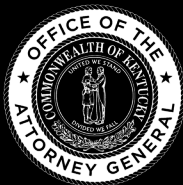




**SEARCH WARRANT
TASK FORCE**



**Report of the Search Warrant Task Force
December 2021**



INDEX

Letter from Attorney General Daniel Cameron.....	01
Overview of the Search Warrant Task Force.....	02
Meetings of the Search Warrant Task Force.....	04
Consensus Recommendations of the Search Warrant Task Force.....	08
Appendices.....	12–60
Appendix 1: Commentary from Members and Committees of the Search Warrant Task Force.....	12
Appendix 2: OAG Executive Order 2021-05.....	19
Appendix 3: Minutes from Meetings of the Search Warrant Task Force.....	23
Appendix 4: Kentucky League of Cities’ Search Warrant Policies and Procedures.....	43
Appendix 5: Kentucky League of Cities’ Risk Assessment Matrix.....	51
Appendix 6: Kentucky League of Cities’ Search Warrant Operations Plan.....	54
Appendix 7: The History of Warrants: Writs of Assistance, James Otis & the Right to be Secure by Professor Luke M. Milligan.....	58



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

December 20, 2021

My friends:

On January 21, 2021, I signed OAG Executive Order 2021-05, creating the Search Warrant Task Force to examine the process for securing, reviewing, and serving search warrants in the Commonwealth. In creating the Search Warrant Task Force, I sought to convene the many interested stakeholders involved in the search warrant process and to provide a public forum in which they—along with the public—could discuss and debate, in a transparent manner, how to make that process safer and more effective for everyone involved.

After many months of meetings, the Search Warrant Task Force has concluded its work and has issued eight recommendations that will bolster public safety and improve overall confidence in the process. These recommendations are the result of hours of deliberation and debate among a diverse group. The Search Warrant Task Force approved each of these recommendations, and I am proud of the effort undertaken to reach such a consensus.

I want to thank the members of the Search Warrant Task Force for their hard work and dedication to this endeavor. I also want to extend my gratitude to our presenters, panel participants, and public commenters for their meaningful contributions. Finally, let me express my appreciation to Eastern Kentucky University, the Kentucky Exposition Center, Western Kentucky University, and the Center for Rural Development for hosting the Search Warrant Task Force as we traveled throughout the Commonwealth to perform our work.

God bless,

A handwritten signature in black ink, appearing to read "D. Cameron".

Daniel Cameron
Kentucky Attorney General

OVERVIEW OF THE SEARCH WARRANT TASK FORCE

In January 2021, Attorney General Daniel Cameron issued an executive order that created the Attorney General’s Search Warrant Task Force. In OAG Executive Order 2021-05,¹ the Attorney General directed that the Search Warrant Task Force would examine the process for securing, reviewing, and serving search warrants in Kentucky.

The membership of the Search Warrant Task Force reflects the Attorney General’s recognition that the people and citizenry of Kentucky have a crucial role to play in the search warrant process. Consequently, representatives of the Search Warrant Task Force include members of the general public, as well as legislators, law enforcement, prosecutors, the Public Advocate, local officials, the NAACP, and members of the judiciary. Following the conclusion of the 2021 General Session of the General Assembly, the Attorney General announced the following members of the Search Warrant Task Force:

1. Denise Bentley, Former Councilwoman for the Louisville Metro Government
Representing citizens at-large
2. Bryan Bogard, Lieutenant at the Covington Police Department
Representing the Kentucky Fraternal Order of Police
3. Phillip Burnett, Jr., Commissioner of the Kentucky State Police
Representing the Kentucky State Police
4. Foster Cotthoff, District Court Judge for the 3rd Judicial District
Representing the Kentucky Court of Justice
5. Charles Cunningham, Circuit Court Judge for the 30th Judicial Circuit
Representing the Kentucky Court of Justice
6. Jeff Gregory, Mayor of Elizabethtown
Representing the Kentucky League of Cities
7. Nicolai Jilek, Commissioner of the Kentucky Department of Criminal Justice Training
Representing the Kentucky Department of Criminal Justice Training
8. Ed Massey, Chairman of the Judiciary Committee
Kentucky House of Representatives
Representing the House Judiciary Committee

¹ See Appendix 2 for OAG Executive Order 2021-05.

9. Ramon McGee, Attorney
Representing the Kentucky Conference of the NAACP
10. Joe Monroe, Chief of the University of Kentucky Police Department
Representing the Kentucky Association of Chiefs of Police
11. David L. Nicholson, Circuit Court Clerk of Jefferson County
Representing the Kentucky Association of Counties
12. Damon Preston, Public Advocate
Representing the Office of the Public Advocate
13. Joseph Ross, County Attorney for Logan County
Representing the Kentucky County Attorneys' Association
14. Rob Sanders, Commonwealth's Attorney for the 16th Judicial Circuit
Representing the Kentucky Commonwealth's Attorneys' Association
15. Walt Sholar, Sheriff of Bullitt County
Representing the Kentucky Sheriffs' Association
16. Elizabeth Thomas, Detective at the Lexington Police Department
Representing the Kentucky Narcotics Officers Association and citizens at-large
17. Whitney Westerfield, Chairman of the Judiciary Committee
Kentucky Senate
Representing the Senate Judiciary Committee
18. George Wright, Distinguished University Research Professor & Senior Adviser
to the President at the University of Kentucky
Representing citizens at-large

MEETINGS OF THE SEARCH WARRANT TASK FORCE

For its first meeting, the Search Warrant Task Force convened at 1:00 p.m. on May 24, 2021, at the Office of the Attorney General at 1024 Capital Center Drive in Frankfort. At that meeting, the Task Force adopted its regular meeting schedule:

1. May 24, 2021, at the Office of the Attorney General in Frankfort
2. June 21, 2021, at Eastern Kentucky University in Richmond
3. July 22, 2021, at Kentucky Exposition Center in Louisville
4. August 11, 2021, at the Office of the Attorney General in Frankfort
5. September 14, 2021, at Western Kentucky University in Bowling Green
6. October 11, 2021, at the Center for Rural Development in Somerset
7. November 15, 2021, at the Office of the Attorney General in Frankfort
8. December 9, 2021, at the Office of the Attorney General in Frankfort

All meetings were conducted beginning at 1:00 p.m. The Search Warrant Task Force rescheduled the October 11 meeting for October 21, and added a special meeting for November 22, 2021, at the Office of the Attorney General in Frankfort.

All meetings of the Search Warrant Task Force were open to the public and the press, and at no time did the Search Warrant Task Force enter executive session. Members of the Search Warrant Task Force had the option to attend meetings in person or via videoconference.

Task Force meetings were livestreamed on the Attorney General's official YouTube channel.² Livestreams of the meetings are archived on the Attorney General's website.³ This website includes links to the agendas, minutes,⁴ and committee minutes from all meetings.

The Search Warrant Task Force invited public comments, and each meeting included a designated time for such comments. The Attorney General's office also established an email address, SearchWarrantTF@ky.gov, at which individuals could submit written comments relevant to the work of the Search Warrant Task Force. No such comments were received.

² The Attorney General's official YouTube channel can be found [here](#).

³ Livestreams of the meetings can be found [here](#).

⁴ See Appendix 3 for minutes of the Search Warrant Task Force meetings.

Summary of the Task Force's Meetings

May Meeting.

The Search Warrant Task Force held its inaugural meeting in Frankfort on May 24, 2021. The meeting included a presentation from Luke M. Milligan, Professor of Law at the University of Louisville's Brandeis School of Law. Professor Milligan's presentation addressed the "History of Warrants: Writs of Assistance, James Otis & the Right to be Secure."⁵

During the meeting, members voted on a regular meeting schedule and committee assignments were made based on members' preferences and expertise. The members established the following committees:

- **Securing Committee.** The Securing Committee agreed to examine the process for obtaining search warrants.
- **Reviewing Committee.** The Reviewing Committee agreed to examine how and by whom search warrants are evaluated and approved.
- **Serving Committee.** The Serving Committee agreed to examine how the service of search warrants could be made safer and more effective for everyone involved.

The members decided that, over the course of the meeting schedule, the committees would present and discuss recommendations for improving the search warrant process in Kentucky, with final recommendations completed on or before the last regularly scheduled meeting.

June Meeting.

The Search Warrant Task Force held its June meeting in Richmond on June 21, 2021. The meeting included a presentation from the Kentucky Department of Criminal Justice Training.



Members met at Eastern Kentucky University for the June meeting.

The Department's presentation addressed "Legal Training on Search and Seizure." The Search Warrant Task Force also heard from Richmond-area stakeholders as part of a panel discussion on the search warrant process. Panelists included B. Scott West, Deputy Public Advocate; Hasan Davis, concerned citizen and former Juvenile Justice Commissioner; Scott McIntosh, Madison County Sheriff's Office;

⁵ See Appendix 7 for an abbreviated version of this presentation.

William O'Donnell, Richmond Police Department; and Kristin Clouse, Assistant County Attorney for Madison County.

July Meeting.

The Search Warrant Task Force held its July meeting in Louisville on July 22, 2021. The Office of Tennessee Attorney General Herbert Slatery III explained the search warrant process in Tennessee. The Louisville Field Office of the Federal Bureau of Investigation presented on FBI search warrant tactics, including the process to secure and serve search warrants. Finally, the Administrative Office of the Courts facilitated a demonstration of the e-search warrant module that it is currently developing for use in Kentucky.

August Meeting.

At its August 11, 2021 meeting, the Search Warrant Task Force selected the Securing Committee to give a presentation in September, the Reviewing Committee to give a presentation in October, and the Serving Committee to give a presentation in November. For the remainder of the meeting, the members of the Search Warrant Task Force met in their respective committees.

September Meeting.

On September 14, 2021, the Search Warrant Task Force met in Bowling Green. The Securing Committee presented to the Search Warrant Task Force at this meeting.



The Search Warrant Task Force met at Western Kentucky University for the September meeting.

October Meeting.

The Search Warrant Task Force held its October 21, 2021, meeting in Somerset. The Reviewing Committee presented to the Search Warrant Task Force at this meeting.

