

Task Force on Issuing Search Warrants

Meeting Agenda

Friday, May 14, 2021

10:00 a.m. to 3:00 p.m.

State Courts Building * 1501 West Washington * Room 101 * Phoenix, AZ

Telephone: **877-853-5247**, Access Code: **989 9560 2536**

Item no. 1	Call to Order Welcoming remarks by the Chief Justice	<i>Hon. Clint Bolick</i> <i>Chief Justice Brutinel</i>
Item no. 2	Introduction of members and staff	<i>All</i>
Item no. 3	Review of Administrative Order No. 2021-34 Approval of Task Force Rules for Conducting Business Introductory remarks by the Chair	<i>Justice Bolick</i>
Item no. 4	Overview of the process for issuing no-knock and nighttime warrants	<i>Ms. Cabanillas</i>
Item no. 5	Review of House Bill 2751 (2021)	<i>Mr. Volkmer, Mr. Landau</i>
Item no. 6	Discussion of the members' experiences and concerns regarding no-knock and nighttime warrants Suggestions and ideas regarding "adequate safeguards" for issuing no-knock and nighttime warrants Identification of items and issues for the second meeting	<i>All</i>
Item no. 7	Roadmap <ul style="list-style-type: none">• Next meeting dates to be determined	<i>Justice Bolick</i>
Item no. 8	Call to the Public Adjourn	<i>Justice Bolick</i>

The Chair may call items on this Agenda, including the Call to the Public, out of the indicated order.

Please contact Mark Meltzer at (602) 452-3242 with any questions concerning this Agenda.

Persons with a disability may request reasonable accommodations by contacting Angela Pennington at (602) 452-3547. Please make requests as early as possible to allow time to arrange accommodations.

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:)
)
ESTABLISHMENT OF A TASK FORCE) Administrative Order
ON ISSUING SEARCH WARRANTS) No. 2021 - 34
)
)
)
)
_____)

The Judicial Branch’s Strategic Agenda, *Justice for the Future: Planning for Excellence*, Goal 5, is Promoting Public Trust and Confidence. The use of no-knock or unannounced search warrants and nighttime warrants can create a dangerous situation for both law enforcement and citizens. In Arizona, few such warrants are issued, but when even one situation goes badly, it can seriously impact the public’s trust in the justice system. The examination of when a judge should authorize such a warrant and what safeguards should be in place before such a warrant is issued is timely. It is also appropriate for the judiciary to examine the procedures followed by judicial officers for issuing these warrants, the training needed, and whether any changes to existing statutes and rules are warranted.

Therefore, pursuant to Article VI, section 3 of the Arizona Constitution,

IT IS ORDERED that:

1. ESTABLISHMENT: The Task Force on Issuing Search Warrants is established.
2. PURPOSE: The Task Force shall review the process for issuing no-knock and nighttime search warrants in Arizona. The Task Force shall make recommendations to ensure that there are adequate safeguards in the issuance of these warrants. The Task Force’s recommendations may propose amendments to Arizona court rules and statutes concerning these warrants, including amendments that provide new or modified criteria or standards for the issuance of no-knock or nighttime warrants. The Task Force’s recommendations shall also address the training of judicial officers to ensure adequate training is provided.

The Task Force shall make its recommendations to the Arizona Judicial Council no later than October 21, 2021.

3. MEMBERSHIP: The individuals listed in Appendix A are appointed as members of the Task Force for a term beginning on April 2, 2021 and ending November 1, 2021. The Chief Justice may appoint additional members as may be necessary.

4. MEETINGS: Task Force meetings shall be scheduled at the discretion of the Chair. All meetings shall comply with the Arizona Code of Judicial Administration § 1-202: Public Meetings.
5. STAFF: The Administrative Office of the Courts shall provide staff for the Task Force and shall assist the Task Force in developing recommendations and preparing any necessary reports and filings.

Dated this 10th day of March, 2021.

ROBERT BRUTINEL
Chief Justice

Appendix A
Task Force on Issuing Search Warrants
Membership List

Chair:

Hon. Clint Bolick
Justice

Armando Nava
Attorney at Law

Members:

Hon. Karl Eppich
Court of Appeals, Division Two

Kevin Robinson
Arizona State University, Professor of
Criminology
Assistant Chief of Police (ret.), Phoenix
Police Department

Hon. Suzanne Cohen
Superior Court of Arizona in Maricopa
County

Major George Manera
Arizona Department of Public Safety

Hon. Melissa Zabor
Superior Court of Arizona in Maricopa
County

Jerry Landau
Administrative Office of the Courts

Hon. Christopher Browning
Superior Court of Arizona in Pima County

Anita Escobedo
Superior Court of Arizona in Gila County

Hon. Jill Davis
Lake Havasu Justice Court

Primitivo Romero
Superior Court of Arizona in Santa Cruz
County

Kent Volkmer
Pinal County Attorney

Abril Ruiz Ortega
Avondale City Court

Benjamin Taylor
Attorney at Law

Darrell Hill
Attorney at Law
American Civil Liberties Union

Christina Cabanillas
Assistant United States Attorney

Ken Cost
Chief of Police
Mesa Police Department

Professor Sylvia Lett
University of Arizona, School of Law

**Task Force on Issuing Search Warrants
Rules for Conducting Task Force Business**

1. Quorum

The minimum number of members to conduct business and act on any item is 11 (50% of the members + 1).

2. Decision-Making

Task Force decisions will be formally considered upon a motion that is properly seconded and following discussion on the motion. Task Force decisions will be made by a majority vote of members attending the meeting. A numerical vote will be recorded unless the decision is unanimous. The Chair will vote only to break a tie.

3. Responsibility of Members and Proxy Policy

Task Force members are selected for their expertise and they are encouraged to actively participate in Task Force meetings. However, a member may send a proxy to meetings if necessary. A member who intends to send a proxy should notify Task Force staff by email at least 24 hours before the meeting. The member should copy the proxy on that email to inform staff of the proxy's address.

- A proxy has all the responsibilities of a member, including voting power. A proxy must review the agenda issues, be prepared for a meeting, and brief the member on the meeting within a reasonable time thereafter.
- Another Task Force member may not serve as a proxy.
- A proxy is included in the count of members present to determine a quorum.
- A member may not use a proxy for more than three meetings without the Chair's approval.

4. Call to the Public

As provided in A.C.J.A. § 1-202, every meeting agenda will include a "Call to the Public" before the meeting is adjourned. The Chair will announce the opportunity for public comment regardless of whether a member of the public is attending the meeting or has expressed any desire to comment. The Chair may impose reasonable time, place, and manner limitations upon members of the public who respond to the call, including setting time limits, banning repetition, and prohibiting profanity and disruptive behavior.

HB 2751: search warrants; audible notice; requirements (Rep. A. Hernandez)

Original Version

Repeals the provision of law that allows a peace officer to make an unannounced entry in executing a search warrant if on a reasonable showing by the affiant announcing the officer's authority may endanger the safety of a person or would result in the destruction of evidence.

Requires that during the execution of a search warrant, an identifiable and uniformed peace officer provide an audible notice that is reasonably expected to be heard by the occupants of the place to be searched regarding the officer's authority and purpose.

As Amended by the House Committee on Criminal Justice Reform

Strikes the provision repealing the unannounced entry. Instead enumerates factors magistrate must find in order to grant an unannounced entry warrant to include:

- Underlying charges,
- Weapons information,
- Gang activity,
- Fortification of the structure,
- Documented violence potential of the suspect and other individuals related to the address,
- Documented violence potential or calls for service related to the address,
- Firsthand knowledge by the detective regarding the suspects and location, and
- Any other factor that a magistrate considers relevant.

Requires that unannounced entries should be executed by a member of a special weapons team, if practicable.

Strikes the provision that requires an identifiable and uniformed peace officer provide an audible notice.

5/11/2021

REFERENCE TITLE: search warrants; audible notice; requirements.

State of Arizona
House of Representatives
Fifty-fifth Legislature
First Regular Session
2021

HB 2751

Introduced by
Representatives Hernandez A: Andrade, Bolding, Cano, Chávez, Dalessandro,
Espinoza, Fernandez, Hernandez D, Hernandez M, Lieberman, Longdon, Meza,
Pawlik, Powers Hannley, Rodriguez, Salman, Schwiebert, Sierra, Stahl
Hamilton, Teller, Terán

AN ACT

AMENDING SECTIONS 13-3915, 13-3916 AND 13-3922, ARIZONA REVISED STATUTES;
RELATING TO SEARCH WARRANTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3915, Arizona Revised Statutes, is amended to
3 read:

4 13-3915. Issuance; form of warrant; duplicate original
5 warrant; telefacsimile

6 A. If the magistrate is satisfied that probable cause for the
7 issuance of the warrant exists, the magistrate shall issue a search
8 warrant commanding a search by any peace officer of the person or place
9 specified, for the items described.

10 ~~B. On a reasonable showing that an announced entry to execute the~~
11 ~~warrant would endanger the safety of any person or would result in the~~
12 ~~destruction of any of the items described in the warrant, the magistrate~~
13 ~~shall authorize an unannounced entry.~~

14 ~~E.~~ B. The warrant shall be in substantially the following form:

15 County of _____, state of Arizona.

16 To any peace officer in the state of Arizona:

17 Proof by affidavit having been this day made before me
18 by (naming every person whose affidavit has been taken) there
19 is probable cause for believing that (stating the grounds of
20 the application) according to section 13-3912, you are
21 therefore commanded in the daytime (or in the night, as the
22 case may be, according to section 13-3917) to make a search of
23 (naming persons, buildings, premises or vehicles, describing
24 each with reasonable particularity) for the following
25 property, persons or things: (describing such with reasonable
26 particularity), and if you find such or any part thereof, to
27 retain such in your custody subject to section 13-3920.

28 Given under my hand or direction and dated _____
29 (judge, justice of the peace or magistrate.)

30 ~~D.~~ C. The magistrate may orally authorize a peace officer to sign
31 the magistrate's name on a search warrant if the peace officer applying
32 for the warrant is not in the actual physical presence of the
33 magistrate. This warrant shall be called a duplicate original search
34 warrant and shall be deemed a search warrant for the purposes of this
35 chapter. In such cases, the magistrate shall cause to be made an original
36 warrant and shall enter the exact time of issuance of the duplicate
37 original warrant on the face of the original warrant. ~~Upon~~ ON the return
38 of the duplicate original warrant, the magistrate shall file the original
39 warrant and the duplicate original warrant as provided in section 13-3923.

