A copy of the Search Warrant Inventory and Return Continuation (TF-3079-2), if necessary

The Search Warrant Coordinator reviews the search warrant forms for completeness and accuracy and signs and dates the forms before forwarding the forms to the CID Commander. The CID Commander also reviews the forms to ensure compliance with policy before signing, dating, and approving the form. Once determined to be compliant, the coordinator scans the search warrant forms into a Portable Document Format (PDF) and places the search warrant PDF in an electronic folder.

Personal Digital Recording Device (PDRD)

An officer who is present during the execution of the search warrant must use a Personal Digital Recording Device (PDRD), also known as a Body Worn Camera (BWC), while conducting a pre-search walk-through of the location or area to be searched to record the condition of the location or area, prior to commencing the search. Upon completion of the search, officers shall use a PDRD while conducting a post-search walk-through of the location or area to be searched to record the condition of the location or area. Officers shall focus on damage to, or destruction of property caused during the search warrant service. If a PDRD is not available, officers shall use an alternate video recording device to record the walk-through.¹³

Scope/Population and Methodology

Audit Scope

The purpose of this inspection was to check the status of four recommendations made in OIA's prior search warrant review, *Review of 2020 OPD Search Warrants*, published in October 2021. The scope consisted of a review of a sample of OPD's search warrant packets completed during the period of January 1, 2022, to July 31, 2022, to ensure they were complete, served and returned to the Court in accordance with OPD's policy, and submitted to the CID Coordinator in a timely manner. OIA reviewed the sample of search warrant packets to ensure the search warrant affidavits included a "hero sheet" and the proper search warrant inventory and return forms were completed and retained in the packets. OIA also reviewed the entire population of search warrants between 2020 and July 2022 to assess

¹² Training Bulletin I-F, X. B. 1-2. Pg. 8

¹³ Training Bulletin I-F, VIII. A/B. Pg.6-7.

improvement in the timely submission of search warrant packets to CID. This review did not include an assessment of search warrant training, which was assessed in the prior review.

Note: The Audit Team focused on search warrants completed in the first seven months of 2022, to evaluate improvement after the Department took corrective measures in April 2022 addressing the findings in OIA’s prior review.

Audit Population and Sample

The Auditor requested and obtained access to the CID search warrant tracking sheet¹⁴ and all 2022 search warrant packets via CID’s Search Warrant Coordinator. At the time of the data request in September 2022, there were **454**¹⁵ search warrants approved by a magistrate during the inspection period that had been submitted to CID. The Auditor categorized the search warrants by departmental Unit to identify the number of search warrants generated in each unit. Using a one-tail test¹⁶ to achieve a 95% confidence level with an error rate of +/- 4%, the Auditor selected a proportional sample of **79** search warrants to ensure the sample included search warrants from each of the units in the population (see Table 1 below).

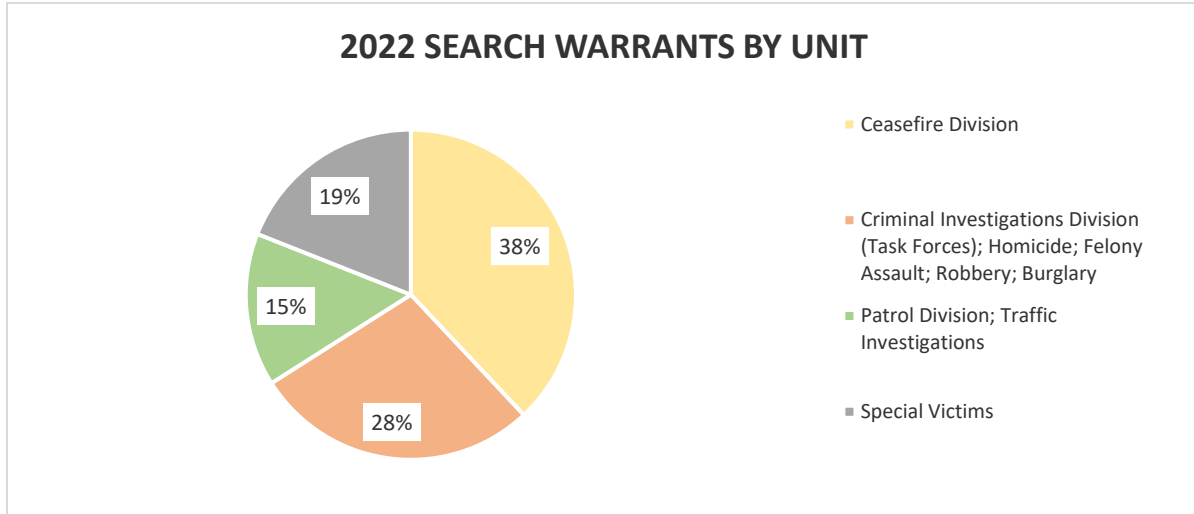
Table 1: 2022 Search Warrant Population and Sample

UNIT	# of Search Warrants in the population	% of Population	# of Search Warrants in Sample
➤ Ceasefire Division	172	38%	30
➤ Criminal Investigations Division (Task Forces)	129	28%	22
➤ Felony Assault /Robbery/ Burglary/General Crimes			
➤ Homicide			
➤ Patrol Division	67	15%	12
➤ Traffic Investigations			
➤ Special Victims	86	19%	15
Total Number of Search Warrants served in 2022 (**from January through July 2022)	454	100%	79

¹⁴ An electronic file that includes all search warrants processed during the 2022 calendar year.

