Until MPD publishes such data, the Council should impose a moratorium on the use of canines for both apprehension and drug- and gun-detection purposes. During the moratorium, canine use should be limited to search-and-rescue and explosive ordnance detection.

II. EXECUTING SEARCH WARRANTS JUSTLY AND SAFELY

12. Recommendation: **The Council should amend the DC Code, and MPD should modify its policies, to ensure that MPD officers execute search warrants lawfully, safely, and in a manner that minimizes harm to people and property. Specifically:**

12 (a) Recommendation: The Council should enact legislation, similar to the Search Warrant Execution Accountability Act of 2016, that would:

A. Require officers to establish by a preponderance of the evidence, and demonstrate that they made all reasonable efforts to verify, that the suspect whose property is the subject of a warrant application either owns the residence or lives there.

B. Require both MPD and the Deputy Auditor for Public Safety (see Section VIII) to conduct a full investigation of any search conducted at the wrong premises (either a wrong address or an address where the suspect does not actually live) and publish a report of its findings regarding the causes of the error.

12 (b) Recommendation: The Council should ban no-knock warrants. Additionally, the Council should limit quick-knock raids, in which officers enter a home with a warrant immediately after knocking and announcing their presence, by: (1) requiring approval from the pertinent commander; and (2) (a) requiring at least 30 seconds to elapse with no response or a refusal to permit entry after officers knock-and-announce at least three times; or (b) requiring the warrant to authorize entry within 30 seconds after officers knock-and-announce based on a judicial finding that waiting 30 seconds would jeopardize officer, occupant, or bystander safety or compromise evidence; or (c) allowing immediate entry after officers knock-and-announce, based on exigent circumstances that arise after issuance of the warrant.

12 (c) Recommendation: The Council should repeal DC Code 23-524(g), and MPD should correspondingly amend General Order 702.03, specifically Section VII.F.8.b., e., f. & g., to make clear that it is not automatically lawful to pat down or search everyone at a location subject to a search warrant: officers still need reasonable suspicion that a person is armed and dangerous before patting down that person for weapons, and any full search of a person still must be justified either by the warrant itself or by a recognized exception to the warrant requirement ("probable cause" is not an exception).

MPD should provide all officers and recruits immediate training on this subject and should discipline officers for conducting unlawful pat-downs and searches during search warrant executions.

12 (d) Recommendation: The Council should amend DC law and MPD should amend General Order 702.03 to (1) prohibit gun-pointing and handcuffing during the execution of search warrants, unless there is an articulable immediate threat to the safety of officers or others; and (2) include special precautions to be taken during the execution of search warrants when older adults or children are present.

12 (e) Recommendation: MPD should amend General Order 702.03 to expressly (1) direct officers to minimize disruption and damage to property during the execution of a search warrant; and (2) prescribe discipline for officers who unnecessarily or unjustifiably damage property.

12 (f) Recommendation: The Council should authorize immediate compensation for property destroyed or damaged, or pets harmed or killed (unless harmed or killed in response to the pet attacking an officer), during the execution of a search warrant, regardless of whether contraband is found or an arrest is made during the search.

Discussion

Searching one's home is among the most intrusive and terrifying of all law enforcement actions. When police obtain a warrant to search a home, they must ensure that they are searching the right place, and they must execute the warrant with restraint. The law demands it. Police legitimacy depends on it.

In 2016, *The Washington Post* published a feature length article detailing an exhaustive investigation of 2,000 search warrants executed by MPD between 2013 and 2015. The *Post* found that in 284 searches, or 14%, officers had obtained a warrant for a residence without observing criminal activity there. The homes were almost exclusively in Black neighborhoods. MPD officers simply arrested an individual on the street for drugs and guns, sought an address for the person, and then justified a search warrant for that address based on their "training and experience." According to the *Post,* "[t]he language of the warrants gave officers broad leeway to search for drugs and guns in areas saturated by them and to seize phones, computers and personal records." The *Post* found that, in a dozen of these cases, MPD searched the wrong residence. It also found that officers frequently engaged in aggressive tactics—breaking down doors, pointing guns, handcuffing innocent occupants, knocking over furniture, destroying personal belongings, and more.[427]

The suite of recommendations here seeks to ensure that, to the greatest extent possible, MPD diminishes the harms that can result from the execution of search warrants.

Avoiding mistaken searches. In 2016, in response to the *Post* investigation, former Councilmember David Grosso introduced legislation to prevent officers from seeking and executing search warrants at the wrong residence. The legislation would have required officers to exercise due diligence to ensure that they were requesting a warrant for the correct residence, and would have provided compensation for individuals victimized by warrants executed at the wrong residence.[428] To ensure that officers get it right when they seek search warrants, and to curb the dubious practice of obtaining warrants based on nothing more than a street arrest and an address matching the arrestee's, the Council should revive and enact former Councilmember Grosso's proposed legislation. Additionally, it should fortify the legislation by requiring MPD and the deputy auditor for public safety (a position recommended in Section VIII), to investigate and publish independent reports on all cases in which officers seek and execute a warrant at the wrong address. With such investigations, MPD can engage in the self-examination necessary to correct its errors and prevent them from recurring.