November 15 Meeting.

At the November 15 meeting, the Serving Committee presented to the Search Warrant Task Force. The members also heard from Victoria Lopez—a private citizen who works at Isaiah House—about her experience with a search warrant at a private residence.

November 22 Meeting. On November 22, 2021, the Search Warrant Task Force discussed the recommendations offered by the Securing, Reviewing, and Serving committees and submitted their draft recommendations.

December Meeting.

The Search Warrant Task Force held its December 9, 2021 meeting in Frankfort. The members reviewed a draft of the final report. Members discussed the draft report, including the final recommendations, and voted by consensus to approve the report.

CONSENSUS RECOMMENDATIONS OF THE SEARCH WARRANT TASK FORCE

Based on its extensive work and for the good of the people of Kentucky, the Search Warrant Task Force submits the following recommendations for the consideration of all Kentucky state agencies involved in the search warrant process. The Search Warrant Task Force approved by consensus these recommendations:

Recommendation 1. As soon as feasible, all state and local agencies with the authority to execute search warrants should utilize an electronic platform maintained by the Administrative Office of the Courts for handling those warrants;; paper copies of search warrants should be maintained as back-up.

- a. All law enforcement should receive training on the electronic platform.
- b. To ensure compliance with relevant law, an agency independent of those obtaining and serving search warrants should conduct random audits of the search warrants on the electronic platform.
- c. The electronic platform should be searchable by field and should be capable of generating reports by field. The following areas should be included as fields in the database:
 - i. Search warrant number
 - ii. Agency name
 - iii. Agency ORI number
 - iv. Agency case number
 - v. Peace officer name
 - vi. Peace officer ID number
 - vii. Type of search warrant
 - viii. Request to be sealed (Y or N)
 - ix. Request for authorized entry without notice (Y or N)
 - x. Location
 - xi. Agency reviewer name
 - xii. Agency reviewer ID number
 - xiii. Prosecutorial reviewer name
 - xiv. Prosecutorial reviewer title
 - xv. Approved (Y or N)
 - xvi. Date of approval or rejection
 - xvii. Judicial approver name
 - xviii. Date/time/location of service
 - xix. Officers/agencies involved in service
 - xx. Results

Recommendation 2. Agencies serving search warrants should track the locations at which the warrants are served. Those locations should be regularly published in a manner that is accessible to the public. The format should allow the public to compare the number of search warrants served across various zip codes and regions of the

Commonwealth. The format should not reveal the addresses for which search warrants were sought or obtained.

Recommendation 3. In the absence of an emergency, a prosecutor should review and approve a proposed search warrant before the investigating agency seeks judicial authorization for the warrant.

Recommendation 4. Law enforcement officers should receive search warrant-related training at the beginning of their careers and thereafter should receive updated training regularly, as determined by the Kentucky Department of Criminal Justice Training. The curriculum should include: search warrant form and mandatory components; accurately describing the property to be searched; developing and articulating probable cause; time limitations for probable cause and execution of warrants; officer and citizen safety concerns in execution of warrants; and proper documentation of an executed search warrant.

Recommendation 5. All law enforcement bodies should adopt, enforce, and regularly update written policies and procedures that govern the service of search warrants in their jurisdictions. An example of such policies and procedures can be found at Appendix 4.

Recommendation 6. For every search warrant that is sought, law enforcement officers should consider, along with other relevant factors, the time of day that is most appropriate for service.

Recommendation 7. Whenever the service of a search warrant may impact a minor, child protective services should be notified of that search warrant.

Recommendation 8. Law enforcement bodies in the Commonwealth should adopt some form of a toolkit to guide the serving of search warrants. For a list of the items to be included in such a toolkit, the Search Warrant Task Force proposes that law enforcement bodies adopt some version of the model toolkit found on page 10 of this Report, which include “best practices” that may evolve to fit the needs of various localities.

Model Toolkit

Risk Assessment. The following information should be documented in a risk assessment checklist prior to service of a search warrant. The information should inform the appropriate tactics for serving the search warrant.⁶

- a. General information
 - i. Record the name of the officer and the date and time the assessment was completed
- b. Suspect assessment
 - i. Assess propensity for violence and prior criminal history and list weapons offenses
 - ii. Document substance abuse history, mental state, gang affiliation, etc., if any
 - iii. History of resisting arrest or assault on law enforcement
- c. Offense assessment
 - i. Type of offense
 - ii. Consideration of whether the crime is one against property or a person and whether it involves drugs
 - iii. List any active arrest warrants
- d. Weapons assessment
 - i. Weapons the suspect is known or believed to possess (e.g., rifle, shotgun, handgun, explosives, knives, etc.).
- e. Site assessment
 - i. Geographical barriers, fortifications, surveillance capabilities, etc.
 - ii. Whether children, elderly individuals, or physically disabled individuals are present
 - iii. Pets or other animals
- f. Time assessment
 - i. Time since alleged violation occurred

Pre-Service Briefing. Before serving a search warrant, law enforcement should collect the following information and ensure it is presented to and reviewed by the officers involved in the service of that search warrant. The information should inform the appropriate tactics for serving the search warrant.⁷

- a. Checklist
 - i. Is there a detective or officer currently on scene?
 - ii. Is there a photograph of the suspect and the location at which service will occur?
 - iii. Have the location and the route to that location been verified?

⁶ An example of a risk assessment checklist can be found in the risk assessment matrix at Appendix 5.

⁷ An example of pre-service briefing materials can be found in the operations plan at Appendix 6.

- iv. Has a supervisor approved of service?
- v. Have communications or radio contacts been notified?
- vi. Review the detectives or officers involved and their assignments
- b. Briefing materials
 - i. History of the case leading to the search warrant
 - ii. Suspect details, including photo, identifying marks, known physical or mental concerns, propensity to engage officers physically, weapons available to him/her, or other relevant details
 - iii. Vehicle information, including a photo
 - iv. Location of operation, including route to location and photos of the route/location
- c. Environmental information
 - i. Number of persons expected at scene, fortifications at site, surveillance capabilities, geographic barriers, known pets or other animals, children or elderly or physically disabled individuals, or dangerous chemicals/hazards
 - ii. Entrance the team will use, including an identification of other available entrances
 - iii. Nearest hospital or EMS staging location
- d. Operational plan
 - i. Should include identification of supervisor and available radio channels
- e. Personalized assignments

After Action Review. After service of a search warrant, relevant law enforcement should complete an “After Action Report” that addresses the following:

- a. The location at which the warrant was served, the date and time of service, and associated case numbers
- b. The suspects and individuals encountered
- c. The evidence encountered
- d. A listing of all detectives and officers involved in the service of the search warrant and contents of any debrief conducted
- e. An assessment of the successes and failures of the operation

APPENDIX 1

Individual members and committees of the Search Warrant Task Force provide the following additional commentary:

Securing Committee

The Securing Committee provided aspirational recommendations for consideration by agencies involved in the search warrant process. The Securing Committee recommends:

1. Legislative and law enforcement entities in Kentucky should educate the public on the particulars of the search warrant process, including the history of search warrants and the steps in the search warrant process, as well as rights and remedies available to those who are subject to unreasonable searches.



**THE LAW OFFICES OF
ATTORNEY RAMON MCGEE, ESQ., PSC**

4123 West Broadway, Suite No. 1
Louisville, Kentucky 40211
(502) 851-5461 * RMCGEEINC@HOTMAIL.COM

Hon. Blake R. Christopher
Deputy General Counsel & Director of Legal Policy
for Attorney General Daniel Cameron
Kentucky Department of Law
700 Capital Avenue - Suite 118
Frankfort, KY 40601

30 NOV 21

RE: Recommendations for Final Report of the Kentucky Attorney General's Search Warrant Task Force

Dear Counselor Christopher,

I am contacting you regarding my contribution to the final report to be issued by Kentucky Attorney General Daniel Cameron's Search Warrant Task Force. I want to thank both you and Gen. Cameron for the amazing degree of focused work put into organizing the Task Force and conducting its business. Whatever the ultimate outcome of this effort, it must be said that General Cameron put forth a Herculean effort to address this serious matter and to secure the contribution of a wide range of opinions and concerns. You served as the point man for this process, Counselor Christopher, and we owe much to you in keeping the Task Force organized, informed and active.

As you know, I have the privilege of serving on the Securing subcommittee as a representative of the Kentucky NAACP. Our organization's historical role is to serve as a conduit for the concerns of several marginalized communities regarding the relationship of government officials with the communities impacted by government action and policy. It was for this reason that the Kentucky delegation of the NAACP is proud and honored to participate in Gen. Cameron's Task Force. After discussing the information obtained during the many meetings conduct by the Task Force with my seniors in the NAACP, I can offer three (3) primary recommendations for inclusion in the Final Report:

1. **Electronic submission with digital storage and tracking of all search warrants requested by law enforcement officials throughout the Commonwealth. This includes both residential warrants and those seeking technological data and information (i.e., “technology warrants.)**
2. **Creation of a publicly-accessible graphic search warrant interface to allow for research and review of search warrant applications. This graphic interface should allow for review of search warrant applications on a county-by-county basis with tracking available down to the ZIP Code level. The search and review capability should allow for the identification of requesting law enforcement officers and agencies, reviewing judges, whether the warrant was authorized and whether court litigation resulted from the execution of authorized warrants. Review should be available for all warrants whether granted or rejected; and**
3. **Annual review of the search warrant process by a body charged with making any necessary recommendations.**

We are also in agreement with the recommendations made the Securing subcommittee as submitted by our chair, Ms. Denise Bentley. Please note, however, that I continue my previous **OBJECTION** to the inclusion of recommendations regarding prosecutorial review of search warrant applications prior to the submission to judges for authorization for the reasons previously stated. These reasons include:

1. Prosecutorial review of search warrant applications is not expressly authorized by or even anticipated under any constitutional, statutory or procedural rule applicable to the issuance of search warrants under Kentucky or federal law.
2. Prosecutorial review of search warrant applications invades both the province and independence of the judiciary. This is irrespective of whether judges are “aided” by such a pre-submission review. A clear and distinct boundary should and must be maintained between the executive and judicial branches in the context of search warrant applications; and
3. Prosecutorial review of search warrant applications results in an untenable and misleading filtering of relevant information upon which a judge may rest his or her decision regarding the sufficiency of the evidence described in the search warrant affidavit. The only purpose of prosecutorial review is to ensure the allegations in the affidavit appear more credible to the reviewing judge and thereby increase the likelihood of approval. The affidavits are essentially witness testimony. Under no sound legal principle should the direct observations and collected information of witnesses be reviewed, processed and filtered before it is submitted to an entity charged with making either factual or legal findings. Reviewing judges should not rely on what a prosecutor *tells them* an investigator observed and collected. The judge should and must rely on what the *person actually conducting the investigation* observed and collected. In assessing the credibility of a witness and the reliability of the information he or she provides, HOW a person says something is every bit as important as WHAT the person says. Prosecutorial review of affidavits removes this important criteria from judicial analysis and assessment. I OBJECT to this particular recommendation, and advocate against its inclusion in Gen. Cameron’s Final Report.