¹⁵ There were two additional search warrants from the Citywide Special Resources Section that brought the total population to 456 search warrants served from January through July 2022. Since there were only two search warrants in that unit, the sample calculation did not generate a percentage above 0% therefore, was removed from the sample population.

¹⁶ A one-tail test is a statistical test measuring the statistical significance in one direction of interest, and for the purposes of this review, was used to determine a sample size.



References

Training Bulletin I-F, *Search Warrants*, dated March 22, 2016

Training Bulletin I-F.1, *E-Warrants*, dated March 22, 2016

See Appendix A for the detailed methodology.

Findings

Finding #1

Completeness of search warrant packets

Of the 79 sampled search warrant packets reviewed, 14 had sealing orders and could not be assessed for completeness. The remaining 65 packets included all the documents required by policy. However, 27 of the 79 search warrants did not use the search warrant inventory and return form listed in policy (TF-3079-1) and instead included the Superior Court’s electronic search warrant inventory and return form or solely the TF-3079-2 (the continuation form associated with TF-3079-1). Twenty three of the 27 were for electronic communications and according to the CID Commander, CID is not requiring affiants to submit the TF-3079-1 inventory and return form when the search warrant is for electronic records (i.e., cell phone records).

Training Bulletin I-F, *Search Warrants* states, “The affiant, or designee, shall submit the search warrant return packet to the Search Warrant Coordinator at CID.”¹⁷ To determine whether affiants submitted all required search warrant forms to the Criminal Investigation Division (CID) Search Warrant Coordinator, the Auditor reviewed a sample of 79 search warrants and affidavits (from various units) that were approved by a magistrate during the inspection period of January 1, 2022 to July 31, 2022. The Auditor reviewed the search warrant packets in the sample to verify that all documents listed in policy were included for each search warrant.

¹⁷ Training Bulletin I-F, X.A.1. Pg. 7

- a. The original Search Warrant Approval Tracking Sheet (TF-3343)
- b. A copy of the Search Warrant [order signed by a magistrate directing the search]
- c. A copy of the Affidavit [contains facts upon which probable cause is based]
- d. A copy of Search Warrant Inventory and Return (TF-3079-1)
- e. A copy of Search Warrant Inventory and Return Continuation (TF-3079-2), if applicable¹⁸

All 79 search warrant packets included the tracking sheet. There were 14 search warrant packets in the sample that had sealing orders, so the Auditor was unable to review the search warrant affidavit. Sealing orders, approved by a magistrate, will conceal all or parts of the affidavit if the information would compromise the investigation or prejudice the public interest.¹⁹ The 65 packets without sealing orders contained both the search warrant and affidavit. All 79 packets included a search warrant inventory and return form. However, 27 of the 79 search warrants did not include the search warrant inventory and return form listed in policy (TF-3079-1) and instead included the Superior Court’s electronic search warrant inventory and return form (25 packets) or continuation form TF-3079-2 without TF-3079-1 (2 packets). Thirty-six of the 79 packets included multiple search warrant inventory and return forms. The table below display the forms included in the 79 sampled search warrant packets.

Table 2: Forms Included in the 79 Sampled Search Warrant Packets

Form	Number of Forms included in Packet	Comments
a. Search Warrant Approval Tracking Sheet (TF-3343)	79	
b. Search Warrant	74	The 5 packets without a search warrant had a sealing order.
c. Affidavit	65	The 14 packets without an affidavit had a sealing order.
d. Search Warrant Inventory and Return	79	
<ul style="list-style-type: none"> • Departmental Search Warrant Inventory and Return (TF 3079-1) 	52	43 Packets with one form <ul style="list-style-type: none"> • 16 packets included only the TF-3079-1 form. • 2 packets included only the TF-3079-2 form.
<ul style="list-style-type: none"> • Departmental Search Warrant Inventory and Return Continuation (TF-3079-2) 	4	

¹⁸ Training Bulletin I-F, X.A.1. a-e. Pg. 7

¹⁹ SUPERIOR COURT OF CALIFORNIA County of Alameda, Search Warrant Sealing Order. [Microsoft Word - SW Sealing Order.docx \(alcoda.org\)](#)

<ul style="list-style-type: none"> • Superior Court's Electronic Search Warrant Inventory and Return 	<p>61</p>	<ul style="list-style-type: none"> • 25 packets included only the Superior Court's electronic form. <p><u>36 Packets with multiple forms</u></p> <ul style="list-style-type: none"> • 2 packets included all three forms (TF-3079-1, TF 3079-2, and the Superior Court's electronic form). • 34 packets included both the TF 3079-1 and the Superior Court's electronic form.
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The Auditor asked the CID Captain about the Departmental inventory form (TF 3079-1) versus the Court's electronic form, and he stated,

“For the warrants where the information requested is anything related to electronic device information, cell phone search (CDR), phone ping, PEN, or GPS, I made it optional for affiants to submit a 3079-1 form. Submitting a 3079-1 for something not seized is not required by policy. Additionally, cell phone pings, CDRs, GPS, etc., are records or links that are sent via email to the investigators. These evidence items are not tangible and “seized” from a person or place in the traditional sense (i.e., clothing from a car or house, gun from a locker or desk, blood from a person's body, etc.) where a 3079-1 is left with a person or in the place as a receipt so to speak. For these reasons, I didn't hold affiants accountable for not submitting a 3079-1 when requesting said electronic information.”