Eliminating no-knock warrants and limiting quick-knock raids. The tragic killing of Breonna Taylor in Louisville last year highlighted the dangerous potential for unnecessary violence associated with no-knock warrants and quick-knock raids. No-knock warrants permit officers to enter a home without first knocking and announcing their presence. In quick-knock raids, officers enter the home either as, or immediately after, they knock and announce.

Nationwide, between 2010 and 2016, at least 94 people died during no-knock raids, including 13 law enforcement officers.[429] Whatever the perceived tactical advantages of raiding a home using the element of surprise, they are far outweighed by the risk of potentially fatal harm to occupants and officers alike.[430] Moreover, no-knock and quick-knock raids effectively eliminate the presumption of innocence—they are based on probable cause, a low bar—and are carried out disproportionately against Black people.[431]

In the wake of Breonna Taylor's death, the city of Louisville passed an ordinance banning no-knock warrants and strictly limiting quick-knock raids.[432] Other jurisdictions, including Oregon and Virginia, have similarly banned no-knock warrants.[433]

MPD maintains that it does not seek no-knock warrants, but its policies do not prohibit them. It is unclear whether MPD officers conduct quick-knock raids. To eliminate these dangerous tactics and leave no doubt about their impropriety, the Council should ban no-knock warrants and strictly limit quick-knock raids.

Ensuring lawful pat-downs and searches. The ordinary constitutional rules for protective pat-downs and warrantless searches of individuals are not relaxed during the execution of a search warrant—they apply with equal force. A protective pat-down during the execution of a search warrant for a particular location is lawful only if an officer has individualized reasonable articulable suspicion that the person to be patted down at the location has committed a crime and is armed and dangerous. A full search of an individual performed during the execution of a search warrant for a particular location is lawful only if the search warrant authorizes a search of the individual or under one of the established exceptions to the warrant requirement—e.g., incident to a lawful arrest or with voluntary consent. A search based solely on probable cause to believe a person at the location possesses evidence of a crime is ***not*** lawful; there is no such thing as a warrantless "probable cause search," including at a location subject to a search warrant.

DC Code 23-524(g) and MPD General Order 702.03 contain language that does not match constitutional requirements, as they provide officers executing search warrants with more authority than the Fourth Amendment allows to pat down and search individuals present at the location being searched. In particular, DC Code 23-524(g) unconstitutionally: (1) authorizes officers to conduct a full pre-arrest search of a person—not just a protective pat-down—"to the extent reasonably necessary to protect [themselves] or others from the use of any weapon which may be concealed upon the person;" and (2) authorizes officers to conduct a full pre-arrest search of a person "to the extent reasonably necessary to find property enumerated in the warrant which may be concealed upon the person." In *Ybarra v. Illinois* (1979), the Supreme Court invalidated application of a very similar law. Consistent with the DC statute, MPD General Order 702.03 improperly: (1) mandates protective pat-downs of all non-arrested occupants "when necessary" during warrant execution (VII.F.8.b.); (2) authorizes full pre-arrest searches of occupants upon articulation of probable cause based on, e.g., "gestures or conduct indicative of criminal conduct" or "information that [the occupant] is involved in the criminal activity on which the search warrant is based"(VII.F.8.e.); (3) authorizes full pre-arrest searches of occupants when "reasonably necessary to ensure safety and/or find contraband or property enumerated in the search warrant" (VII.F.8.f.); and (d) mandates full pre-arrest searches when an officer "can articulate a reasonable belief that the occupants were involved in the illegal activity on which the warrant was based" (VII.F.8.g.). Like the DC statute, none of these policy provisions are constitutional.

To comply with constitutional standards, the Council should repeal DC Code 23-524(g); MPD should amend General Order 702.03; and MPD should train its officers to comply with the revised policies.

Prohibiting unnecessary intimidation and degradation. Aggressive tactics are common in the execution of search warrants in the District. As the *Post* investigation found, officers often barge into homes with guns pointed at people's faces and then handcuff them while conducting the search. Similar tactics are used elsewhere. For instance, in mistakenly raiding one home last year, Chicago Police handcuffed a naked woman as she got out of the shower, and in mistakenly raiding another home three times, they broke down the door with a battering ram and trained guns on young children.[434]

Routinely using terrifying, humiliating tactics is both unnecessary and counterproductive. Unless an occupant of the targeted residence poses an immediate threat of harm, such tactics should not be used. In particular, unless the actions of an occupant cause officers to reasonably fear for their safety or the safety of others, officers should not point their guns at the occupant or restrain the occupant in handcuffs. Such needlessly menacing tactics induce trauma and undermine community trust. This is particularly true when the occupant is a senior, who might be physically less capable of withstanding the stress, or a youth, who is even more likely to be traumatized.

