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No-knock Warrants – Fourth Amendment Analysis for No-Knock Entry, Overview of Federal Law, and 50 State Survey

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FOURTH AMENDMENT STANDARD FOR NO-KNOCK ENTRY

In *Wilson v. Arkansas*, 514 U.S. 927 (1995), the U.S. Supreme Court acknowledged that the Fourth Amendment incorporates the common law requirement that police officers entering a residence must knock on the door and their identity and purpose before attempting forcible entry to execute a search warrant. However, the Supreme Court also recognized that not every entry must be preceded by an announcement and that the Fourth Amendment's flexible requirement of reasonableness should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests.[1] The *Wilson* decision left it to the lower courts to determine the circumstances under which an unannounced entry is reasonable under the Fourth Amendment and "simply [held] that although a search or seizure of a dwelling might be constitutionally defective if police officers enter without prior announcement, law enforcement interests may also establish the reasonableness of an unannounced entry."[2] The Supreme Court did, however, imply that the knock-and-announce requirement could "yield under circumstances presenting a threat of physical violence" or when police officers have reason to believe that evidence would likely be destroyed if advance notice were given.[3]

In *Richards v. Wisconsin*, 520 U.S. 385 (1997), the Supreme Court went on to hold that, in order to justify a "no-knock" entry, the police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. The Court noted that, "[t]his standard – as opposed to a probable-cause requirement – strikes the appropriate balance between the legitimate law enforcement concerns at issue in the execution of search warrants and the individual privacy interests affected by no-knock entries."[4]

In *United States v. Banks*, 540 U.S. 31, 36 (2003), the Supreme Court stated that "when a warrant applicant gives reasonable grounds to expect futility or to suspect that one or another such exigency already exists or will arise instantly upon knocking, a magistrate judge is acting within the Constitution to authorize a 'no-knock' entry. And even when executing a warrant silent about that, if circumstances support a reasonable suspicion of exigency when the officers arrive at the door, they may go straight in." In that case, the Court found that the interval of 15 to 20 seconds from the officers' knock and announcement of search warrant until the forced entry was reasonable, given the exigency of the possible destruction of evidence.

[1] *Wilson v. Arkansas*, 514 U.S. 927, 934 (1995).
[2] *Id.* at 936.
[3] *Id.*
[4] *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997).

In *Hudson v. Michigan*, 547 U.S. 586 (2006), the U.S. Supreme Court held that the suppression of evidence is inappropriate when the entry is made pursuant to a search warrant but without a proper knock-and-announce, in violation of the Fourth Amendment. In the *Hudson* case, the Detroit police, while executing a search warrant for narcotics and weapons, entered a home in violation of the Fourth Amendment's knock-and-announce rule, and Michigan conceded that the entry was a knock-and-announce violation. In the majority opinion authored by Justice Scalia, the Supreme Court noted that the interests protected by the knock-and-announce requirement include: (1) the protection of human life and limb, because an unannounced entry may provoke violence in supposed self-defense by the surprised resident; (2) the protection of property (i.e., avoiding damage from breaking into a house); and (3) the elements of privacy and dignity that can be destroyed by a sudden entrance. However, the Court also found that the knock-and-announce rule never protected a person's interest in preventing the government from seeing or taking evidence described in a warrant, rendering the exclusionary rule inapplicable in these circumstances.[5]

FEDERAL LAW REGARDING NO-KNOCK WARRANTS

18 U.S.C. § 3109 provides that an officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.

Although a federal statute previously authorized no-knock warrants for certain drug searches in the Comprehensive Drug Abuse Prevention and Control Act of 1970, Congress repealed that provision in 1974. As described in a 1993 article in the Columbia Law Review:

> The "no-knock" experience lasted four years and demonstrated the inevitability of many of the dangers foreseen in 1970. During the four-year period when "no-knock" warrants were issued, horror stories were legion. Over one hundred newspaper articles, reproduced in the Congressional Record, described a repeated scenario: terrified citizens, thinking themselves targets of burglary or more frightening acts, discovered that they were instead being searched by law enforcement officers who had entered their homes without notice.[6]

As the Congressional Research Service noted in a June 23, 2020 analysis on "'No-Knock' Warrants and Other Law Enforcement Identification Considerations," the legal status of federal no-knock search warrants "is unsettled, although federal officers do sometimes employ no-knock warrants or act pursuant to no-knock warrants issued by state courts when serving on joint state-federal task forces."

Recently, members of Congress have made efforts to eliminate federal no-knock search warrants. For example, one section of the George Floyd Justice in Policing Act of 2020 (H.R. 7120) would establish that search warrants issued in federal drug cases must "require that a law enforcement officer execute the search warrant only after providing notice of his or her authority and purpose." The bill would also require states and localities that receive certain federal funds to "have in effect a law that prohibits the issuance of a no-knock warrant in a drug case." Rep. Karen Bass (D-CA-37), the sponsor of H.R. 7120, is the Chair of the Congressional Black Caucus.

Sen. Rand Paul (R-KY) introduced the Justice for Breonna Taylor Act (S. 3955), which would provide that federal law enforcement officers may not execute a warrant without providing notice of authority and purpose. Sen. Paul's bill would also prohibit state and local law enforcement agencies receiving

[5] *Hudson v. Michigan*, 547 U.S. 586, 593-94 (2006).
[6] Charles Patrick Garcia, *The Knock and Announce Rule: A New Approach to the Destruction-of-Evidence Exception*, 93 COLUM. L. REV. 685, 705 (1993).

federal funds from executing warrants that do not require the serving officer to provide notice of authority and purpose prior to forcible entry.

CURRENT LAW IN GEORGIA REGARDING NO-KNOCK WARRANTS

O.C.G.A. § 17-5-27 states that:

> All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to execute a search warrant if, after verbal notice or an attempt in good faith to give verbal notice by the officer directed to execute the same of his authority and purpose:
>
> > (1) He is refused admittance;
> > (2) The person or persons within the building or property or part thereof refuse to acknowledge and answer the verbal notice or the presence of the person or persons therein is unknown to the officer; or
> > (3) The building or property or part thereof is not then occupied by any person.

However, as the Court of Appeals of Georgia has noted, "where the State demonstrates a reasonable suspicion that knocking and announcing the officers' presence would be dangerous or futile under the particular circumstances, or that it would hinder the effective investigation of the crime by, for example, allowing the destruction of evidence, a no-knock entry may be authorized."[7] Furthermore, "…the standard for establishing the reasonable suspicion necessary to justify a no-knock entry, as opposed to the standard for establishing probable cause, is not high."[8]

Nevertheless, generalized statements or beliefs will not be sufficient to justify a no-knock provision in a search warrant. For example, in *State v. Lopez-Chavez*, the Georgia Court of Appeals held that the affidavit submitted in support of the request for a no-knock warrant "merely contained a generalized statement that unspecified evidence might be destroyed if the police announced their presence before entering, and it does not appear that the officer who presented the affidavit pointed to any specific items or data that might be destroyed if the no-knock intrusion was not allowed." Therefore, the magistrate "was not provided with underlying details that would have allowed him to evaluate whether these conclusions were based on specific facts or whether they were merely boilerplate based on speculation and presumptions." Furthermore, the only recitation in the affidavit concerning weapons on the premises was based on "an obviously stale, unverified tip that officers received seven years earlier," and there was no indication that weapons had been observed on the premises since that time. Because the no-knock warrant was illegally executed, the Court of Appeals affirmed the motion to suppress the evidence that was seized.[9]

RECENT LEGISLATIVE EFFORTS IN THE GEORGIA SENATE

1. 2015 Georgia Senate Bill 159 (Did Not Pass)

Senator Jesse Stone was the primary sponsor of 2015 Senate Bill 159, which passed by Committee Substitute from the Senate Judiciary Non-Civil Committee but did not advance to the Senate floor.[10]

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[7] *State v. Lopez-Chavez*, 768 S.E.2d 816, 819 (Ga. Ct. App. 2015) (citing *State v. Cash*, 728 S.E.2d 918 (Ga. Ct. App. 2012)).
[8] *Lopez-Chavez*, 768 S.E.2d at 819 (citing *Braun v. State*, 747 S.E.2d 872 (Ga. Ct. App. 2013) (citation and punctuation omitted)).
[9] *Lopez-Chavez*, 768 S.E.2d at 819.
[10] The 2015-16 session had two other bills on the topic of no-knock warrants, including Senate Bill 45, sponsored by former-Senator Vincent Fort (D), and House Bill 56, sponsored by Representative Kevin Tanner (R). However, neither of these bills made it out of Committee.

