Wisconsin Legislative Council
INFORMATION MEMORANDUM

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NO-KNOCK SEARCH WARRANTS

Under the Fourth Amendment to the U. S. Constitution, citizens have the right to be protected against unlawful searches and seizures. One of the rules under the Fourth Amendment that safeguards these protections is the knock-and-announce rule, which requires that law enforcement announce its presence before forcibly entering a person's dwelling to conduct a search. However, the majority of jurisdictions have created exceptions to this rule, one of which is the no-knock search warrant.

This information memorandum describes the Fourth Amendment constitutional protections applicable to no-knock search warrants, how no-knock search warrants are treated in other states, and current legislative efforts to restrict the use of no-knock search warrants.

CONSTITUTIONAL FRAMEWORK

The general requirement that law enforcement knock-and-announce their presence and authority before making a forced entry into a dwelling to conduct a search dates back centuries to British common law[1]. Referred to as the "knock-and-announce rule," or the "announcement rule" in Wisconsin, this common law requirement was incorporated into early American law and has become part of the constitutional analysis of whether a search is permissible under the Fourth Amendment. [*Wilson v. Arkansas*, 514 U.S. 927, 980 (1995).]

U.S. Constitution

The Fourth Amendment to the U.S. Constitution protects citizens against unreasonable searches and seizures. Specifically, the Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. [U.S. Const. amend. IV.]

The U.S. Supreme Court has stated that the fundamental purpose of the Fourth Amendment is to protect against "unreasonable searches and seizures and to safeguard the privacy and security of individuals against arbitrary invasions by governmental officials." [*Camara v. Mun. Ct. of the City and Cnty. of San Francisco*, 387 U.S. 523, 528 (1967).] The test used to determine whether law enforcement executed a search in violation of the Fourth Amendment is whether the search

[1] One of the earliest judicial sources cited is *Semayne's Case*, a 1604 English common law case, where the court held "when the King is party, the sheriff (if the doors be not open) may break the party's house, either to arrest him, or to do other execution of the King's process, if otherwise he cannot enter. But before he breaks it, he ought to signify the cause of his coming, and to make request to open doors...." [*Wilson v. Arkansas,* 514 U.S. 927, 931 (1995).]

was "reasonable" under the circumstances as the officer knew them to be at that time.[2] [*Terry v. Ohio*, 392 U.S. 1 (1968).]

Wisconsin Constitution

Rights conferred to citizens under the Fourth Amendment of the U.S. Constitution are also granted under the Wisconsin Constitution. Wisconsin Constitution, Article I, Section 11, relating to searches and seizures, provides the following:

> The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

The language used, and the rights granted, in Wis. Const. art. I, s. 11, are a direct copy of the Fourth Amendment of the U. S. Constitution. Similar to the Fourth Amendment, this section of the Wisconsin Constitution grants citizens the right to be secure in their homes and protects citizens against unreasonable searches and seizures. The Wisconsin Supreme Court has held that art. 1, s. 11 is interpreted in the same manner as the Fourth Amendment to the U.S. Constitution. [*State v. Ferguson*, 2009 WI 50.] For that reason, the constitutional analysis is identical under the state and U.S. constitutions.

The Reasonableness Inquiry and the Knock-and-Announce Rule

The knock-and-announce rule was developed as part of the U.S. Supreme Court's Fourth Amendment constitutional analysis, which reviews the reasonableness of law enforcement's actions, commonly referred to as the "reasonableness inquiry." By virtue of the knock-and-announce rule, when a law enforcement officer executes a search warrant, the officer is generally required to first knock, identify the officer and the officer's intention, and then wait a reasonable time for residents to let the officer into the dwelling. The Wisconsin Supreme Court has stated that the knock-and-announce rule fulfills three purposes:

- Protecting the safety of police officers and others.
- Protecting the limited privacy interests of the occupants of the premises to be searched.
- Preventing the physical destruction of property.

[*State v. Meyer*, 216 Wis. 2d 729, 734 n.4 (1998).]