Thank You once again for allowing commentary on the important matter of Kentucky’s search warrant process. Please accept these comments in the spirit of cordiality intended. Best wishes for continued health and happiness to you and yours this holiday season. In this I am

Very Truly Yours,

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

RAMON MCGEE, ESQ.

cc. *Marcus Ray*
President, Kentucky NAACP
Members of the Securing Subcommittee of the KY AG Search Warrant Task Force

On behalf of its public defenders and its clients, the Department of Public Advocacy submitted the following recommendations to the Search Warrant Task Force. None of these recommendations were adopted.

1. **Comprehensive Data System** - While the Task Force may recommend a system for tracking search warrants electronically, DPA supports the creation of a robust data system that would reflect accurately the extent and impact of law enforcement search warrant practices. This system should include demographic information (including race) of all targets of search warrants and all individuals present at the time a search warrant is executed, the time of the execution of the warrant, the neighborhood or street at which the warrant was executed, the evidence collected, and the criminal charges, if any, that resulted from the execution. Collection of this data and entry into the tracking system should be required. While the creation of such a system would be very challenging and substantial resources would be required, we believe it is necessary to provide transparency and accountability when the Government engages in a court-sanctioned intrusion into the private property of Kentuckians.
2. **Heightened Scrutiny Warrants** - Not all search warrants are equally intrusive on the citizens of Kentucky and not all search warrants carry the same risks of harm or violence. Those that are the most intrusive or the most dangerous should be subjected to heightened scrutiny. The Fourth Amendment's prohibition on "unreasonable searches and seizures" implies an examination of the circumstances to determine the reasonableness of the proposed search. In light of the limitations in 2021 Senate Bill 4 on "no-knock" warrants, DPA proposes that the same requirements for heightened review apply to especially intrusive or dangerous warrants (i.e., approval by a supervisor or highest-ranking officer, consultation with prosecutor, demonstration of need for search in the manner or at the time proposed).

Heightened scrutiny would be required for:

- a) all searches of private residences,
- b) all searches where children or innocent uninvolved bystanders may reasonably be expected to be present,
- c) all searches that may foreseeably create a substantial risk of physical harm or trauma to others in the vicinity of the area to be searched (i.e., neighbors); or
- d) all searches to be conducted between the hours of 10 p.m. and 6 a.m.

3. **Judicial Consideration of "Reasonableness"** – The Fourth Amendment prohibits "unreasonable searches and seizures," but current practice in Kentucky does not include any review of the "reasonableness" of the search. If a law enforcement provides a sworn statement that meets the standard of probable cause that the proposed search will reveal evidence of criminality, the court signs the warrant without consideration of any other circumstances around the search. Both sitting judges on the Task Force expressed the view that their role is limited to review of probable cause and that any inquiry beyond that would be outside the scope of their judicial function. DPA proposes the adoption of a statute or criminal rule that would establish that a judge reviewing a warrant can and should consider the circumstances of a search, not just the probable cause of criminality.

Relevant considerations could include:

- a) Will children be present at the time of the search?
- b) Will other innocent occupants not reasonably suspected of wrongdoing be present?
- c) Is there a documented history of violence by the subject of the warrant?
- d) Will militarized equipment and tactics be utilized in the execution of the warrant?
- e) Has a prior application to search this location been denied?

4. **Policies against Judge Shopping** – Every judicial district and circuit should be required to have policies and procedures in place to protect against “judge shopping,” where a law enforcement officer can freely select which judge will review his or her search warrant application. Many jurisdictions already have such procedures, formally or informally, through “on call” judges or rotations.
5. **No Trial Commissioner Approval of Residential Searches** – Unelected Trial Commissioners should not be authorized to approve search warrants of personal residences. These should be required to be presented to an elected judge.
6. **Mandatory Presence of Social Workers** – To reduce and mitigate potential trauma to children, all law enforcement agencies should be required to arrange for the presence of social workers within minutes of the execution of a search warrant at any location where children may reasonably be expected to be present. In many instances, social workers are already necessary to provide shelter or care for children but are currently only notified after law enforcement has executed the warrant and identified the need. Notification in advance of the search and arrangement for a worker to be present immediately or within minutes after a raid would better protect children and simplify the procedures during the execution itself.
7. **“Wrong Raids”** - A “Wrong Raid” is when a search warrant is served at a location that is different than the location listed on the search warrant or when circumstances or facts arise during the execution of the warrant that clearly demonstrate that the factual basis of the search warrant application was in error. Every law enforcement agency should be required to adopt policies to address the harms caused by “wrong raids.” Innocent victims who are subjected to erroneous searches should be recompensed for all harms caused by these searches, including property damage, trauma, and all secondary costs, such as reputational harm or other consequences. They bore no fault and should bear no costs. A mandatory review of all “wrong raids” should be conducted by an organization outside the agency that executed the warrant and those responsible should be held accountable. All law enforcement agencies and officers should be required to report all “wrong raids” immediately to an appropriate specified body (ex. Kentucky State Police, Justice and Public Safety Cabinet, Attorney-General’s Office).
8. **Limitations of Residential Searches** – The work of the Task Force has focused on the procedures and practices that are appropriate when law enforcement believes a search will reveal evidence of criminal behavior. DPA believes a more foundational conversation should be conducted, specifically whether there are circumstances when the harm of a legally valid search exceeds the severity of the criminal behavior sought to be stopped. A witness before the Task Force testified

about the ongoing effects of the trauma her children experienced during the search of her home. It is a legitimate question whether the public benefits of a search are sometimes outweighed by the enduring public harms of a violent forceful invasion by those whom the inhabitants thought would protect them. The answer to that question is not easy, but to the extent the report and work of the Task Force presupposes that all searches are valid if a crime has been committed, DPA submits that a broader assessment of warrant practices is needed.

APPENDIX 2

Below is OAG Executive Order 2021-05, which established the Search Warrant Task Force on January 21, 2021.



COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL

DANIEL CAMERON
ATTORNEY GENERAL

CAPITOL BUILDING, SUITE 118
700 CAPITAL AVENUE
FRANKFORT, KENTUCKY 40601
(502) 696-5300
FAX: (502) 564-2894

OAG EXECUTIVE ORDER

2021-05
January 21, 2021

**RELATING TO THE ESTABLISHMENT OF THE
ATTORNEY GENERAL'S SEARCH WARRANT TASK FORCE**

WHEREAS, the Fourth Amendment to the United States Constitution guarantees that the “right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized”; and

WHEREAS, in enacting the Fourth Amendment the Framers sought to protect the safety and liberty of citizens by ensuring that searches and seizures would be justified by probable cause, limited in scope, and subject to independent judicial review; and

WHEREAS, Section 10 of the Kentucky Constitution similarly provides that the “people shall be secure in their persons, houses, papers and possessions, from unreasonable search and seizure; and no warrant shall issue to search any place, or seize any person or thing, without describing them as nearly as may be, nor without probable cause supported by oath or affirmation”; and

WHEREAS, together the “Fourth Amendment to the United States Constitution and Section 10 of the Kentucky Constitution assure the people that they will be free from all unreasonable search and seizure,” *Combs v. Commonwealth*, 965 S.W.2d 161, 163 (Ky. 1998); and

WHEREAS, the liberties protected by the Fourth Amendment and Section 10 of the Kentucky Constitution belong to all people; and

WHEREAS, recent events, including the death of Ms. Breonna Taylor, have prompted questions related to the methods by which search warrants are secured, reviewed, and executed; and

WHEREAS, the guarantees of the Fourth Amendment and Section 10 of the Kentucky Constitution should be applied with the same rigor and care in each of the Commonwealth's 120 counties; and

WHEREAS, careful review and examination of the methods by which search warrants are secured, reviewed, and executed within the Commonwealth is periodically appropriate; and

WHEREAS, this review should be completed in a manner that is inclusive, that recognizes the many interested stakeholders, and that balances the interests of law enforcement, the peace and security of each community, and the personal liberties protected by the Constitutions of the United States and the Commonwealth:

NOW, THEREFORE, I, Daniel Cameron, Attorney General of the Commonwealth of Kentucky, by virtue of the authority vested in me by KRS 15.020, KRS 15.200(2), KRS 15.700, and the common law, do hereby Order and Direct the following:

- I. The Attorney General’s Search Warrant Task Force (“Task Force”) is hereby created as an advisory body within the Department of Law.
- II. The Task Force shall have the following duties:
 - A. To examine, in detail, the processes for securing, reviewing, and executing search warrants within the Commonwealth;
 - B. To examine training needs for those involved in securing, reviewing, and executing search warrants within the Commonwealth;
 - C. To provide for public input on matters relating to search warrants;
 - D. To identify best practices for the effective execution of search warrants with an eye toward the safety of all involved; and
 - E. To make recommendations for potential improvements to the process of securing, reviewing, and executing search warrants within the Commonwealth.
- III. The Task Force shall consist of the following individuals:
 - A. The Attorney General or his designee;
 - B. Two representatives of the Kentucky Court of Justice appointed by the Chief Justice of the Supreme Court of Kentucky;
 - C. The Chairs of the Judiciary Committees of the Kentucky House of Representatives and the Kentucky Senate;
 - D. One person appointed by the Fraternal Order of Police of Kentucky;
 - E. One person appointed by the Kentucky Sheriff’s Association;
 - F. One person appointed by the Kentucky Association of Chiefs of Police;
 - G. The Commissioner of the Kentucky State Police or his designee;
 - H. One person appointed by the Kentucky Commonwealth’s Attorneys’ Association;
 - I. One person appointed by the Kentucky County Attorney’s Association;
 - J. The Public Advocate or his designee;
 - K. One person appointed by the Kentucky League of Cities;
 - L. One person appointed by the Kentucky Association of Counties;
 - M. One person appointed by the Kentucky Conference of the NAACP;
 - N. The Commissioner of the Kentucky Department of Criminal Justice Training or his designee; and
 - O. Three citizens representing the Commonwealth at large appointed by the Attorney General.

