

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 577
Judiciary

(Delegate Anderson, *et al.*)

Judicial Proceedings

Criminal Procedure - "No-Knock" Warrants - Authority

This bill authorizes a law enforcement officer to request, via the application for a search warrant, to enter a building, apartment, premises, place, or thing to be searched without giving notice of the officer's authority or purpose. The officer must have a reasonable suspicion that, without the authorization, the property subject to search or seizure may be destroyed, disposed of, or secreted or the life or safety of the executing officer or another person may be in danger. The warrant shall 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.

Fiscal Summary

State Effect: None. Authorizing "no knock" warrants would not materially affect governmental operations or expenditures.

Local Effect: None – see above.

Small Business Effect: None.

Analysis

Current Law: A judge may issue a search warrant whenever it is made to appear to the judge that there is probable cause to believe that (1) a misdemeanor or felony is being committed by a person or in a building, apartment, premises, place, or thing within jurisdiction of the judge; or (2) property subject to seizure is on the person or in or on the building, apartment, premises, place, or thing.

An application for a search warrant must be in (1) writing; (2) signed and sworn to by the applicant; and (3) accompanied by an affidavit that sets forth the basis for probable cause and contains facts within the personal knowledge of the affiant that there is probable cause.

State law does not specifically allow “no-knock” warrants.

Background: The Court of Appeals most recently decided the issue of “no-knock” warrants in two 2004 cases, *Davis v. State*, 383 Md. 394, and *State v. Carroll*, 383 Md. 438.

In *Davis*, two defendants were arrested, charged with, and convicted of possession of marijuana with intent to distribute and a handgun violation. The Court of Appeals overturned the convictions, holding that absent valid statutory authority, a judicial officer in Maryland may not issue a “no-knock” warrant. In the opinion, Chief Judge Bell stated, “...a judicial officer in Maryland, under Maryland law, may not issue a ‘no-knock’ warrant. Rather, the propriety of a ‘no-knock’ entry will be reviewed and determined on the basis of the facts known to the officers at the time of entry, rather than at the time of the application for the warrant.”

In *Carroll*, the police, on a valid warrant, entered the defendant’s residence without knocking and identifying themselves as officers. After an investigation, the police determined that knocking and entering would place the officers in danger and proceeded without doing so. The Court of Appeals allowed the admission of the evidence, effectively affirming the portion of the *Davis* holding that stated that the determination of the correctness of a “no-knock” warrant should be made by the officers at the time of entry, based on facts known at that time.

Several states allow judicial officers to issue “no-knock” warrants, including: Georgia, Massachusetts, Minnesota, Mississippi, New Jersey, and Wisconsin. Massachusetts and Minnesota require the police at the scene to make a “threshold reappraisal of the actual threat,” even after a “no-knock” warrant has been issued.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State’s Attorneys’ Association, Judiciary (Administrative Office of the Courts), Office of the Public Defender, Department of Legislative Services

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