Twenty-three of the search warrants missing TF 3079-1 forms were for electronic device information. Of the other four missing TF-3079-1 forms, two were for driving under the influence (DUI) blood draws, one was for a DNA swab, and one was for a residential search. The affiants included the Superior Court's electronic form or solely the TF-3079-2 (the continuation form associated with TF-3079-1) instead. The Auditor asked the CID Captain about the four non-electronic device search warrants, to which he stated, “For the residential search, the affiant was not required to complete/submit a 3079-1 because no evidence was recovered in the search of the residence. For the two DUI blood draws where TF-3079-1 forms were missing, I recognized this and issued the Officers an SNF (Supervisory Note File) entry. For the DNA swab, this was a miss on my part. The Officer completed the CRIMS inventory (Superior Court's electronic search warrant inventory and return form), and it was my oversight in not catching there wasn't a 3079-1 submitted to CID.” The Auditor noted, for the one residential search warrant missing the TF-3079-1 inventory and return form, the affiant submitted the Superior Court's electronic form and documented “Warrant served. Nothing recovered from the residence” on the form.

Although not required by policy, 61 (77%) search warrant packets included a copy of the Superior Court's electronic inventory and return form. There were 18 packets that did not include the Superior Court's electronic form. Twelve of the eighteen were for DUI blood draws, three were for residential

searches, two were for electronic device searches, and one was for a vehicle search. Finding #5 includes a recommendation about electronic inventory and return forms.

Finding #2

Timeliness of Search Warrant Packets to CID

On April 20, 2022, the Department published a Chief of Police (COP) Memorandum requiring search warrant and return packets be submitted to CID within 30 days of being signed by a magistrate and in mid-June 2022, CID began date stamping search warrants upon receipt. Of the 157 search warrants approved by a magistrate in June and July 2022 and submitted to CID, 126 had a date stamp. The average time between magistrate approval and CID receipt (date stamp) was 22 days. However, for search warrants submitted to CID after 30 days, there was rarely documentation of the reason for the delay.

According to Training Bulletin I-F, *Search Warrants*, the affiant, or designee, shall submit the search warrant packet to the Search Warrant Coordinator in CID.²⁰ In its last review of OPD's 2020 search warrants, OIA found the Department's policy did not address the due date for affiants submitting search warrant packets to CID after the date of service and therefore some search warrant packets were being submitted several months after the warrant was served, delaying CID's review for errors. Hence, OIA recommended the Department determine an appropriate time for submission of search warrant packets to CID and update policy with a submission time requirement. Although policy has not been updated with a submission deadline requirement, on April 20, 2022, the Department published a Chief of Police (COP) Memorandum, *Timeline for Search Warrant Return Packet*, which requires the affiant of a search warrant to submit the search warrant packet to the CID Search Warrant Coordinator **within 30 days** of the search warrant being signed by a judge (magistrate).²¹

In mid-June 2022, CID began date stamping search warrant packets upon receipt from affiants, allowing for a more accurate assessment of submission dates. To determine the timeliness of search warrant packet submission to CID, the Auditor requested an updated version of the CID search warrant tracking sheet, which was received on March 29, 2023. The Auditor collected the date stamp for all search warrant packets approved in June and July 2022 to calculate the average time between search warrant approval by a magistrate and CID receipt. Of the 157 search warrants approved in June and July 2022 and submitted to CID, 126 had a date stamp (date of receipt).

Twenty-two days was the average time between magistrate approval and CID receipt for the 126 search warrant packets with a date stamp. There were 32 packets that took longer than 30 days to get to CID, 23 (72%) of which were for either electronic communications or bank records. Nineteen of the packets took 40 or more days. The COP Memorandum published on April 20, 2022 requires affiants to notify CID via email when extenuating circumstances prevent delivery of the search warrant packet within the 30-

