

# NOPD CONSENT DECREE MONITOR NEW ORLEANS, LOUISIANA



November 29, 2018

202.747.1904 direct

File Number: 37PA-191555

Deputy Superintendent Danny Murphy  
Compliance Bureau, New Orleans Police Department  
714 Broad Street  
New Orleans, LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on Chapter 1.2.4.2 - Search Warrants. The OCDM has no objection to the policy as written.

We believe that Chapter 1.2.4.2 - Search Warrants, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process.  
Very truly

Very truly yours,

David L. Douglass  
For SHEPPARD MULLIN RICHTER & HAMPTON LLP\*  
2099 PENNSYLVANIA AVE., N.W., SUITE 100  
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)  
JUDE VOLEK, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)  
SUNNI LEBEOUF, CITY ATTORNEY (VIA ELECTRONIC MAIL)



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 1.2.4.2

### TITLE: SEARCH WARRANTS

**EFFECTIVE:**

**REVISED:**

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#### PURPOSE

Search warrant requirements are governed by the 4th Amendment to the U.S. Constitution as well as Louisiana Code of Criminal Procedure Articles 161 through 167. This policy governs how the NOPD requires officers to conform to the applicable laws and the manner and content of the documents to be used.

#### POLICY STATEMENT

1. Officers shall not use race, color, ethnicity, national origin, ancestry, creed, religion, gender, gender identity, sexual orientation, economic status, age, cultural group, disability, housing status, or affiliation with any other similar identifiable group in exercising discretion to conduct a warrantless search or to seek a search warrant, except as part of an actual and apparently credible description of a specific suspect or suspects in any criminal investigation.

#### WARRANT DOCUMENTATION

2. Electronic versions of the search warrant forms to be utilized are found on the website <https://cloudgavel.com/>. Members shall utilize their City email address and password to log in.
3. The most current paper forms to be utilized in the event the CloudGavel site is down or Departmental computers are off-line are found on [NOPD Web Applications, Nopd.org, Forms](#) (NOPD Forms **117A - Application for Search Warrant**, **117W - Search Warrant - Order of Search**, and **117R - Warrant Return**).
4. The instructions in this Chapter governing the completion of search warrants apply to both the electronic and the paper versions of the warrant forms.
5. All supervisory members of the Department shall utilize the **Warrant Log** when recording the review and execution of search warrants.
6. The Special Operations Division shall utilize its own planning and after-action reporting mechanism for all search warrants, of any level, executed by SOD, which at a minimum shall be consistent with the planning and after action-reporting requirements detailed in this Chapter.

**WARRANT LOG**

7. Each District/Unit and specialized unit shall document the following in the **Warrant Log**:
  - (a) Each search warrant;
  - (b) The case file (item number) where a copy of such warrant is maintained;
  - (c) The officer who applied for the search warrant;
  - (d) Each supervisor who reviewed and approved or disapproved the application for a search warrant; and
  - (e) Documentation if disapproved, including why it was disapproved and what remedial actions, if any, were taken by the supervisor (disciplinary or training). The supervisor shall document corrective action in the Supervisor Feedback Log (see **35.1.7 – Non-Disciplinary Responses to Minor Violations**) or by initiating a formal disciplinary investigation (see **52.1.1 – Misconduct Intake and Complaint Investigation**) and note the corrective action in the Compliance Log.