- IV. The Task Force shall be chaired by the Attorney General, or his designee, and shall meet as often as may be necessary to conduct the review called for in this Executive Order. The Task Force shall conclude its work no later than December 31, 2021.
- V. Any member who misses three consecutive meetings shall be removed, and a replacement shall be named in the same manner as provided in Paragraph III.
- VI. Members of the Task Force shall receive no compensation for their service but shall be reimbursed for travel costs pursuant to the then-prevailing state rate.

So ORDERED this the 21st day of January, 2021



DANIEL CAMERON, Attorney General
Commonwealth of Kentucky

APPENDIX 3

Below are the minutes from each of the meetings of the Search Warrant Task Force. The Search Warrant Task Force reviewed and unanimously approved these minutes.



Search Warrant Task Force
May 24, 2021
1:00 p.m. ET
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky

Minutes

- I. Meeting Called to Order
 - a. The meeting was called to order by Attorney General Daniel Cameron.
- II. Roll Call
 - a. Members Present: Denise Bentley, Bryan Bogard, Phillip Burnett Jr., Foster Cotthoff, Charles Cunningham, Jeff Gregory, Nicolai Jilek, Ed Massey, Ramon McGee, Joe Monroe, David L. Nicholson, Damon Preston, Joseph Ross, Rob Sanders, Walt Sholar, Elizabeth Thomas, Whitney Westerfield, and George Wright
- III. Opening Comments
 - a. Attorney General Cameron provided opening comments.
- IV. Member Introductions
 - a. Members introduced themselves.
- V. Presentation
 - a. Luke Milligan, Professor of Law, University of Louisville Louis D. Brandeis School of Law, presented to the Task Force on the history of search warrants. The presentation was entitled "History of Warrants: Writs of Assistance, James Otis & the Right to be Secure."
- VI. Meeting Schedule
 - a. The Task Force agreed on the following meeting dates and locations for the remainder of 2021: June 21, Eastern Kentucky University, Richmond, Kentucky; July 22, Kentucky Exposition Center, Louisville, Kentucky; August 11, Capital Complex East, Frankfort, Kentucky; September 14, Western Kentucky University, Bowling Green, Kentucky; October 11, Center for Rural Development, Somerset, Kentucky; November 15, Capital Complex East, Frankfort, Kentucky; December 9, 2021, Capital Complex East, Frankfort, Kentucky. All meetings will be held at 1:00 p.m. ET. Bentley made a motion to accept the proposed meeting dates. Bogard seconded the motion. The motion was approved unanimously.
- VII. Committee Assignments
 - a. Securing Committee
 - i. Denise Bentley
 - ii. Charles Cunningham

- iii. Jeff Gregory
 - iv. Nicolai Jilek
 - v. Ramon McGee
 - vi. David L. Nicholson
 - b. Reviewing Committee
 - i. Foster Cotthoff
 - ii. Ed Massey
 - iii. Joe Monroe
 - iv. Damon Preston
 - v. Joseph Ross
 - vi. Rob Sanders
 - c. Serving Committee
 - i. Bryan Bogard
 - ii. Phillip Burnett Jr.
 - iii. Walt Sholar
 - iv. Elizabeth Thomas
 - v. Whitney Westerfield
 - vi. George Wright
 - d. The Attorney General read the committee assignments. Bentley requested to move to the securing committee. The transfer was made. To keep the committee numbers even, Sholar volunteered to move to the serving committee.
- VIII. Public comments
 - a. There were no public comments.
- IX. Sholar made a motion to adjourn. Bentley seconded the motion. The motion was approved unanimously.

SEARCH WARRANT TASK FORCE

Search Warrant Task Force
June 21, 2021
1:00 p.m. ET
Eastern Kentucky University
225 Park Drive
Richmond, Kentucky 40475

Minutes

- I. Meeting Called to Order
 - a. The meeting was called to order by Attorney General Daniel Cameron.
- II. Roll Call
 - a. Members present: Denise Bentley, Bryan Bogard, Phillip Burnett Jr., Foster Cotthoff, Jeff Gregory, Nicolai Jilek, Ed Massey, Ramon McGee, David L. Nicholson, Damon Preston, Joseph Ross, Rob Sanders, Walt Sholar, Elizabeth Thomas, Whitney Westerfield, and George Wright.
 - b. Attorney General Cameron introduced representatives in attendance from the Administrative Office of the Courts (AOC), Director Laurie K. Dudgeon and Deputy Director Jason L. McGinnis. Director Dudgeon provided an update to the task force on AOC's work to implement changes resulting from Senate Bill 4.
- III. Presentation
 - a. The Kentucky Department of Criminal Justice Training provided a presentation entitled "Legal Training on Search and Seizure." The presentation was given by Douglas Barnett, Supervisor, Legal Training Section; and Shannon West, Supervisor, Critical Skills Section.
- IV. Panel Presentation
 - a. Richmond-area stakeholders involved in the search warrant process participated in a panel discussion. Panelists included: B. Scott West, Deputy Public Advocate for the Kentucky Department of Public Advocacy; Hasan Davis, former Juvenile Justice Commissioner; Scott McIntosh, Madison County Sheriff's Office; William O'Donnell, Richmond Police Department; and Kristin Clouse, Assistant County Attorney for Madison County.
- V. Committees
 - a. Task Force Members broke off into committee assignments. The committees are Securing, Reviewing, and Serving.
- VI. Attorney General Cameron reconvened the main meeting of the Task Force.
 - a. Bogard made a motion to approve the minutes from the May 24, 2021 meeting. Ross seconded the motion. The motion was approved unanimously.



**SEARCH WARRANT
TASK FORCE**

- VII. Subcommittee Reports
 - a. Jilek provided an update for the Securing committee.
 - b. Cotthoff provided an update for the Reviewing committee.
 - c. Burnett provided an update for the Serving committee.
- VIII. Public Comments
 - a. There were no public comments.
- IX. Jilek made a motion to adjourn. Sanders seconded the motion. The motion was approved unanimously.

SEARCH WARRANT TASK FORCE

Search Warrant Task Force
July 22, 2021
1:00 p.m. ET
Kentucky Exposition Center
937 Phillips Lane, Room B-101
Louisville, Kentucky

Minutes

- I. Meeting Called to Order
 - a. The meeting was called to order by Attorney General Daniel Cameron.
- II. Roll Call
 - a. Members Present: Denise Bentley, Bryan Bogard, Phillip Burnett Jr., Foster Cotthoff, Charles Cunningham, Jeff Gregory, Nicolai Jilek, Ed Massey, Ramon McGee, Joe Monroe, Damon Preston, Joseph Ross, Rob Sanders, Walt Sholar, Elizabeth Thomas, Whitney Westerfield, and George Wright.
- III. Announcements
 - a. Attorney General Cameron discussed the availability of travel reimbursement for members.
 - b. Attorney General Cameron reviewed the public speaking policy.
- IV. Presentation by the Office of the Tennessee Attorney General
 - a. Representatives from the Tennessee Attorney General's Office presented on the search warrant process in Tennessee. The presentation was given by:
 - i. Leslie Price, Senior Deputy Attorney General, Criminal Justice Section;
 - ii. Nick Spangler, Deputy Attorney General, Criminal Justice Section; and
 - iii. Scott Wilder, Legal Instructor, Tennessee Law Enforcement Training Academy.
- V. Presentation by the Federal Bureau of Investigations (FBI) Louisville Field Office
 - a. Representatives from the FBI Louisville Field Office presented on the search warrant process for the FBI, including the process to secure and serve search warrants. The presentation was given by:
 - i. Supervisory Special Agent Tim Beam, Chief Division Counsel of the Louisville Field Office; and
 - ii. Brian Jones, Special Agent in Charge, Louisville Field Office.
- VI. Presentation by the Administrative Office of the Courts (AOC)

SEARCH WARRANT TASK FORCE



- a. Representatives from Lexis Nexis (representing AOC) gave a demonstration of the E-Search Warrant Module. The presentation was given by:
 - i. Steve Roadcap, Lexis Nexis Risk Solutions; and
 - ii. Troy Belcher, Lexis Nexis Risk Solutions
- VII. Old Business
 - a. Approval of Minutes
 - i. Cunningham made a motion to approve the minutes from the June 21, 2021 meeting. Sholar seconded the motion. The motion was approved unanimously.
- VIII. Public Comments
 - a. There were no public comments.
- IX. New Business
 - a. Task Force Members broke off into committee assignments. The committees are Securing, Reviewing, and Serving.
- X. Attorney General Cameron reconvened the main meeting of the Task Force.
- XI. Committee Reports
 - a. Bentley provided an update for the Securing committee.
 - b. Cotthoff provided an update for the Reviewing committee.
 - c. Sholar provided an update for the Serving committee.
- XII. Motion to adjourn
 - a. Sanders made a motion to adjourn. Cunningham seconded the motion. The motion was approved unanimously.

