

APPROVED



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF CRIMINAL JUSTICE
PO BOX 085
TRENTON, NJ 08625-0085
TELEPHONE: (609) 984-6500

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ANDREW J. BRUCK
Acting Attorney General

LYNDSAY RUOTOLO
Director

ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2021-12

TO: All Law Enforcement Chief Executives and County Prosecutors
FROM: Andrew J. Bruck, Acting Attorney General
DATE: December 7, 2021
SUBJECT: Directive Regulating “No-Knock” Warrants

The execution of a residential search warrant can lead to dire consequences for the safety of both law enforcement and the residents involved. Sometimes, this danger arises when law enforcement is permitted to forcibly enter a residence pursuant to a warrant without announcing themselves—often called a “no-knock” warrant. This Directive further regulates the already-rare application of no-knock warrants in New Jersey, and establishes approval and reporting requirements for instances when they are used.

The Fourth Amendment of the United States Constitution, and Article I, Section 7 of the New Jersey Constitution, require law enforcement to obtain a warrant—backed by probable cause and approved by a judge—before searching a person’s home. And the law has long-required police to “knock-and-announce” themselves—even after obtaining a warrant—prior to entering a residence, reflecting the “ancient adage” that a person’s house is their castle. State v. Johnson, 168 N.J. 608, 615 (2001); see also Miller v. United States, 357 U.S. 301, 307 (1958). Under this rule, if officers are not granted entry into the premises, they must wait a “reasonable” period of time after knocking before forcibly entering. State v. Robinson, 200 N.J. 1, 18 (2009). The appropriate delay depends on the particular circumstances of each case. Id. The knock-and-announce requirement not only protects privacy, but also decreases the potential for violence and prevents the physical destruction of property during forcible entry. Johnson, 168 N.J. at 616.

The New Jersey Supreme Court has laid out certain limited circumstances, however, in which law enforcement may apply to the court for approval of a no-knock warrant. To justify a no-knock provision, a law enforcement officer must have a “reasonable, ~~particularized suspicion~~” that forcible entry is required for one of three reasons:

1. “to prevent the destruction of evidence”;
2. “to protect the officer’s safety”; or
3. “to effectuate the arrest or seizure of evidence.”

SCANNED
COPY



APPROVED

Id. at 619. A 2020 survey of County Prosecutors revealed that, while only a fraction of the total number of warrants executed over the past several years in New Jersey contained a no-knock provision, the use of no-knock warrants was not consistently tracked across the State.

After studying the issue, I have determined that no-knock warrants present significant risks to public and officer safety, privacy, and community trust, and should be used only in rare and targeted circumstances. Accordingly, this Directive takes four broad actions regulating no-knock warrants for both residences and commercial premises alike.

- First, the Directive generally prohibits the use of no-knock warrants. Absent exigent circumstances, law enforcement officers are permitted to request authorization from the court for a no-knock warrant provision only under the following circumscribed conditions—narrower than what is permitted by law—where (i) knocking and announcing will create a reasonable and particularized concern for officer safety or the safety of another person and (ii) a trained tactical team executes the no-knock warrant.
- Second, the County Prosecutor, Director of the Division of Criminal Justice (DCJ Director), or their senior legal staff designee must approve any warrant that includes a no-knock provision.
- Third, every execution of a no-knock warrant will undergo subsequent review by the approving County Prosecutor's Office, including when appropriate a review of relevant body-worn camera footage created during the warrant execution.¹
- Fourth, the County Prosecutors must track the number of no-knock warrants applied for and authorized by courts in their jurisdiction, and the requesting law enforcement agency, as well as any no-knock entries justified by exigent circumstances, and the DCJ Director must track the same information in response to applications sought by attorneys in the Division of Criminal Justice.

Finally, this Directive also includes three general premises search warrant restrictions.

- First, search warrants should presumptively be executed between 5:00 a.m. and 10:00 p.m. Early morning execution generally promotes the safest outcomes for each actor involved.
- Second, law enforcement should use flash bang devices² sparingly and only with proper safety precautions in place, and must obtain approval from the County Prosecutor, DCJ Director, or their senior legal staff designee, or Chief of Detectives, when seeking to use this tool.

¹ Pursuant to Attorney General Law Enforcement Directive No. 2021-5, which established and implemented the statewide Body Worn Camera Policy, officers are required to wear body worn cameras when executing search warrants. That requirement provides a video record of search warrant execution, should it become necessary to perform further review of no-knock provisions in the future.

² A "flash bang" is an explosive device that produces a flash of light and a loud noise intended to temporarily stun and distract.

COPY

- Third, the operations plan created prior to execution should take reasonable steps to identify the occupants of the target premises, including any children or other individuals with known vulnerabilities.