40 ~~E.~~ D. A magistrate may affix the magistrate's signature on a
41 telefacsimile of an original warrant. The telefacsimile of the original
42 warrant is deemed to be a search warrant for the purposes of this chapter.
43 On return of the telefacsimile of the original warrant, the magistrate
44 shall file the original warrant and the telefacsimile of the original
45 warrant as provided in section 13-3923.

1 Sec. 2. Section 13-3916, Arizona Revised Statutes, is amended to
2 read:

3 13-3916. Service of warrant; audible notice; breaking and
4 entering to execute

5 A. A search warrant may be served by any peace officer but by no
6 other person except in aid of an officer engaging in service of the
7 warrant.

8 B. BEFORE EXECUTING A SEARCH WARRANT, A PEACE OFFICER WHO IS
9 RECOGNIZABLE AND IDENTIFIABLE AS A UNIFORMED PEACE OFFICER SHALL PROVIDE
10 AUDIBLE NOTICE OF THE OFFICER'S AUTHORITY AND PURPOSE. THE AUDIBLE NOTICE
11 MUST BE REASONABLY EXPECTED TO BE HEARD BY THE OCCUPANTS OF THE PLACE TO
12 BE SEARCHED.

13 ~~B.~~ C. An officer may break into a building, premises or vehicle or
14 any part of a building, premises or vehicle, to execute the warrant when:

15 1. After PROVIDING AUDIBLE notice of the officer's authority and
16 purpose, the officer receives no response within a reasonable time.

17 2. After PROVIDING AUDIBLE notice of the officer's authority and
18 purpose, the officer is refused admittance.

19 ~~3. A magistrate has authorized an unannounced entry pursuant to~~
20 ~~section 13-3915.~~

21 ~~4. The particular circumstances and the objective articulable facts~~
22 ~~are such that a reasonable officer would believe that giving notice of the~~
23 ~~officer's authority and purpose before entering would endanger the safety~~
24 ~~of any person or result in the destruction of evidence.~~

25 D. AFTER ENTERING AND SECURING THE PLACE TO BE SEARCHED BUT BEFORE
26 UNDERTAKING ANY SEARCH OR SEIZURE PURSUANT TO THE SEARCH WARRANT, THE
27 PEACE OFFICER EXECUTING THE SEARCH WARRANT SHALL PROVIDE A COPY OF THE
28 SEARCH WARRANT TO THE PERSON TO BE SEARCHED OR THE OWNER OF THE PLACE TO
29 BE SEARCHED OR, IF THE OWNER IS NOT PRESENT, TO ANY OCCUPANT OF THE PLACE
30 TO BE SEARCHED. IF THE PLACE TO BE SEARCHED IS UNOCCUPIED, THE PEACE
31 OFFICER EXECUTING THE SEARCH WARRANT SHALL LEAVE A COPY OF THE SEARCH
32 WARRANT SUITABLY AFFIXED TO THE PLACE TO BE SEARCHED.

33 ~~E.~~ E. A peace officer executing a search warrant may seize any
34 property discovered in the course of the execution of the warrant if the
35 officer has reasonable cause to believe that the item is subject to
36 seizure under section 13-3912, even if the property is not enumerated in
37 the warrant.

38 ~~F.~~ F. A peace officer executing a search warrant may make or cause
39 to be made photographs, measurements, impressions or scientific tests.

40 ~~E.~~ G. A peace officer executing a search warrant directing a
41 search of any premises or a vehicle may search any person in the premises
42 or vehicle if either of the following applies:

43 1. It is reasonably necessary to protect himself or others from the
44 use of any weapon that may be concealed ~~upon~~ ON the person.

1 2. It reasonably appears that property or items enumerated in the
2 search warrant may be concealed ~~upon~~ ON the person.

3 Sec. 3. Section 13-3922, Arizona Revised Statutes, is amended to
4 read:

5 13-3922. Controverting grounds of issuance; procedure;
6 restoration of property

7 A. If an owner of seized property controverts the grounds on which
8 the warrant was issued, the magistrate shall proceed to take testimony
9 relative thereto unless a proceeding pursuant to chapter 39 of this title
10 is or has been initiated relating to the same property interest. The
11 testimony given by each witness shall be reduced to writing and certified
12 by the magistrate. If it appears that the property taken is not the same
13 as that described in the warrant and is not within section 13-3916,
14 subsection ~~C, D OR~~ E, F OR G or section 13-3925, subsection C, or that
15 probable cause does not exist for believing the items are subject to
16 seizure, the magistrate shall cause the property to be restored to the
17 person from whom it was taken if the property is not such that any
18 interest in it is subject to forfeiture or its possession would constitute
19 a criminal offense.

20 B. Any order under this section as to a property interest is
21 subject to revision at any time before the entry of judgment adjudicating
22 all the claims and the rights and liabilities of that person in all
23 actions pursuant to this title. Other orders are appealable, if permitted
24 by the Arizona rules of civil procedure.

25 C. No stay may issue on the forfeiture of seized property or its
26 use in an action pursuant to this title while contravention of the warrant
27 is being litigated.

COMMITTEE ON CRIMINAL JUSTICE REFORM
HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2751
(Reference to printed bill)

1 Page 1, strike lines 10 through 13, insert:

2 "B. THE MAGISTRATE MAY AUTHORIZE AN UNANNOUNCED ENTRY on a
3 reasonable showing that an announced entry to execute the warrant would
4 endanger the safety of any person or would result in the destruction of any
5 of the items described in the warrant, ~~the magistrate shall authorize an~~
6 ~~unannounced entry~~ DUE TO ANY OF THE FOLLOWING FACTORS:

- 7 1. UNDERLYING CHARGES.
- 8 2. WEAPONS INFORMATION.
- 9 3. GANG ACTIVITY.
- 10 4. FORTIFICATION OF THE STRUCTURE.
- 11 5. DOCUMENTED VIOLENCE POTENTIAL OF THE SUSPECT AND OTHER ASSOCIATES
12 OR OCCUPANTS RELATED TO THE ADDRESS.
- 13 6. DOCUMENTED VIOLENCE POTENTIAL OR CALLS FOR SERVICE RELATED TO THE
14 ADDRESS ITSELF.
- 15 7. FIRSHAND KNOWLEDGE BY THE DETECTIVE OF THE SUSPECTS AND TARGET
16 LOCATION.
- 17 8. ANY OTHER FACTOR WHICH A MAGISTRATE MAY CONSIDER RELEVANT."

18 Reletter to conform

19 Page 2, line 7, after the period insert "A WARRANT AUTHORIZED PURSUANT TO SECTION
20 13-3915, SUBSECTION B SHALL BE EXECUTED BY A MEMBER OF A SPECIAL WEAPONS
21 AND TACTICS TEAM IF PRACTICABLE."

22 Strike lines 8 through 12

23 Reletter to conform

1 Page 2, lines 15 and 17, strike "PROVIDING AUDIBLE"

2 Strike lines 19 through 24, insert:

3 "3. A magistrate has authorized an unannounced entry pursuant to
4 section 13-3915.

5 4. The particular circumstances and the objective articulable facts
6 are such that a reasonable officer would believe that giving notice of the
7 officer's authority and purpose before entering would endanger the safety
8 of any person or result in the destruction of evidence."

9 Strike lines 25 through 32

10 Reletter to conform

11 Page 3, strike lines 3 through 27

12 Amend title to conform

And, as so amended, it do pass

WALTER "WALT" BLACKMAN
CHAIRMAN

2751CRIMINAL JUSTICE REFORM
02/17/2021
05:52 PM
H: ra

Hi Jerry,

You asked me to look into Maryland police reform legislation that vetoed by the Governor and then that veto was overwritten. Specifically you asked me to look into SB 178, which contains the no knock search warrant provisions.

SB 178 first amends section 1-203(a) under "Article - Criminal Procedure." This section defines a no knock search warrant as "a search warrant that authorizes the executing law enforcement officer to enter a building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose."

Paragraph (3)(vi)(1) provides that an application for a search warrant may contain a request that the warrant be a no knock search warrant if it is approved in writing by the state's attorney and a police supervisor. Additionally there must a reasonable suspicion that the property subject to seizure may be destroyed, disposed of, or secreted or that the executing officer or another person's life or safety may be endangered.

Subparagraph (2) under this provision provides what must be contained in an application for a no-knock warrant. The application must include:

- A description of the supporting evidence;
- A description of the investigative activities and the information gathered to support the request;
- An explanation about why the officer cannot use less invasive methods;
- An acknowledgement that the officers who will execute the warrant have completed the same training in breach and call-out entry procedures as SWAT team members;

- A statement whether the warrant can be effectively executed during daylight hours;
- If the warrant cannot be executed during daylight hours, then the facts and circumstances that preclude the warrant from being effectively executed;
- A list of occupants by age, gender, and whether there is any person with cognitive or physical disabilities; and
- If any pets reside at the premises.

Subparagraph (3) places a limitation on no knock warrants. A no knock warrant is limited to being executing between 8:00 AM and 7:00 PM, unless there are exigent circumstances. The bill places other limitations that are not limited to no knock warrants. Subparagraph (4) states that a warrant must be executed within 10 days, after which it will be void. Subparagraph (8) states that while executing the warrant, an officer must be recognizable and identifiable as an officer and officers are now allowed to use flashbang, stun, distraction or other similar military-style devices when executing search warrants unless there are exigent circumstances.

SB 178 next amends section 3-523 under “Article - Public Safety.” Subsection (B) provides that a law enforcement agency must report information relating to executed search warrants within the prior year to the Governor’s Office of Crime Prevention, Youth, and Victim Services. The portion relating to no knock warrants are in paragraphs (1) - (4). They state that the report must include:

- The number of no knock warrants executed;
- Name of the county and municipal corporation and zip code of the location where the warrant was executed;

- Number of days between when the warrant was issued and when it was executed, separated by whether it was a no knock warrant or not; and
- The legal basis for each no knock warrant.

The remaining paragraphs, (5)-(10), include information that should be in the reports but is not limited to no knock warrants.

Let me know if you have any questions.