The Committee Substitute for 2015 SB 159 would have, among other things, specifically provided for the use of no-knock search warrants but only when:

> (A) The law enforcement agency that employs the officer seeking such warrant has adopted written policies for using no-knock that comply with certain requirements discussed below; and
> (B) The affidavit or testimony supporting the no-knock warrant establishes by probable cause that if an officer were to knock and announce identity and purpose before entry, such act of knocking and announcing would be dangerous to human life or would inhibit the effective investigation of an alleged crime by allowing the destruction of evidence.

The Committee Substitute for 2015 SB 159 also would have required that any law enforcement agency that may seek a no-knock must adopt guidelines and procedures that include, but would not be limited to:

> (A) Designating the rank or status of an employee who may be qualified to serve as a supervising officer;
> (B) Requiring a supervising officer to review and approve an application for a no-knock;
> (C) Requiring a supervising officer to be present during the execution of a search warrant which contains a no-knock;
> (D) Having an operational plan for the execution of a search warrant which contains a no-knock; and
> (E) Having a training program relevant to applying for a no-knock and executing a search warrant which contains a no-knock.

2. 2020 Senate Bill 513 (Did Not Pass)

Following the recess for COVID-19 this past session, Senator Harold Jones filed 2020 Senate Bill 513, also known as the "Georgia Justice Act," which would have, among other things, provided in statute that no search warrants will be issued that contain a no-knock provision unless the affidavit or testimony supporting the warrant establishes by probable cause that if an officer were to knock and announce presence, authority, and purpose before entry, such act of knocking and announcing would likely pose a significant and imminent danger to human life or imminent danger of evidence being destroyed. The bill was filed on June 15, 2020 and was referred to the Senate Judiciary Committee.

BRIEF OVERVIEW OF LAWS IN OTHER STATES REGARDING NO-KNOCK WARRANTS AND FORCIBLE ENTRY

1. Alabama – knock-and announce is codified, but forcible entry is allowed under exigent circumstances pursuant to case law

Ala. Code § 15-5-9 provides that, "[t]o execute a search warrant, an officer may break open any door or window of a house, any part of a house or anything therein if after notice of his authority and purpose he is refused admittance."

The Handbook for Alabama Sheriffs (7th ed.) discusses the U.S. Supreme Court's decision in *Hudson v. Michigan*, 547 U.S. 586, 589-90 (2006), which per the Handbook, "reversed existing case law that required law enforcement officers to 'knock and announce' before entering a building during the execution of a search warrant." The Handbook states that Alabama has a statute "that requires law enforcement to 'knock and announce;' thus law enforcement officers in this state continue to be bound by Ala. Code §15-5-9, and the *Hudson* decision does not affect Alabama sheriffs."

However, non-compliance with the knock-and-announce requirement may be excused in exigent circumstances, which depends on whether an "emergency situation" exists. An emergency situation exists "when the officers may in good faith believe that they or someone within are in peril of bodily harm ... or that the person to be arrested is fleeing or attempting to destroy evidence."[11]

2. Alaska – knock-and-announce is codified, but forcible entry is allowed under exigent circumstances pursuant to case law

Pursuant to Alaska Stat. Ann. § 12.35.040 regarding the execution or service of a search warrant, the officer has the same power and authority in all respects to break open any door or window, to use the necessary and proper means to overcome forcible resistance made to the officer, or to call any other person to the officer's aid as the officer has in the execution or service of a warrant of arrest. Pursuant to Alaska Stat. Ann. § 12.25.100, a peace officer may break into a building or vessel in which the person to be arrested is or is believed to be, if the officer is refused admittance after the officer has announced the authority and purpose of the entry.

However, strict compliance with the knock and announce rule is not required when a balancing test indicates that the exigencies outweigh the hindrance to the dual purposes behind the rule of respecting individuals' privacy, and minimizing the destruction of property and the possibility of forcible resistance.[12]

3. Arizona – no-knock warrants expressly authorized by statute, following earlier state court of appeals decision that statutory authority is needed to issue such a warrant

In 1974, the Arizona Court of Appeals held that, under Arizona law, there was no authority for the issuance of a no-knock search warrant, finding that "[w]here the legislature has enacted a statute dealing with execution of a search warrant which is clear and unambiguous on its face, we as a court may not weigh the reasons for and against such a statute-that is the province of the legislature."[13] The Arizona Court of Appeals acknowledged that other states with similar statutes to Arizona's statutory requirement of announcement of purpose in execution of a search warrant had made judicial exceptions to allow for the issuance of no-knock warrants. However, "unlike California, this Court has not by a series of decisions engrafted a judicial exception to the statute.'"[14] The court declined to "engage in judicial legislation" and stated that, "[i]f a remedy is needed, it is for the legislature to form one."[15]

In 2000, Arizona's statute on the issuance of search warrants was revised to add a subsection providing that, "[o]n a reasonable showing that an announced entry to execute the warrant would endanger the safety of any person or would result in the destruction of any of the items described in the warrant, the magistrate shall authorize an unannounced entry."[16]

4. Arkansas – no-knock warrants permitted by case law

Rule 13.3(b) of the Arkansas Rules of Criminal Procedure incorporates the knock-and-announce requirement into the rules governing the execution of a search warrant:

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[11] *Moore v. State*, 650 So. 2d 958, 962–63 (Ala. Crim. App. 1994) (quotation and citation omitted).
[12] *Trosper v. State*, 721 P.2d 134, 135 (Alaska Ct. App. 1986) (citing *Sandland v. State*, 636 P.2d 1196, 1197 (Alaska Ct. App. 1981)).
[13] *State v. Eminowicz*, 520 P.2d 330, 332 (Ariz. Ct. App. 1974).
[14] *Id.* (quoting *State v. Mendoza*, 454 P.2d 140, 143 (Ariz. 1969)).
[15] *Eminowicz*, 520 P.2d at 332.
[16] Ariz. Rev. Stat. Ann. § 13-3915(B), added by 2000 House Bill 2394.

> Prior to entering a dwelling to execute a search warrant, the executing officer shall make known the officer's presence and authority for entering the dwelling and shall wait a period of time that is reasonable under the circumstances before forcing entry into the dwelling. The officer may force entry into a dwelling without prior announcement if the officer reasonably suspects that making known the officer's presence would, under the circumstances, be dangerous or futile or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence. . . .

Arkansas courts permit the issuance of no-knock warrants under case law, but notably, the Arkansas Rules of Criminal Procedure has a provision that requires a search warrant to be executed between 6:00 AM and 8:00 PM, unless the judicial officer issuing the search warrant finds reasonable cause to believe that a nighttime warrant should be issued because: (1) the place to be searched is difficult of speedy access; (2) the objects to be seized are in danger of imminent removal; or (3) the warrant can only be safely or successfully executed at nighttime or under circumstances the occurrence of which is difficult to predict with accuracy.[17]

In *Holt v. State*, 151 S.W.3d 1, 6 (Ark. Ct. App. 2004), the Arkansas Court of Appeals found that the issuance of a nighttime, no-knock search warrant was justified when the officer testified in the days just prior to the application for the warrant that a confidential informant obtained methamphetamine from the residence and saw drug paraphernalia inside the residence, that someone inside the residence could see law enforcement outside without opening the door, and that the suspects would likely destroy the evidence before law enforcement could enter the premises.