SEARCH WARRANT TASK FORCE

Search Warrant Task Force
August 11, 2021
1:00 p.m. ET
Office of the Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky

Minutes

- I. Meeting Called to Order
 - a. The meeting was called to order by Attorney General Daniel Cameron.
- II. Roll Call
 - a. Members Present: Denise Bentley, Bryan Bogard, Foster Cotthoff, Charles Cunningham, Jeff Gregory, Ramon McGee, Joe Monroe, David L. Nicholson, Damon Preston, Mike Rogers (proxy for Phillip Burnett Jr.), Joseph Ross, Rob Sanders, Elizabeth Thomas, and George Wright.
- III. Opening Comments
 - a. Attorney General Cameron provided opening comments and reminded attendees about the public speaking policy.
- IV. Old Business
 - a. Approval of Minutes
 - i. Bentley made a motion to approve the minutes from the July 22, 2021 meeting. Ross seconded the motion. The motion was approved unanimously.
- V. New Business
 - a. October meeting
 - i. The October 12, 2021 meeting is rescheduled because of a conflict. Members were polled regarding new dates for an October meeting. October 21, 2021 was the best date for the group. Cunningham made a motion to set a new meeting schedule, to include the new October meeting date. Cotthoff seconded the motion. The motion was approved unanimously.
 - b. Committee meetings
 - i. Task Force members broke off into committee meetings. The committees are Securing, Reviewing, and Serving.
 - c. Committee reports

SEARCH WARRANT TASK FORCE

- i. Bentley provided an update for the Securing committee. Judge Cunningham will do a presentation at next month’s meeting to talk about recommendations for the General Assembly.
 - ii. Cotthoff provided an update for the Reviewing committee. The committee is considering inviting a panel of local officials to present at the October meeting and discuss challenges that search warrants present for smaller jurisdictions.
 - iii. Thomas provided an update for the Serving committee. The committee is considering assembling a toolkit to assist law enforcement when serving a search warrant.
 - d. Committee dates
 - i. Attorney General Cameron reminded the committees that each will be responsible for presenting at an upcoming meeting: Securing, September; Reviewing, October; Serving, November.
- VI. Public comments
 - a. There were no public comments.
 - VII. Thomas made a motion to adjourn. Sanders seconded the motion. The motion was approved unanimously.

SEARCH WARRANT TASK FORCE

Search Warrant Task Force
September 14, 2021
1:00 p.m. ET/12:00 p.m. CT
Western Kentucky University
Downing Student Union, Room 3023
Bowling Green, Kentucky

Minutes

- I. Meeting Called to Order
 - a. The meeting was called to order by Attorney General Daniel Cameron.
- II. Roll Call
 - a. Members Present: Denise Bentley, Bryan Bogard, Phillip Burnett Jr., Foster Cotthoff, Charles Cunningham, Jeff Gregory, Nicolai Jilek, Ed Massey, Ramon McGee, Joe Monroe, David L. Nicholson, Damon Preston, Joseph Ross, Rob Sanders, Walt Sholar, Elizabeth Thomas, Whitney Westerfield, and George Wright.
- III. Opening Comments
 - a. Attorney General Cameron provided opening comments and reminded attendees about the public speaking policy.
- IV. Old Business
 - a. Approval of Minutes
 - i. Mr. Ross made a motion to approve the minutes from the August 11, 2021 meeting. Ms. Bentley seconded the motion. The motion was approved unanimously.
- V. New Business
 - a. Presentation from the Securing Committee
 - i. Mr. Cunningham presented on behalf of the committee. He stated that the committee saw their role as two-fold. First, their role is to determine where there might be problems with how law enforcement sought search warrants in the past. Second, their role is to make recommendations on ways the process could be improved going forward. Mr. Cunningham recognized that it is difficult to gather information from available data on search warrants. He stated that Mr. McGee conferred with institutions of higher learning about collaborating to compile the data, but limitations of time, resources, and available data pose challenges.
 - ii. The committee's recommendations include:

SEARCH WARRANT TASK FORCE



1. Seeking, approving, and storing search warrants in a digital format to help facilitate subsequent review. The committee noted that the e-warrants system looks promising and should eventually be implemented across the Commonwealth for search warrants as it is now for bench warrants.
 2. Some degree of prosecutorial oversight of law enforcement's efforts to secure search warrants.
 3. A boundary on the age of the information relied upon to support the application for a warrant.
 4. A presumptive window of time to execute a search warrant; both as to how far into the future and as to during what hours of the day or night.
 5. Recommending a permanent review panel created to routinely analyze the data on warrants sought, approved (or not), and served in the preceding months. The concept would be similar to the External Child Fatality Review Panel.
- b. Committee meetings
 - i. Task Force members broke off into committee meetings. The committees are Securing, Reviewing, and Serving.
 - c. Committee reports
 - i. Ms. Bentley provided an update for the Securing committee. She asked if the Task Force would consider extending the deadline past December 31, 2021, for the group to complete its work. Attorney General Cameron asked staff to add this discussion to the agenda for the October meeting.
 - ii. Sholar provided an update for the Serving committee. The committee believes that the search warrant process is not well publicized, and that efforts should be made to educate the public about the process. The committee is considering developing best practices for serving a search warrant to present to the larger Task Force.
 - iii. Mr. Cotthoff provided an update for the Reviewing committee. The committee will present at the October meeting and plans to share recommendations at that time.
- VI. Public comments
- a. There were no public comments.
- VII. Ms. Bentley made a motion to adjourn. Mr. Nicholson seconded the motion. The motion was approved unanimously.

SEARCH WARRANT TASK FORCE

Search Warrant Task Force
October 21, 2021
1:00 p.m. ET
Center for Rural Development
2292 US-27 #300
Somerset, Kentucky

Minutes

- I. Meeting Called to Order
 - a. The meeting was called to order by Attorney General Daniel Cameron.
- II. Roll Call
 - a. Members Present: Denise Bentley, Bryan Bogard, Foster Cotthoff, Charles Cunningham, Ed Massey, Ramon McGee, Joe Monroe, David L. Nicholson, Damon Preston, Mike Rogers (proxy for Phillip Burnett Jr.), Joseph Ross, and Walt Sholar.
- III. Opening Comments
 - a. Attorney General Cameron provided opening comments and reminded attendees about the public speaking policy. The Attorney General noted that he would have to leave the meeting early and that Blake Christopher would serve as his proxy.
- IV. Old Business
 - a. Approval of Minutes
 - i. Bogard made a motion to approve the minutes from the September 14, 2021 meeting. Cotthoff seconded the motion. The motion was approved unanimously.
- V. New Business
 - a. Presentation from the Reviewing Committee
 - i. Cotthoff provided an introduction for the Reviewing Committee's presentation. He noted that the committee members would be presenting recommendations that represent their different perspectives.
 - ii. Monroe provided feedback from a law enforcement perspective. He noted that there is currently no formal data for tracking search warrants and no identified procedure for the review of search warrants. He recommended the development of a statewide electronic database to manage the search warrant process. He noted that the database should be field searchable and should be randomly audited. He also stated that Kentucky peace officers should receive training on the use of the new database.

SEARCH WARRANT TASK FORCE



- iii. Cotthoff provided feedback from a judicial perspective. He noted that judges are neutral magistrates when it comes to search warrants and that prosecutorial review of search warrants prior to contact with a judge is preferable. He also stated that an e-warrant system would streamline the process and make things quicker, easier, and more efficient. He further stated that he does not believe judge shopping is an issue in most jurisdictions.
 - iv. Ross provided feedback from a prosecutorial perspective. He stated that smaller counties need a prosecutor that can be “on call” to review search warrants. He noted that in Logan County law enforcement officers start the search warrant process to help with efficiency and timeliness. He also stated that cell phone connectivity is an issue in some rural communities and that those issues would need to be addressed in an e-warrant system.
 - v. Preston provided feedback from the public advocate’s perspective. He stated that objective data about search warrant practices is essential and that it must not fall exclusively on one body. He also stated that data should be aggregated and be publicly available and searchable. Preston also stated that some searches should be subjected to heightened scrutiny, including residential searches, any searches where children or innocent bystanders may reasonably be expected to be present, any search that may foreseeably create a substantial risk of physical harm or trauma to others in the vicinity of the area searched, and searches to be conducted between the hours of 10 p.m. and 6 a.m. He also stated that in addition to considering whether probable cause exists, a court should consider other factors in determining whether the proposed search and seizure may be unreasonable. He further stated that every jurisdiction should be required to have a procedure to prevent forum shopping.
 - vi. Massey provided feedback from the legislative perspective. He stated that the legislature must not be reactionary and make sweeping changes that would affect many. Instead, he said that all parties must be empowered during this process and that the Task Force should clearly define what is needed and then discuss with the General Assembly how to fund it.
- b. Committee Meetings
 - i. Task Force members broke off into committee meetings. The committees are Securing, Reviewing, and Serving.
 - c. Committee Reports
 - i. The Securing Committee did not provide a report.

SEARCH WARRANT TASK FORCE



- ii. Cotthoff provided an update for the Reviewing Committee. The committee is interested in developing a list of templates to provide uniformity in the ewarrant process. The committee is also interested in continuing its work once the work of the larger Task Force is complete, either as a working group or as a permanent committee.
 - iii. Bogard provided an update for the Serving Committee. Only two members were able to attend the committee meeting, so no business was decided. The committee is interested in meeting on another date to prepare for the upcoming November presentation.
 - d. Meeting Dates
 - i. Christopher noted that at the last meeting, members requested a discussion about additional meeting dates being added. Members present discussed the possibility of adding a new meeting date after the November 15th meeting. Christopher agreed to send out a poll to members to gauge the best date for the new meeting.
- VI. Public comments
 - a. There were no public comments.
- VII. Ross made a motion to adjourn. Bogard seconded the motion. The motion was approved unanimously.