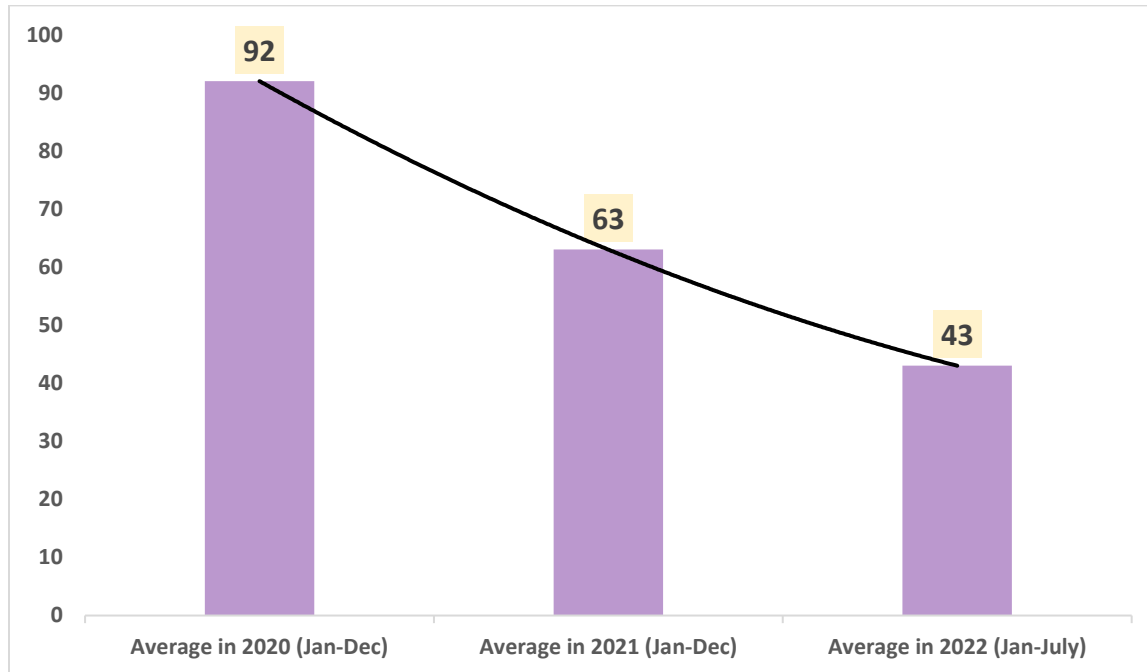
²⁰ Training Bulletin I-F, X.A. Pg. 7

²¹ OPD Chief of Police Memorandum, *Timeline for Search Warrant Return Packets*, published April 20, 2022

day deadline. For the 19 packets that took 40 or more days²², only one included documentation explaining the reason for the delay. The search warrant was for electronic communications and the company did not respond with the records until two months after the search warrant service.

The Auditor took an additional step to assess improvement in the timely submission and review of search warrant packets over the past three years. The Auditor used the CID search warrant tracking sheet to calculate the average time between magistrate approval and CID review for all search warrants submitted in 2020 (January-December), 2021 (January-December) and 2022 (January-July). Prior to mid-June 2022, CID did not date stamp search warrant packets, and therefore did not track the date the affiant submitted their packet. The only way to assess timeliness was to use the CID review date. The average number of days between magistrate approval and CID review dropped from 92 in 2020 to 43 in 2022. The chart below shows the averages by search warrant year.

Chart 1: The Average Number of days between search warrant approval by a magistrate and CID review



The Department has made good progress submitting search warrant packets to CID in a timely manner. The COP Memorandum and CID's practice of date stamping packets upon receipt are important tools for ensuring timely submission. The inspection revealed the bulk of search warrant packets submitted to CID after 30 days from magistrate approval were for electronic communications or bank records. OIA recommends the Department assess whether 30 days is an appropriate timeline to submit search warrant packets to CID for all search warrant types, given search warrant service on providers for electronic records may not result in timely return of records. Once assessed, the Department should

²² The Auditor only reviewed the packets for documentation of delay when the delay was 10 days or more.

update its search warrant policy with due dates for search warrant packet submission to CID, requirements for documenting delays and monitoring requirements for commanders.

Finding #3

Affiant's Training, Background and Experience

Eleven (14%) of 65 affidavits reviewed were missing the affiants' training, background, and experience (referred to in policy and practice as a "hero sheet"), 9 of which were for DUI search warrants. Eight of the affidavits missing a "hero sheet" were completed prior to the publication of Information Bulletin (IB) Criminal Investigation Division Search Warrant Reminders in April 2022, which reminded affiants to include a "hero sheet" in their DUI search warrant affidavits. Six of the 11 affidavits missing a "hero sheet" included a training supervisory note from the Department, reminding the affiant to include a "hero sheet" or "hero statement" in the search warrant affidavits.

According to Training Bulletin I-F, *Search Warrants*, "The affiant's 'hero sheet' (shall) reflect his/her accurate background, training, and experience."²³ In October 2021, OIA published the annual review of the Oakland Police Department's 2020 search warrants and found the 87 sampled affidavits to be complete with the exception of the affiant's training, background, and experience, which were missing from 13 DUI search warrants and two other search warrants which were related to confiscating deadly weapons. OIA recommended that the Department should ensure all search warrants include the affiant's training, background, and experience, unless the Department determines the information is not required for certain search warrant types, and if so, policy should be updated to codify any exceptions to the requirement. In response to the recommendation, the Department published Information Bulletin (IB) *Criminal Investigation Division Search Warrant Reminders*, published April 20, 2022, which states, "For Search Warrant Affidavits, members shall include a 'hero sheet' or 'hero statement' in all Search Warrant Affidavits authored. This includes DUI (Blood Draw) search warrants. The affiant shall include a summary of his/her relevant training and experience in the statement of probable cause."²⁴

To determine whether the search warrant affidavits included a "hero sheet" that reflected the affiant's background, training, and experience, the Auditor reviewed the 65 search warrant packets that included an affidavit (14 of the 79 sampled search warrants were missing an affidavit due to a sealing order). Of the 65 affidavits with no sealing orders, 54 included a "hero sheet." There were 11 search warrant affidavits that did not include a "hero sheet." Nine were for DUI search warrants, one was for a vehicle search, and one was for electronic communications Information.