In 2019, the Little Rock police department came under criticism for the high percentage of no-knock warrants that they requested and executed.

5. California – no-knock warrants permitted by case law

Cal. Penal Code § 1531 provides that, in the execution of a search warrant, an officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. Moreover, the California Supreme Court held in 1973 that advance judicial approval may not excuse noncompliance with this statutory announcement requirements to the effect that an officer generally may break open door or window in the execution of a search warrant.[18]

However, The New York Times reported in 2017 that no-knock warrants are routinely granted in California. I located California Court of Appeals cases referencing the use of no-knock warrants, including one from 2004 which cited the U.S. Supreme Court's decision in *Banks* and in *Richards* and went on to note that "exigency may ripen along a continuum of law enforcement activity. It might exist at the time the warrant is issued, resulting in a no-knock warrant."[19]

In June 2020, the Long Beach Police Department issued a special order to require officers to seek approval from a supervisor of the rank of Deputy Chief before seeking judicial approval to serve a no-knock warrant.

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[17] Ark. R. Crim. P. 13.2(c).
[18] *Parsley v. Superior Court*, 513 P.2d 611 (Cal. 1973).
[19] *People v. Murphy*, 13 Cal. Rptr. 3d 269, 289 (Cal. Ct. App. 2004), *review granted and opinion superseded*, 94 P.3d 476 (Cal. 2004), and *rev'd*, 123 P.3d 155 (Cal. 2005).

6. Colorado – no-knock warrants expressly authorized by statute

Colo. Rev. Stat. Ann. § 16-3-303 (4) provides, in addition to meeting the requirements for obtaining a search warrant, a no-knock search warrant[20] will only be issued if the affidavit for the warrant also specifically requests the issuance of a no-knock search warrant and has been reviewed and approved for legal sufficiency and signed by a district attorney. This review and approval may take place as allowed by statute or court rule or by means of facsimile transmission, telephonic transmission, or other electronic transfer.

If the grounds for the issuance of a no-knock search warrant are established by a confidential informant, the affidavit for such warrant shall contain a statement by the affiant concerning when such grounds became known or were verified by the affiant. The statement shall not identify the confidential informant.

7. Connecticut – not granted but forcible entry allowed under exigent circumstances

As reflected in an analysis of no-knock warrant usage by The New York Times in 2017, no-knock warrants are not generally available in Connecticut, but forcible entries when executing a search warrant are permitted in exigent circumstances. As the Appellate Court of Connecticut has noted, "[f]rom early colonial times we, in this jurisdiction, have followed the common-law requirement in the execution of search warrants that, in the absence of some special exigency, before an officer may break and enter he ought to signify the cause of his coming, and to make request to open the doors. . . ."[21]

8. Delaware – case law does not authorize no-knock warrants but allows forcible entry in exigent circumstances

As stated by the Superior Court of Delaware, "there 'is no such creature as a no-knock warrant in Delaware.' While other jurisdictions acknowledge no-knock warrants, Delaware has not adopted such a procedure."[22]

However, the Delaware courts have recognized exceptions to the knock-and-announce rule under exigent circumstances in which there is a "good faith belief" on the part of the police officers that full and complete compliance with the rule would have: (1) increased their peril; (2) frustrated the arrest; (3) or permitted destruction of the evidence.[23]

9. Florida – no-knock warrants not permitted, absent express statute authorizing such warrants; forcible entry may be allowed under exigent circumstances

The Supreme Court of Florida held in *State v. Bamber*, 630 So. 2d 1048 (Fla. 1994) that, in the absence of express statutory authorization, no-knock search warrants are without legal effect in Florida. The Court noted that "[a]s a matter of policy, no-knock warrants are disfavored because of their staggering potential for violence to both occupants and police." The Supreme Court of Florida also supported this decision upon the finding that "no-knock warrants are disfavored under the law and limited largely to those states that have enacted statutory provisions authorizing their issuance."[24]

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[20] Colo. Rev. Stat. Ann. § 16-3-303 (5) defines the term "no-knock search warrant" to mean a search warrant served by entry without prior identification.
[21] *State v. Huff*, 793 A.2d 1190, 1192 (Conn. Ct. App. 2002) (citing *State v. Ruscoe*, 563 A.2d 267 (Conn. 1989), *cert. denied*, 493 U.S. 1084 (1990)).
[22] *State v. Backus*, 2002 WL 31814777, at *4 (Del. Super. Ct. Nov. 18, 2002) (quoting *State v. Cox*, No. 0011003431 (Del. Super. Ct. Dec. 4, 2001)).
[23] *Backus*, 2002 WL 31814777, at *2-3 (citing *Tatman v. State*, 320 A.2d 750 (Del. 1974)).
[24] *Bamber*, 630 So. 2d at 1050.

Fla. Stat. Ann. § 933.09 provides that "[t]he officer may break open any outer door, inner door or window of a house, or any part of a house or anything therein, to execute the warrant, if after due notice of the officer's authority and purpose he or she is refused admittance to said house or access to anything therein."

However, the Supreme Court of Florida also held in *Bamber* that the police may engage in a no-knock search of a residence under exigent circumstances, such as where officers have "reasonable grounds to believe the [contraband] within the house would be immediately destroyed if they announced their presence."

10. Hawaii – knock-and-announce is codified, but unannounced entry is allowed under exigent circumstances pursuant to case law

Regarding the execution of a search warrant, Haw. Rev. Stat. Ann. § 803-37 provides that:

> The officer charged with the warrant, if a house, store, or other building is designated as the place to be searched, may enter it without demanding permission if the officer finds it open. If the doors are shut, the officer shall declare the officer's office and the officer's business and demand entrance. If the doors, gates, or other bars to the entrance are not immediately opened, the officer may break them. When entered, the officer may demand that any other part of the house, or any closet or other closed place in which the officer has reason to believe the property is concealed, may be opened for the officer's inspection, and if refused the officer may break them. If an electronic device or storage media is designated as the item to be searched, the court may authorize the officer to obtain technical assistance from individuals or entities, located within or outside the State, in the examination of the item; provided that the officer shall submit a sworn statement to the judge or magistrate, certifying the reliability and qualifications of the individuals or entities and the reason their assistance is necessary; provided further that no individual or entity shall be compelled to provide technical assistance without their consent.

The Supreme Court of Hawaii held in a recent case that the officers did not afford the defendant reasonable time to respond to a demand for entry into a home pursuant to a warrant and noted that "[t]he 'knock-and-announce' procedure is not a mere formality or police tactic; it is an essential restraint on the power of the State which has deep roots in both the Anglo-American and Hawaiian legal systems."[25] However, exigent circumstances could justify entering the premises earlier than would otherwise be reasonable; exigent circumstances are those under which "the demands of the occasion reasonably call for an immediate police response."[26] Exigent circumstances exist where there is an imminent threat of harm to a person, where there is a danger of serious property damage, where a suspect is likely to escape, or where evidence is likely to be removed or destroyed.[27]

11. Idaho – no-knock warrants permitted under case law

Idaho Code Ann. § 19-4409 provides that an officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance. However, as the Idaho Court of Appeals noted in

[25] *State v. Naeole*, 470 P.3d 1120, 1124 (Haw. 2020) (citations omitted).
[26] *Id.* (citing *State v. Lloyd*, 606 P.2d 913, 918 (Haw. 1980)).
[27] *Naeole*, 470 P.3d at 1127.

