

To: Judge Elizabeth Harris, chair of the Colorado Criminal Rules Committee

From: Christian Champagne, Hon. Lindsey Van Gilder, Abraham Hutt,

Date: October 16, 2024

RE: SB 23-254 and its impact on Crim. P. 41

This memo explores the impacts of SB 23-254 on Crim. P. 41 and requests the Criminal Rules Committee to consider changes to the rule based on the legislation.

SB 23-254 is a bill “[c]oncerning entry into a dwelling by a peace officer.” This topic is addressed in Title 16 of the Colorado Revised Statutes. Three statutes underwent changes following the passage of SB 23-254¹ - §§16-3-303, 16-3-305, and 16-3-312. These statutory changes impact different portions of Rule 41 and require modification of the rule.

I. Proposed Change #1

SB 23-254 modifies the language of §16-3-303 (6), which defines the term “no-knock search warrant,” as follows:

“(6) For the purposes of this section, unless the context otherwise requires, “no-knock search warrant” means a search warrant ~~served by entry without prior identification~~ THAT DOES NOT REQUIRE COMPLIANCE WITH SECTION §16-3-305 (7) (d).”

Within Rule 41, no-knock search warrants are addressed in subsection (c) (2.5). Subsection (c) (2.5) defines the term “no-knock search warrant” within the rule and will need to be changed to reflect the new definition described in 16-3-306 (6).

Proposed Change #1: Modifying the language of subsection (c) (2.5) to reflect the new definition of the term “no-knock search warrant” as described in 16-3-303 (6).

II. Proposed Change #2

SB 23-254 adds subsection (a.5) to §16-3-303 (4), requiring that an affidavit for a no-knock search warrant...

“(a.5) ESTABLISHES THAT A NO-KNOCK ENTRY IS NECESSARY BECAUSE OF A CREDIBLE THREAT TO THE LIFE OF ANY PERSON, INCLUDING THE PEACE OFFICER EXECUTING THE WARRANT.”

Rule 41, subsections (c) (2.5) (I)-(IV) address the application for a no-knock search warrant and will need to be modified to add in the new requirement described in 16-3-303 (4) (a.5).

¹ Effective June 6, 2023

Proposed Change #2: Modifying the language of subsection (c) (2.5) (III) to match the language of 16-3-303 (4) (a.5).

III. Proposed Change #3

SB 23-254 adds subsection (7) to §16-3-305, which creates new restrictions on the execution of search warrants of dwellings, including restrictions on when the search warrant of a dwelling may be executed and when force may be used.

As the subcommittee reviewed the language of Rule 41 (d) (3), we felt that the language of the Rule might be confusing to practitioners. Specifically, the current language reads:

“Unless the court otherwise directs, every search warrant authorizes the officer executing the same:

(I) To execute and serve the warrant at any time; and

(II) To use and employ such force as may reasonably be necessary in the performance of the duties commanded by the warrant.”

The subcommittee felt that the rule’s reference to “every search warrant” being executed and served “at any time” and with “such force as may be reasonably necessary” is no longer accurate given the new restrictions on the execution of search warrants of dwellings created by §16-3-305 (7).

Proposed Change #3: Modifying the language of subsection (d) (3) to reflect the restrictions on search warrants of dwellings created by §16-3-305 (7).

IV. Proposed Changes #4 and #5

As noted above, SB 23-254 creates §16-3-305 (7), which specifically addresses the execution of search warrants of dwellings; these new restrictions need to be incorporated into Rule 41.

The subcommittee examined Rule 41 and felt that the subsection most closely matching this topic is (d) (5) (although (d) (3) was considered), as it speaks to execution of search warrants in specific places such as persons, motor vehicles, aircrafts, or other mobile objects, and electronic storage media.

The subcommittee suggests the following changes:

Proposed Change #4: Modifying subsection (d) (5) (II) to insert the language of 16-3-305 (7).

Proposed Change #5: Combining the language previously contained in (d) (5) (II) with the language of (d) (5) (III). Both address the execution of search warrants for persons, motor vehicles, aircrafts, or other mobile objects and could be combined.

V. Proposed Change #6

SB 23-254 modifies the rules surrounding no-knock search warrants via changes to §§16-3-303 and 16-3-305.²

Within Rule 41, subsection (d) (5) (V) addresses when law enforcement may make forcible entry during the execution of search warrant. This subsection requires officers to announce their identity, purpose, and authority, and if not admitted, they may make forcible entry. The subsection also addresses no-knock warrant scenarios; they may make forcible entry without announcing their identity, purpose, and authority only when the warrant expressly authorizes them to do so.

The subcommittee felt that Rule 41 should be modified to reflect the new restrictions regarding no-knock search warrants. However, the subcommittee was split as to which standard should be required before forcible entry pursuant to a no-knock search warrant is authorized under Rule 41. The subcommittee felt it best to present two options to the larger committee.

Option A: Option A incorporates the standard described in §16-3-303(a.5). This would require that, prior to conducting forcible entry pursuant to a no-knock search warrant, the entry “...is necessary because of a credible threat to the life of any person, including the peace officers executing the warrant.”

Option B: Option B incorporates the standard described un §16-3-305 (7)(d)(II). This would require that, prior to conducting forcible entry pursuant to a no-knock search warrant, “...circumstances known to the officer at the time the warrant is to be executed provide an objectively reasonable basis to believe that a no knock entry or not waiting a reasonable amount of time is necessary because of an emergency threatening the life of or grave injury to a person, provided that the imminent danger is not created by law enforcement itself.”

² §16-3-312 applies specifically to warrantless entries of a dwelling, a topic not covered by Rule 41, which applies only to search warrants.

