



**House
Legislative
Analysis
Section**

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"NO-KNOCK" WARRANTS

**House Bill 5579 (Substitute H-1 with committee
amendments)
First Analysis (5-15-90)**

**Sponsor: Rep. Bart Stupak
Committee: Judiciary**

THE APPARENT PROBLEM:

When executing a search warrant, a law enforcement officer must give notice of his or her authority and purpose before entering a house or building. The officer may break down a door or window if he or she is refused admittance, or if it is necessary to "liberate" the officer or another person. Case law has established that a refusal of admittance need not be an "affirmative denial" and that certain exigent circumstances (including the likelihood that evidence is being destroyed) allow an officer to disregard the "knock and announce" requirement. Still, it is up to the officers at the scene to determine whether there is a silent refusal to admit them or if exigent circumstances exist. Law enforcement officials argue that the requirement that officers announce their presence and give the occupants a reasonable opportunity to respond before breaking in leaves officers vulnerable to physical attack and allows suspects the opportunity to destroy evidence. Further, they argue that an officer's use of discretion to determine whether the knock and announce requirement may be disregarded can open the possibility of legal challenges to the execution of a warrant and thus jeopardize a conviction. Those in the forefront of the battle to stem the surging flow of drug-related crimes argue that police need the authority to seek special warrants allowing entry without first knocking and identifying themselves.

THE CONTENT OF THE BILL:

The bill would amend Public Act 189 of 1966, which governs the use of search warrants, to allow a law enforcement officer to enter a house or building to execute a search warrant immediately, without giving notice of his or her purpose or waiting until admittance was refused, under certain circumstances. The warrant would have to expressly authorize the "no-knock" entry, authorize the seizure of evidence of certain felony drug offenses, and be issued by a judge of a municipal, district or circuit court (and not by a district court magistrate). Further, the affidavit submitted to obtain the warrant would have to specifically allege, and the judge would have to determine, that the safety of the officer executing the warrant, the safety of another person, or the collection of evidence of the felony drug offense could be jeopardized by any delay in executing the warrant.

If law enforcement officers caused property damage in executing a no-knock warrant, the local unit of government would be liable to the owner of the property for the damage, if none of the evidence being sought under the warrant was obtained.

A judge who signed a no-knock warrant would have to forward a copy of the warrant and the supporting affidavit

to the Department of Management and Budget. These affidavits and search warrants would be exempt from disclosure under the Freedom of Information Act.

The bill would expire three years after it took effect.

MCL 780.656a

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill has no fiscal implications for the state. (5-10-90)

ARGUMENTS:

For:

According to testimony, up to eight law enforcement officers nationwide were shot and killed while executing search warrants in 1988, and seven of those were in knock-required situations. Since the law requires officers to knock and give the occupants a reasonable length of time to respond before forcefully entering a building, the delay can allow occupants to prepare an ambush. Further, evidence in drug cases can be quickly and easily destroyed by flushing it down a drain or burning it in acid. Police officers have often been frustrated by such loss of evidence, and are sometimes placed at great risk due to the knock and announce requirements. The bill would create a process for obtaining special warrants for no-knock searches, which could aid law enforcement officials in their efforts to stem the tide of the drug crisis. It would allow officers to know with certainty that the use of no-knock entry would be legally sanctioned, thus avoiding suppression of evidence because of improper searches, and would help guard the safety of law officers working in the riskiest of situations. The bill would carefully limit the process to situations in which felony drug offenses were suspected, and would be subject to legislative review after a three-year trial period.

Against:

Whether authorization of no-knock entry would serve to protect the safety of police officers is a matter of debate. Given the frequent occurrence of violence among people involved in the drug trade, officers may well be more at risk bursting into a drug house unannounced, when they could be mistaken for thieves or people intent on violent revenge, than if they identified themselves as police officers before entering. Further, under current statutory provisions and case law, law enforcement officers already have sufficient authority to enter buildings unannounced when their safety is in jeopardy or when they suspect that evidence is being destroyed. Using the procedure outlined in the bill would simply place the discretion for deciding upon a no-knock entry with the judge, away from the scene, rather than with the officers who are at the scene and better able to assess the situation. As for the argument

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that the use of no-knock entry opens a possibility of legal challenges, it should be noted that in virtually all of the recent Michigan cases, the courts have upheld the decisions of officers at the scene; defendants have not been winning acquittals based on this issue. Rather than a substantive proposal to increase the odds of winning the war on drugs, this bill appears to be more a public relations device.

Against:

The bill, and other supposed anti-drug legislation, erodes the 4th amendment right of citizens to be secure in their own homes and protected against unreasonable searches. Knock and announce requirements exist because the 4th amendment demands a certain propriety on the part of police officers, even after they have been authorized to invade a person's privacy by issuance of a valid search warrant. Moreover, the whole concept of no-knock entry presumes that police are correctly targeting suspects of crime, but it is clear that cases of officers making mistakes and entering into the homes of innocent citizens are far from unheard of.

POSITIONS:

The Department of State Police supports the concept of the bill. (5-8-90)

The Office of Drug Agencies supports the concept of the bill. (5-8-90)

The ACLU of Michigan opposes the bill. (5-8-90)

The State Appellate Defender's Office opposes the bill. (5-10-90)