Chapter 62

(Senate Bill 178)

AN ACT concerning

~~Public Information Act – Personnel Records – Investigations of Law Enforcement Officers
(Anton’s Law)~~

~~Maryland Police Accountability Act of 2021 – Personnel Records –
Investigations of Law Enforcement Officers
(Anton’s Law)~~

Search Warrants and Inspection of Records Relating to Police Misconduct
(Anton’s Law)

FOR the purpose of ~~establishing that a certain record relating to an administrative or criminal investigation of misconduct by a law enforcement officer is not a personnel record for purposes of certain provisions of the Public Information Act; authorizing a custodian to deny inspection of records relating to an administrative or criminal investigation of misconduct by a law enforcement officer; requiring that an application for a certain no-knock search warrant be approved in writing by a police supervisor and the State’s Attorney; repealing a certain ground for issuance of a certain no-knock search warrant; requiring that an application for a certain no-knock search warrant contain certain items; requiring that a certain no-knock search warrant be executed between certain times under certain circumstances; altering the number of days within which a certain search and seizure shall be made; imposing certain restrictions on a police officer when executing a search warrant; requiring a certain custodian to allow inspection of certain records by the United States Attorney, the Attorney General, the State Prosecutor, and a certain State’s Attorney; providing that a certain record is not a personnel record for a certain purpose, with a certain exception; authorizing a certain custodian to deny inspection of certain records; requiring a certain custodian to deny inspection of~~ redact a certain record in a certain manner under certain circumstances; authorizing a custodian to redact a certain record in a certain manner under certain circumstances; requiring a custodian to notify a certain person in interest when a certain record is inspected; prohibiting a certain custodian from disclosing the identity of a certain requestor to a certain person in interest; requiring a law enforcement agency that maintains a SWAT team to report certain information to the Governor’s Office of Crime Prevention, Youth, and Victim Services using a certain format; requiring the Maryland Police Training and Standards Commission, in consultation with the Office, to develop a standardized format that certain law enforcement agencies shall use in reporting certain data relating to the activation and deployment of certain SWAT teams to the Office; requiring a law enforcement agency to compile certain information as a report in a certain format and to submit the report to the Office not later than a certain date following the period that is the subject of the report; requiring the Office to analyze and summarize certain reports of law enforcement agencies and to submit a report of the analyses and summaries to the Governor, the General

Assembly, and each law enforcement agency before a certain date each year and publish the report on its website; providing that, if a law enforcement agency fails to comply with certain reporting requirements, the Office shall report the noncompliance to the Commission; providing that the Commission shall contact a certain law enforcement agency and request that the agency comply with certain reporting requirements under certain circumstances; providing that, if a certain law enforcement agency fails to comply with certain reporting requirements within a certain period after being contacted by the Commission, the Office and the Commission jointly shall make a certain report to the Governor and the Legislative Policy Committee of the General Assembly; defining certain terms; providing for the application of this Act; and generally relating to ~~personnel records and the Public Information Act~~ search warrants and inspection of records relating to police misconduct.

~~BY renumbering~~

~~Article – General Provisions
Section 4–101(e) through (j), respectively
to be Section 4–101(f) through (k), respectively
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)~~

~~BY repealing and reenacting, without amendments,~~

~~Article – General Provisions
Section 4–101(a)
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)~~

~~BY adding to~~

~~Article – General Provisions
Section 4–101(e) and (l)
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)~~

~~BY repealing and reenacting, with amendments,~~

~~Article – General Provisions
Section 4–311 and 4–351
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)~~

BY repealing and reenacting, with amendments,

Article – Criminal Procedure
Section 1–203(a)
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, without amendments,

Article – General Provisions
Section 4-101(a) and (c)
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

BY adding to
Article – General Provisions
Section 4-101(i) and (l)
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

BY repealing and reenacting, with amendments,
Article – General Provisions
Section 4-101(i) and (j), 4-311, and 4-351
Annotated Code of Maryland
(2019 Replacement Volume and 2020 Supplement)

BY adding to
Article – Public Safety
Section 3-523
Annotated Code of Maryland
(2018 Replacement Volume and 2020 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, ~~That Section(s) 4-101(e) through (j), respectively, of Article – General Provisions of the Annotated Code of Maryland be renumbered to be Section(s) 4-101(f) through (k), respectively.~~

~~SECTION 2. AND BE IT FURTHER ENACTED,~~ That the Laws of Maryland read as follows:

Article – Criminal Procedure

1-203.

(a) (1) **IN THIS SUBSECTION, “NO-KNOCK SEARCH WARRANT” MEANS A SEARCH WARRANT THAT AUTHORIZES THE EXECUTING LAW ENFORCEMENT OFFICER TO ENTER A BUILDING, APARTMENT, PREMISES, PLACE, OR THING TO BE SEARCHED WITHOUT GIVING NOTICE OF THE OFFICER’S AUTHORITY OR PURPOSE.**

(2) *A circuit court judge or District Court judge may issue forthwith a search warrant whenever it is made to appear to the judge, by application as described in paragraph [(2)] (3) of this subsection, that there is probable cause to believe that:*

(i) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within the territorial jurisdiction of the judge; or

(ii) property subject to seizure under the criminal laws of the State is on the person or in or on the building, apartment, premises, place, or thing.

[(2)] (3) (i) An application for a search warrant shall be:

1. in writing;

2. signed, dated, and sworn to by the applicant; and

3. accompanied by an affidavit that:

A. sets forth the basis for probable cause as described in paragraph (1) of this subsection; and

B. contains facts within the personal knowledge of the affiant that there is probable cause.

(ii) An application for a search warrant may be submitted to a judge:

1. by in-person delivery of the application, the affidavit, and a proposed search warrant;

2. by secure fax, if a complete and printable image of the application, the affidavit, and a proposed search warrant are submitted; or

3. by secure electronic mail, if a complete and printable image of the application, the affidavit, and a proposed search warrant are submitted.

(iii) The applicant and the judge may converse about the search warrant application:

1. in person;

2. via telephone; or

3. via video.

(iv) The judge may issue the search warrant:

1. by signing the search warrant, indicating the date and time of issuance on the search warrant, and physically delivering the signed and dated search warrant, the application, and the affidavit to the applicant;

2. by signing the search warrant, writing the date and time of issuance on the search warrant, and sending complete and printable images of the signed and dated search warrant, the application, and the affidavit to the applicant by secure fax; or

3. by signing the search warrant, either electronically or in writing, indicating the date and time of issuance on the search warrant, and sending complete and printable images of the signed and dated search warrant, the application, and the affidavit to the applicant by secure electronic mail.

(v) The judge shall file a copy of the signed and dated search warrant, the application, and the affidavit with the court.

(vi) 1. [An] IF APPROVED IN WRITING BY A POLICE SUPERVISOR AND THE STATE’S ATTORNEY, 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] BE A NO-KNOCK SEARCH WARRANT, on the [grounds] GROUND 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.

2. AN APPLICATION FOR A NO-KNOCK SEARCH WARRANT UNDER THIS SUBPARAGRAPH SHALL CONTAIN:

A. A DESCRIPTION OF THE EVIDENCE IN SUPPORT OF THE APPLICATION;

B. AN EXPLANATION OF THE INVESTIGATIVE ACTIVITIES THAT HAVE BEEN UNDERTAKEN AND THE INFORMATION THAT HAS BEEN GATHERED TO SUPPORT THE REQUEST FOR A NO-KNOCK SEARCH WARRANT;

C. AN EXPLANATION OF WHY THE AFFIANT IS UNABLE TO DETAIN THE SUSPECT OR SEARCH THE PREMISES USING OTHER, LESS INVASIVE METHODS;

D. ACKNOWLEDGMENT THAT ANY POLICE OFFICERS WHO WILL EXECUTE THE SEARCH WARRANT HAVE SUCCESSFULLY COMPLETED THE SAME

TRAINING IN BREACH AND CALL-OUT ENTRY PROCEDURES AS SWAT TEAM MEMBERS;

E. A STATEMENT AS TO WHETHER THE SEARCH WARRANT CAN EFFECTIVELY BE EXECUTED DURING DAYLIGHT HOURS AND, IF NOT, WHAT FACTS OR CIRCUMSTANCES PRECLUDE EFFECTIVE EXECUTION IN DAYLIGHT HOURS; AND

F. A LIST OF ANY ADDITIONAL OCCUPANTS OF THE PREMISES BY AGE AND GENDER, AS WELL AS AN INDICATION AS TO WHETHER ANY INDIVIDUALS WITH COGNITIVE OR PHYSICAL DISABILITIES OR PETS RESIDE AT THE PREMISES, IF KNOWN.

3. A NO-KNOCK SEARCH WARRANT SHALL BE EXECUTED BETWEEN 8:00 A.M. AND 7:00 P.M., ABSENT EXIGENT CIRCUMSTANCES.

~~[(3)]~~ (4) The search warrant shall:

(i) be directed to a duly constituted police officer, the State Fire Marshal, or a full-time investigative and inspection assistant of the Office of the State Fire Marshal and authorize the police officer, the State Fire Marshal, or a full-time investigative and inspection assistant of the Office of the State Fire Marshal to search the suspected person, building, apartment, premises, place, or thing and to seize any property found subject to seizure under the criminal laws of the State;

(ii) name or describe, with reasonable particularity:

1. the person, building, apartment, premises, place, or thing to be searched;

2. the grounds for the search; and

3. the name of the applicant on whose application the search warrant was issued; and

(iii) if warranted by application as described in paragraph [(2)] (3) of this subsection, 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.

~~[(4)]~~ (5) (i) The search and seizure under the authority of a search warrant shall be made within [15] 10 calendar days after the day that the search warrant is issued.

(ii) After the expiration of the [15-day] 10-DAY period, the search warrant is void.

[(5)] (6) The executing law enforcement officer shall give a copy of the search warrant, the application, and the affidavit to an authorized occupant of the premises searched or leave a copy of the search warrant, the application, and the affidavit at the premises searched.

[(6)] (7) (i) The executing law enforcement officer shall prepare a detailed search warrant return which shall include the date and time of the execution of the search warrant.

(ii) The executing law enforcement officer shall:

1. give a copy of the search warrant return to an authorized occupant of the premises searched or leave a copy of the return at the premises searched; and

2. file a copy of the search warrant return with the court in person, by secure fax, or by secure electronic mail.

(8) (I) IN THIS PARAGRAPH, “EXIGENT CIRCUMSTANCES” RETAINS ITS JUDICIALLY DETERMINED MEANING.

(II) WHILE EXECUTING A SEARCH WARRANT, A POLICE OFFICER SHALL BE CLEARLY RECOGNIZABLE AND IDENTIFIABLE AS A POLICE OFFICER, WEARING A UNIFORM, BADGE, AND TAG BEARING THE NAME AND IDENTIFICATION NUMBER OF THE POLICE OFFICER.

(III) 1. THIS SUBPARAGRAPH APPLIES TO A POLICE OFFICER WHOSE LAW ENFORCEMENT AGENCY REQUIRES THE USE OF BODY-WORN CAMERAS.

