

**REPORT OF THE JUDICIAL COUNCIL CRIMINAL LAW ADVISORY COMMITTEE
ON NO-KNOCK WARRANTS**

December 2, 2022

In March 2022, Rep. Stephen Owens asked the Judicial Council to study the topic of “no-knock” warrants. (Study request attached.) The topic was brought to Rep. Owens’ attention by H.B. 2133, a bill that, if enacted, would have required law enforcement officers executing a search warrant at a residence to be uniformed and to knock and announce themselves before entering the residence. Rep. Owens indicated that he is not interested in banning no-knock warrants; rather, he asked the Council to review recent state and federal court decisions and make a recommendation “regarding any statutory changes that could be made to ensure our statutes reflect the parameters for no-knock warrants established by state and federal court rulings.” The Judicial Council assigned the study to the Criminal Law Committee.

COMMITTEE MEMBERSHIP

The members of the Criminal Law Advisory Committee (Committee) are:

Victor Braden, Chair, Deputy Attorney General; Topeka

Aaron Breitenbach, Deputy District Attorney for Sedgwick County; Wichita

Natalie Chalmers, Assistant Solicitor General; Topeka

Randall Hodgkinson, Kansas Appellate Defender Office & Visiting Assistant Professor of Law at Washburn University School of Law; Topeka

Sal Intagliata, Member at Monnat & Spurrier, Chartered; Wichita

Christopher M. Joseph, Partner at Joseph Hollander & Craft, LLC; Topeka

Ed Klumpp, Chief of Police-Retired, Topeka Police Department; Topeka

Hon. Cheryl A. Rios, District Court Judge in the Third Judicial District;
Topeka

Ann Sagan, Director of Special Projects, Kansas State Board of Indigents' Defense Services; Lawrence

Kirk Thompson, Director of the Kansas Bureau of Investigation; Topeka

Rep. John Wheeler, Kansas House of Representatives, District 123; Garden City

Ronald Wurtz, Retired Public Defender (Federal and Kansas); Topeka

Prof. Corey Rayburn Yung, KU School of Law Professor; Lawrence

SUMMARY

There has been much national public policy debate about whether no-knock warrants should be restricted or prohibited; however, the Committee understood its assignment to be much narrower: to identify the applicable caselaw surrounding the knock-and-announce rule and propose changes to ensure that Kansas statutes are in line with that caselaw. Current Kansas statutes do not contain any language requiring officers to knock and announce before executing a warrant, but a knock-and-announce rule has been recognized by both federal and state caselaw. While a majority of the Committee agreed that it is neither necessary nor desirable to attempt to codify the knock-and-announce rule, the Committee has provided a proposed amendment should the legislature decide to consider codifying the rule.

DISCUSSION

The Fourth Amendment to the federal constitution and Section 15 of the Kansas Constitution Bill of Rights provide the same protection from unreasonable government searches and seizures. *State v. Daniel*, 291 Kan. 490, 498, 242 P.3d 1186 (2010). The United States Supreme Court has held that whether law enforcement officers knock and announce their presence and authority before entering a dwelling, as required by common law, is a factor to be considered in determining the reasonableness of a search under the Fourth Amendment. *Wilson v. Arkansas*, 514 U.S. 927, 934, 115 S.Ct. 1914, 131 L.Ed.2d 976 (1995). However, the *Wilson* Court recognized that countervailing law enforcement interests might

provide specific circumstances under which an unannounced entry is reasonable. 514 U.S. at 936.

In *Richards v. Wisconsin*, 520 U.S. 385, 117 S.Ct. 1416, 137 L.Ed.2d 615 (1997), the Court rejected Wisconsin's blanket exception to the knock-and-announce rule for felony drug investigations. Instead, the Court held that, "to justify a 'no-knock' entry, police must have a reasonable suspicion that knocking and announcing their presence, under the particular circumstances, would be dangerous or futile, or that it would inhibit the effective investigation of the crime by, for example, allowing the destruction of evidence." 520 U.S. at 394.

The Kansas Supreme Court has adopted and applied the knock-and-announce rule articulated in *Wilson* and *Richards*. In *State v. Wakefield*, 267 Kan. 116 (1999), officers knocked and then immediately kicked open the door of the defendant's dwelling. The officers had information that the defendant had been involved in a burglary that led to a shooting and that there were weapons inside the dwelling. The Court found that, under these facts, the trial court did not err in ruling that exigent circumstances justified the forcible entry.

In a second case applying the knock-and-announce rule, the Kansas Supreme Court found a lack of exigent circumstances to justify a no-knock entry. In *State v. Shively*, 268 Kan. 589 (2000), officers conducted a surprise drug raid at 3:00 a.m., battering down the doors to the defendant's residence. In ruling that the search was unconstitutionally executed, the Court noted that practically all of the warrants obtained by the police department's special street crime force were executed in a no-knock manner, the confidential informant had advised officers that no weapons were present, and the defendant was expected to be asleep. 268 Kan. at 596.

Even if a warrant is executed in violation of the knock and announce rule, the evidence seized during the search need not be suppressed. See *State v. Francis*, 282 Kan. 120, 126, 145 P.3d 48, 58 (2006) (applying rule announced in *Hudson v. Michigan*, 547 U.S. 586, 126 S. Ct. 2159, 165 L.Ed.2d 56 [2006], which held that exclusionary rule did not apply to violations of knock-and-announce rule).