State v. Ramos, 130 P.3d 1166, 1169 (Idaho Ct. App. 2005), Idaho courts recognize the no-knock warrant.[28]

12. Illinois – no-knock warrant expressly authorized by statute

725 Ill. Comp. Stat. Ann. 5/108-8 (b) provides that the court issuing a warrant may authorize the officer executing the warrant to make entry without first knocking and announcing his or her office if it finds, based upon a showing of specific facts, the existence of the following exigent circumstances:

> (1) That the officer reasonably believes that if notice were given a weapon would be used:
>
> (i) against the officer executing the search warrant; or
>
> (ii) against another person.
>
> (2) That if notice were given there is an imminent "danger" that evidence will be destroyed.

On July 2, 2020, Illinois Rep. Maurice A. West, II (D) filed House Bill 5807, which would prohibit a peace officer of other public officer or employee from seeking or executing a no-knock search warrant or dynamic entry warrant and would also prohibit a court from issuing such a warrant. A peace officer or other public officer or employee who violates these prohibitions would be guilty of official misconduct. However, no action has been taken on House Bill 5807 at this time.

13. Indiana – no-knock warrants authorized by case law

Ind. Code Ann. § 35-33-5-7(d) provides that "a law enforcement officer may break open any outer or inner door or window in order to execute a search warrant, if the officer is not admitted following an announcement of the officer's authority and purpose." The Indiana Court of Appeals has rejected the assertion that Indiana law should not recognize a no-knock search warrant based on the argument that this statute "requires" the police to knock and announce their presence and authority, finding instead that the statute does not expressly prohibit entry without announcing the law enforcement officer's authority and purpose when there are exigent circumstances or when it would be dangerous to officers or others to make such an announcement.[29] The Indiana Court of Appeals concluded:

> In summary, Ind. Code § 35–33–5–7 does not expressly prohibit a no knock warrant. It is well settled in Indiana common law that the knock and announce requirement need not be followed blindly in all circumstances. The Legislature appears to have acquiesced in the interpretation that a notice of purpose requirement need not be met in all circumstances. We conclude that Indiana law supports no knock warrants under certain circumstances.[30]

In order to justify a no knock warrant, there must be a reasonable suspicion that knocking and announcing the officers' presence, under the particular circumstances, would be dangerous, futile, or inhibit the effective investigation of the crime.[31] For example, in *Mack v. State*, the Indiana Court of Appeals found that a no-knock warrant was justified when the officers demonstrated a possible serious

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[28] *See also State v. Kester*, 51 P.3d 457, 459 (Idaho Ct. App. 2002) (police officers executed a "no-knock" search warrant); *State v. Pierce*, 47 P.3d 1266, 1267 (Idaho Ct. App. 2002) (officers executed a no-knock search warrant at premises believed to be the location of a methamphetamine lab).

[29] *Beer v. State*, 885 N.E.2d 33, 41-42 (Ind. Ct. App. 2008). In *Wilkins v. State*, 946 N.E.2d 1144 (Ind. 2011), the Indiana Supreme Court agreed that this statute governing the execution of search warrants did not prohibit police officers from performing no-knock entry during execution of search warrant; statute permitted exigent circumstances to justify police to bypass knock-and-announce requirement and declined to revisit the Indiana Court of Appeals' decision in *Beer*.

[30] *Beer*, 885 N.E.2d at 43.

[31] *Id.* at 44.

violent felon was in possession of firearms, the felon had failed to report to his parole officers that he was staying at a different residence, and (shortly before the application for the warrant), the felon appeared nervous in the presence of law enforcement. [32]

In July 2020, the Indianapolis Metropolitan Police Department announced that they would voluntarily end the use of no-knock warrants.

14. Iowa – knock-and-announce is codified, but unannounced entry is allowed under exigent circumstances pursuant to case law

Iowa Code Ann. § 808.6 codifies the knock-and-announce rule:

> 1. The officer may break into any structure or vehicle where reasonably necessary to execute the warrant if, after notice of this authority and purpose the officer's admittance has not been immediately authorized. The officer may use reasonable force to enter a structure or vehicle to execute a search warrant without notice of the officer's authority and purpose in the case of vacated or abandoned structures or vehicles.
> 2. The officer executing a search warrant may break restraints when necessary for the officer's own liberation or to effect the release of a person who has entered a place to aid the officer.

However, exigent circumstances can excuse compliance with the announcement requirements.[33]

15. Kansas – issuance of no-knock warrants supported by case law

The issuance of no-knock warrants in Kansas is supported by case law. For example, in *State v. Bell*, 410 P.3d 947 (Kan. Ct. App. 2018), a magistrate authorized a no-knock warrant. The trial court found that the no-knock aspect of the warrant was reasonable because the officer had a valid, reasonable, and good-faith belief that a suspect with a history of battery against law enforcement and prior convictions resided at the property and would be present at the time the search was executed. On appeal, the defendant continued to challenge whether the no-knock nature of the warrant was unreasonable, and the Kansas Court of Appeals affirmed the denial of the motion to suppress because (following the U.S. Supreme Court's decision in *Hudson*, even if the no-knock aspect of the warrant had not been granted, the evidence would not have been excluded due to a failure to knock and announce prior to executing the search warrant.

Similarly, in *State v. Warren*, 421 P.3d 259 (Kan. Ct. App. 2018), *review denied* (Feb. 28, 2019), a no-knock search warrant was issued by a local magistrate, in light of the suspect's violent nature as demonstrated by his criminal history.

In July 2020, the Topeka City Council banned the use of no-knock warrants within the city limits. However, Topeka's police chief stated that the department already had a policy against no-knock warrants in place before the ban was made local law.

16. Kentucky – issuance of no-knock warrants supported by case law

Ky. Rev. Stat. Ann. § 70.077 states that:

> A sheriff having an order of attachment, or for the delivery of property, may enter any building or enclosure containing the property, to take it; and, if necessary for this

[32] *Mack v. State*, 23 N.E.3d 742, 752 (Ind. Ct. App. 2014) (citing *Richards v. Wisconsin*, 520 U.S. 385, 394 (1997)).
[33] *State v. Cohrs*, 484 N.W.2d 223, 225 (Iowa Ct. App. 1992).

> purpose, may break the building or enclosure, having first publicly demanded the property.

The issuance of no-knock warrants in Kentucky is supported by case law. For example, in *Holsey v. Commonwealth*, the Kentucky Court of Appeals upheld a decision to deny a motion to suppress where the defendant argued that the police had insufficient evidence to request a no-knock warrant, where the trial court found that a no-knock warrant was justified because: (1) there was sufficient evidence that drugs were present in the residence, and such could easily and quickly be destroyed; (2) the defendant had a previous conviction for robbery with a handgun and there was a reasonable probability that weapons were also present in the residence. Furthermore, "great deference is afforded the [warrant] issuing judge," and the Kentucky Court of Appeals found no grounds to disturb his decision that a no-knock warrant was proper.[34]

In *Prescott v. Commonwealth*, the detective sought and was granted a no-knock warrant on the basis of controlled buys of illegal drugs.[35]

In June 2020, the Louisville Metro Council unanimously approved "Breonna's Law," which bans no-knock warrants in the city and requires police to wear body cameras when serving warrants and to turn on the cameras five minutes before beginning the operation.

Kentucky Senate President Robert Stivers (R) announced in July that he is working on proposed legislation that would essentially ban standalone, no-knock search warrants. He said the bill he envisions would make exceptions for no-knock search warrants that are used along with an arrest warrant or in a hostage situation. Rep. Attica Scott (D) also announced that she will put forth a bill to ban the use of controversial no-knock search warrants across Kentucky.