2. A POLICE OFFICER EXECUTING A SEARCH WARRANT SHALL USE A BODY-WORN CAMERA DURING THE COURSE OF THE SEARCH IN ACCORDANCE WITH THE POLICIES ESTABLISHED BY THE POLICE OFFICER’S LAW ENFORCEMENT AGENCY.

(IV) UNLESS EXECUTING A NO-KNOCK SEARCH WARRANT, A POLICE OFFICER SHALL ALLOW A MINIMUM OF 20 SECONDS FOR THE OCCUPANTS OF A RESIDENCE TO RESPOND AND OPEN THE DOOR BEFORE THE POLICE OFFICER ATTEMPTS TO ENTER THE RESIDENCE, ABSENT EXIGENT CIRCUMSTANCES.

(V) A POLICE OFFICER MAY NOT USE FLASHBANG, STUN, DISTRACTION, OR OTHER SIMILAR MILITARY-STYLE DEVICES WHEN EXECUTING A SEARCH WARRANT, ABSENT EXIGENT CIRCUMSTANCES.

Article – General Provisions

~~4-101.~~~~(a) In this title the following words have the meanings indicated.~~~~(E) “LAW ENFORCEMENT OFFICER” HAS THE MEANING STATED IN § 3-101 OF THE PUBLIC SAFETY ARTICLE.~~~~(L) “TECHNICAL INFRACTION” MEANS A MINOR RULE VIOLATION BY AN INDIVIDUAL SOLELY RELATED TO THE ENFORCEMENT OF ADMINISTRATIVE RULES THAT:~~~~(1) DOES NOT INVOLVE AN INTERACTION BETWEEN A MEMBER OF THE PUBLIC AND THE INDIVIDUAL;~~~~(2) DOES NOT RELATE TO THE INDIVIDUAL’S INVESTIGATIVE, ENFORCEMENT, TRAINING, SUPERVISION, OR REPORTING RESPONSIBILITIES; AND~~~~(3) IS NOT OTHERWISE A MATTER OF PUBLIC CONCERN.~~~~4-311.~~~~(a) Subject to subsection (b) of this section, a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information.~~~~(b) A custodian shall allow inspection by:~~~~(1) the person in interest;~~~~(2) an elected or appointed official who supervises the work of the individual; or~~~~(3) an employee organization described in Title 6 of the Education Article of the portion of the personnel record that contains the individual’s:~~~~(i) home address;~~~~(ii) home telephone number; and~~~~(iii) personal cell phone number.~~~~(C) (1) A EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A RECORD RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION OF~~

~~MISCONDUCT BY A LAW ENFORCEMENT OFFICER, INCLUDING AN INTERNAL AFFAIRS INVESTIGATORY RECORD, A HEARING RECORD, AND RECORDS RELATING TO A DISCIPLINARY DECISION, IS NOT A PERSONNEL RECORD FOR PURPOSES OF THIS SECTION.~~

~~(2) A RECORD OF A TECHNICAL INFRACTION IS A PERSONNEL RECORD FOR THE PURPOSES OF THIS SECTION.~~

~~4-351.~~

~~(a) Subject to subsection (b) of this section, a custodian may deny inspection of:~~

~~(1) records of investigations conducted by the Attorney General, a State's Attorney, a municipal or county attorney, a police department, or a sheriff;~~

~~(2) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; [or]~~

~~(3) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff; OR~~

~~(4) RECORDS, OTHER THAN A RECORD OF A TECHNICAL INFRACTION, RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION OF MISCONDUCT BY A LAW ENFORCEMENT OFFICER, INCLUDING AN INTERNAL AFFAIRS INVESTIGATORY RECORD, A HEARING RECORD, AND RECORDS RELATING TO A DISCIPLINARY DECISION.~~

~~(b) A custodian may deny inspection by a person in interest only to the extent that the inspection would:~~

~~(1) interfere with a valid and proper law enforcement proceeding;~~

~~(2) deprive another person of a right to a fair trial or an impartial adjudication;~~

~~(3) constitute an unwarranted invasion of personal privacy;~~

~~(4) disclose the identity of a confidential source;~~

~~(5) disclose an investigative technique or procedure;~~

~~(6) prejudice an investigation; or~~

~~(7) endanger the life or physical safety of an individual.~~

4-101.

(a) In this title the following words have the meanings indicated.

(c) “Board” means the State Public Information Act Compliance Board.

(I) “POLICE OFFICER” HAS THE MEANING STATED IN § 3-201 OF THE PUBLIC SAFETY ARTICLE.

[(i)](J) “Political subdivision” means:

- (1) a county;
- (2) a municipal corporation;
- (3) an unincorporated town;
- (4) a school district; or
- (5) a special district.

[(i)](K) (1) “Public record” means the original or any copy of any documentary material that:

(i) is made by a unit or an instrumentality of the State or of a political subdivision or received by the unit or instrumentality in connection with the transaction of public business; and

(ii) is in any form, including:

1. a card;
2. a computerized record;
3. correspondence;
4. a drawing;
5. film or microfilm;
6. a form;
7. a map;
8. a photograph or photostat;

9. a recording; or

10. a tape.

(2) "Public record" includes a document that lists the salary of an employee of a unit or an instrumentality of the State or of a political subdivision.

(3) "Public record" does not include a digital photographic image or signature of an individual, or the actual stored data of the image or signature, recorded by the Motor Vehicle Administration.

(L) "TECHNICAL INFRACTION" MEANS A MINOR RULE VIOLATION BY AN INDIVIDUAL SOLELY RELATED TO THE ENFORCEMENT OF ADMINISTRATIVE RULES THAT:

(1) DOES NOT INVOLVE AN INTERACTION BETWEEN A MEMBER OF THE PUBLIC AND THE INDIVIDUAL;

(2) DOES NOT RELATE TO THE INDIVIDUAL'S INVESTIGATIVE, ENFORCEMENT, TRAINING, SUPERVISION, OR REPORTING RESPONSIBILITIES; AND

(3) IS NOT OTHERWISE A MATTER OF PUBLIC CONCERN.

4-311.

(a) Subject to subsection (b) of this section, a custodian shall deny inspection of a personnel record of an individual, including an application, a performance rating, or scholastic achievement information.

(b) A custodian shall allow inspection by:

(1) the person in interest;

(2) an elected or appointed official who supervises the work of the individual; or

(3) an employee organization described in Title 6 of the Education Article of the portion of the personnel record that contains the individual's:

(i) home address;

(ii) home telephone number; and

(iii) personal cell phone number.

(C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A RECORD RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION OF MISCONDUCT BY A POLICE OFFICER, INCLUDING AN INTERNAL AFFAIRS INVESTIGATORY RECORD, A HEARING RECORD, AND RECORDS RELATING TO A DISCIPLINARY DECISION, IS NOT A PERSONNEL RECORD FOR PURPOSES OF THIS SECTION.

(2) A RECORD OF A TECHNICAL INFRACTION IS A PERSONNEL RECORD FOR THE PURPOSES OF THIS SECTION.

4-351.

(a) Subject to [subsection (b)] SUBSECTIONS (B), (C), AND (D) of this section, a custodian may deny inspection of:

(1) records of investigations conducted by the Attorney General, a State's Attorney, a municipal or county attorney, a police department, or a sheriff;

(2) an investigatory file compiled for any other law enforcement, judicial, correctional, or prosecution purpose; [or]

(3) records that contain intelligence information or security procedures of the Attorney General, a State's Attorney, a municipal or county attorney, a police department, a State or local correctional facility, or a sheriff; OR

(4) RECORDS, OTHER THAN A RECORD OF A TECHNICAL INFRACTION, RELATING TO AN ADMINISTRATIVE OR CRIMINAL INVESTIGATION OF MISCONDUCT BY A POLICE OFFICER, INCLUDING AN INTERNAL AFFAIRS INVESTIGATORY RECORD, A HEARING RECORD, AND RECORDS RELATING TO A DISCIPLINARY DECISION.

(b) A custodian may deny inspection by a person in interest only to the extent that the inspection would:

(1) interfere with a valid and proper law enforcement proceeding;

(2) deprive another person of a right to a fair trial or an impartial adjudication;

(3) constitute an unwarranted invasion of personal privacy;

(4) disclose the identity of a confidential source;

(5) disclose an investigative technique or procedure;

(6) prejudice an investigation; or

(7) endanger the life or physical safety of an individual.

(C) A CUSTODIAN SHALL ALLOW INSPECTION OF A RECORD DESCRIBED IN SUBSECTION (A)(4) OF THIS SECTION BY:

(1) THE UNITED STATES ATTORNEY;

(2) THE ATTORNEY GENERAL;

(3) THE STATE PROSECUTOR; OR

(4) THE STATE'S ATTORNEY FOR THE JURISDICTION RELEVANT TO THE RECORD.

~~**(D) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A CUSTODIAN SHALL DENY INSPECTION OF A RECORD DESCRIBED IN SUBSECTION (A)(4) OF THIS SECTION:**~~

~~**(1) IF THE RECORD RELATES TO AN ACTIVE INVESTIGATION; OR**~~

~~**(2) TO THE EXTENT THAT THE RECORD REFLECTS:**~~

~~**(I) MEDICAL INFORMATION;**~~

~~**(II) PERSONAL CONTACT INFORMATION OF THE PERSON IN INTEREST;**~~

~~**(III) INFORMATION RELATING TO THE FAMILY OF THE PERSON IN INTEREST; OR**~~

~~**(IV) WITNESS INFORMATION.**~~

(D) EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, A CUSTODIAN:

(1) SHALL REDACT THE PORTIONS OF A RECORD DESCRIBED IN SUBSECTION (A)(4) OF THIS SECTION TO THE EXTENT THAT THE RECORD REFLECTS:

(I) MEDICAL INFORMATION OF THE PERSON IN INTEREST;

(II) PERSONAL CONTACT INFORMATION OF THE PERSON IN INTEREST OR A WITNESS; OR

(III) INFORMATION RELATING TO THE FAMILY OF THE PERSON IN INTEREST; AND

(2) MAY REDACT THE PORTION OF A RECORD DESCRIBED IN SUBSECTION (A)(4) OF THIS SECTION TO THE EXTENT THAT THE RECORD REFLECTS WITNESS INFORMATION OTHER THAN PERSONAL CONTACT INFORMATION.

(E) A CUSTODIAN SHALL NOTIFY THE PERSON IN INTEREST OF A RECORD DESCRIBED IN SUBSECTION (A)(4) OF THIS SECTION WHEN THE RECORD IS INSPECTED, BUT MAY NOT DISCLOSE THE IDENTITY OF THE REQUESTOR TO THE PERSON IN INTEREST.