SEARCH WARRANT TASK FORCE

Search Warrant Task Force
November 15, 2021
1:00 p.m. ET
Capital Complex East
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky

Minutes

- I. Meeting Called to Order
 - a. The meeting was called to order by Attorney General Daniel Cameron.
- II. Roll Call
 - a. Members Present: Denise Bentley, Bryan Bogard, Foster Cotthoff, Charles Cunningham, Jeff Gregory, Nicolai Jilek, Ed Massey, Ramon McGee, Joe Monroe, David L. Nicholson, Damon Preston, Mike Rogers (proxy for Phillip Burnett Jr.), Joseph Ross, Walt Sholar, Elizabeth Thomas, Whitney Westerfield, and George Wright.
- III. Opening Comments
 - a. Attorney General Cameron provided opening comments and reminded attendees about the public speaking policy.
- IV. Old Business
 - a. Approval of Minutes
 - i. Bogard made a motion to approve the minutes from the October meeting. Cunningham seconded the motion. The motion was approved unanimously.
- V. New Business
 - a. Presentation from Ms. Victoria Lopez
 - i. Ms. Victoria Lopez with Isaiah House provided a presentation about her experience with a search warrant. Ms. Lopez was in a residence where a no-knock search warrant was served at approximately 11:30 p.m. Ms. Lopez shared that based on her experience, she would recommend that, when possible, a search warrant be executed without children present. She also recommended that a social worker be present during the service of warrant when children are present. Ms. Lopez answered questions about her experience.
 - b. Presentation from the Serving Committee

SEARCH WARRANT TASK FORCE



- i. Thomas provided an introduction for the Serving Committee’s presentation and stated that the committee had several considerations for the larger Task Force, including:
 - 1. Training of law enforcement officers on search warrants, both at the beginning of their careers and annually/biannually through the remainder of their careers.
 - 2. Providing greater information to the public on the process for serving search warrants.
 - 3. Developing some written policies and procedures for all law enforcement agencies in the Commonwealth. These written procedures would include a “Search Warrant Toolkit” that utilizes a threat assessment, pre-execution briefing, and after-action review.
- ii. The Task Force discussed the recommendations.
- c. Committee Meetings
 - i. Attorney General Cameron provided committee instructions and reminded the committee members that they should be prepared to present recommendations to the Task Force at the November 22, 2021, meeting. Attorney General Cameron stated that recommendations adopted by the Task Force should be adopted unanimously but that there will be an opportunity for individual members to include additional comments.
 - ii. Task Force members broke off into committee meetings. The committees are Securing, Reviewing, and Serving.
- d. Committee Reports
 - i. Bogard provided an update for the Serving Committee. He said the committee met and came to agreement on recommendations that will be provided to the larger Task Force.
 - ii. Bentley provided an update for the Securing Committee. She said the committee will provide recommendations that will be categorized as mandatory, best practices, and aspirational.
 - iii. Massey provided an update for the Reviewing Committee. He said the committee will have three recommendations for consideration by the Task Force and may also draft a resolution for consideration by the General Assembly.
- e. Meeting Dates

SEARCH WARRANT TASK FORCE



- i. There will be a special meeting of the Task Force on Monday, November 22, 2021, at 1:00 p.m. ET at Capital Complex East, 1024 Capital Center Drive, Suite 200, Frankfort, Kentucky.
- VI. Public comments
 - a. There were no public comments.
- VII. Bogard made a motion to adjourn. Massey seconded the motion. The motion was approved unanimously.

SEARCH WARRANT TASK FORCE

Search Warrant Task Force
November 22, 2021
1:00 p.m. ET
Capital Complex East
1024 Capital Center Drive, Suite 200
Frankfort, Kentucky

Minutes

- I. Meeting Called to Order
 - a. The meeting was called to order by Attorney General Daniel Cameron.
- II. Roll Call
 - a. Those present were: Denise Bentley, Bryan Bogard, Foster Cotthoff, Charles Cunningham, Jeff Gregory, Nicolai Jilek, Ed Massey, Ramon McGee, Joe Monroe, David L. Nicholson, Damon Preston, Phillip Burnett Jr., Joseph Ross, Walt Sholar, Elizabeth Thomas, Whitney Westerfield, and George Wright.
- III. Opening Comments
 - a. Attorney General Cameron provided opening comments and reminded attendees about the public speaking policy.
- IV. Old Business
 - a. Approval of Minutes
 - i. Bogard made a motion to approve the minutes from the November 15 meeting. Bentley seconded the motion. The motion was approved unanimously.
- V. New Business
 - a. Committee Meetings
 - i. Attorney General Cameron provided committee instructions and reminded the committee members that they will present recommendations today.
 - ii. Task Force members broke off into committee meetings. The committees are Securing, Reviewing, and Serving.
 - b. Committee Reports
 - i. Bentley provided a report from the Securing Committee. The Committee put forth mandatory recommendations, best practices, and aspirational items.
 1. Mandatory Recommendations
 - a. State and local agencies with the authority to execute search warrants should move to an electronic platform for handling those warrants.

SEARCH WARRANT TASK FORCE



2. Best Practices
 - a. Develop a platform that allows the public to review data on search warrants served on residences and businesses.
 - b. Develop a standard threat assessment form that can be used across the Commonwealth.
 - c. Institute prosecutorial review for search warrants.
3. Aspirational Items
 - a. Consider developing a public awareness campaign about search warrants.
 - b. Create an ongoing body to routinely review the search warrant process.
- ii. Reviewing Committee
 1. Cotthoff provided a report for the Reviewing Committee. The committee's recommendations include:
 - a. Agencies serving search warrants should track the locations at which the warrants are served. The locations should be published and be made accessible to the public.
 - b. Each agency should have policies for obtaining a search warrant.
 - c. Institute prosecutorial review of search warrants.
- iii. Serving Committee
 1. Thomas provided a report for the Serving Committee. The committee's recommendations include:
 - a. Institute training for law enforcement at the beginning of an individual's career and then require continuing education throughout the remainder of his/her career.
 2. Law enforcement should develop written order policies and procedures for search warrants.
 3. Create a toolkit for law enforcement to follow during the search warrant process. Toolkit should include a threat assessment.
- iv. Additional recommendations
 1. The Task Force discussed other recommendations that were not put forth by a committee but were discussed in prior meetings, including:
 - a. Notifying child services when a minor is present during the service of a search warrant. The Task Force decided to include this recommendation in its draft report.

SEARCH WARRANT TASK FORCE



- b. Creating a recommendation to address the staleness of information. The Task Force decided not to include this recommendation in its draft report.
 - c. Considering the time of day that a search warrant is executed. The Task Force decided to include this recommendation in its draft report.
 - v. The Task Force will vote on the final recommendations at the December meeting.
- VI. Public comments
 - a. There were no public comments.
- VII. Cunningham made a motion to adjourn. Preston seconded the motion. The motion was approved unanimously.

APPENDIX 4

Below are the Kentucky League of Cities' Search Warrant Policies and Procedures.



Policy # Search and Seizure: Residences	Related Policies: Search Warrant Execution; SWAT
<i>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only be for the basis of a complaint by this department for nonjudicial administrative action in accordance with the laws governing employee discipline.</i>	
Applicable State Statutes:	
KACP Accreditation Standard: 1.4	
Date Implemented:	Review Date: 07/28/21

- I. **Purpose:** The purpose of this policy is to direct officers and supervisors with respect to home entries.
- II. **Policy:** The policy of this department is to protect and serve the constitutional rights of all citizens when conducting home entries while balancing the needs of law enforcement in solving crime for the protection of the community.
- III. **Definitions:**
 - A. **Probable Cause** (search): Facts and circumstances based upon observations or information that would lead a reasonable law enforcement officer to believe that evidence of crime exists and that the evidence exists at the place to be searched.
 - B. **Exigent Circumstances Entry:** Entry of a dwelling without a warrant due to some existing emergency that would not allow an officer time to get a warrant.
 - C. **Search Incident to Arrest:** A search of the arrestee and their immediate area of control that is allowed whenever a custodial arrest is made.
 - D. **Consent:** The voluntary granting of permission for an officer to enter an area that is protected by the Fourth Amendment, by a person who has a reasonable appearance of authority over that area.
 - E. **SWAT Dynamic Entry:** The utilization of a special team (e.g., SWAT, ERU, etc.) when executing a high-risk warrant (that which meets high-risk matrix criteria) entering to control a barricaded subject, or similar high-risk event.

IV. Procedure: At the outset officers are directed that there are only three lawful methods upon which he or she may enter a person's dwelling. These methods include a warrant (arrest or search-with differing rules for each), exigent circumstances, or consent.

A. Risk Assessment Matrix: Unless exigent circumstances exist, officers shall compile a risk assessment matrix prior to planning any entry of homes or other buildings.

B. Officer Identification: Officers/detectives should be clearly identified as law enforcement officers to include but not be limited to police jackets, ball caps, wrist bands, patches, and badges. It is recommended that tactical vests have police marked on the front and back. Tactical vests should also have a badge and name tag. Law enforcement officers executing a no-knock warrant are to be equipped with clearly visible insignia on any protective equipment or clothing that clearly identifies the name of the agency that employs the members of the special weapons and tactics team or special response team.

C. Knock and Announce: Prior to considering a forced entry into a dwelling, officers must knock at the entrance and announce their identity and purpose.

- 1) Officers must wait a reasonable time before making entry after the knock and announcement. In determining how long an officer must wait before forcing entry following the knock and announcement, officers should consider the nature of the item sought and how long it would take to destroy the item.

D. Issuance of No-Knock Entry Warrant: No arrest warrant or search warrant shall be issued authorizing entry without notice unless the court finds by clear and convincing evidence that:

1) Crime

- a. The crime alleged is a crime that would qualify a person, if convicted, as a violent offender under KRS 439.3401.
- b. The crime alleged is a crime designated in KRS 525.045 (Terrorism), 527.200 (Use of a Weapon of Mass Destruction in the First Degree), 527.205 (Use of a Weapon of Mass Destruction in the Second Degree), or 527.210 (Use of a Weapon of Mass Destruction in the Third Degree).