17. Louisiana – statute explicitly provides for exception to knock-and-announce

La. Code Crim. Proc. Ann. art. 164 provides that a peace officer who executes a search warrant may use such means and force as is authorized to make an arrest. La. Code Crim. Proc. Ann. art. 224 provides that:

> In order to make an arrest, a peace officer, who has announced his authority and purpose, may break open an outer or inner door or window of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, where the person to be arrested is or is reasonably believed to be, if he is refused or otherwise obstructed from admittance. The peace officer need not announce his authority and purpose when to do so would imperil the arrest.

In March 2020, prosecutors decided not to bring charges against a West Baton Rouge deputy who fatally shot a man while executing a no-knock search warrant in 2019.

18. Maine – no-knock warrants provided for in state's Rules of Unified Criminal Procedure

Rule 41(f)(2)(C) of Maine's Rules of Unified Criminal Procedure provides that a search warrant may direct that it be executed by an officer without providing notice of the officer's purpose and office if the court or justice of the peace so directs by appropriate provision in the warrant. The court or justice of the peace may so direct in the warrant upon a finding of reasonable cause showing that:

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[34] *Holsey v. Com.*, No. 2010-CA-001620-MR, 2012 WL 1057941, at *3 (Ky. Ct. App. Mar. 30, 2012).
[35] *Prescott v. Com.*, No. 2012-CA-000190-MR, 2014 WL 813109, at *1 (Ky. Ct. App. Feb. 28, 2014).

(1) The property sought may be quickly or easily altered, destroyed, concealed, removed, or disposed of if prior notice is given;
(2) The escape of the person sought may be facilitated if prior notice is given;
(3) The person sought, the person from whom or from whose premises the property is sought, or an occupant thereof, may use deadly or nondeadly force in resistance to the execution of the warrant, and dispensing with prior notice is more likely to ensure the safety of officers, occupants, or others;
(4) Such facts and circumstances exist as would render reasonable the warrant's execution without notice

19. Maryland - no-knock warrants expressly authorized by statute

In 2004, the highest court in Maryland held that a judge cannot issue a no-knock warrant in the absence of a statutory provision authorizing the issuance of such a warrant:

> We come out on the side of those courts that, in the absence of valid statutory authority, refuse to authorize a judicial officer to make an advance determination of exigency. We hold that a judicial officer in Maryland, under current Maryland law, may not issue a "no-knock" warrant. Rather, the propriety of a "no-knock" entry will be reviewed and determined on the basis of the facts known to the officers at the time of entry, rather than at the time of the application for the warrant.[36]

However, in 2005, the Maryland legislature passed House Bill 577 to add a provision to the statute regarding search warrants to authorize the issuance of no-knock warrants. This bill became effective law on October 1, 2005.

Currently, Md. Code Ann., Crim. Proc. § 1-203(2) (vi) provides that an application for a search warrant may contain a request that the search warrant authorize the executing law enforcement officer to enter the building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose, on the grounds that there is reasonable suspicion to believe that, without the authorization:

(1) The property subject to seizure may be destroyed, disposed of, or secreted; or
(2) The life or safety of the executing officer or another person may be endangered.

20. Massachusetts – issuance of no-knock warrants supported by case law

No-knock warrants are recognized under Massachusetts case law. For example, in *Commonwealth v. Fernandez*, the defendant contended that the affidavit submitted in support of the warrant application failed to establish a sufficient risk to officer safety to justify the no-knock provision of the warrant, but the Appeals Court of Massachusetts found that the defendant's illegal possession of a deadly weapon or weapons, combined with his criminal history, including acts of violence and the distribution of narcotics, established sufficient substantial risk to officer safety to justify a no-knock entry.[37]

In *Commonwealth v. Silva*, the Appeals Court of Massachusetts also concluded that the magistrate was justified in authorizing a no-knock entry by police when executing the warrant because the affidavit explained in some detail the basis for the detective's concern that the occupants of the apartment would destroy evidence unless the officers executing the warrant were allowed to dispense with the knock-and-announce requirement due; the location of the apartment on the third floor, with

[36] *Davis v. State*, 859 A.2d 1112, 1132 (Md. 2004).
[37] *Commonwealth v. Fernandez*, 119 N.E.3d 354 (Mass. App. Ct. 2018), *review denied*, 120 N.E.3d 733 (Mass. 2019).

a locked entrance door to the building at the ground floor, furnished heightened concern for the possible destruction of evidence.[38]

However, the Supreme Judicial Circuit Court of Massachusetts has held that:

> Even a no-knock entry properly authorized in advance of a search may turn out to be unlawful if the situation actually encountered by the police at the time of the warrant's execution is less exigent than what was anticipated. Consequently, the police who execute a search warrant that dispenses with the knock and announce requirement must make a "threshold reappraisal" of the actual circumstances they face before they may disregard the requirement.[39]

21. Michigan – knock-and-announce codified, but exigent circumstances may allow for forcible entry

Regarding search warrants, Mich. Comp. Laws Ann. § 780.656 states that:

> The officer to whom a warrant is directed, or any person assisting him, may break any outer or inner door or window of a house or building, or anything therein, in order to execute the warrant, if, after notice of his authority and purpose, he is refused admittance, or when necessary to liberate himself or any person assisting him in execution of the warrant.

As reflected in an analysis of no-knock warrant usage by The New York Times in 2017, no-knock search warrants are not granted but forcible entries are allowed under exigent circumstances in Michigan. However, Michigan's Governor (D) put forth a proposal on June 29, 2020 to "further limit the use of no-knock warrants."

22. Minnesota – no-knock warrants permitted under case law

Minnesota courts have authorized the use of no-knock warrants, but the application for such a warrant must include a "particularized" showing of dangerousness, not one that is merely possible or speculative. In other words, the police must have reasonable suspicion of a threat to officer safety or the likelihood of destruction of evidence, and this reasonable suspicion must be supported by a particularized showing of dangerousness, futility, or likelihood of destruction of evidence.[40] However, to substantiate the need for a no-knock warrant, an officer must establish more than that drugs are involved.[41]

23. Mississippi – no-knock warrants permitted under case law

A prior version of Miss. Code. Ann. § 41-29-157(c) expressly allowed for a judge to issue a no-knock search warrant in matters regarding certain drug offenses, if certain circumstances were met; that subsection was repealed in 1974. However, the fact that Miss. Code. Ann. § 41-29-157(c) is no longer in effect does not mean that no-knock warrants can never be issued.[42] Mississippi courts have held that no-knock warrants can be issued when such a warrant is justified and reasonable.[43]

The Mississippi Court of Appeals recently upheld a $50,000 damages award under the Mississippi Tort Claims Act regarding the execution of a no-knock search warrant at the wrong address because,

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[38] *Commonwealth v. Silva*, 113 N.E.3d 400, 405 (Mass. App. Ct.), *review denied*, 119 N.E.3d 297 (Mass. 2018).
[39] *Commonwealth v. Jimenez*, 780 N.E.2d 2, 6 (Mass. 2002).
[40] *State v. Botelho*, 638 N.W.2d 770, 778 (Minn. Ct. App. 2002).
[41] *State v. Wasson*, 615 N.W.2d 316, 320 (Minn. 2000).
[42] Miss. Prac. Trial Handbook for Lawyers § 27:19 (3d ed.) (search and seizure with a warrant).
[43] *See White v. State*, 746 So. 2d 953, 956 (Miss. Ct. App. 1999).

even though the monetary damages were only $2,850 in medical bills and a $350 bill for a damaged door, the incident had lasting impacts on the people who were wrongfully detained, including their sense of security and well-being in their personal home. The Bureau of Narcotics also acted in reckless disregard of safety and well-being of innocent persons in executing the no-knock search warrant at the wrong address.[44]

24. Missouri – issuance of no-knock warrants supported by case law

For example, in *State v. Bacon*, 156 S.W.3d 372, 376 (Mo. Ct. App. 2005), the circuit court for the county issued a no-knock warrant allowing the police to search the home based on a detective's affidavit that described a drug purchase that occurred earlier that day and noted that the confidential informant had stated that she had seen the occupants of the residence armed with a handgun in the past.