Article – Public Safety

3-523.

(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “LAW ENFORCEMENT AGENCY” HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.

(3) “NO-KNOCK SEARCH WARRANT” MEANS A SEARCH WARRANT AUTHORIZING ENTRY INTO A BUILDING, AN APARTMENT, A PREMISES, A PLACE, OR A THING TO BE SEARCHED WITHOUT GIVING NOTICE OF THE OFFICER’S AUTHORITY OR PURPOSE.

(4) “POLICE OFFICER” HAS THE MEANING STATED IN § 3-201 OF THIS TITLE.

(5) “SWAT TEAM” MEANS A SPECIAL UNIT COMPOSED OF TWO OR MORE POLICE OFFICERS WITHIN A LAW ENFORCEMENT AGENCY TRAINED TO DEAL WITH UNUSUALLY DANGEROUS OR VIOLENT SITUATIONS AND HAVING SPECIAL EQUIPMENT AND WEAPONS, INCLUDING RIFLES MORE POWERFUL THAN THOSE CARRIED BY REGULAR POLICE OFFICERS.

(B) A LAW ENFORCEMENT AGENCY SHALL REPORT THE FOLLOWING INFORMATION RELATING TO SEARCH WARRANTS EXECUTED BY THE LAW ENFORCEMENT AGENCY DURING THE PRIOR CALENDAR YEAR TO THE GOVERNOR’S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES USING THE FORMAT DEVELOPED UNDER SUBSECTION (C) OF THIS SECTION:

(1) THE NUMBER OF TIMES A NO-KNOCK SEARCH WARRANT WAS EXECUTED IN THE PREVIOUS YEAR;

(2) THE NAME OF THE COUNTY AND MUNICIPAL CORPORATION AND THE ZIP CODE OF THE LOCATION WHERE EACH NO-KNOCK SEARCH WARRANT WAS EXECUTED;

(3) FOR EACH SEARCH WARRANT EXECUTED, THE NUMBER OF DAYS FROM THE ISSUANCE UNTIL THE EXECUTION OF THE SEARCH WARRANT, DISAGGREGATED BY WHETHER THE SEARCH WARRANT WAS A NO-KNOCK SEARCH WARRANT;

(4) THE LEGAL BASIS FOR EACH NO-KNOCK SEARCH WARRANT ISSUED;

(5) THE NUMBER OF TIMES A SEARCH WARRANT WAS EXECUTED UNDER CIRCUMSTANCES IN WHICH A POLICE OFFICER MADE FORCIBLE ENTRY INTO THE BUILDING, APARTMENT, PREMISES, PLACE, OR THING TO BE SEARCHED SPECIFIED IN THE WARRANT;

(6) THE NUMBER OF TIMES A SWAT TEAM WAS DEPLOYED TO EXECUTE A SEARCH WARRANT;

(7) THE NUMBER OF ARRESTS MADE, IF ANY, DURING THE EXECUTION OF A SEARCH WARRANT;

(8) THE NUMBER OF TIMES PROPERTY WAS SEIZED DURING THE EXECUTION OF A SEARCH WARRANT;

(9) THE NUMBER OF TIMES A WEAPON WAS DISCHARGED BY A POLICE OFFICER DURING THE EXECUTION OF A SEARCH WARRANT; AND

(10) THE NUMBER OF TIMES A PERSON OR DOMESTIC ANIMAL WAS INJURED OR KILLED DURING THE EXECUTION OF A SEARCH WARRANT, DISAGGREGATED BY WHETHER THE PERSON OR ANIMAL WAS INJURED OR KILLED BY A POLICE OFFICER.

(C) THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION, IN CONSULTATION WITH THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES, SHALL DEVELOP A STANDARDIZED FORMAT FOR EACH LAW ENFORCEMENT AGENCY TO USE IN REPORTING DATA TO THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES UNDER SUBSECTION (B) OF THIS SECTION.

(D) A LAW ENFORCEMENT AGENCY SHALL:

(1) COMPILE THE DATA DESCRIBED IN SUBSECTION (B) OF THIS SECTION FOR EACH 1-YEAR PERIOD AS A REPORT IN THE FORMAT REQUIRED UNDER SUBSECTION (C) OF THIS SECTION; AND

(2) NOT LATER THAN JANUARY 15 EACH YEAR, SUBMIT THE REPORT TO:

(I) THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES; AND

(II) 1. THE LOCAL GOVERNING BODY OF THE JURISDICTION SERVED BY THE LAW ENFORCEMENT AGENCY THAT IS THE SUBJECT OF THE REPORT; OR

2. IF THE JURISDICTION SERVED BY THE LAW ENFORCEMENT AGENCY IS A MUNICIPAL CORPORATION, THE CHIEF EXECUTIVE OFFICER OF THE JURISDICTION.

(E) (1) THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL ANALYZE AND SUMMARIZE THE REPORTS OF LAW ENFORCEMENT AGENCIES SUBMITTED UNDER SUBSECTION (D) OF THIS SECTION.

(2) BEFORE SEPTEMBER 1 EACH YEAR, THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL:

(I) SUBMIT A REPORT OF THE ANALYSES AND SUMMARIES OF THE REPORTS OF LAW ENFORCEMENT AGENCIES DESCRIBED IN PARAGRAPH (1) OF THIS SUBSECTION TO THE GOVERNOR, EACH LAW ENFORCEMENT AGENCY, AND, IN ACCORDANCE WITH § 2-1257 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL ASSEMBLY; AND

(II) PUBLISH THE REPORT ON ITS WEBSITE.

(F) (1) IF A LAW ENFORCEMENT AGENCY FAILS TO COMPLY WITH THE REPORTING PROVISIONS OF THIS SECTION, THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES SHALL REPORT THE NONCOMPLIANCE TO THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION.

(2) ON RECEIPT OF A REPORT OF NONCOMPLIANCE, THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION SHALL CONTACT THE LAW

ENFORCEMENT AGENCY AND REQUEST THAT THE AGENCY COMPLY WITH THE REQUIRED REPORTING PROVISIONS.

(3) IF THE LAW ENFORCEMENT AGENCY FAILS TO COMPLY WITH THE REQUIRED REPORTING PROVISIONS OF THIS SECTION WITHIN 30 DAYS AFTER BEING CONTACTED BY THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION WITH A REQUEST TO COMPLY, THE GOVERNOR'S OFFICE OF CRIME PREVENTION, YOUTH, AND VICTIM SERVICES AND THE MARYLAND POLICE TRAINING AND STANDARDS COMMISSION JOINTLY SHALL REPORT THE NONCOMPLIANCE TO THE GOVERNOR AND THE LEGISLATIVE POLICY COMMITTEE OF THE GENERAL ASSEMBLY.

SECTION ~~2~~ 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply prospectively to any Public Information Act request made on or after the effective date of this Act regardless of when the record requested to be produced was created.

SECTION ~~4~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2021.

Gubernatorial Veto Override, April 10, 2021.

Arizona Constitution and Statutes

Arizona Constitution, Article II (“Declaration of Rights”)

Right to privacy

Section 8. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

Arizona Revised Statutes, Title 13 (“Criminal Code”), Chapter 38 (“Miscellaneous”), Article 8 (“Search Warrant”)

13-3911. Definition

A search warrant is an order in writing issued in the name of the state of Arizona, signed by a magistrate, directed to a peace officer, commanding him to search for personal property, persons or items described in section 13-3912.

13-3912. Grounds for issuance

A search warrant may be issued upon any of the following grounds:

1. When the property to be seized was stolen or embezzled.
2. When the property or things to be seized were used as a means of committing a public offense.
3. When the property or things to be seized are in the possession of a person having the intent to use them as a means of committing a public offense or in possession of another to whom he may have delivered it for the purpose of concealing it or preventing it being discovered.
4. When property or things to be seized consist of any item or constitute any evidence which tends to show that a particular public offense has been committed, or tends to show that a particular person has committed the public offense.
5. When the property is to be searched and inspected by an appropriate official in the interest of the public health, safety or welfare as part of an inspection program authorized by law.
6. When the person sought is the subject of an outstanding arrest warrant.

Arizona Constitution and Statutes

13-3913. Conditions precedent to issuance

No search warrant shall be issued except on probable cause, supported by affidavit, naming or describing the person and particularly describing the property to be seized and the place to be searched.

13-3914. Examination on oath; affidavits

A. Before issuing a warrant, the magistrate may examine on oath the person or persons seeking the warrant, and any witnesses produced, and must take his affidavit, or their affidavits, in writing and cause the affidavit to be subscribed by the party or parties making the affidavit. Before issuing the warrant, the magistrate may also examine any other sworn affidavit submitted to him which sets forth facts tending to establish probable cause for the issuance of the warrant.

B. The affidavit or affidavits must set forth the facts tending to establish the grounds of the application, or probable cause for believing the grounds exist.

C. In lieu of, or in addition to, a written affidavit, or affidavits, as provided in subsection A, the magistrate may take an oral statement under oath which shall be recorded on tape, wire or other comparable method. This statement may be given in person to the magistrate or by telephone, radio or other means of electronic communication. This statement is deemed to be an affidavit for the purposes of issuance of a search warrant. If a recording of the sworn statement is made, the statement shall be transcribed at the request of the court or either party and certified by the magistrate and filed with the court.

13-3915. Issuance; form of warrant; duplicate original warrant; telefacsimile

A. If the magistrate is satisfied that probable cause for the issuance of the warrant exists, the magistrate shall issue a search warrant commanding a search by any peace officer of the person or place specified, for the items described.

B. On 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.

C. The warrant shall be in substantially the following form:

Arizona Constitution and Statutes

County of _____, state of Arizona.

To any peace officer in the state of Arizona:

Proof by affidavit having been this day made before me by (naming every person whose affidavit has been taken) there is probable cause for believing that (stating the grounds of the application) according to section 13-3912, you are therefore commanded in the daytime (or in the night, as the case may be, according to section 13-3917) to make a search of (naming persons, buildings, premises or vehicles, describing each with reasonable particularity) for the following property, persons or things: (describing such with reasonable particularity), and if you find such or any part thereof, to retain such in your custody subject to section 13-3920.

Given under my hand or direction and dated _____ (judge, justice of the peace or magistrate.)

D. The magistrate may orally authorize a peace officer to sign the magistrate's name on a search warrant if the peace officer applying for the warrant is not in the actual physical presence of the magistrate. This warrant shall be called a duplicate original search warrant and shall be deemed a search warrant for the purposes of this chapter. In such cases, the magistrate shall cause to be made an original warrant and shall enter the exact time of issuance of the duplicate original warrant on the face of the original warrant. Upon the return of the duplicate original warrant, the magistrate shall file the original warrant and the duplicate original warrant as provided in section 13-3923.