Since the Department published Information Bulletin (IB) *Criminal Investigation Division Search Warrant Reminders* on April 20, 2022, reminding affiants to include "hero sheets" for all affidavits, the Auditor reviewed the 11 affidavits that were missing the "hero sheets" to verify whether the affiants completed the affidavits before or after the IB publish date. The Auditor found that eight of the 11 affidavits completed without "hero sheets" were completed before the April 2022 IB date, three of which resulted

²³ Training Bulletin I-F, *Search Warrant Checklist*. B. Affidavit. Pg. 10

²⁴ OPD Information Bulletin (IB) *Criminal Investigation Division Search Warrant Reminders*, published April 20, 2022. Pg.1

in a training supervisory note reminding the affiant to include a “hero sheet” or “hero statement” in the search warrant affidavits. There were three affidavits for DUI blood draws completed after the April 2022 IB date and all three resulted in a training supervisory note reminding the affiant to include a “hero sheet” or “hero statement” in the Search Warrant Affidavits.

OIA recommends the Department re-issue Information Bulletin (IB) *Criminal Investigation Division Search Warrant Reminders* to remind affiants to include a “hero sheet” in all search warrant affidavits.

Finding #4

Residential and Vehicle Searches

The Department has made improvements with the submission of required inventory and return forms for residential and vehicle search warrants. Only one of the 26 residential and vehicle search warrant packets reviewed was missing the TF-3079-1 inventory and return form. However, in that incident, no evidence was recovered from the search and therefore the inventory form was not required to be left at the scene. The packet did include the Superior Court’s electronic search warrant inventory and return form.

According to Training Bulletin I-F, *Search Warrants*, upon completion of the search warrant service, if property is seized, the affiant shall provide a copy of the Search Warrant Inventory and Return to the person from whom it was taken, or in whose possession it was found, or if the person is not present during the time of the search, the affiant is required to leave a copy of the Search Warrant Inventory and Return (TF-3079-1) at the location (Penal Code 1535).²⁵

In October 2021, OIA published the annual review of the Oakland Police Department’s 2020 search warrants and found that affiants were not always including the Department’s search warrant inventory and return form in the search warrant packets submitted to CID, rather, in seven cases, they only included the Superior Court’s electronic form, resulting in some search warrant packets missing a copy of the inventory form that was provided to the person from whom the items were seized. In addition, the Department was using two different versions of the search warrant inventory and return form and the version listed in policy (TF-3079-1) was only included in six of the 87 search warrant packets, compared to TF-3079, which was included in 35 packets. OIA recommended the Department require the affiant submit to CID a copy of the departmental search warrant inventory and return form that was provided to the person from whom the items were seized (or left at the location). Additionally, the Auditor recommended the Department should ensure that the correct search warrant inventory and return form was referenced in policy and PowerDMS. In its response, the Department stated that the correct forms (TF-3079-1 and TF-3079-2) would be created and placed into circulation for use and the old form TF- 3079 would be removed and destroyed.

The Auditor reviewed the eight vehicle and 18 residential search warrant packets to confirm that TF-3079-1 inventory and return forms were completed and retained. All but one of the 26 residential and vehicle search warrant packets included the TF-3079-1 inventory and return form, as required by policy.

²⁵ Training Bulletin I-F, VIII. C.2.Pg. 7

Of the 26 packets reviewed, 19 included both the Departmental TF-3079-1 form and the Superior Court's electronic form, and the evidence documented on both forms matched. There were two packets that included all three forms (TF-3079-1, TF-3079-2, and the Superior Court's electronic form) and the evidence on the three forms matched. There were four packets that included only the TF-3079-1 inventory and return form.

There was one packet missing the TF-3079-1 inventory and return form, however no evidence was seized during execution of that search warrant. Training Bulletin I-F states, "if property is seized, a copy of the Search Warrant Inventory is provided to the person from whom it was taken, or in whose possession it was found."²⁶ Therefore, no inventory form was required to be left at the scene. The packet submitted to CID did include the Superior Court's electronic form, which stated "Nothing recovered from the residence."

Overall, the Department has made improvements with the submission of inventory and return forms for residential and vehicle searches. The affiants used the correct Departmental search warrant inventory and return form in the search warrant packets submitted to CID, and when there was more than one inventory form, the inventory on both forms matched.

Finding #5

10-day Court returns

California Penal Code 1534(a)²⁷ requires search warrants to be executed and returned within 10 days after date of issuance. All 79 sampled search warrants were served within 10 days from the date of magistrate approval. There were 10 search warrant packets for which the Auditor was unable to determine when they were returned to the Court and 3 packets that were submitted to the Court only after the Auditor requested the return date from the affiants. Of the remaining 66 packets, the Auditor was able to confirm that 46 (70%) were returned to Superior Court within 10 days from the date of issuance, as required. There were 20 search warrants returned to the Court between 11 and 83 days from the date of issuance.

According to Training Bulletin I-F, *Search Warrants*, "a search warrant shall be executed and returned (to Superior Court) within 10 days from the date of issuance. If the 10th day is a court holiday or weekend, the next court day is permitted. After 10 days, the warrant, unless executed, is void."²⁸ In its last review of search warrants, OIA was unable to determine if the search warrants were returned to the court within 10 days and recommended the Department remind affiants that search warrant returns must be submitted to the Court within 10 days of search warrant issuance.