Therefore, pursuant to the authority granted to me under the New Jersey Constitution and the Criminal Justice Act of 1970, N.J.S.A. 52:17B-97 to -117, which provides for the general supervision of criminal justice by the Attorney General as chief law enforcement officer of the State in order to secure the benefits of a uniform and efficient enforcement of the criminal law and the administration of criminal justice throughout the State, I hereby direct all law enforcement and prosecuting agencies operating under the authority of the laws of the State of New Jersey to implement and comply with the directives outlined below.

I. Restrictions on No-Knock Warrants

- A. ***Limiting no-knock provisions except for officer or civilian safety.*** Although the New Jersey Supreme Court has provided three independent justifications for no-knock provisions—destruction of evidence, officer safety, and effecting an arrest or seizure—officers and prosecutors shall only request a no-knock warrant where there is a reasonable and particularized concern for the safety of the executing officers or another person. The specific facts supporting the request should be included in the warrant affidavit. A no-knock provision should be sought only where knock-and-announce entry would be inadequate to achieve safe warrant execution.
- B. ***Use of tactical teams to execute no-knock warrants.*** In line with best practices among the counties, to promote both officer and civilian safety, warrants that include a no-knock provision shall be executed only by tactical teams, or other law enforcement units specifically trained to handle high-risk incidents, including S.W.A.T. (Special Weapons and Tactics), S.R.T. (Special Response Team), T.E.A.M.S. (Technical Emergency and Mission Specialists), High Risk Entry Teams, Rapid Deployment, Fugitive Squads or similar units. This requirement may be waived by the County Prosecutor, DCJ Director, or their senior legal staff designee, if, after reasonable inquiry, tactical personnel are unavailable, there is particularized urgency for the execution of the warrant, and other properly trained personnel are available to execute the warrant.
- C. ***Subsequent prosecutor review.*** After execution of a no-knock warrant, the executing agency will report back to the approving official at the County Prosecutor's Office the results of the operation within 48 hours. If based on that information provided, the County Prosecutor's Office or Attorney General's Office identifies issues that warrant greater review, upon request, the executing agency shall furnish to the County Prosecutor's Office all relevant body-worn camera footage created during the warrant execution for review to assess compliance with this Directive.
- D. ***Exigent circumstances.*** Nothing in this Directive limits law enforcement's ability when executing a knock and announce warrant to justify a no-knock entry where "exigent circumstances" arise in the immediate lead up to the warrant's execution. See Johnson,

168 N.J. at 624. Any such justification must be reasonable and particular to the circumstances of the case. In any instance where exigencies lead to entry without announcing in the execution of a warrant that does not include an approved no-knock provision, that warrant's affiant shall report the entry to the County Prosecutor or DCJ Director within 24 hours, which will later be reported to the Attorney General or designee pursuant to Section IV.A below.

II. General Search Warrant Restrictions

- A. ***Default time period for warrant execution.*** In order to help assure the safety of both law enforcement and civilians, all search warrants—with or without a no-knock provision—shall have a *presumptive* execution timeframe of between 5:00 a.m. and 10:00 p.m. In some instances, warrants will need to be executed outside this default time range. In such a case, the extended time period must be approved by the court, and supported by facts in the affidavit establishing good cause for the request. The face of each search warrant must state the time range for execution.
- B. ***Flash bangs.*** Flash bangs should be rarely used in search warrant executions. In the minimal instances where law enforcement deems use of flash bangs to be necessary, careful planning will be required, including consideration of any individuals with disabilities that are known to be present in the residence (see Section II.C below).
1. The County Prosecutor, DCJ Director, or their senior legal staff designee, or Chief of Detectives, must approve the planned deployment of flash bangs during any search warrant execution.
 2. Flash bangs should only be used in the execution of a search warrant by trained tactical personnel and with requisite safety precautions in place (e.g., fire extinguishers available).
 3. Nothing in this Directive, however, shall limit law enforcement's ability to deploy flash bangs in exigent circumstances during a warrant execution. In any instance where exigencies lead to the use of flash bangs without prior approval, that warrant's affiant shall report use of the device to the County Prosecutor or DCJ Director, in a manner prescribed by the County Prosecutor or DCJ Director, within 48 hours.
- C. ***Accounting for individuals present in the target premises.*** Prior to the execution of any search warrant that requires a written operations plan, unless exigent circumstances exist, such plan shall include the following:
1. The reasonable steps taken to timely identify any residents or occupants of the location to be searched, and any subdivided living quarters, legal or otherwise, within the specific unit to be searched, and when those steps were taken.

2. The following information for anyone known or believed to be present at the target premises, if it can be determined with reasonable efforts.
 - i. The age and gender, and whether they are connected to the criminal activity detailed to support probable cause;
 - ii. Cognitive or physical disabilities, if known; and
 - iii. Animals.