E. A magistrate may affix the magistrate's signature on a telefacsimile of an original warrant. The telefacsimile of the original warrant is deemed to be a search warrant for the purposes of this chapter. On return of the telefacsimile of the original warrant, the magistrate shall file the original warrant and the telefacsimile of the original warrant as provided in section 13-3923.

13-3916. Service of warrant; breaking and entering to execute

A. A search warrant may be served by any peace officer but by no other person except in aid of an officer engaging in service of the warrant.

B. An officer may break into a building, premises or vehicle or any part of a building, premises or vehicle, to execute the warrant when:

Arizona Constitution and Statutes

1. After notice of the officer's authority and purpose, the officer receives no response within a reasonable time.
 2. After notice of the officer's authority and purpose, the officer is refused admittance.
 3. A magistrate has authorized an unannounced entry pursuant to section 13-3915.
 4. The particular circumstances and the objective articulable facts are such that a reasonable officer would believe that giving notice of the officer's authority and purpose before entering would endanger the safety of any person or result in the destruction of evidence.
- C. A peace officer executing a search warrant may seize any property discovered in the course of the execution of the warrant if the officer has reasonable cause to believe that the item is subject to seizure under section 13-3912, even if the property is not enumerated in the warrant.
- D. A peace officer executing a search warrant may make or cause to be made photographs, measurements, impressions or scientific tests.
- E. A peace officer executing a search warrant directing a search of any premises or a vehicle may search any person in the premises or vehicle if either of the following applies:
1. It is reasonably necessary to protect himself or others from the use of any weapon that may be concealed upon the person.
 2. It reasonably appears that property or items enumerated in the search warrant may be concealed upon the person.

13-3917. Time of service; exception

Upon a showing of good cause therefor, the magistrate may, in his discretion insert a direction in the warrant that it may be served at any time of the day or night. In the absence of such a direction, the warrant may be served only in the daytime. For the purposes of this section night is defined as the period from ten p.m. to six-thirty a.m.

Arizona Constitution and Statutes

13-3918. Time of execution and return

A. A search warrant shall be executed within five calendar days from its issuance and returned to a magistrate within three court business days after the warrant is executed. Upon expiration of the five-day period, the warrant is void unless the time is extended by a magistrate. The time for execution of the warrant may be extended for no longer than five calendar days. The documents and records of the court relating to the search warrant need not be open to the public until the return of the warrant or the warrant is deemed void pursuant to this section unless a magistrate orders the time to be shortened or lengthened for good cause. Thereafter, if the warrant has been executed, the documents and records shall be open to the public as a judicial record.

B. If a duplicate original search warrant has been executed, the peace officer who executed the warrant shall enter the exact time of its execution on its face.

13-3919. Receipt for property; definitions

A. If an officer takes any property under the warrant, the officer shall give a detailed receipt for the property taken to the person from whom it was taken or in whose possession it was found. If the property was not taken from a person, the officer shall leave the receipt at the place where the property was found.

B. The court may delay for a reasonable period the service of the detailed receipt required by subsection A of this section if all of the following apply:

1. The court finds that there is reasonable cause to believe that the delay is necessary to protect the safety of any person or to prevent flight from prosecution, tampering with evidence, intimidation of witnesses or jeopardizing an investigation.

2. Unless the court finds reasonable necessity for the seizure, the warrant prohibits the seizure of any tangible property, any wire or electronic communication or, except as expressly provided in section 13-3016, any stored wire or electronic information.

3. The warrant provides for service of a detailed receipt within a reasonable period after the execution of the warrant. Extensions for a reasonable period of time may be granted, but only on an application and judicial finding.

Arizona Constitution and Statutes

C. For the purposes of this section:

1. "Electronic communication" has the same meaning prescribed in section 13-3001.
2. "Wire communication" has the same meaning prescribed in section 13-3001.

13-3920. Retention of property

All property or things taken on a warrant shall be retained in the custody of the seizing officer or agency which he represents, subject to the order of the court in which the warrant was issued, or any other court in which such property or things is sought to be used as evidence.

13-3921. Return of warrant and inventory; copy of inventory

A. The officer shall return the warrant to the magistrate and at the same time deliver to him a written inventory of the property taken. The inventory shall be made publicly, or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present. The inventory shall be verified by the affidavit of the officer which shall be taken by the magistrate at the time it is delivered to the magistrate. The affidavit shall recite that the inventory contains a true and detailed account of all the property taken.

B. The magistrate shall, if requested, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

13-3922. Controverting grounds of issuance; procedure; restoration of property

A. If an owner of seized property controverts the grounds on which the warrant was issued, the magistrate shall proceed to take testimony relative thereto unless a proceeding pursuant to chapter 39 of this title is or has been initiated relating to the same property interest. The testimony given by each witness shall be reduced to writing and certified by the magistrate. If it appears that the property taken is not the same as that described in the warrant and is not within section 13-3916, subsection C, D or E or section 13-3925, subsection C, or that probable cause does not exist for believing the items are subject to seizure, the magistrate shall cause the property to be restored to the person from whom it was taken if the property is not such that any interest in it is subject to forfeiture or its possession would constitute a criminal offense.

Arizona Constitution and Statutes

B. Any order under this section as to a property interest is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of that person in all actions pursuant to this title. Other orders are appealable, if permitted by the Arizona rules of civil procedure.

C. No stay may issue on the forfeiture of seized property or its use in an action pursuant to this title while contravention of the warrant is being litigated.

13-3923. Filing and transmittal of papers

The magistrate shall annex the affidavits, the search warrant and return, and the inventory, and if he does not have jurisdiction to inquire into the offense in respect to which the warrant was issued, he shall at once file the warrant, and return the affidavits and inventory to the court having jurisdiction to inquire into the offense.

13-3924. Unlawful procurement of search warrant without probable cause

A person who, with intent to harass and without probable cause, causes a search warrant to be issued and executed, is guilty of a class 2 misdemeanor.

13-3925. Unlawful search or seizure; admissibility of evidence; definitions

A. Any evidence that is seized pursuant to a search warrant shall not be suppressed as a result of a violation of this chapter except as required by the United States Constitution and the constitution of this state.

B. If a party in a criminal proceeding seeks to exclude evidence from the trier of fact because of the conduct of a peace officer in obtaining the evidence, the proponent of the evidence may urge that the peace officer's conduct was taken in a reasonable, good faith belief that the conduct was proper and that the evidence discovered should not be kept from the trier of fact if otherwise admissible.

C. The trial court shall not suppress evidence that is otherwise admissible in a criminal proceeding if the court determines that the evidence was seized by a peace officer as a result of a good faith mistake or technical violation.

D. This section does not limit the enforcement of any appropriate civil remedy or criminal penalty in actions pursuant to other provisions of law against any individual or government entity found to have conducted an unreasonable search or seizure.

Arizona Constitution and Statutes

E. This section does not apply to unlawful electronic eavesdropping or wiretapping.

F. For the purposes of this section:

1. "Good faith mistake" means a reasonable judgmental error concerning the existence of facts that if true would be sufficient to constitute probable cause.

2. "Technical violation" means a reasonable good faith reliance on:

(a) A statute that is subsequently ruled unconstitutional.

(b) A warrant that is later invalidated due to a good faith mistake.

(c) A controlling court precedent that is later overruled, unless the court overruling the precedent orders the new precedent to be applied retroactively.

Arizona Revised Statutes, Title 13 (“Criminal Code”), Chapter 4 (“Justification”)

13-404. Justification; self-defense

A. Except as provided in subsection B of this section, a person is justified in threatening or using physical force against another when and to the extent a reasonable person would believe that physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful physical force.

B. The threat or use of physical force against another is not justified:

1. In response to verbal provocation alone; or

2. To resist an arrest that the person knows or should know is being made by a peace officer or by a person acting in a peace officer's presence and at his direction, whether the arrest is lawful or unlawful, unless the physical force used by the peace officer exceeds that allowed by law; or

3. If the person provoked the other's use or attempted use of unlawful physical force, unless:

Arizona Constitution and Statutes

(a) The person withdraws from the encounter or clearly communicates to the other his intent to do so reasonably believing he cannot safely withdraw from the encounter; and

(b) The other nevertheless continues or attempts to use unlawful physical force against the person.

13-405. Justification; use of deadly physical force

A. A person is justified in threatening or using deadly physical force against another:

1. If such person would be justified in threatening or using physical force against the other under section 13-404, and

2. When and to the degree a reasonable person would believe that deadly physical force is immediately necessary to protect himself against the other's use or attempted use of unlawful deadly physical force.

B. A person has no duty to retreat before threatening or using deadly physical force pursuant to this section if the person is in a place where the person may legally be and is not engaged in an unlawful act.

INTER-OFFICE MEMORANDUM

To: Justice Bolick
From: Daniel Bowman
Re: Research Memorandum discussing no-knock and nighttime warrants
Date: March 30, 2021

RESEARCH NEEDED

- I. A memorandum discussing the history and case law of no-knock and nighttime warrants in Arizona, current legislative amendments addressing these warrants, and the boundaries of the Court's rulemaking power in this area.

BACKGROUND AND FOCUS OF TASK FORCE

On March 10, 2021, the Arizona Supreme Court issued Administrative Order [No. 2021-34](#): *The Establishment of a Task Force on Issuing Search Warrants*. The order established a task force to review Arizona's process for issuing no-knock and nighttime warrants in order to confirm that appropriate safeguards are in place which ensure these warrants are properly authorized. The task force can make recommendations proposing amendments to Arizona court rules and statutes, "including amendments that provide new or modified criteria or standards for the issuance of no-knock or nighttime warrants." The recommendations shall also address "the training of judicial officers to ensure adequate training is provided."

DISCUSSION

No-knock warrants are exceptions to the common law requirement that officers serving a search warrant must knock and announce their entry prior to forcibly attempting to enter a dwelling place. This knock-and-announce requirement was a fixture of English common law and, similarly, was embraced by founding-era thinkers, state legislatures, and Fourth Amendment doctrine. See [*Wilson v. Arkansas*](#), 514 U.S. 927, 931–34 (1995) (Thomas, J., majority opinion) (discussing the history of the knock-and-announce requirement and holding that it is pertinent to a Fourth Amendment “reasonableness” analysis). However, as is true of Fourth Amendment doctrine in general, this requirement is subject to exceptions. Generally, officers can forego announcing their presence before forcibly entering a residence if they believe that knocking and announcing would endanger anyone involved or would allow suspects to destroy evidence. *Id.* at 936–37 (“We simply hold 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.”).