For this review, the Auditor reviewed the 79 sampled search warrant packets and collected the dates the search warrants were approved by the magistrate, the dates the search warrants were served, and,

²⁶ Training Bulletin I-F, VIII. C. 2. Pg. 7

²⁷ California Penal Code 1534(a):

https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=1534.&highlight=true&keyword=search%20warrant

²⁸ Training Bulletin I-F, X. B. 2. Pg. 8

if an electronic inventory form was included in the packets, the dates the officers signed the inventory form, which indicates the date it was electronically submitted to the Court.²⁹ If there was no electronic inventory form included in the packet, the Auditor requested a copy of the Superior Court's electronic search warrant inventory and return form or other evidence of the return date directly from the affiant.

All 79 search warrants reviewed were served within 10 days from the date of magistrate approval. There were 19 search warrant packets for which the Auditor was unable to determine the date of return to the Court. While the Superior Court's electronic form has a signature block indicating the date of submission to the Court, OPD's TF-3079-1 inventory and return form does not capture the date the form was submitted. The Auditor requested copies of the electronic form or other evidence of the return date from the affiants for these 19 search warrants and was able to confirm submission dates for nine. However, three of the nine inventory and return forms were submitted to the Court after the Auditor's request. All three were submitted more than 150 days after magistrate approval. One was for a vehicle search warrant by Ceasefire that took 212 days and two were DUI search warrants by patrol officers that took 158 days and 264 days to return to the Court. After requesting follow-up information from the affiants, the Auditor was unable to locate the return dates for 10 of the 19 search warrant packets. Eight of the ten remaining search warrant packets missing the return date were DUI search warrants completed by patrol officers and two were residential or vehicle searches completed by Ceasefire.

Of the 66 packets that were submitted to the Court prior to the Auditor's request and wherein a return date was located, the Auditor was able to confirm that 46 (70%) were returned to the Court within 10 days from the date of issuance. There were 20 search warrant packets that were returned to the Court between 11 and 83 days from the date of issuance. Sixteen of the 20 search warrants were approved prior to the end of April 2022, before or shortly after the publication of the Information Bulletin reminding officers of the 10-day requirement. The four search warrants approved after April 2022 were returned to the Court within 12, 13, 14 and 17 days respectively. For the 66 packets, the average return time to the Court was 11 days.

The table below shows the number of days it took the affiants to return the search warrant packets to the Court by Unit.

²⁹ The date the Superior Court's electronic inventory and return is uploaded via the Ewarrant system and submitted to the Superior Court.

Table 4: The Number of days to Return the Search Warrant Packets to Superior Court by Unit.

Unit	Number of search warrant packets in the sample (by unit)	Number of packets that included the return date to the Court	Number of days it took Affiants to return the search warrant inventory and return forms to the Court	
Ceasefire Division	30	27	0 to 83 days	<ul style="list-style-type: none"> 16 were returned between 0 and 9 days. 11 were returned between 12 and 83 days.
Criminal Investigations Division (Task Forces), Homicide, Felony Assault, Robbery, Burglary	22	22	0 to 35 days	<ul style="list-style-type: none"> 15 were returned between 0 and 9 days. 7 were returned between 11 and 35 days.
Patrol Division, Traffic Investigations	12	2	1 to 4 days	<ul style="list-style-type: none"> 1 was returned in 1 day. 1 was returned in 4 days.
Special Victims	15	15	0 to 10 days	<ul style="list-style-type: none"> All 15 were returned between 0 to 10 days.
Total	79	66		

Of the 20 search warrants that were not returned to the Court within 10 days, 11 were from the Ceasefire Division (seven electronic communication or device information, one residential, and three vehicle search warrants) and nine were from the Homicide and Felony Assault Division (six electronic communication or device information, two residential and one vehicle search warrants). There was no documentation in the search warrant packets explaining the reason for the delay in submitting the inventory and return form to the Court. The Information Bulletin addresses the documentation requirements for search warrants that cannot be submitted to the Court within 10 days.

There may be extenuating circumstances as to why a search warrant return cannot be submitted to the County within 10 days of search warrant issuance. In these instances, the affiant should document the reason for the delay in their case notes, a supplemental report, or email which can be sent to the CID Search Warrant Coordinator for auditing purposes.

OIA recommends the Department update its search warrant policy to include language about documenting delays in returning search warrants to the Court, as well as monitoring requirements for commanders to ensure that subordinate affiants are following search warrant due dates. Additionally, OIA recommends the Department update its policy to require that all search warrant packets include the Superior Court electronic inventory and return form and determine if form TF-3079-1 is necessary for all

search warrant types, particularly electronic communications. Dated electronic inventory and return forms serve as confirmation that the forms were returned to the Court and allow for supervisors and CID reviewers to identify affiants who are not meeting the 10-day return timelines.

Recommendations

OIA Findings	OIA Recommendations
<p>Finding #1 Of the 79 sampled search warrant packets reviewed, 14 had sealing orders and could not be assessed for completeness. The remaining 65 packets included all the documents required by policy. However, 27 of the 79 search warrants did not use the search warrant inventory and return form listed in policy (TF-3079-1) and instead included the Superior Court’s electronic search warrant inventory and return form or solely the TF-3079-2 (the continuation form associated with TF-3079-1). Twenty three of the 27 were for electronic communications and according to the CID Commander, CID is not requiring affiants to submit the TF-3079-1 inventory and return form when the search warrant is for electronic records (i.e., cell phone records).</p>	<p>See Recommendation #3</p>
<p>Finding #2 On April 20, 2022, the Department published a Chief of Police (COP) Memorandum requiring search warrant and return packets be submitted to CID within 30 days of being signed by a magistrate and in mid-June 2022, CID began date stamping search warrants upon receipt. Of the 157 search warrants approved by a magistrate in June and July 2022 and submitted to CID, 126 had a date stamp. The average time between magistrate approval and CID receipt (date stamp) was 22 days. However, for search warrants submitted to CID after 30 days, there was rarely documentation of the reason for the delay.</p>	<p>Recommendation #1 OIA recommends the Department assess whether 30 days is an appropriate timeline to submit search warrant packets to CID for all search warrant types, given search warrant service on providers for electronic records may not result in timely return of records. Once assessed, the Department should update its search warrant policy with due dates for search warrant packet submission to CID, requirements for documenting delays, and monitoring requirements for commanders.</p>