While the knock-and-announce rule is an element of the Fourth Amendment's reasonableness inquiry, the U.S. Supreme Court stated in *Wilson v. Arkansas* that the Fourth Amendment "should not be read to mandate a rigid rule of announcement that ignores countervailing law enforcement interests." Therefore, in that case, rather than creating a blanket rule under which law enforcement must always knock-and-announce its presence before entering a dwelling to execute a search warrant, the Court held that the knock-and-announce rule is part of the analysis that courts must consider when reviewing a Fourth Amendment challenge to instances

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[2] The U.S Supreme Court has held that judges should evaluate the conduct of "those charged with enforcing the laws" and the reasonableness of a particular search or seizure in light of the particular circumstances using this objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" [*Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889 (1968).]

where law enforcement does not knock-and-announce prior to entering. [514 U.S. 927, 934 (1995).]

NO-KNOCK SEARCH WARRANTS

Following the Court holding in *Wilson* that the knock-and-announce rule is not mandated by the Fourth Amendment, courts have allowed limited exceptions to the knock-and-announce rule. The no-knock search warrant is one exception to the knock- and- announce rule.[3] This exception has been recognized by the U.S. Supreme Court due to public policy concerns regarding the preservation of evidence and the safety of law enforcement officers. A no-knock search warrant, which is issued by a judge or magistrate before law enforcement enters a dwelling to conduct a search, is used by law enforcement when there is reasonable suspicion that "countervailing law enforcement interests, such as officer safety" establish "the reasonableness of an unannounced entry." [*Id. at 936.*] In order to waive the knock-and-announce rule, law enforcement must present evidence to establish "...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."[4] [*Richards v. Wisconsin*, 520 U.S. 385, 394 (1997).]

In Wisconsin, there is a broad statute that addresses the amount of force law enforcement may use when executing a search warrant, but the statute does not explicitly authorize or prohibit no-knock search warrants. Specifically, s. 968.14, Stats., provides as follows:

> All 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.

In *State v. Cleveland*, the Wisconsin Supreme Court held that no-knock search warrants were authorized despite the fact that s. 968.14, Stats., does not expressly authorize them. The Court held that no-knock search warrants are authorized as long as law enforcement, in its petition for such a warrant, sets forth "special circumstances with sufficient particularity to show reasonable cause to believe that circumstances presently exist which justify a no-knock entry...." [118 Wis. 2d 615, 626 (1984).] The Court went on to state that a no-knock search warrant, however, does not give law enforcement unlimited authority to conduct a search without knocking and announcing themselves. For example, if between the time that the no-knock search warrant is authorized and the warrant is executed, law enforcement obtains new information that eliminates the need to enter without complying with the knock-and-announce rule, then law enforcement must comply with the rule. [*Id.* at 626-27.]

THE EXCLUSIONARY RULE

In general, when a search of a person's dwelling is found to be unreasonable and in violation of the Fourth Amendment, the remedy is that any evidence unlawfully seized is inadmissible in

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[3] The other exception to the knock-and-announce rule is the no-knock entry pursuant to exigent circumstances. In a no-knock entry pursuant to exigent circumstances, a law enforcement officer is permitted to enter without prior approval by a court or magistrate if the officer has reasonable suspicion that knocking and announcing would be dangerous, futile, or that evidence might be destroyed once they arrive at the scene. [*Richards v. Wisconsin*, 520 U.S. 385, 589-590 (1997).]

[4] The court found that this standard 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. [*Id.* at 394–95.]

court proceedings. This is commonly referred to as the "exclusionary rule." The rationale of the exclusionary rule is to a person's constitutional rights by creating a deterrent against law enforcement misconduct by preventing the use of evidence gathered as a result of a constitutional violation. However, the U.S. Supreme Court and state courts have recognized exceptions to this rule. For example, the U.S. Supreme Court has held that the exclusionary rule does not apply to evidence gathered pursuant to a no-knock search warrant, even if the search has been found to be in violation of the Fourth Amendment knock-and-announce rule. [*Hudson v. Michigan*, 547 U.S. 586 (2006).]