Whether to codify

A majority of the Committee believes that it is neither necessary nor desirable to attempt to codify the knock-and-announce rule. (The vote on this recommendation was 5-3 with one member abstaining). Because the determination of whether a search is reasonable is dependent on the specific circumstances involved and decided on a case-by-case basis, Fourth Amendment caselaw is constantly evolving and extremely fact-specific. As a result, the Committee found it difficult to draft language that is clearly neither more nor less restrictive than the constitution requires.

While the legislature could enact greater protections than required by the constitution, Rep. Owens made clear that is not his goal. However, merely codifying the knock-and-announce rule would likely have no impact on how these cases are decided by the appellate courts. As stated in *City of Dodge City v. Webb*, 305 Kan. 351, Syl. ¶ 2, 381 P.3d 464, 466 (2016), “When a statute affords citizens of Kansas greater protections against searches and seizures than the Fourth Amendment to the United States Constitution, the statute governs the permissible scope of state action. *When such statutes are either silent or merely codify the federal constitutional standard, however, it is proper for courts to determine the permissibility of state action as a matter of constitutional law.*” (Emphasis added.)

And, sometimes, attempts to codify the Fourth Amendment can backfire. For example, in *State v. Henning*, 289 Kan. 136, 209 P.3d 711 (2009), the Kansas Supreme Court struck down as unconstitutional a legislative amendment to K.S.A. 22-2501(c) regarding searches incident to arrest. The amendment allowed an arresting officer to search the person arrested and the area within the person’s immediate presence for “fruits, instrumentalities and evidence of *a* crime” whereas the prior version of the statute only allowed a search for “fruits, instrumentalities and evidence of *the* crime.” While the legislature had apparently been attempting to codify United States Supreme Court caselaw, a later case made clear that the amendment was overly broad and not consistent with the Court’s interpretation of the Fourth Amendment.

A minority of the Committee favored codifying the knock-and-announce rule because setting out the rule in the statutes would make it easier for officers to find.

Proposed amendment

While a majority of the Committee does not believe a statutory amendment is necessary or desirable, in order to be responsive to the study request, the Committee proposes the following language for the legislature's consideration should it choose to codify the knock-and-announce rule:

“K.S.A. 22-2508. All necessary and reasonable force may be used to effect an entry into any building or property or part thereof to execute a search warrant. Except for a warrant executed under K.S.A. 22-2506(b), a person serving a search warrant shall give notice of intent to serve a search warrant to the occupants of the place to be searched unless reasonable suspicion supporting exigent circumstances exists to justify entry without such notice.”

The exception for warrants issued under K.S.A. 22-2506(b) refers to warrants that authorize placement of a tracking device. Such tracking devices would be ineffective if the subject of the device had to be given notice of it first.

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STEPHEN OWENS
74TH DISTRICT

March 2, 2022

Nancy Strouse, Executive Director
Kansas Judicial Council
301 SW 10th Avenue
Topeka, Kansas 66612

Dear Nancy:

I am writing to request Judicial Council study of a topic that arose during the consideration of legislation by the House Committee on Corrections and Juvenile Justice during the 2022 Session. I believe that in-depth consideration by the Judicial Council of the topic ("no-knock" warrants) raised by the legislation would be appropriate and helpful before additional consideration of legislation regarding the topic by the Legislature.

The bill raising the topic was **HB 2133 – Requiring a law enforcement officer executing a search warrant at residential premises to be uniformed and to knock and announce themselves before entering the property.**

During the Committee's hearing on this bill on January 24, 2022, it became clear there were issues with the bill's approach to the topic that would need to be resolved before the bill could be advanced. However, I believe the topic of no-knock warrants is one that should receive additional consideration.

Specifically, I would request the Judicial Council review recent state and federal court decisions regarding no-knock warrants and how those may apply to Kansas law. While I am not interested in banning no-knock warrants, I would appreciate the Judicial Council's recommendation regarding any statutory changes that could be made to ensure our statutes reflect the parameters for no-knock warrants established by state and federal court rulings.

Please let me know if I can provide any further information or answer any questions regarding this request.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Owens", written over a horizontal line.

Representative Stephen Owens
Chairman, House Committee on Corrections and Juvenile Justice

HOUSE BILL No. 2133

By Representatives Fairchild, Finney, Houser, Murphy, Parker and Xu

1-26

1 AN ACT concerning crimes, punishment and criminal procedure; relating
2 to search and seizure; requiring a law enforcement officer executing a
3 search warrant to announce their presence before entering; amending
4 K.S.A. 22-2510 and repealing the existing section.

5
6 *Be it enacted by the Legislature of the State of Kansas:*

7 Section 1. K.S.A. 22-2510 is hereby amended to read as follows: 22-
8 2510. (a) A search warrant may be executed at any time of any day or
9 night.

10 (b) *A law enforcement officer executing a search warrant at a*
11 *dwelling shall be properly uniformed and shall knock on the door and*
12 *announce their presence in a manner reasonably expected to be heard by*
13 *the occupants of the dwelling before entering the dwelling to execute a*
14 *search warrant.*

15 (c) *For the purposes of this section, "dwelling" means a building, or*
16 *portion thereof, that is used or intended for use as a human habitation,*
17 *home or residence.*

18 Sec. 2. K.S.A. 22-2510 is hereby repealed.

19 Sec. 3. This act shall take effect and be in force from and after its
20 publication in the statute book.