Limiting damage to property. In recognition of the needless property damage sometimes wrought by the execution of search warrants, certain police departments have adopted policies that require officers to execute search warrants in a manner that minimizes damage and disruption. Baltimore Police Department, for example, mandates that "[a]ll searches shall be conducted in a thorough and professional manner with minimal damage or disruption to the location searched. To minimize property damage and the need for forcible entry, and where doing so would not place BPD members at heightened risk, members shall attempt to lawfully obtain keys, combinations, or access codes when a search of locked property is anticipated."[435] Similarly, the San Marcos, Texas Police Department requires officers to exercise "reasonable care…to minimize damage to property" when executing warrants.[436]

These policies not only preserve property, they also prevent the erosion of community trust in policing. As one researcher noted, "the potential for negative interactions is likely heightened during more intrusive police interactions, and negative experiences have a greater influence on legitimacy views than positive ones."[437]

MPD General Order 309.03 (Forcible Entries/Property Damage Caused by MPD Police Action) states that "the policy of [MPD] is to minimize damage to the property of citizens when making forcible entries." There is, however, no general policy requiring officers to minimize damage to property inside a residence during the execution of search warrants, whether accomplished by forcible entry or consent. MPD should adopt one.

In addition, the Council should fully and promptly enact a law to compensate District residents whose property is damaged or destroyed during searches. General Order 309.03 provides that MPD will compensate residents for property damage caused by erroneous forcible entries (i.e., damage to an entryway during the search of the wrong address) and will also advise residents on how to file a claim for property damage resulting from actions other than a forcible entry. However, as the *Post* reported, MPD and the District do not readily honor this policy. Residents often have to fight for reimbursement and, even when successful, receive less than what they claim to be owed, long after the damage occurs.

Former Councilmember Grosso proposed a law that would have required reimbursement for individuals whose property is damaged during searches at the wrong address. Minnesota has passed a similar law, which requires "just compensation" for innocent people whose property is damaged during searches.[438] Former Councilmember Grosso's bill and laws like Minnesota's are a good start. But the District should go further. Even when a search warrant is executed at the *correct* address, and even when contraband is found, the home's residents do not forfeit their property rights. They deserve to be compensated for property that is damaged or destroyed during any search, as

General Order 309.03 itself implies. Furnishing them the right to compensation should serve to incentivize officers to execute search warrants with the appropriate restraint.

13. **Recommendation: For occupied residences and businesses, the Council should prohibit search warrants that are either solely for drugs or based solely on allegations of drug activity.**

Discussion

The *Post*'s findings are and continue to be consistent with the experience of both District residents and criminal defense lawyers: MPD officers frequently justify a search warrant for a home not based on observations or reports of criminal activity in the home or on any other investigation, but instead based on nothing more than a street arrest for drugs, an address lookup for the arrestee, and the officers' asserted "training and experience" that more drugs will be found at the address. As the *Post* found, search warrants issued on this basis often turn up no evidence, and even when evidence is found, it is often just a meager amount of drugs.

The War on Drugs has been ineffectual. But as Michelle Alexander explains in *The New Jim Crow*, and numerous others have recounted, it has also been harmful, particularly to Black communities, spawning three decades of mass incarceration that state and federal lawmakers have begun to rethink and roll back. Given the combination of the intrusiveness of police searches of people's homes and the ineffectiveness and harmfulness of drug enforcement policies, the Council should restrict MPD's authority to obtain search warrants solely for drugs or based solely on evidence of a drug crime.

Importantly, this restriction would not prohibit MPD from seeking warrants for drugs in combination with other contraband, particularly firearms, nor would it prohibit MPD from seeking warrants based on evidence of drug crime in combination with other crimes. MPD would and should remain empowered to obtain warrants for guns, evidence of violent crime, and evidence of other serious crimes. This recommendation would simply bar MPD from doing what the *Post* reported—it would prohibit MPD from transforming simple street arrests for drug crime into invasive and sometimes dangerous searches of homes.

14. **Recommendation: The Council should require MPD to collect, report, and publish quarterly the following data on each search warrant application in aggregable format in a relational database:**

    A. **Race/ethnicity/gender identity of suspect.**
    B. **Assignment of requesting officer (e.g., Patrol, CST, GRU).**
    C. **Type of property requested to be searched (premises, vehicle, mobile or electronic device).**
    D. **Person to be searched, if any.**
    E. **Type of evidence sought (e.g., firearms, electronic files).**
    F. **District in which property to be searched is located.**
    G. **Offenses alleged in warrant application.**
    H. **Approval, rejection, or modification by USAO.**
    I. **Approval, rejection, or modification by the court.**
    J. **Whether approved application was executed.**
    K. **Whether contraband was seized and, if so, what type.**
    L. **Whether arrest resulted and, if so, offenses charged and whether individual(s) arrested were the target of the investigation.**