In *Hudson v. Michigan*, the U. S. Supreme Court held that the exclusionary rule could not be applied to evidence obtained after a knock-and-announce violation, because the protections violated by the unannounced entry had nothing to do with protecting evidence[5]. The court reasoned that the substantial social costs of the exclusionary rule as applied to the knock-and-announce rule outweighed the deterrence benefits, and that other measures such as a civil lawsuit filed against a law enforcement officer[6] or agency and internal police disciplinary actions[7] would provide more effective deterrence. [*Id.* at 593 and 597.]

In Wisconsin, the Supreme Court has also held that even if the knock-and-announce rule was violated and the no-knock search warrant is found to be invalid, evidence should not be suppressed through the exclusionary rule. The court reasoned that if a law enforcement officer can show objectively that the officer reasonably relied upon a warrant given by the issuing authority, then the good faith exception applies[8]. [*State v. Eason*, 2001 WI 98, ¶ 74.]

OTHER STATES' APPROACHES TO NO-KNOCK SEARCH WARRANTS

Most jurisdictions recognize the knock-and-announce rule by statute, case law, or both, and require a law enforcement officer who is executing a search warrant to announce the officer's identity and purpose and then wait a reasonable time before executing a forced entry. Most states also recognize exceptions to this rule and allow law enforcement officers to execute no-knock searches under specified circumstances. [National Conference of State Legislatures (NCSL), *"No-Knock" Forcible Entry* (June 2020).]

Some states, such as Florida and Oregon, have abolished the use of no-knock search warrants completely. Oregon abolished the use by statute[9] and Florida abolished the use through a

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[5] The Court found that the interests protected by the knock-and-announce requirement (protection of human life and limb, the protection of property, and the protection of privacy) are quite different—and do not include the shielding of potential evidence from the government's eyes. [*Hudson*, at 593 (2006).]

[6] For more information related to the civil liability to which a law enforcement may be subject, as well as the immunities that limit this liability, including qualified immunity, see Legislative Council, *Law Enforcement Use of Force*, Information Memorandum (June 2020).

[7] For more information related to law enforcement disciplinary actions and decertification, see Legislative Council, *Law Enforcement Use of Force*, Information Memorandum (June 2020).

[8] The good faith exception applies when officers can show that they had a reasonable, good faith belief that they were acting according to legal authority, or their transgressions have been minor. [*United States v. Leon*, 468 U.S. 897, 908 (1984).]

[9] Under Or. Rev. Stat. § 133.575, Oregon's execution of a warrant statute, police are required to knock-and-announce their presence whenever they execute a warrant without exception.

Supreme Court case[10]. In 15 states, including Illinois,[11] no-knock search warrants are expressly authorized in state statute or court rule. For example, the Illinois Code of Criminal Procedure 725 ILCS 5/108-8 provides as follows:

> "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…."

Other states such as Alabama[12], Minnesota[13], and California[14], have taken a similar approach as Wisconsin, and their respective state courts have allowed exceptions to the knock-and-announce rule and authorized no-knock search warrants through case law. While there may be slight variations in requirements, the majority of these states apply the same or a similar standard as Wisconsin. [NCSL, *"No-Knock" Forcible Entry*, p. 3.]

CURRENT LEGISLATIVE EFFORTS TO RESTRICT THE USE OF NO-KNOCK SEARCH WARRANTS

The legality and use of no-knock warrants by law enforcement officers are being challenged and discussed at the federal and state levels.[15] With the increased usage of body cameras by law enforcement, there is a growing awareness regarding no-knock search warrants, as the public is able to review footage captured during their execution. Following the death of Breonna Taylor, an EMT in Louisville, Kentucky, some state and local governments have recently banned no-knock search warrants, and others are considering doing so.

In Louisville, the city council enacted an ordinance, entitled "Breonna's Law", banning the use of no-knock search warrants in the city[16]. Within the last few weeks, several state legislatures,

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[10] Florida's Supreme Court held that as a matter of policy, no-knock warrants are disfavored because of their staggering potential for violence to both occupants and police. In the absence of express statutory authorization, no-knock search warrants are without legal effect in Florida. [*State v. Bamber*, 630 So. 2d 1048, 1050–51 (Fla. 1994).]