In Arizona, magistrates can issue no-knock warrants and thereby preemptively authorize officers to forego the knock-and-announce requirement. A.R.S. § 13-3915 guides the issuance of all search warrants. Concerning no-knock warrants, subsection (B) states:

On 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.

Additionally, A.R.S. § 13-3916 guides the service and execution of search warrants.

Subsection (B) allows a warrant-carrying officer to forcibly break into a building when:

1. After notice of the officer's authority and purpose, the officer receives no response within a reasonable time.
2. After notice of the officer's authority and purpose, the officer is refused admittance.
3. A magistrate has authorized an unannounced entry pursuant to § 13-3915.
4. The particular circumstances and the objective articulable facts are such that a reasonable officer would believe that giving notice of the officer's authority and purpose before entering would endanger the safety of any person or result in the destruction of evidence.

The key language guiding the issuance of no-knock warrants in § 13-3915 is the requirement that officers make a “reasonable showing” of why an unannounced entry is necessary. Additionally, the mandatory word “shall” seemingly limits magistrates’ discretion over the issuance of no-knock warrants to deciding whether an officer has made a reasonable showing.

Turning to nighttime warrants, both common law and the U.S. Supreme Court have long recognized that it is far more intrusive to serve warrants late at night when residents are asleep.¹ Still, there are situations that necessitate the nighttime service of a

¹ While less has been written about the common law origins of the daytime-service requirement, this presumption against nighttime service is logically connected to the reasonableness of a search or seizure. See *United States v. Kelley*, 652 F.3d 915, 917 (8th Cir. 2011) (“[W]e have little doubt that in some circumstances an officer's night-time entry into a home might be unreasonable under the Fourth Amendment.”); 79 C.J.S. Searches § 270 (2021) (“At early common law, the search warrant seems to have been limited to the daytime.”). Nighttime warrants also functionally abridge the knock-and-announce

warrant. For instance, if an officer has reason to believe that waiting to serve a warrant until morning would enable the removal or destruction of evidence, then nighttime service of the warrant may be appropriate. The Arizona statute governing the issuance of nighttime warrants is A.R.S. § 13-3917, which states:

Upon a showing of good cause therefor, the magistrate may, in his discretion insert a direction in the warrant that it may be served at any time of the day or night. In the absence of such a direction, the warrant may be served only in the daytime. For the purposes of this section night is defined as the period from ten p.m. to six-thirty a.m.

The key language in this statute is the requirement that “good cause” support the issuance of a nighttime warrant.

Below, Parts I & II of this Memorandum will discuss the history and case law guiding no-knock and nighttime warrants in Arizona. Part III outlines current legislative actions seeking to curtail no-knock warrants, specifically discussing Arizona House Bill No. 2751. Finally, Part IV briefly discusses the boundaries of the Arizona Supreme Court’s rulemaking power in this area.

I. No-knock warrants in Arizona.

No-knock warrants are a relatively new fixture in Arizona. Before 1974, magistrates presumably could authorize an unannounced entry if doing so was justified by “necessity.” [State v. Peterson](#), 20 Ariz. App. 296, 298 (1973); see also Brian Dolan, Note,

requirement, simply because many residents are not awake and will not quickly respond to a police officers’ request for entry late at night. The Supreme Court has repeatedly recognized that nighttime searches are, on their face, less reasonable than searches conducted during daylight. *Coolidge v. New Hampshire*, 403 U.S. 443, 477 (1971) (describing nighttime searches as an “extremely serious intrusion”); *Jones v. United States*, 357 U.S. 493, 498 (1958) (“[I]t is difficult to imagine a more severe invasion of privacy than the nighttime intrusion into a private home in this instance.”).

To Knock or Not to Knock? No-Knock Warrants and Confrontational Policing, 93 St. John's L. Rev. 201, 214 (2019) (discussing how many states interpret their knock-and-announce statutes to incorporate common-law exceptions allowing magistrates to issue no-knock warrants). However, this changed in 1974 when the court of appeals held that A.R.S. § 13-3916 (then codified as § 13-1446) did not allow magistrates to authorize no-knock warrants. [*State v. Eminowicz*](#), 21 Ariz. App. 417, 418–19 (1974) (“[T]he legislature has [] already made the determination, based on public policy, that the lives of all concerned are best protected by requiring full compliance with A.R.S. § 13-1446 in all instances.”). This decision was not modified by the Arizona Supreme Court and remained good law until 2000.

In 2000, the legislature amended A.R.S. § 13-3915 & 3916 to allow for issuance of no-knock warrants. This amendment inserted both § 13-3915(B), which allows magistrates to authorize an unannounced entry upon a “reasonable showing” that knocking and announcing would endanger any person or could result in the destruction of evidence, and § 13-3916(B)(3), which allows officers to serve such warrants. The legislature also added § 13-3916(B)(4), which codifies existing Fourth Amendment exceptions to the knock-and-announce requirement by giving officers the discretion to forego the requirement if they reasonably believe that knocking and announcing would endanger anyone involved or result in the destruction of evidence.

There is little case law defining what constitutes a reasonable showing—in fact, I found only one case where the issuance of a no-knock warrant was directly challenged. There, a defendant in the District Court for the District of Arizona asserted that a

magistrate erred in authorizing an unannounced entry. [U.S. v. Wigglesworth](#), No. CR 08-01376-TUC-FRZ (JM), 2009 WL 1507571 (D. Ariz. May 29, 2009). The requesting officer’s reasons for no-knock exception were “the way the crack trade is conducted,” “the weapons that are often involved,” and “the protection of the officers serving the warrant.” *Id.* at *5. The district court held that such “generalized” reasons did not constitute a reasonable showing that knocking and announcing, in this specific instance, would cause anyone to be hurt or evidence to be destroyed. *Id.* (citing [Richards v. Wisconsin](#), 520 U.S. 385, 396 (1997)). However, although there was a violation of the knock-and-announce requirement, this violation did not justify suppression of the evidence obtained in the search, per U.S. Supreme Court precedent. [Hudson v. Michigan](#), 547 U.S. 586 (2006); *see also* [State v. Roberson](#), 223 Ariz. 580, 583–84 (App. 2010) (holding that neither the Fourth Amendment nor Arizona’s Constitution require the suppression of evidence that is obtained in violation of the knock-and-announce requirement).²

² Writing for the court in *Roberson*, Judge Downie applied *Hudson v. Michigan* when deciding that the Fourth Amendment does not require suppression of evidence seized during an improperly announced search. 223 Ariz. at 584. However, the defendant also argued that Arizona’s Constitution provides greater protection than the Fourth Amendment and, therefore, evidence seized following an unauthorized, unannounced entry should be suppressed. *Id.* at 581 (citing Ariz. Const. art. 2, § 8 (“No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”)). The court considered this argument and acknowledged that the Arizona Constitution does provide greater protection than the U.S. Constitution “in certain contexts.” *See State v. Bolt*, 142 Ariz. 260, 264–65 (1984) (stating that this constitutional provision reaches further than the Fourth Amendment by “preserving the sanctity of homes and [] creating a right of privacy.”). However, the court found that this increased level of protection is most pertinent to *warrantless* searches and seizures, at which point residents still have a presumptive right to shield their homes from the government’s inspection. *Roberson*, 223 Ariz. at 583. Additionally, the court found pertinent [A.R.S. § 13-3925](#), which provides that: “Any evidence that is seized pursuant to a search warrant shall not be suppressed as a result of a violation of this chapter except as required by the United States Constitution and the constitution of this state.” *Id.* at 583–84. For both reasons, the court held that Arizona’s Constitution does not require suppression of evidence seized after officers forego the knock-and-announce requirement. *Id.* at 584.

In one additional case, the court of appeals indicated that issuance of a no-knock warrant was appropriate when officers, seeking a warrant for a marijuana investigation, showed there were specific “dangers associated with a firearm in this investigation.” [*State v. Vassell*](#), 238 Ariz. 281, 282 (App. 2015). The officers’ concerns about this firearm were apparently well-founded because the defendant did fire two shots at the officers after they served the no-knock, nighttime warrant. *Id.* at 283. For the Task Force’s purposes, the most notable part of this opinion is Judge Eckerstrom’s concurrence, in which he outlines why a jury could have reasonably concluded that the defendant was firing his weapon at unknown intruders rather than at police officers serving a warrant. *See id.* at 286–88. The Judge’s concurrence aptly describes the quick and disorienting nature of the officers’ nighttime entry and why the defendant could easily have been confused about the officers’ identity when awakened from his slumber. *Id.*

Beyond these few cases, I was unable to find any cases that even tangentially discuss the reasonable showing standard. Additionally, there are no existing Arizona Supreme Court rules or trainings that define what constitutes a reasonable showing. It is possible (though unlikely) that some counties have created rules to provide this guidance. This lack of guidance is one thing that Arizona House Bill No. 2751 seeks to ameliorate, as will be discussed in Part III.

II. Nighttime warrants in Arizona.

Dissimilarly from no-knock warrants, nighttime warrants have been statutorily authorized in Arizona since 1901. [*State v. Jackson*](#), 177 Ariz. 120 (1977) (discussing the history of A.R.S. § 13-1447 (recoded in 1977 as § 13-3917) and the historic “aversion to

nighttime searches”). The statute was substantially rewritten in 1970, at which point the legislature also added the “good cause” standard which controls the issuance of nighttime warrants. The statute’s most recent substantive amendment was in 1971 when the legislature defined “night” as anytime between 10 p.m. and 6:30 a.m.

Because judges have applied the good cause standard since 1970, there are several cases that help define its contours. As an initial matter, a magistrate’s determination of whether good cause exists for nighttime service of a warrant is not coterminous with a finding of probable cause for the warrant. *Jackson*, 177 Ariz. at 122 (clarifying that “good cause” is not a higher or lower evidentiary standard than probable cause; rather, “all that is required for a nighttime search is that it is reasonable.”). The reasons given by officers in support of their request for a nighttime warrant must show that, in each specific case, the “interests of justice are best served by the authorization of nighttime service.” [State v. Foncette](#), 238 Ariz. 42, 47 (App. 2015). Additionally, when officers improperly serve a daytime warrant at night, evidence seized in the ensuing search should not be suppressed because this is a statutory, rather than constitutional, violation. *Id.* (citing [A.R.S. § 13-3925\(A\)](#), which precludes suppression of evidence that was improperly obtained unless it was obtained through a constitutional violation).