III. Approval

Before any application for a warrant including a no-knock provision is presented to the court, it must be approved by the County Prosecutor, DCJ Director, or their senior legal staff designee. See attached application form.

IV. Tracking

- A. ***No-knock warrants.*** Each County Prosecutor shall track on an annual basis, for each requesting law enforcement agency, the number of warrants including no-knock provisions applied for and the number approved by a court in their jurisdiction, as well as any no-knock entries justified by exigent circumstances. Similarly, the Division of Criminal Justice shall track the number of warrants including no-knock provisions applied for and approved by courts upon the applications of DCJ attorneys, as well as any no-knock entries justified by exigent circumstances. The County Prosecutors and the DCJ Director should submit that information for the preceding year to the Attorney General or designee annually on January 31. The information to be submitted on January 31, 2022, need only reflect warrants approved after the effective date of this Directive.
- B. ***Uses of force.*** Any injury occurring during the execution of a no-knock warrant, or other use-of-force during such execution, shall be reported to the Attorney General's Use of Force Reporting Portal and documented as taking place during a no-knock entry.
- C. ***Public reporting.*** The Attorney General or designee shall make this information available, by county, on its public website by the end of February each year.

V. Other Provisions

- A. ***Non-enforceability by third parties.*** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the State. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.

SCANNED

COPY

- B. **Severability.** The provisions of this Directive shall be severable. If any phrase, clause, sentence or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the document shall not be affected.
- C. **Questions.** Any questions concerning the interpretation or implementation of this Directive shall be addressed to the DCJ Director, or their designee.
- D. **Effective date.** This Directive shall take effect on December 21, 2021, which is two weeks after issuance. The provisions of this Directive shall remain in force and effect unless and until it is repealed, amended, or superseded by Order of the Attorney General.
- E. **Prior directives.** This Directive supersedes any prior directive on this topic, including Attorney General Law Enforcement Directive 2002-2.



Andrew J. Bruck
Acting Attorney General

ATTEST:



Lyndsay Ruotolo
Director
Division of Criminal Justice

Dated: December 7, 2021

SCANNED

COPY

No-Knock Search Warrant Application Form

NJ Office of the Attorney General
Division of Criminal Justice

Per AG Directive 2021-12, please complete this form and obtain specified approval prior to presenting any search warrant application with a "no-knock" provision to a court. **Attach a copy of the warrant application to this form.**



I. BASIS FOR NO-KNOCK REQUEST *(check all that apply)*

Please check the applicable boxes relating to specified criteria for a finding of a risk to officer safety or safety of nearby civilians. If "other" selected, please provide brief explanation of the relevant facts.

- Information received that the target of the search warrant or other known occupant of the residence has recently been in possession of a firearm, other weapon or explosives that are readily capable of causing serious bodily injury.
- Information received that there currently are, or recently have been, readily accessible firearms, weapons, or explosives located inside the target residence that are readily capable of causing serious bodily injury.
- The target of the search warrant is being investigated for an offense involving the use or possession of a firearm or other weapon that is readily capable of causing serious bodily injury that has yet to be recovered by law enforcement officers, or is being investigated for an especially violent offense.
- The presence of a fortified structure or exterior surveillance system at the residence capable of being monitored.
- The target of the search warrant or other known occupants of the target residence have a documented history of violent offenses (to include arrests and/or convictions) or offenses involving the use or possession of a firearm (to include arrests and/or convictions). If this factor is applicable and includes arrests and/or convictions, the certification/affidavit shall include a synopsis of the relevant offenses and whether they are arrests or convictions. Additionally, a criminal history sheet shall be attached.
- Information received that the target of the residence or other known occupants of the target residence have been affiliated with a gang or gang activity or terrorist organization or other group that engages in or supports violence against the government or the public.
- The layout of the target residence is such that the risk to officer safety or the safety of nearby civilians is heightened.
- The target of the search warrant or other known occupants of the premises have made threats to harm law enforcement if law enforcement action is taken against them.
- Other risk(s) to officer safety and/or the safety of nearby civilians: *(explain)*

SCANNED

COPY

II. BRIEF SYNOPSIS OF FACTS SUPPORTING EACH RELEVANT FACTOR IN SUPPORT OF NO-KNOCK REQUEST

The submitting officer must include a concise set of facts in support of the request for a no-knock provision below based upon the factors cited above.

If approved, said set of facts must be included in the affidavit under a section entitled: REQUEST FOR NO-KNOCK WARRANT and must articulate all applicable factors (*facts specific to the case*) which form the basis for the no-knock warrant request.

The facts supporting the request for a no-knock provision are as follows:

III. APPROVAL

Submitting law enforcement agency:

Agency Name

SCANNED

Reviewing prosecutor:

Name

_____/_____/_____
Date

COPY

County Prosecutor or senior legal staff designee approval:

Name

_____/_____/_____
Date

Title