2) Evidence

- a. The evidence sought may give rise to the charge of a crime that would qualify a person, if convicted, as a violent offender under KRS 439.3401.
- b. The evidence sought may give rise to a charge of a crime designated in KRS 525.045 (Terrorism), 527.200 (Use of a Weapon of Mass Destruction in the First Degree), 527.205 (Use of a Weapon of Mass Destruction in the Second Degree), or 527.210 (Use of a Weapon of Mass Destruction in the Third Degree).

- 3) As established by facts specific to the case, giving notice prior to entry will endanger the life or safety of any person result in the loss or destruction of evidence sought that may give rise to a charge of a crime that would qualify a person, if convicted, as a violent offender under KRS 439.3401 or may give rise to a charge of a crime designated in KRS 525.045 (Terrorism), 527.200 (Use of a Weapon of Mass Destruction in the First Degree), 527.205 (Use of a Weapon of Mass Destruction in the Second Degree), or 527.210 (Use of a Weapon of Mass Destruction in the Third Degree).

- 4) The law enforcement officer seeking the warrant has obtained the approval of his or her supervising officer or has the approval of the highest-ranking officer in his or her law enforcement agency.
- 5) The law enforcement officer seeking the warrant has consulted with the commonwealth's attorney or county attorney for the jurisdiction for which the warrant is sought or with an assistant Commonwealth's attorney or assistant county attorney for the jurisdiction for which the warrant is sought.
- 6) The law enforcement officer seeking the warrant discloses to the judge, as part of the application, any other attempt to obtain a warrant authorizing entry without notice for the same premises, or for the arrest of the same individual.

E. Time of Entry: The warrant authorizes that the entry without notice occur only between the hours of 6:00 a.m. and 10:00 p.m. except in exigent circumstances where the court makes the findings set forth in subsection (a) and (b) above and the court further finds by clear and convincing evidence that there are substantial and imminent risks to the health and safety of the persons executing the warrant, the occupants of the premises, or the public that justify the entry without notice occur during other hours designated by the court.

F. Judge's Signature on Warrant: If the warrant is not issued electronically pursuant to KRS 455.170, the warrant includes the legibly printed name and signature of the judge.

G. No-Knock Warrant Execution: A warrant allowing entry without notice shall be executed by law enforcement officers who are members of a special weapons and tactics team or special response team, or another established team or unit trained and tasked with resolving high-risk situations and incidents, who have received appropriate training in the execution of arrest and search warrants authorizing entry without notice.

- 1) In counties having a population of less than ninety thousand (90,000), when, after reasonable inquiry by the law enforcement officer seeking the warrant, members of the special weapons and tactics team or special response team are not available to timely execute the warrant and the court finds by clear and convincing evidence that the risks to the health and safety of the persons executing the warrant, the occupants of the premises, or the public are greater if the warrant is not timely executed, the court may approve the execution of the warrant without members of a special weapons and tactics team or special response team.

H. Law Enforcement Officers Executing No-Knock Warrant Equipment: Law enforcement officers executing a no-knock warrant are to be equipped with body-worn cameras, or, in counties having a population of less than ninety thousand (90,000), equipped with other audio-visual or audio-recording devices issued by the government, and shall record the entirety of the execution of the warrant with a recording device that meets the requirements of this paragraph.

- 1) Law enforcement officers executing a no-knock warrant are to be equipped with clearly visible insignia on any protective equipment or clothing that clearly identifies the name of the agency that employs the members of the special weapons and tactics team or special response team.

I. Other Required Personnel On-Site for Execution of No-Knock Warrant:

- 1) A warrant allowing entry without notice shall be executed in the presence of a uniformed law enforcement officer.
- 2) A warrant allowing entry without notice shall be executed with a certified or licensed paramedic or emergency medical technician in proximity and available to provide medical assistance, if needed.

J. Change of Condition: If there is a change of condition that reduces the level of threat under the risk assessment matrix and removes the need for a no-knock entry, the normal knock and announce procedures should be followed. (Should notify communications and document in report.)

K. Arrest Warrant, Felony or Misdemeanor: Officer may enter the home of the subject of an arrest warrant in cases where the officer also has reasonable suspicion to believe the subject is home.

1) Knock and Announce Rules Apply

2) Search Incident to Arrest

- a. Officers may, after the subject is arrested, search the room where the subject was arrested.
- b. Officers may conduct a protective sweep in conjunction with an arrest, limited to those places where a person could be, in cases where the officers have reasonable suspicion to believe someone else on the premises poses a danger to the officer.

3) Officers must obtain a search warrant before entering the residence of a third party in order to search for the subject of an arrest warrant unless exigency or consent exists.

L. Search Warrants: Officers must have probable cause to believe that evidence of crime exists and must have probable cause to believe it will be located at the place to be searched.

1) Knock and Announce Rules Apply: All necessary and reasonable force may be used to effect an entry into any building or part thereof to execute a search warrant if, after verbal notice or a good faith attempt at verbal notice by the officer executing the warrant that states the officer's authority and purpose the officer may enter without delay:

- a. He or she is refused admittance;
- b. The person or persons on the premises refuse to acknowledge the verbal notice or the presence of persons inside the building is unknown to the officer; or
- c. The building or property is unoccupied.

- 2) The search warrant itself must particularly describe the place to be searched and the items to be seized.
- 3) The scope of a search warrant is limited by information (e.g. information developed indicates that items are stored in a specific location). Scope may also be limited by the size of the item (e.g., if looking for a stolen piano, one would not open a bureau drawer).
- 4) All search warrants must be executed in a reasonable manner.
 - a. Search warrants shall be executed within a reasonable time of issuance.
 - b. If the search warrant is related to the search for alcoholic beverages held in violation of the law, the search warrant must be executed immediately.
 - c. Search warrants may be executed at any reasonable time.
 - d. An inventory of all items seized shall be compiled by two officers and a copy shall be left at the scene.
 - e. A duplicate copy of the warrant shall be left with any person from whom items are seized or if no one is present, a copy shall be left in a conspicuous place at the residence.
- 5) **Detention and Search of Persons on the Premises:** When executing a search warrant, the officer may reasonably:
 - a. Detain: Officers may detain any person who is present at the scene of a **residence where officers are executing a search warrant**. Where officers are executing a dangerous search warrant, all persons present may be handcuffed while officers conduct their search. If at any time it is determined that the person restrained in handcuffs is not dangerous, the handcuffs should be removed. Officers must be able to articulate the dangerous circumstances present which justified the handcuffing. **This does not apply to commercial businesses.**
 - b. Frisk: When the officer has reasonable suspicion, based upon specific facts, to believe that the individual present is armed and poses a threat.
 - c. Search: To prevent the disposal or concealment of any item particularly described in the warrant where there is probable cause, based upon specific facts, to believe that the person to be searched is in possession of said item.

M. Consensual Entry: Officers may enter a dwelling based upon the knowing and voluntary consent of a person who appears to have authority over the premises.

- 1) **Consent must be voluntary and knowingly made. Consent given by juveniles will receive additional scrutiny by the court including evaluation of the juvenile's age, maturity, background, education, and juvenile justice experience.**
- 2) Consent does not need to be in writing, but written documentation or recording will assist officers in proving that the consent was voluntary.
- 3) Officers may not enter a dwelling in a case where a co-occupant is present and objecting to the entry.

- 4) The scope of a consensual entry and search rests with the consenting party who controls both how long the entry and search may last as well as what locations within the dwelling may be searched.

N. Exigent Entry: An officer may enter a dwelling based on emergency circumstances with probable cause when any of the following circumstances exist:

- 1) Hot pursuit of a fleeing felon.
- 2) Misdemeanors **do not** categorically qualify as an exigent circumstance for purposes of warrantless home entry.
- 3) Invoking the exigent circumstances exception to enter a home “should rarely be sanctioned when there is probable cause to believe that only a minor offense” has been committed.
- 4) “The flight of a suspected misdemeanant does not always justify a warrantless entry into a home.” In some cases, it will but those must be justified by something more than simple flight from apprehension. The seriousness of the crime, the nature of the flight, and surrounding facts need to be taken into consideration.
- 5) Imminent destruction of evidence for any crime which is a jailable offense.
- 6) Need to prevent suspect’s escape.
- 7) Risk of danger to police or others inside or outside the dwelling.
- 8) Officers may enter a dwelling without a warrant when they have an objectively reasonable basis for believing that an occupant is seriously injured or imminently threatened with such an injury.
- 9) Once exigency has ended, officers should secure the scene and obtain a search warrant.
- 10) The fact that an area is a crime scene does not create automatic exigency. There is no crime scene exception to the warrant requirement.

O. SWAT Dynamic Entry: The determination as to whether a SWAT dynamic entry is necessary is done through the completion of a risk assessment matrix.

- 1) Due to the nature of executing this **SWAT** high-risk entry, extreme care must be utilized in order to ensure that only the proper residence is entered. When considering the use of a **SWAT** dynamic entry, the following precautions must be followed:
 - a. A supervisor must be present and take responsibility for reviewing and approving the warrant as well as the affidavit prior to the execution of the warrant.
 - b. If utilizing an informant for a narcotics purchase, an investigator must ensure that the informant has been observed at all possible times.
 - c. The officer supervising the special team will conduct a drive by of the location with the lead investigator using the legal description on the warrant to locate the residence to ensure that the residence to be entered is verified with the warrant. If any discrepancies exist or if the house cannot be located by the description on the warrant, the warrant shall not be served.

- d. Prior to execution of the warrant, all available databases will be checked (telephone, electric, real estate, etc.) to ensure that the residence matches the suspect of the investigation.
- e. A written operations plan will be prepared identifying the specific mission for the team, intelligence considered, a description of the targeted subjects and location, and the specific tasks assigned to each member of the entry team.
- f. The lead investigator will accompany the special team during the execution of the warrant and direct officers to the doorway of the residence to ensure that the correct residence is entered.
- g. Upon completion of the operation, photographs of all entryways into the building shall be taken to document both damage and lack of damage.

Highlight Key:

Yellow - Latest changes the model policy committee made.

Green - New updates regarding KRS on no-knock warrants.

Light blue - Changes to exigent entry relating to new court case.