Good cause exists when police have witnessed nighttime drug sales occur at the premises to be searched—it is reasonable that sought-after narcotics may not still be at the premises in the morning. [State v. Eichorn](#), 143 Ariz. 609, 614 (App. 1984). Additionally, the type of criminal activity that a warrant is premised upon can affect whether nighttime service is reasonable. *Id.* at 613 (“The factors to be considered regarding the “good cause”

for a nighttime search in a murder case . . . are much different than the ones to be considered in a case concerning possession and sale of marijuana.”); [State v. Adamson](#), 136 Ariz. 250, 259 (1983) (holding that good cause for a nighttime search correlates to the seriousness of the crime involved). Finally, good cause does not exist if the reasons given for a nighttime search are generalized. [State v. Rypkema](#), 144 Ariz. 585, 589 (App. 1985) (holding that a request based upon “the nature of the contraband” and allegations that “drug sales often occur at night” did not sufficiently establish good cause).

In summary, while “good cause” is a low bar that only requires nighttime service to be reasonable, it still requires officers to have an actual, non-generalized reason for a nighttime exception. Currently, the Arizona legislature has not proposed any amendments to A.R.S. § 13-3917. However, the combination of no-knock authorizations with nighttime service authorizations has received consistent criticism because the combination of both warrant exceptions can lead to dangerous situations for residents and police officers alike.³ This criticism has swelled since Breonna Taylor’s death in March 2020, when she was killed by police officers who were executing a no-knock, nighttime warrant in order to search for narcotics in her boyfriend’s apartment.

³ See generally G. Todd Butler, [Recipe for Disaster: Analyzing the Interplay Between the Castle Doctrine and the Knock-And-Announce Rule After Hudson v. Michigan](#), 27 Miss. C.L. Rev. 435 (2008). Kevin Sack, [Door-Busting Drug Raids Leave a Trail of Blood](#), N.Y. Times (Mar. 18, 2017) (detailing the commonality of no-knock warrants across the country and the heavy losses that can ensue). Of note is the cited New York Times article, which highlights many instances where unannounced entries by SWAT teams resulted in death or injuries to officers and residents. Specifically, it includes a 2011 video of a SWAT team serving a no-knock warrant on Jose Guerena’s residence in Tucson in order to search for marijuana. This incident ultimately left Mr. Guerena dead after he was shot more than 20 times by the officers. See Joe Ferguson, [\\$3.4M Settlement in Deadly 2011 SWAT Raid Near Tucson](#), Tucson.com (Sep. 20, 2013).

III. Recent legislative proposals and reforms curtailing the issuance of no-knock warrants.

Over the last year, there has been an influx of legislation seeking to curtail or eliminate the use of no-knock warrants on federal, state, and local levels. *See* Caroline Kelly, [Rand Paul Introduces Bill To End the Type of Warrant Involved in Breonna Taylor's Death](#), CNN (June 11, 2020); Tessa Duvall & Darcy Costello, [In Cities and States Across the US, Breonna's Law Is Targeting Deadly No-Knock Warrants](#), Louisville Courier J. (Mar. 17, 2021) (claiming that there are 84 active proposals in 33 different states which would curtail or ban the use of no-knock warrants). Cities across the country – such as Columbus, Louisville, Santa Fe, Memphis, Indianapolis, San Antonio, and Long Beach – have either eliminated or severely limited their police force’s ability to obtain no-knock warrants.

On the state level, Virginia recently banned the use of no-knock warrants. Daniella Cheslow, [Virginia Gov. Northam Signs 'Breonna's Law' Banning No-Knock Warrants](#), NPR (Dec. 8, 2020). Additionally, no-knock warrants have long been prohibited by state law in both Florida and Oregon, and Utah legislatively curtailed its use of no-knock warrants in 2015 by prohibiting their issuance for drug-related crimes. *State v. Bamber*, 630 So. 2d 1048 (Fla. 1994); Or. Rev. Stat § 133.575 (2009); Utah Code Ann. 77-23-210 (2018).

It is against this backdrop that [Arizona House Bill No. 2751](#) was introduced on February 2, 2021, by Representative Alma Hernandez (D-Tucson). This bill, in its current form, would amend A.R.S. § 13-3915 by changing the statute’s mandatory language to permissive (“shall” becomes “may”), which would presumably give a magistrate discretion over the issuance of a no-knock warrant even when an officer has made a reasonable showing in support of the warrant. The amendment would also insert eight

factors into A.R.S. § 13-3915(B) to guide magistrates' consideration of the reasonable showing standard.⁴ This amendment has 21 co-sponsors but has not had a change of status since February 24. I am sure that the Task Force is much better equipped than I to predict the Amendment's chances of being enacted.

Something that frustrates attempts to understand whether the use of no-knock or nighttime warrants in Arizona is systemically problematic is the dearth of data showing how commonly they are issued. On a national level, there is significant disparity amongst estimates of how many no-knock warrants are issued annually.⁵ Closer to home, I have been unable to find actual data detailing how frequently no-knock warrants are issued by Arizona magistrates. There are claims that no-knock warrants are rarely issued in Arizona—that they are proverbial needles in a haystack of warrants—but I have not found any data backing this up.⁶ This empirical scarcity obstructs consideration of whether, or to what extent, no-knock and nighttime warrants should be curtailed in Arizona.

⁴ These factors are:

- 1) Underlying Charges,
- 2) Weapons Information,
- 3) Gang Activity,
- 4) Fortification of Structure,
- 5) Documented Violence Potential of the Suspect and other Associates or Occupants Related to the Address,
- 6) Calls for Service Related Related to the Address Itself,
- 7) Firsthand Knowledge by the Detective of the Suspects and Target Location,
- 8) Any Other Factor Which a Magistrate May Consider Relevant.

⁵ Compare Dara Lind, [Cops Do 20,000 No-Knock Raids A Year. Civilians Often Pay the Price When They Go Wrong](#), VOX (May 15, 2015) with Candice Norwood, [The War on Drugs Gave Rise to 'No-Knock' Warrants. Breonna Taylor's Death Could End Them](#), PBS News Hour (June 12, 2020) (stating that criminologist Peter Kraska estimated that police officers serve 60–70 thousand no-knock warrants per year).

⁶ See, e.g., Brittini Thomason, [No-Knock Warrants Are Legal in Arizona, But Rare](#), AZfamily.com (Sep. 23, 2020) (providing absolutely no basis for the title's claim that no-knock warrants are "rare" in Arizona).

IV. The extent of the Arizona Supreme Court's rulemaking power in this area.

The Court does not currently have any rules or orders guiding magistrates' issuance of no-knock or nighttime warrants, nor have I found any such rules that were issued in the past. Accordingly, whether or not the Court could promulgate such rules—to perhaps define the “good cause” and “reasonable showing” standards—is something of an open question.

Article 6, § 5 of Arizona's Constitution bestows upon the Supreme Court the “[p]ower to make rules relative to all procedural matters in any court.” This broad authority conceivably would allow the Court to make rules guiding magistrates' consideration of nighttime or no-knock warrant requests. Whether such rules would be proper depends, entirely, upon if they are considered procedural or substantive in nature. And this consideration, somewhat circularly, would come before the Supreme Court because the thorny question of whether a rule is procedural or substantive “is one of law.” *See Seisinger v. Siebel*, 220 Ariz. 85, 92 ¶¶ 26–29 (2009) (“Although the basic constitutional principle of separation of powers is easily stated, the precise dividing line between substance and procedure has proven elusive.”) (internal quotation marks omitted).

At a basic level, substantive law “creates, defines and regulates rights” while procedural law “prescribes the method of enforcing the right or obtaining redress for its invasion.” *State v. Birmingham*, 96 Ariz. 109, 110 (1964). The distinction between procedural and substantive laws does not hinge upon the effect that the law has—procedural rules will sometimes have “important or substantial” effects. *State v. Reed*,

248 Ariz. 72, 76 ¶ 13 (2020). Instead, “the ultimate question” is whether a rule or statute works to effectively create, define, and regulate rights. *Seisinger*, 220 Ariz. at 93 ¶ 29.

Here, if the Court were to promulgate rules defining how the “good cause” and “reasonable showing” standards should be evaluated, this seemingly would not create, define, or regulate a right. Although it is debatable what type of “rights” are created by A.R.S. § 13-3915 & § 13-3917,⁷ they foundationally seem to provide police officers with a right to abridge common-law restraints upon the service of a warrant. If this is the right, then surely a Court rule clarifying how to apply the ambiguous standards that gatekeep this right would simply “prescribe[] the method of enforcing the right.” *Birmingham*, 96 Ariz. at 110. Accordingly, at this basic level – which is perhaps as far as this analysis can go until an actual rule is suggested – such a rule would be procedural and, therefore, would be within the Court’s rulemaking power.

One additional question is whether Arizona House Bill No. 2751’s proposed eight-factor test, which would guide magistrates’ reasonable-showing determination, would override a Court rule that also attempts to provide such guidance. Of course, as a practical matter, the Court may not want to actually promulgate such a rule if it would be duplicative of the legislature’s efforts. However, it is not inconceivable that the Court might choose to promulgate such a rule even if the amendment is passed. For instance, the Court could decide that the legislature’s eight-factor analysis is overbroad and thus unhelpful, or that it is not something magistrates can deploy effectively. In such a

⁷ For instance, do these statutes give a magistrate a right to issue certain types of warrants, police officers a right to seek necessary warrant exceptions, or the public an enhanced right to more effective law enforcement?

situation, a conflicting Court rule would likely prevail over the legislature’s statute— assuming, of course, that the rule was classified as procedural rather than substantive. *State v. Forde*, 233 Ariz. 543, 575 ¶ 145 (2014) (“It is more accurate to say that the legislature and this Court both have rulemaking power, but that in the event of irreconcilable conflict between a procedural statute and a rule, the rule prevails.” (quoting *Siebel*, 220 Ariz. at 89 ¶ 8)).

Ultimately, the Arizona Constitution does vest the Supreme Court with the power to promulgate procedural rules, and it is likely that rules guiding how magistrates should analyze the good-cause and reasonable-showing standards would qualify as procedural. Whether the Court *should* exercise this power is, of course, another question entirely.

CONCLUSION

The issuance of no-knock and nighttime warrants in Arizona are guided by open-ended, fact-dependent standards that provide issuing magistrates with much discretion. Arizona lawmakers, following a movement occurring throughout the Union, have proposed an amendment which seeks to help guide magistrates’ issuance of no-knock warrants. However, the ball is not solely in the legislature’s court; the Arizona Supreme Court also could create rules guiding the magistrates’ application of these somewhat amorphous statutory standards.