**SEARCH WARRANT PREPARATION – OFFICER’S RESPONSIBILITIES**

8. Search warrants for Criminal District Court shall be drafted in CloudGavel or on NOPD form 117A (Application for Search Warrant), 117W (Search Warrant – Order of Search), and 117R (Warrant Return). All forms shall be typed.
9. Using the Application for Search Warrant (Form 117A) and Search Warrant – Order of Search (Form 117W):
  - (a) The affiant/officer shall provide an accurate and clear description of the reasons for the request for the search (i.e., probable cause).
  - (b) The affiant/officer shall particularly describe the person or place to be searched.
  - (c) The affiant/officer shall describe the person or things intended to be seized (items of possible evidence that are the purpose of the search).
  - (d) The affiant/officer shall prepare an affidavit signed under oath and under penalty of perjury.
  - (e) The affiant shall provide the magistrate judge/judge with a truthful and complete affidavit that recites the evidence to establish probable cause.
  - (f) The affiant shall not omit from the application any material evidence or information known at the time it was presented that would vitiate the finding of probable cause. Examples of this type of information are:
    - i. Material facts impacting the credibility of an informant or witness.
    - ii. The bias of an informant or witness.
    - iii. Witness' observations of the crime that are contrary to the affidavit.
    - iv. Material evidence that would significantly undermine witnesses' and victims' identification of suspects.
    - v. Material evidence that would undermine witnesses' and victims' statements of events.
    - vi. Material evidence that witnesses have identified persons other than the suspect as the perpetrator of the crime.
    - vii. Material evidence that a victim or witness has advised the suspect is not the perpetrator of the crime, including that the victim or witness has seen a line-up and advised the suspect is not perpetrator.
    - viii. The existence of material evidence pointing to another perpetrator.
    - ix. Material evidence that the suspect was not at the scene of the crime.
    - x. The existence of material physical evidence or scientific testing that would contradict statements of facts in the application.
10. The investigating officer shall present all search warrant documentation to a reviewing supervisor for approval prior to submission to a Judicial Officer for approval.

11. Search warrants for State criminal charges shall be presented to be signed to the on-duty Magistrate Judge or a Judge of Criminal District Court. No other judicial officers, including Juvenile and Municipal Judges, have authority to issue search warrants.
12. Search warrants shall be prepared and distributed as indicated on the forms.
13. Search warrants are required by statute (C. Cr. P. Art. 163) to be executed prior to the expiration of the tenth day after its issuance, or they become invalid. The only exception is for search warrants under C. Cr. P. Art. 163.1 for the search of a person for body samples (e.g. DNA). These warrants are good for 180 days after their issuance.
14. When the planned execution of a search warrant presents a possibility of injury to officers or others, the officer charged with executing the warrant shall contact EMS and request EMS be available prior to executing a search warrant.
15. The Warrant Return (Form 117R) is to be executed within one day after the execution of the search warrant or within one day of the expiration, by statute, of the search warrant if not executed.

#### **OFFICER'S RESPONSIBILITIES DURING AND AFTER WARRANT EXECUTION**

16. Officers shall not detain non-occupants present at the location where a search warrant is executed for longer than reasonably necessary to secure the area or determine whether they are occupants of the premises being searched, unless the officer has reasonable suspicion that the non-occupant is involved in criminal activity or poses a danger to officer safety.
17. It is the officer's responsibility to document the reasons non-occupants were detained and the duration in their incident report.
18. Investigating officers shall list, in detail, all property seized in connection with the execution of the warrant in the space provided on the Warrant Return (Form 117R).
19. The investigating officer shall provide a receipt for items seized to the presumptive owner of the items or principal occupant of the structure searched. A copy of the receipt shall be made part of the incident report.
20. All procedures governing the collection and preservation of evidence and chain of custody outlined in **Chapter 83.1 – Collection and Preservation of Evidence** shall be followed.
21. The name, sex, age, and address of each person arrested in connection with the execution of the warrant shall be listed on the Warrant Return (Form 117R). All available information concerning wanted individuals arising out of the execution of the warrant shall also be listed on the Warrant Return.
22. All search warrant documentation shall be completed and distributed even if the warrant is not subsequently executed after judicial approval or becomes invalid by not being executed within the time constraints or additional investigation has invalidated the basis of the warrant. In those instances when the warrant is not executed or becomes invalid, the investigating officer shall mark the Search Warrant "**not executed**" and shall distribute as indicated on Search Warrant – Order of Search (Form 117W). The reasons for the non-execution or invalidation of the warrant should be noted in the incident report.