OIA Findings

OIA Recommendations

<p>Finding #3 Eleven (14%) of 65 affidavits reviewed were missing the affiants’ training, background, and experience (“hero sheet”), 9 of which were for DUI search warrants. Eight of the affidavits missing a “hero sheet” were completed prior to the publication of Information Bulletin (IB) Criminal Investigation Division Search Warrant Reminders in April 2022, which reminded affiants to include a “hero sheet” in their DUI search warrant affidavits. Six of the 11 affidavits missing a “hero sheet” included a training supervisory note from the Department, reminding the affiant to include a “hero sheet” or “hero statement” in the search warrant affidavits.</p>	<p>Recommendation #2 OIA recommends the Department re-issue Information Bulletin (IB) <i>Criminal Investigation Division Search Warrant Reminders</i> to remind affiants to include a “hero sheet” in all search warrant affidavits.</p>
<p>Finding #4 The Department has made improvements with the submission of required inventory and return forms for residential and vehicle search warrants. Only one of the 26 residential and vehicle search warrant packets reviewed was missing the TF-3079-1 inventory and return form. However, in that incident, no evidence was recovered from the search and therefore the inventory form was not required to be left at the scene. The packet did include the Superior Court’s electronic search warrant inventory and return form.</p>	<p>No Recommendation</p>

OIA Findings

OIA Recommendations

<p>Finding #5 California Penal Code 1534(a)³⁰ requires search warrants to be executed and returned within 10 days after date of issuance. All 79 sampled search warrants were served within 10 days from the date of magistrate approval. There were 10 search warrant packets for which the Auditor was unable to determine when they were returned to the Court and 3 packets that were submitted to the Court only after the Auditor requested the return date from the affiants. Of the remaining 66 packets, the Auditor was able to confirm that 46 (70%) were returned to Superior Court within 10 days from the date of issuance, as required. There were 20 search warrants returned to the Court between 11 and 83 days from the date of issuance.</p>	<p>Recommendation #3 OIA recommends the Department update its search warrant policy to include language about documenting delays in returning search warrants to the Court, as well as monitoring requirements for commanders to ensure that subordinate affiants are following search warrant due dates. Additionally, OIA recommends the Department update its policy to require that all search warrant packets include the Superior Court electronic inventory and return form and determine if form TF-3079-1 is necessary for all search warrant types, particularly electronic communications.</p>
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³⁰ California Penal Code 1534(a):
https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN§ionNum=1534.&highlight=true&keyword=search%20warrant

Methodology

Objective 1

To determine whether affiants submitted all required search warrant forms to the Criminal Investigation Division (CID) Search Warrant Coordinator³¹ in a timely manner, the Auditor reviewed the search warrant packets to verify that all forms were included in each search warrant PDF:

- a. The original Search Warrant Approval Tracking Sheet (TF-3343)
- b. A copy of the search warrant
- c. A copy of the affidavit
- d. A copy of Search Warrant Inventory and Return (TF-3079-1)
- e. A copy of Search Warrant Inventory and Return Continuation (TF-3079-2)³², if applicable

In addition, to determine if the search warrant packets were submitted to the CID Coordinator in a timely manner, the Auditor used the CID search warrant tracking sheet to collect the date of magistrate approval and the date of CID review for all search warrants submitted to CID between January 2020 and July 2022. The average time between magistrate approval and CID review was calculated for 2020 (January-December), 2021 (January-December) and 2022 (January-July). The Auditor also collected the CID date stamp date for search warrants approved during June and July 2022 and calculated the average time between magistrate approval and CID receipt (date stamp).

Objective 2

The Auditor reviewed the probable cause statement³³ in the search warrant affidavits to determine whether the search warrant affidavits included a “hero sheet” that reflected the affiant’s background, training, and experience.

Objective 3

For residential and vehicle searches, to determine if the Department’s Search Warrant Inventory form (TF-3079-1) was included in the search warrant packet, the Auditor:

1. Identified which search warrants in the sample were served at a residence or a vehicle.
2. Reviewed the search warrant packets to determine which search warrant inventory and return form was submitted.
3. If packet included an electronic inventory form and a paper form, compared the items on both to ensure they matched.

³¹ Training Bulletin I-F, X.A.1. Pg. 7

³² Training Bulletin I-F, X.A.1. a-e. Pg. 7

³³ The facts upon which probable cause is based.