[11] The states that have expressly authorized no-knock search warrants in their respective state statutes or court rules are: Arizona, Colorado, Illinois, Louisiana, Maine, Maryland, Nebraska, New York, North Carolina, North Dakota, Oklahoma, Pennsylvania, South Dakota, Utah, and Wyoming. [NCSL, *"No-Knock" Forcible Entry*, p. 3-11.]

[12] In Alabama, the courts held that the Legislature intended for § 15-10-4 to codify the general knock-and-announce principle and its recognized common-law exceptions. [*Walker v. State*, 895 So. 2d 366, 368 (Ala. Crim. App. 2004).]

[13] In Minnesota, the court held that the state need only show a reasonable suspicion that an announced entry will pose a threat to officer safety. [*State v. Wasson*, 615 N.W.2d 316, 322 (Minn. 2000).]

[14] In California, the court recognized that exigent circumstances excused compliance with knock-notice requirements. [*People v. Murphy*, 37 Cal. 4th 490, 123 P.3d 155 (2005).]

[15] For more information about the current law and recent proposals in Congress regarding police reform, please see the Congressional Research (CRS), *Congress and Police Reform: Current Law and Recent Proposals*, Legal Sidebar (June 25, 2020).

[16] This ordinance was passed unanimously by Louisville's Metro Council. [Louisville Metro Council Minutes (June 11, 2020), item #16.]

including Illinois[17], Minnesota[18], and Massachusetts[19], have introduced legislation amending or banning the authority to issue no-knock search warrants, as well as other types of law enforcement tactics.

In Wisconsin, Governor Tony Evers and Lt. Governor Mandela Barnes circulated a series of bills for co-sponsorship that pertain to law enforcement accountability and transparency reform. One of the bills drafts, LRB-6289/1, prohibits no-knock search warrants issued under state law by requiring a law enforcement officer who is executing a search warrant to identify himself or herself as a law enforcement officer and announce the authority and purpose of the entry, before entering the premises.

At the federal level, two police reform bills have been introduced in Congress that seek to change policing on a national scale, including no-knock search warrants. Members of the House of Representatives, led by the Congressional Black Caucus, introduced H.R. 7120, (2019-2020), the George Floyd Justice in Policing Act of 2020 (Justice in Policing Act); Senate Republicans introduced S. 3985 (2019-2020), the Just and Unifying Solutions to Invigorate Communities Everywhere Act of 2020 (JUSTICE Act). Both bills contain provisions related to no-knock search warrants. The Justice in Policing Act, Section 362, bans federal no-knock search warrants for drug cases and prohibits a state or local unit of government from receiving funding from the Community Oriented Policing Services (COPS) grant program for a fiscal year if, at the beginning of the fiscal year, the state or local unit of government does not have in effect a law that prohibits the issuance of a no-knock search warrant in drug cases. The JUSTICE Act, Section 102 (the Breonna Taylor Notification Act), requires state and local law enforcement agencies that receive funding from the Edward Byrne Memorial Justice Assistance (Byrne JAG) grant program to report to the U.S. Department of Justice information about each no-knock search warrant carried out by the agency during the preceding calendar year.[20]

This information memorandum was prepared by Kara Weatherby, Legal Intern, and Melissa Schmidt, Senior Staff Attorney, on August 4, 2020.

[17] In Illinois, IL H 5807 (2019-2020), relating to amending the code of criminal procedure to state that a peace officer or other public officer or employee shall not seek or execute a no-knock search warrant and a court shall not issue such a warrant, was introduced by the house on July 2, 2020.

[18] In Minnesota, H.F. 98 (2019-2020), relating to public safety and regulating no-knock search warrants, was introduced on July 20, 2020.

[19] In Massachusetts, S.2800 (2020), relating to reforming police standards and shifting resources to build a more equitable, fair and just commonwealth that values Black lives and communities of color, was introduced by the Senate and addresses police reform as well as amending no-knock warrants. On July 14, 2020, the bill was amended, and then passed as amended, by the Senate.

[20] For more in-depth comparison of the Justice in Policing Act and the JUSTICE Act, please see the CRS, *Comparing Police Reform Bills: the Justice in Policing Act and the JUSTICE Act*, Legal Sidebar (July 6, 2020).