## SUPERVISOR REVIEW OF WARRANT APPLICATION

23. Supervisors shall review each request for a search warrant, including each affidavit or declaration, before it is filed by an officer in support of a warrant application, for:
  - (a) Appropriateness;
  - (b) Legality; and
  - (c) Conformance with NOPD regulations.
24. The supervisor shall assess the information contained in the warrant application and supporting document for authenticity, including:
  - (a) Use of "boilerplate" or "pat" language;
  - (b) Ensuring the information is consistent and detailed; and
  - (c) Probable cause has been established within the document.
25. The supervisor shall take appropriate action to address violations or deficiencies, including recommending non-disciplinary corrective action for the involved officer. The supervisor shall document corrective action in the Supervisor Feedback Log (see **35.1.7 – Non-Disciplinary Responses to Minor Violations**) or by initiating a formal disciplinary investigation (see **52.1.1 – Misconduct Intake and Complaint Investigation**) and note the corrective action in the Compliance Log.
26. The quality and accuracy of search warrants and supportive affidavits or declarations shall be taken into account in officer performance evaluations.

## SUPERVISOR'S RESPONSIBILITY ON SCENE

27. Supervisory responsibility on the scene of all executed search warrants shall be as follows:
  - (a) A ranking officer from the investigating officer's chain of command shall be responsible for on-scene supervision during the execution of a search warrant other than a **no risk** search warrant.
  - (b) Prior to executing a search warrant other than a **no risk** search warrant, the supervisor shall meet with the investigating officer(s) to assess probable cause factors which led to the issuance of the warrant, confirm the target location, coordinate entry strategy, and assist in developing an operational plan for execution of the warrant by considering and planning for the types of factors listed in **Appendix A – Risk and Planning Factors**, as well as assessing the need for additional or specialized resources.

## RISK DETERMINATION, PLANNING, EXECUTION, AND DOCUMENTATION

28. The determination of risk assessment of a particular search is made by the on-scene supervisor working with the case officer. The risk assessment dictates who handles the warrant and the associated documentation requirements.
29. The determination for risk levels of the operational plan for execution of the search warrant falls into three basic categories:
  - (a) **No Risk** – The person, item, vehicle or structure is securely in police custody and control or the documentation/item subject to the warrant is in the custody of an organization or business in a stable, safe environment posing no threat. The scene must be stable and/or secured. Examples include:
    - i. A crime scene that has been completely secured and no suspects or persons other than police personnel are on the scene.
    - ii. The item or vehicle is secured, impounded or in custody at CE&P.
    - iii. The structure is empty of persons or animals other than police personnel.
    - iv. Video from surveillance cameras at a business/residence.

- v. Business records from a company.
  - vi. Buccal swabs only.
- (b) **Moderate Risk** – Everything that is not classified as no-risk or high-risk. Moderate-risk search warrants pose some level of risk but are not so risky as to require the involvement of SOD. If the warrant does not fall into the no-risk or high-risk category, the on-scene supervisor may choose to execute the warrant or may contact SOD for their availability to execute the warrant. Supervisors shall consider the factors in **Appendix A – Risk and Planning Factors** when assessing the risk of executing a search warrant. If the reviewing supervisor has **any concerns** about the risks associated with the execution of the warrant or there are any questions whether the warrant is a high-risk warrant, the supervisor shall contact SOD, advise the on-duty SOD supervisor of the assessment, and inquire if SOD wishes to execute the warrant. The SOD supervisor has the discretion to execute a moderate-risk warrant or leave the execution to the field supervisor and officers. If there is a disagreement about the risk level between on-scene supervisor and the SOD supervisor, the assessment and classification made by SOD shall be considered conclusive. Examples of moderate-risk warrants include:
- i. A search warrant for stolen TVs in an occupied house
  - ii. A search warrant to collect evidence with DNA (other than a buccal swab) associated with a sex crime.
- (c) **High Risk** – Warrants that pose a significant safety risk and require the expert planning, specialized equipment and execution by SOD to maximize safety and effectiveness. Warrants are determined to be high risk by evaluating the automatic high-risk factors or after discussion between the on-scene supervisor and the SOD supervisor. **High-risk warrant are ONLY executed by SOD.** The factors that automatically trigger the high-risk category include:
- i. The suspect is associated with a para-military, terrorist, or violent extremist organization or an identifiable criminal gang.
  - ii. The suspect is known or believed to possess fully automatic weapons or explosives.
  - iii. There are armed counter surveillance personnel present at the site.
  - iv. The site is known or believed to be booby-trapped.
30. For **No Risk** searches, the supervisor shall fill out the **Warrant Log** accurately and completely. No after-action report is needed.
31. For **Moderate Risk** searches that are not executed by SOD, the supervisor shall:
- (a) Fill out the **Warrant Log** accurately and completely.
  - (b) Develop an operational plan for the execution of the search warrant, record the planning on BWC and complete the operational planning section of the **Warrant Log**, noting the video ID, before the search is executed. Some of the factors that should be evaluated and planned for are listed in **Appendix A** of this Chapter.
  - (c) Be present for the execution of the search warrant, and ensure adequate police resources (including EMS) are present to meet the needs identified in the operational planning, including crisis scenarios.
  - (d) Complete an after-action report in the **Warrant Log**.
32. If SOD executes a **Moderate Risk** search warrant, the SOD supervisor is responsible for all documentation required in the SWAT Report application, and the district supervisor is not required to document an operational plan or after-action report in the **Warrant Log**.
33. For **High Risk** searches, the supervisor shall:
- (a) Fill out the **Warrant Log** accurately and completely.
  - (b) Contact the Special Operations Division and advise the on-duty SOD supervisor that he or she is requesting SOD assistance in the execution of a “High Risk”