**After adopting model policy, highlights and highlight key can be deleted.*

APPENDIX 5

Below is the Kentucky League of Cities' Risk Assessment Matrix.



RISK ASSESSMENT MATRIX

Risk assessment is based on facts and circumstances stated in the affidavit for the arrest or search warrant, knowledge of the target location and the criminal history of the suspect(s). A copy of the warrant should be attached to the Risk Assessment Matrix.

NOTE: The supervising officer must consider the presence of non-involved persons and children when determining the manner of any entry into a residence.

Section 1 Search Warrant Considerations		
Points	Facts	Score
0	Warrant for Property Crime	
1	Warrant for Crime against Person	
2	Warrant for Major Drug Possession/Dist.	
Section 2 Arrest Warrant Considerations		
Points	Facts	Score
0	Warrant for Property Crime	
1	Warrant for Crime against Person	
2	Warrant for Major Drug Possession/Dist.	
Section 3 Subject History Considerations		
Points	Facts	Score
0	History of Property Crimes	
1	History of Crimes against Persons	
2	Subject Statements regarding intent to resist	
3	Criminal History of Resistance or Drug Offenses	
4	Criminal History of Violence	
10	Criminal History of Firearms Use	

Section 4 Location Considerations		
Points	Facts	Score
1	Location of Service requires Minimal Force	
2	Location has Surveillance by Suspects	
3	Presence of Hazardous Materials	
3	Location requires use of Ram/Sledgehammer	
10	Location is Fortified requiring Specialty Breaching	
10	Location guarded by dog(s)	
Section 5 Firearms Considerations		
Points	Facts	Score
2	Firearms are readily available to Suspect	
3	Previous history of location involved weapons or involved violence to officers	
4	Subject known to carry and has been arrested for unlawful possession of firearm	
6	Subject is known to be always armed	
8	Subject has history of Assault on Officers or Resisting Arrest when confronted by Law Enforcement	
25	Automatic weapon is possessed by Suspect or was used by Suspect in the commission of prior crime	

Circle only one provision in each of the 5 sections. The circled provision should be the highest known provision that is applicable to the subject location.

Points	
0-14	Service/Execution may be handles by the unit supervisor.
15-20	Consultation with SWAT Commander is optional; warrant service requires approval of District/Unit Commander or designee
21-24	Consultation with SWAT Commander is required ; warrant service requires approval of District/Unit Commander or Designee
25 or More	SWAT Team is required for service/execution of warrant; warrant service requires approval of District/Unit Commander and notification of Commanding Officer of Supporting Units

**Signature of Highest Ranking Officer
of Review**

Date

APPENDIX 6

Below is the Kentucky League of Cities' Search Warrant Operations Plan.



Search Warrant Operations Plan



Location (Legal Description)	Division	Case #
Physical Description		
Review of Search Warrant		
Date:	Time:	
Lead Officer:	Supervisor:	
Verification of Search Warrant Location		
Date:	Time:	Drive-By:
Lead Officer:	Supervisor:	
Pre-Service Meeting		
Date:	Time:	
Assignments:		
Supervisor:	Breaching Officer:	
Video/Photo Officer:	Logging Officer:	
Evidence Custodian:		
Warrant Served		
Date:	Time:	Radio Channel:
Supervisor:	Type of Entry:	
Officer Identification		
Raid Jackets	Wrist Bands	Badge Displayed
Uniform Officers	Police Ball Caps	Other:
Officers Involved in Warrant Service		
Search Warrant Pre-Execution Checklist (Check off Completed Items)		
Photo of Suspect	Criminal History	Diagram of Location
Warrant Checks	Photos of Breach Point (Pre/Post-breach)	
Notification of Division Commander or Agency (Time/Name of CO):		
Notification of Location to Communications		
Environmental Concerns:	Children	Elderly
	Pets	Other
Hazards	Risk Assessment Matrix	HIDTA Check
	EMS Notified	
Personal Protective Equipment Used		
Vests	Taser	Mace
Gloves	Ballistic Helmet	Other
Attachments:		
AIR	Injury Report	Risk Assessment Matrix (Mandatory)

Supervisor Approval _____ Date _____
Note* All forms are to be submitted together.

S.W.A.T. Warrant Service Team

Arrest / Search Warrant Information Sheet



Date:		Time:	
Location of Service:		Division:	
Requested Date of Service:		Requested Time of Service:	
Request for SWAT submitted by:		Pager/Cell #	
Lead Detective/Officer:			
Type of Warrant	Arrest Warrant		Search Warrant
Suspect Information			
Suspect Name:			
Race:	Sex: M F	Date of Birth:	
Occupants Information			
Number:	Males	Females	Children
Special Needs, Handicap, Medical Alert, Other:			
Location Information			
Weapons	Yes No Unknown	Type/Location:	
Explosives	Yes No Unknown	Type/Location:	
Dogs	Yes No Unknown	Type/Location:	
Fortifications, Security Doors, Security Windows			Yes No
Fortification Other	Yes No	Type/Location:	
Photos Taken	Yes No	Taken By:	
Video Taken	Yes No	Taken By:	
Surveillance Prior to Service-Officer:			Division/Unit
Radio Channel for Surveillance:		Cellular Phone:	Pager:
Description of Suspects			
Suspect 1:			
Suspect 2:			
Suspect 3:			
Suspect 4:			
Suspect 5:			
Description of Others who may be Present			
Non-Party 1:			
Non-Party 2:			
Non-Party 3:			
Non-Party 4:			
Prior Known Criminal History at Location			
Documentation			
SWAT/Warrant Service Team Supervisor:			
Roll Call Date:		Time:	Roll-Call Location:
Supervisory Initials:		Page:	

Search Warrant Operations Plan



Diagram in detail the location of warrant service in the space provided below. The exterior should include all doors, windows, detached garages and outbuildings. The interior should include furniture placement and the location of any known weapons or explosives. Use separate forms for the interior and exterior of the structure. If photos are available they may be used in place of diagrams. Exterior Photos should be attached in most cases. (Attach Copies of Photos where available)

Notes:

Map Prepared by Officer:	Code: 57
Supervisor Initials:	Page:

APPENDIX 7

Below is an abbreviated version of the presentation that Professor Luke M. Milligan provided to the Search Warrant Task Force on May 24, 2021. Professor Milligan is Professor of Law at the University of Louisville's Louis D. Brandeis School of Law.

THE HISTORY OF WARRANTS: WRITS OF ASSISTANCE, JAMES OTIS & THE RIGHT TO BE SECURE

The American political ideals of individual liberty, equality under law, and self-government were forged in large part through colonial resistance to government searches and seizures. Armed with “general warrants,” royal agents in the 17th and 18th centuries regularly conducted searches absent individualized suspicion. In the American colonies, general warrants came in the form of “writs of assistance,” which allowed customs officials to search for contraband goods without cause. The writs of assistance became a source of great controversy by the mid-18th century, earning the ire of the colonists, most notably in Boston.

The writs of assistance were scheduled to expire in 1761 following the death of King George II. When customs officials applied for new writs, a group of Boston merchants brought suit, contesting their legality. James Otis, Jr., was initially tasked with defending the writs, but ultimately resigned, switched sides, and represented the merchants. Criticizing the writs of assistance in no uncertain terms, Otis argued:

- “A man’s house is his castle; and while he is quiet, he is as well guarded as a prince in his castle.”
- “Every householder in this province will necessarily become less secure than he was before this writ had any existence among us.”
- “It is a power that places the liberty of every man in the hands of every petty officer.”

Although the merchants lost the case and the new writs of assistance were issued, Otis’s summation had cracked the foundation of the British Empire. Watching from the audience was a young lawyer named John Adams, who characterized Otis’s speech as the prelude to American independence: “Then and there was the first scene of the first act of opposition to the arbitrary claims of Great Britain. Then and there the child Independence was born.” The U.S. Supreme Court has since described Otis’s condemnation of the writs as “perhaps the most prominent event which inaugurated the resistance of the colonies to the oppressions of the mother country.”

Fifteen years after Otis’s attack on the writs of assistance, the American colonists revolted. The Declaration of Independence alludes to general warrants, charging the Crown with sending “swarms of Officers to harass our people, and eat out their substance.” In short order, most of the new state constitutions expressly prohibited general warrants. For example, the Virginia Declaration of Rights provides “[t]hat general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive and ought not to be granted.”

In 1791, the U.S. Bill of Rights was ratified. Drafted by James Madison, the Fourth Amendment states: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.” In 1792, the guarantees of the Fourth Amendment were incorporated, nearly word for word, into the Kentucky Constitution.

As a structural matter, the text of the Fourth Amendment is notable for its two distinct clauses. The first clause is pitched at a high level of abstraction: the people have a right to be “secure” against unreasonable searches and seizures. The second is more concrete: a direct ban on general warrants. The two clauses relate to one another through the term “secure.” The express constitutional requirements for warrants—probable cause, oath, and particularity—instill in the population a threshold level of confidence, or *security*. In this way, the second clause serves the first. As Justice John Marshall Harlan II explained: “Interposition of a warrant requirement is designed not to shield ‘wrongdoers,’ but to secure a measure of privacy and a sense of personal security throughout our society.” Justice Robert Jackson observed that “one need only briefly to have dwelt and worked among a people possessed of many admirable qualities but deprived of these rights to know that the human personality deteriorates and dignity and self-reliance disappear where homes, persons and possessions are subject at any hour to unheralded search and seizure by the police.”

It has been well over two centuries since the ratification of the Fourth Amendment. Over time, shifts in law, custom, and technology have rendered us—we the people—less secure against unreasonable searches and seizures. Yet at the same time, our legal system has proved resilient, capable of reaction and necessary reform in the service of our constitutional right to be secure. To this point, we should note the adoption of the exclusionary rule, as well as the U.S. Supreme Court’s Brandeisian turn—equating electronic surveillance with physical searches.

The Kentucky Attorney General’s task force on search warrants is a continuation of this longstanding constitutional tradition. Once again, we the people have convened to take account of our government—and when necessary institute reforms—in order to uphold our hard-won, constitutional right to be secure against unreasonable searches and seizures.