Objective 4

To determine whether the search warrants were served and returned to Superior Court within 10 days of issuance, the Auditor reviewed the sample of search warrant packets and collected the following dates:

1. Date search warrant approved by magistrate
2. Date search warrant served
3. If an electronic inventory form was included in the packet, date officer signed (I declare under penalty of perjury...)
4. If there was no electronic inventory form, requested electronic form or other evidence directly from the affiant.

Inspection of Use of Force Investigation Timelines

By Kristin Burgess-Medeiros

Objective

Determine if OPD has improved in the timeliness of its use of force investigations and documentation of extensions.

References

- Departmental General Order (DGO) K-4, *Reporting and Investigating the Use of Force*, effective October 16, 2014.
- Report Writing Manual U-1, *Use of Force Report*, effective November 23, 2019.

Overview/Background

In December 2022, OIA published a review of use of force investigation timelines in its [2022 Combined 2nd and 3rd Quarterly Report](#). OIA reviewed the investigative timelines for all Level 2 and 3 use of force incidents and a sample of Level 4 incidents that occurred between July and December 2021. None of the Level 2 or 3 use of force incidents were investigated within the timelines listed in DGO K-4, which requires Level 2 and 3 use of force investigations to be approved and submitted to the Bureau of Field Operations Administrative Unit (BFO Admin) within 16 days of the incident unless an extension is approved and documented. While the required 16-day timeline appeared unachievable, OIA determined the average actual timeline (72 to 80 days) for the 20 Level 2 and 3 use of force incidents reviewed was unreasonably long. Additionally, 13 of the 20 incidents reviewed were missing documented extensions that covered the entire delay (more than 16 days).

The investigative timelines for Level 4 uses of force are less clear than Level 2 and 3 uses of force, but OIA allowed for 10 days between the force incident and investigation submission to BFO Admin. OIA found that Level 4 use of force reviews were completed within 10 days 79% of the time. A further review of 20 Level 4 investigations that took longer than 10 days revealed that only five of the investigations included documented extensions that covered the entire delay (more than 10 days).

OIA recommended that OPD analyze current timelines for use of force investigations and revise the timelines set forth in DGO K-4 to accommodate unavoidable workload issues and revisions to the packets. Although DGO K-4 has not yet been updated, OIA conducted a follow-up inspection of use of force investigation timelines for the fourth quarter of 2022 to determine if OPD has improved in the timeliness of investigations and the documentation of extensions.

Scope and Methodology

The inspection included a review of investigation timelines for all Level 2, 3, and 4 use of force incidents³⁴ that occurred between October 1, 2022, and December 31, 2022. Levels of force are based

³⁴ A use of force incident is an incident that involves one or more uses of force. The numbers presented in this inspection represent incidents in which force was used, not all force that was used.

on the seriousness of the force used. Level 1 uses of force are the most serious (resulting in serious bodily injury or death) and were not included in this inspection. Level 4 uses of force are the least serious uses of force. The investigative level of a use of force incident is determined by the highest level of force used during the incident. During this inspection period, there were three Level 2 use of force incidents, two Level 3 incidents and 461 Level 4 incidents.

The number of days between the date of incident and the date of submission to BFO Admin was calculated for all use of force incidents.³⁵ Level 2 and 3 incidents that took longer than 16 days and Level 4 incidents that took longer than 10 days were reviewed to determine if extensions were properly approved and documented.

FINDINGS

Level 2 and 3 Investigations

Between October and December 2022, there were five Level 2 and 3 use of force investigations. The investigations took between 30 and 59 days to complete, with 43 days being the average. In OIA's prior inspection, the investigations took between 31 and 132 days to complete, with Level 2 investigations averaging 80 days and Level 3 investigations averaging 72 days.

All five Level 2 and 3 use of force investigations had documented extensions. OPD's practice is to have a Deputy Chief approve extensions for any use of force investigations that last more than 30 days, while a Captain of Police can provide an extension within the first 30-day window. One investigation took 30 days to complete, and the extension was approved by a Captain. The other four investigations took longer than 30 days and had Deputy Chief approval for the extensions. The reasons for the extensions were documented in all five cases.

Level 4 Investigations

There were 461 Level 4 incidents that occurred during the same time period and 426 (92%) were investigated within 10 days of the incident. They took an average of 4.3 days to complete, with the longest investigation taking 31 days. In OIA's prior inspection, 79% of Level 4 use of force investigations were completed within 10 days.

All 35 of the Level 4 investigations that took longer than 10 days included documented approved extensions. Two of the 35 investigations took 31 days. A Deputy Chief approved the additional day in one of the incidents, but in the other incident, the investigator completed their investigation one day after the extended due date (on day 31) and there was no documented approval by a Deputy Chief for the additional day. Captains approved extensions for the other 33 investigations that took longer than 10 days to complete. The reasons for the extensions were documented in all 35 cases.

Since OIA's prior review, which focused on use of force incidents occurring between July and December 2021, OPD has made improvements in the timeliness of its use of force investigations and in the

³⁵ For two Level 4 investigations, the Lieutenant's approval date was used instead of the date of submission to BFO Admin. Usually these dates are the same, but in a couple of cases, the investigation was approved but incorrectly routed in the system, thereby taking additional time to get to BFO Admin.

documentation of extensions. This inspection reaffirms, however, that the timelines required by DGO K-4 for Level 2 and 3 use of force investigations are unachievable and should be updated. OIA reiterates its recommendation that the Department revise the Level 2 and 3 use of force investigation timelines set forth in DGO K-4.