25. Montana – state Supreme Court held that judges have no role in determining whether warrant should be executed with a no-knock entry and that officers serving the warrant must make that determination based on a reasonable suspicion of exigent circumstances

As reflected in an analysis of no-knock warrant usage by The New York Times in 2017, Montana routinely granted no-knock warrants. However, in 2019, the Montana Supreme Court held that under the Fourth Amendment and the search and seizure provision of the Montana Constitution, "[j]udges no longer have a role in determining whether officers may execute a warrant via a no-knock entry. Instead, officers serving a warrant may perform a no-knock entry if they have a reasonable suspicion of exigent circumstances."[45] Furthermore, the officers may base their reasonable suspicion on information known both before and after the application for search warrant. In reaching this decision, the Montana Supreme Court noted that "officers must have flexibility when evaluating the circumstances surrounding execution of a search warrant, including physical threats posed by knocking and announcing their presence along with any other exigent circumstance" and that "placing the onus on the judge issuing the warrant to prospectively evaluate exigent circumstances . . . severely limits the officer's ability to protect the safety of other persons and property and to secure evidence."

The Montana Supreme Court also concluded that "Montanans' enhanced privacy protections do not compel judicial preauthorization of no-knock entries because the judge's role is to determine probable cause, not the manner of the warrant's execution."[46]

26. Nebraska – no-knock warrants expressly authorized by statute

Neb. Rev. Stat. Ann. § 29-411 provides that, in executing a warrant for the arrest of a person charged with an offense, or a search warrant, or when authorized to make an arrest for a felony without a warrant, the officer may break open any outer or inner door or window of a dwelling house or other building, if, after notice of his office and purpose, he is refused admittance; or without giving notice of his authority and purpose, if the judge or magistrate issuing a search warrant has inserted a direction therein that the officer executing it shall not be required to give such notice, but the political subdivision from which such officer is elected or appointed shall be liable for all damages to the property in gaining admission. The judge or magistrate may so direct only upon proof under oath, to his satisfaction that the property sought may be easily or quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice be given; but this section

[44] *Mississippi Bureau of Narcotics v. Hunter*, No. 2019-CA-01246-COA, 2020 WL 5089433, at *7 (Miss. Ct. App. Aug. 18, 2020).
[45] *State v. Neiss*, 443 P.3d 435, 449 (Mont. 2019), *cert. denied*, 140 S. Ct. 411 (U.S. 2019). The *Neiss* decision overruled *State v. Anyan*, 104 P.3d 511 (Mont. 2004), "to the extent that it requires prior judicial approval for no-knock entries"
[46] *Neiss*, 443 P.3d at 448.

is not intended to authorize any officer executing a search warrant to enter any house or building not described in the warrant.

27. Nevada – no-knock warrants issued, no specific state statute

Nev. Rev. Stat. Ann. § 179.055 provides that:

> 1. The officer may break open any outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant, if, after notice of authority and purpose, the officer is refused admittance.
> 2. The officer may break open any outer or inner door or window of a house for the purpose of liberating a person who, having entered to aid in the execution of the officer's warrant, is detained therein, or when necessary for the officer's own liberation.
> 3. All reasonable and necessary force may be used to effect an entry into any building or property or part thereof to execute a search warrant. In the execution of the warrant, the person executing it may reasonably detain and search any person in the place at the time in order to protect himself or herself from attack or to prevent destruction, disposal or concealment of any instruments, articles or things particularly described in the warrant.

Case law reflects that no-knock warrants are issued in Nevada. For example, in an unpublished decision in 2011, the Nevada Supreme Court upheld various convictions stemming from evidence that the police exercising a no-knock warrant related to methamphetamines.[47]

28. New Hampshire – no-knock warrants granted, without a state statute

As reflected in an analysis of no-knock warrant usage by The New York Times in 2017, New Hampshire routinely granted no-knock warrants. A 2017 editorial in the Concord Monitor noted that New Hampshire issues no standards or guidelines governing no-knock raids and called for the state legislature to debate how and when no-knock warrants should be conducted. I was also unable to locate a state statute that specifically authorizes the issuance of no-knock warrants.

29. New Jersey – no-knock warrants permitted under case law

The Supreme Court of New Jersey has provided the following tenets for the issuance of a no-knock warrant:

> (1) To justify a no-knock warrant provision, a police officer must have a reasonable, particularized suspicion that a no-knock entry is required to prevent the destruction of evidence, to protect the officer's safety, or to effectuate the arrest or seizure of evidence.
> (2) The police officer must articulate the reasons for that suspicion and may base those reasons on the totality of the circumstances with which he or she is faced.
> (3) Although the officer's assessment of the circumstances may be based on his or her experience and knowledge, the officer must articulate a minimal level of objective justification to support the no-knock entry, meaning it may not be based on a mere hunch.[48]

[47] *Abbott v. State*, 373 P.3d 889 (Nev. 2011).
[48] *State v. Johnson*, 775 A.2d 1273, 1279–80 (N.J. 2001).

30. New Mexico – no-knock warrants allowed, without a state statute

I was unable to find a statute in New Mexico that specifically authorizes the issuance of no-knock warrants. However, I did find cases in New Mexico that reference the use of no-knock warrants.[49]

On September 30, 2020, the Albuquerque Journal noted that the Santa Fe City Council will consider a proposed ordinance that would ban no-knock warrants and require city police officers to wear body cameras when executing all warrants.

31. New York – no-knock warrants expressly authorized by statute

N.Y. Crim. Proc. Law § 690.50 (2) provides that, in executing a search warrant directing a search of premises or a vehicle, a police officer need not give notice to anyone of his authority and purpose, as prescribed in subdivision one, but may promptly enter the same if:

> (a) Such premises or vehicle are at the time unoccupied or reasonably believed by the officer to be unoccupied; or
> (b) The search warrant expressly authorizes entry without notice.

N.Y. Crim. Proc. Law § 690.35 (4)(b) also provides that the application for the warrant may include a request that the search warrant authorize the executing police officer to enter premises to be searched without giving notice of his authority and purpose, upon the ground that there is reasonable cause to believe that (i) the property sought may be easily and quickly destroyed or disposed of, or (ii) the giving of such notice may endanger the life or safety of the executing officer or another person, or (iii) in the case of an application for a search warrant as defined in paragraph (b) of subdivision two of section 690.05 for the purpose of searching for and arresting a person who is the subject of a warrant for a felony, the person sought is likely to commit another felony, or may endanger the life or safety of the executing officer or another person.

According to a September 28, 2020 article by City & State New York, State Sen. James Sanders Jr. of Queens plans to introduce Breonna's Law, a new bill that would ban the use of no-knock search warrants in all drug cases. While it does not ban no-knock warrants in cases such as murder, drug cases make up the majority of cases for which such warrants are issued.

32. North Carolina – statute explicitly provides for exception to knock-and-announce

N.C. Gen. Stat. Ann. § 15A-251 provides that an officer may break and enter any premises or vehicle when necessary to the execution of the search warrant if:

> (1) The officer has previously announced his identity and purpose as required by G.S. 15A-249 and reasonably believes either that admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or
> (2) The officer has probable cause to believe that the giving of notice would endanger the life or safety of any person.