warrant. The SOD supervisor will review the available information with the on-scene supervisor and will make the final determination of risk. If SOD executes the warrant, the SOD supervisor is responsible for all documentation required in the SWAT Report application. The district supervisor is not required to document an operational plan or after-action report in the **Warrant Log** if SOD executes the warrant.

34. Within 24 hours of the execution of a “moderate risk” search warrant that is not handled by SOD:
- (a) The investigating officer's platoon commander shall meet with the scene supervisor and entry team members to conduct an assessment of operational effectiveness and document the assessment in the **After-Action Report** section of the **Warrant Log**. Relevant assessment topics include:
    - i. The reliability of information used as a basis for the warrant;
    - ii. Procedures used to identify the target location and overall performance of entry team members; and
    - iii. Recommendations to improve performance.
  - (b) As part of the supervisory review, the on-scene supervisor or platoon commander shall document any corrective action from the assessment in the Supervisor Feedback Log (see **Chapter 35.1.7 – Non-Disciplinary Responses to Minor Violations**) or, if necessary, initiate a formal disciplinary investigation (see **52.1.1 – Misconduct Intake and Complaint Investigation**).

**APPENDIX A – Risk and Planning Factors**

Elements to consider and plan for include the following:

1. History of subject(s) of the warrant. Relevant questions include:
  - (a) Violent crime history (homicide, rape, armed robbery, resisting officers, battery on officers, etc.)?
  - (b) Significant drug violator (quantity and type of CDS)?
  - (c) Subject on probation (for what) or parole?
  - (d) Known drug / alcohol abuser (type of drug)?
  - (e) History of mental instability (especially acting out, violent, delusional)?
  - (f) Military or police background or training?
  - (g) Known to possess weapons (type)?
2. Animals on premises which present a risk to officers. (Remember that even “peaceful” breeds of dogs can become protective of their home/master.)
3. Are there physical barriers or geography that need to be considered? (Fences, water, high traffic density roads, other buildings presenting a barrier, or presence of bystanders.)
4. Are cameras visible or known to be present? (Can they be disabled?)
5. Are any other individuals, including children, elderly or handicapped persons, present or likely present? (Consider executing at a different time to reduce risk / trauma.)
6. How likely are the items to be seized capable of being easily removed / moved / destroyed?
7. Is this part of an ongoing criminal enterprise that needs to be quickly interdicted?

Any identified factors should be presented, discussed, and planned for. Adequate police resources (including EMS) should be present to meet the identified need(s), including crisis scenarios.

Remember to always critically evaluate the source of the information being used. Is it reliable? Can it be verified? How perishable is the information? Are there reasonable alternatives to when the warrant should best be executed to maximize safety?