[49] *See, e.g., State v. Winton*, 229 P.3d 1247, 1248 (N.M. Ct. App. 2010) (case in which a search warrant contained a no-knock provision "for officer safety" based upon the affidavit which stated the subject property contained "drugs, guns, and money" and that the suspect "was not afraid to shoot someone if necessary."

33. North Dakota - no-knock warrants expressly authorized by statute

N.D. Cent. Code Ann. § 29-29-08 provides that an officer directed to serve a search warrant may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant:

> (1) If, after notice of the officer's authority and purpose, the officer is refused admittance; or
> (2) Without notice of the officer's authority and purpose if the warrant was issued by a magistrate who is learned in the law and who has inserted a direction therein that the officer executing it shall not be required to give such notice.

The magistrate may so direct only upon written or recorded oral petition and proof under oath, to the magistrate's satisfaction, that the property sought may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, if such notice were to be given.

34. Ohio – no-knock warrants expressly authorized by statute

Ohio Rev. Code Ann. § 2933.231(B) provides that a law enforcement officer, prosecutor, or other authorized individual who files an affidavit for the issuance of a search warrant may include in the affidavit a request that the statutory precondition for nonconsensual entry[50] be waived in relation to the search warrant. A request for that waiver shall contain all of the following:

> (1) A statement that the affiant has good cause to believe that there is a risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant if they are required to comply with the statutory precondition for nonconsensual entry;
> (2) A statement setting forth the facts upon which the affiant's belief is based, including, but not limited to, the names of all known persons who the affiant believes pose the risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant at the particular dwelling house or other building;
> (3) A statement verifying the address of the dwelling house or other building proposed to be searched as the correct address in relation to the criminal offense or other violation of law underlying the request for the issuance of the search warrant;
> (4) A request that, based on those facts, the judge or magistrate waive the statutory precondition for nonconsensual entry.

Pursuant to Ohio Rev. Code Ann. § 2933.231(C), the issuing judge may waive the statutory preconditions for entry if there is probable cause to believe the allegations in the affidavit. Such a waiver does not authorize entry of any building other than the one described in the warrant, pursuant to Ohio Rev. Code Ann. § 2933.231(D)(1).

35. Oklahoma – no-knock warrants expressly authorized by statute

Regarding the execution of a search warrant, Okla. Stat. Ann. tit. 22, § 1228 provides that a peace officer may break open an outer or inner door or window of a house, or any part of the house, or anything therein, to execute the warrant when:

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[50] Ohio Rev. Code Ann. § 2933.231(3) defines the phrase "statutory precondition for nonconsensual entry" to mean the precondition specified in Ohio Rev. Code Ann. § 2935.12 (regarding forcible entry) that requires a law enforcement officer or other authorized individual executing a search warrant to give notice of his intention to execute the warrant and then be refused admittance to a dwelling house or other building before he legally may break down a door or window to gain entry to execute the warrant.

(1) The officer has been refused admittance after having first given notice of his authority and purpose; or

(2) Pursuant to an instruction inserted in the search warrant by the magistrate that no warning or other notice of entry is necessary because there is reasonable cause to believe that exigent circumstances exist. Exigent circumstances include:

a. such warning or other notice would pose a significant danger to human life,

b. such warning or other notice would allow the possible destruction of evidence,

c. such warning or other notice would give rise to the possibility of resistance or escape,

d. such warning or other notice would otherwise inhibit the effective investigation of the crime, or

e. such warning or other notice would be futile or a useless gesture.

36. Oregon – statute requires the police to announce themselves

Or. Rev. Stat. Ann. § 133.575 (2) provides that "[t]he executing officer shall, before entering the premises, give appropriate notice of the identity, authority and purpose of the officer to the person to be searched, or to the person in apparent control of the premises to be searched, as the case may be." Furthermore, a magistrate issuing a search warrant no authority to authorize officers to ignore knock-and-announce requirement.[51]

37. Pennsylvania – state Rules of Criminal Procedure provide for forcible entry in exigent circumstances

Rule 207 (A) of Pennsylvania's Rules of Criminal Procedure provides that a law enforcement officer executing a search warrant shall, before entry, give, or make reasonable effort to give, notice of the officer's identity, authority, and purpose to any occupant of the premises specified in the warrant, unless exigent circumstances require the officer's immediate forcible entry.

38. Rhode Island – no-knock warrants issued, no specific state statute

Rhode Island courts permit the issuance of no-knock warrants. I could not locate a state statute specifically authorizing such a warrant. As reflected in 2015 General Order 330.03 from the Providence Police Department, an officer applying for a search warrant can also request that the judge grant permission for no-knock entry, which is permissible for officer safety and to prevent the destruction of evidence. The officer must articulate the reasons, facts, and circumstances that are necessary to support the request for the no-knock search warrant.

According to a June 15, 2020 article, Rep. Anastasia Williams (D) said she is also working on legislation to ban no-knock warrants.

39. South Carolina – state Supreme Court issued temporary ban on no-knock warrants

In an order dated July 10, 2020, the Supreme Court of South Carolina issued a "moratorium upon the issuance of no-knock warrants by all circuit and summary court judges of this state take effect immediately and remain in effect until instruction is provided to circuit and summary court judges

[51] *State v. Arce*, 730 P.2d 1260, 1262 (Or. Ct. App. 1986).

statewide as to the criteria to be used to determine whether a requested no-knock warrant should be issued." This instruction will be provided by the South Carolina Judicial Branch.

The Supreme Court of South Carolina issued the temporary ban on the issuance of no-knock warrants following a recent survey of magistrates which revealed that most do not understand the gravity of no-knock warrants and do not discern the heightened requirements for issuing a no-knock warrant and the discovery that "no-knock search warrants are routinely issued upon request without further inquiry."

40. South Dakota – no-knock warrants expressly authorized by statute

S.D. Codified Laws § 23A-35-9 provides that, if a committing magistrate who has been asked to issue a search warrant is satisfied that there is probable cause to believe that if notice were given prior to its execution, the property sought in the case may be easily and quickly destroyed or disposed of, or that danger to the life or limb of the officer or another may result, he may include in the warrant a direction that the officer executing it is not required to give the notice required by § 23A-35-8.[52] In such case, the officer who executes the warrant may, without notice of his authority and purpose, enter any structure, portion of a structure or vehicle, or anything therein, by whatever means, including breaking therein.

41. Tennessee – knock-and-announce rule in state Rules of Criminal Procedure but exceptions recognized by case law allow for the issuance of a no-knock warrant

Rule 41(e)(2) of the Tennessee Rules of Criminal Procedure provides that if, after notice of his or her authority and purpose, a law enforcement officer is not granted admittance, or in the absence of anyone with authority to grant admittance, the peace officer with a search warrant may break open any door or window of a building or vehicle, or any part thereof, described to be searched in the warrant to the extent that it is reasonably necessary to execute the warrant and does not unnecessarily damage the property.

However, courts in Tennessee have held that "a no-knock warrant is appropriate when 'the officers have a justified belief those inside the dwelling are aware of their presence and are engaged in escape or the destruction of evidence.'"[53] No-knock warrants may also be issued if law enforcement officers show that evidence in the property (drugs, etc.) might be destroyed before they could be seized.[54]

In June 2020, the Memphis Police Department decided to stop requesting no-knock warrants following the fatal shooting of Breonna Taylor in Kentucky. State Senator Raumesh Akbari (D – Memphis) also plans to file legislation when Tennessee's legislature reconvenes in January 2021 to end the issuance of no-knock warrants statewide.

42. Texas – no-knock warrants permitted under case law

Officers are not required to knock and announce their presence before entry if either (1) a magistrate has authorized the "no knock" entry or (2) the circumstances support a reasonable suspicion of

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[52] S.D. Codified Laws § 23A-35-8 provides that:

> The officer executing a search warrant may break open any building, structure, or container or anything therein to execute the warrant if, after giving notice of his authority and purpose, he is refused admittance. An officer executing a search warrant may break open any building, structure, or container or anything therein for the purpose of liberating a person who, having entered to aid him in the execution of a warrant, is detained therein, or when necessary for his own liberation.

[53] *State v. Perry*, 178 S.W.3d 739, 746 (Tenn. Crim. App. 2005) (quoting *State v. Curtis*, 964 S.W.2d 604, 610 (Tenn. Crim. App. 1997)).

[54] *State v. Campbell*, No. W201701101CCAR3CD, 2020 WL 1987924, at *1 (Tenn. Crim. App. Apr. 24, 2020).

exigency when the officers arrive at the door, although no magistrate has authorized the unannounced entry.[55] In determining the applicability of number (2) above, the totality of the circumstances must be examined.[56] Texas courts allow "no-knock" warrants if the affiant supplies information indicating that announcing the presence of officers would be dangerous or futile, or it would inhibit the effective investigation of a crime.[57]

43. Utah – no-knock warrants authorized by statute, but not solely for suspected drug possession

Utah Code Ann. § 77-23-210(3)(a) provides that the officer executing the search warrant may enter without notice only if:

> (1) There is reasonable suspicion to believe that the notice will endanger the life or safety of the officer or another person;
> (2) There is probable cause to believe that evidence may be easily or quickly destroyed; or
> (3) The magistrate, having found probable cause based upon proof provided under oath that the object of the search may be easily or quickly destroyed, or having found reason to believe that physical harm may result to any person if notice were given, has directed that the officer need not give notice of authority and purpose before entering the premises to be searched under the Rules of Criminal Procedure; or
> (4) The officer physically observes and documents a previously unknown event or circumstance at the time the warrant is being executed which creates probable cause to believe the object of the search is being destroyed, or creates reasonable suspicion to believe that physical harm may result to any person if notice were given.

However, subsection (8) of this statute provides that a warrant authorizing forcible entry without prior announcement may not be issued solely for the alleged possession or use of a controlled substance or drug paraphernalia.

Utah Code Ann. § 77-23-210(7)(a) also requires the officer to take reasonable precautions in execution of any search warrant to minimize the risks of unnecessarily confrontational or invasive methods which may result in harm to any person. Likewise, subsection (7)(b) of this statute also requires the officer to minimize the risk of searching the wrong premises by verifying that the premises being searched is consistent with a particularized description in the search warrant, including such factors as the type of structure, the color, the address, and orientation of the target property in relation to nearby structures as is reasonably necessary.

44. Vermont – no-knock warrants issued, without a specific state statute

Vermont permits the issuance of no-knock warrants but does not have a statute specifically addressing this issue. Following the execution of a no-knock search warrant in 2016 that resulted in the death of a suspect, the Vermont ACLU called for reform on the state's issuance of no-knock warrants. As reflected in an analysis of no-knock warrant usage by The New York Times in 2017, Vermont judges routinely granted no-knock warrants.

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[55] *Martinez v. State*, 220 S.W.3d 183, 188 (Tex. Ct. App. 2007) (citing *United States v. Banks*, 540 U.S. 31, 36–37 (2003)).
[56] *Martinez*, 220 S.W.3d at 188 (citing Banks, 540 U.S. at 36; *Flores v. State*, 177 S.W.3d 8, 14 (Tex. Ct. App. 2005).
[57] *Jones v. State*, 364 S.W.3d 854, 865 (Tex. Crim. App. 2012) (citing *Richards v. Wisconsin*, 520 U.S. 385, 392–94 (1997)).

45. Virginia – Governor Northam signed bill to prohibit law enforcement officers from seeking or executing a no-knock search warrant

This fall, Virginia lawmakers were in a special legislative session to address a number of issues, including law enforcement reform. Governor Ralph Northam (D) took action on several bills that passed in October 2020 regarding police and criminal justice reform in Virginia, including signing Senate Bill 5030, which provides, among other things, that "[n]o law-enforcement officer shall seek, execute, or participate in the execution of a no-knock search warrant."

46. Washington – forcible entry to execute a search warrant permitted under exigent circumstances

I was unable to find a statute in Washington that specifically authorizes the issuance of a no-knock warrant. In 1982, the Court of Appeals of Washington in *State v. Spargo* opined that "a prior 'no knock' authorization is superfluous and that justification of an unannounced entry must be based on specific facts known to the officers executing the warrant, is a sound one."[58] The Court of Appeals in *Spargo* cited favorably to the California Supreme Court's decision in Parsley in 1978, but as discussed above, these decisions occurred prior to the U.S. Supreme Court decisions in *Banks* and in *Richards*.

As reflected in an analysis of no-knock warrant usage by The New York Times in 2017, no-knock search warrants are not generally granted in Washington, but forcible entries are allowed under exigent circumstances. The Washington Court of Appeals recently found that exigent circumstances existed to permit immediate entry into a home to execute a search warrant, where the warrant had been classified as high risk and necessitated SWAT involvement, someone on the porch of the suspect's home saw the police arrive, the police were looking for evidence that could easily and quickly be destroyed, the police had been advised that there was a large dog on the property, and the suspect was known to carry a firearm.[59]

47. West Virginia – knock-and-announced is codified

W. Va. Code Ann. § 62-1A-5 provides that:

> The officer may break into a house, building or structure, or any part thereof, or anything therein, or any vehicle, vessel or other conveyance, to execute a search warrant, or commit such breaking as may be necessary to liberate himself or a person aiding him in the execution of the warrant. If the place to be searched is a dwelling he shall not attempt a forcible entry until he shall have given notice of his authority and purpose and shall have been refused admittance.

However, as reflected in an analysis of no-knock warrant usage by The New York Times in 2017, no-knock search warrants are not generally granted in West Virginia, but forcible entries are allowed under exigent circumstances.

48. Wisconsin – no-knock warrants authorized by case law

Wis. Stat. Ann. § 968.14 provides that "[a]ll necessary force may be used to execute a search warrant or to effect any entry into any building or property or part thereof to execute a search warrant." However, as the Wisconsin Legislative Council recently noted in Informational Memorandum IM-2020-09 regarding no-knock search warrants, this statute does not explicitly authorize or prohibit no-knock search warrants.

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[58] *State v. Spargo*, 639 P.2d 782, 784 (Wash. App. 1982).
[59] *State v. Sexton*, No. 52401-5-II, 2020 WL 4463525, at *6 (Wash. Ct. App. Aug. 4, 2020).

The Supreme Court of Wisconsin has held that judicial officers are authorized to issue no-knock warrants.[60]

49. Wyoming – no-knock warrants specifically authorized by statute for felony offenses involving controlled substances

Wyo. Stat. Ann. § 35-7-1045(e) provides that:

> Any officer authorized to execute a search warrant relating to offenses involving controlled substances the penalty for which is imprisonment for more than one (1) year may, without notice of his authority and purpose, break open an outer or inner door or window of a building, or any part of the building, or anything therein, only if a district judge or district court commissioner issuing the warrant: (i) is satisfied that there is probable cause to believe that (A) the property sought may and, if such notice is given, will be easily and quickly destroyed or disposed of, or (B) the giving of such notice will immediately endanger the life or safety of the executing officer or another person; and (ii) has included in the warrant a direction that the officer executing it shall not be required to give such notice. Any officer acting under such warrant, shall, as soon as practicable after entering the premises, identify himself and give the reason and authority for his entrance upon the premises.

[60] *See, e.g., State v. Henderson*, 629 N.W.2d 613, 622 (Wis. 2001).