West's Colorado Revised Statutes Annotated
Colorado Court Rules
Chapter 29. Rules of Criminal Procedure (Refs & Annos)
VIII. Supplementary and Special Proceedings

Crim.P. Rule 41

Rule 41. Search, Seizure, and Confession

Effective: January 11, 2018

[Currentness](#)

(a) Authority to Issue Warrant. A search warrant authorized by this Rule may be issued by any judge of a court of record.

(b) Grounds for Issuance. A search warrant may be issued under this Rule to search for and seize any property:

- (1) Which is stolen or embezzled; or
- (2) Which is designed or intended for use as a means of committing a criminal offense; or
- (3) Which is or has been used as a means of committing a criminal offense; or
- (4) The possession of which is illegal; or
- (5) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or
- (6) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or
- (7) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order, or to public health.

(c) Application for Search Warrant.

(1) A search warrant shall issue only on affidavit sworn or affirmed to before the judge, except as provided in (c)(3). Such affidavit shall relate facts sufficient to:

- (I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;
- (II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) Establish the grounds for issuance of the warrant, or probable cause to believe that such grounds exist; and

(IV) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant shall be attached to the search warrant filed with the court.

(2.5) A no-knock search warrant, which means, for purposes of this section, a search warrant authorized by the court to be executed by law enforcement officers through a forcible entry without first announcing their identity, purpose, and authority, shall be issued only if the affidavit for such warrant:

(I) Complies with the provisions of subsections (1) and (2) of this section (c) and [section 16-3-303\(4\), C.R.S.](#);

(II) Specifically requests the issuance of a no-knock search warrant;

(III) Relates sufficient circumstances to support the issuance of a no-knock search warrant;

(IV) Has been reviewed and approved for legal sufficiency and signed by a district attorney with the date and his or her attorney registration number on the affidavit, pursuant to [section 20-1-106.1\(2\), C.R.S.](#); and

(V) If the grounds for the issuance of a no-knock warrant are established by a confidential informant, the affidavit for such warrant shall contain a statement by the affiant concerning when such grounds became known or were verified by the affiant, but such statement shall not identify the confidential informant.

(3) *Application and Issuance of a Warrant by Facsimile or Electronic Transmission.* A warrant, signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission (fax) or by electronic transfer with electronic signatures to the judge, who may act upon the transmitted documents as if they were originals. A warrant affidavit may be sworn to or affirmed by administration of the oath over the telephone by the judge. The affidavit with electronic signature received by the judge or magistrate and the warrant approved by the judge or magistrate, signed with electronic signature, shall be deemed originals. The judge or magistrate shall facilitate the filing of the original affidavit and original warrant with the clerk of the court and shall take reasonable steps to prevent the tampering with the affidavit and warrant. The issuing judge or magistrate shall also forward a copy of the warrant and affidavit, with electronic signatures, to the affiant. This subsection (c)(3) does not authorize the court to issue warrants without having in its possession either a faxed copy of the signed affidavit and warrant or an electronic copy of the affidavit and warrant with electronic signatures.

(d) Issuance, Contents, Execution, and Return of Warrant.

(1) If the judge is satisfied that grounds for the application exist, or that there is probable cause to believe that such grounds exist, he shall issue a search warrant, which shall:

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) State the grounds or probable cause for its issuance; and

(IV) State the names of the persons whose affidavits of testimony have been taken in support thereof.

(2) The search warrant may also contain such other and further orders as the judge may deem necessary to comply with the provisions of a statute, charter, or ordinance, or to provide for the custody or delivery to the proper officer of any property seized under the warrant, or otherwise to accomplish the purposes of the warrant.

(3) Unless the court otherwise directs, every search warrant authorizes the officer executing the same:

(I) To execute and serve the warrant at any time; and

(II) To use and employ such force as may reasonably be necessary in the performance of the duties commanded by the warrant.

(4) *Joinder.* The search of one or more persons, premises, places, or things, may be commanded in a single warrant or in separate warrants, if compliance is made with Rule 41(c)(1)(IV) of these Rules.

(5) *Execution and Return.*

(I) Except as otherwise provided in this Rule, a search warrant shall be directed to any officer authorized by law to execute it in the county wherein the property is located.

(II) Any judge issuing a search warrant, for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported may make an order authorizing a peace officer to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the state. All sheriffs, coroners, police officers, and officers of the Colorado State Patrol, when required, in their respective counties, shall aid and assist in the execution of such warrant. The order authorized by this subsection (5) may also authorize execution of the warrant by any officer authorized by law to execute it in the county wherein the property is located.

(III) When any officer, having a warrant for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported, shall be in pursuit thereof and such person, motor vehicle, aircraft, or other object shall cross or enter into another county, such officer is authorized to execute the warrant in such other county.

(IV) It shall be the duty of all peace officers into whose hands any search warrant shall come, to execute the same, in their respective counties or municipalities, and make due return thereof.

(V) The officers executing a search warrant shall first announce their identity, purpose, and authority, and if they are not admitted, may make a forcible entry into the place to be searched; however, the officers may make forcible entry without such prior announcement if the warrant expressly authorizes them to do so or if the particular facts and circumstances known to them at the time the warrant is to be executed adequately justify dispensing with this requirement.

(VI) A search warrant shall be executed within 14 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer.

In a case involving the seizure of electronic storage media or the seizure or copying of electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied.

The officer may retain a copy of the electronically stored information that was seized or copied. The judge upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(VII) A warrant under Rule 41(b) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in Rule 41(d)(5)(VI) refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the county where the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:

- (1) The property was illegally seized without warrant; or
- (2) The warrant is insufficient on its face; or
- (3) The property seized is not that described in the warrant; or
- (4) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or
- (5) The warrant was illegally executed.

The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the court where the trial is to be had. The motion shall be made and heard before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial.

(f) Return of Papers to Clerk. The judge who has issued a warrant shall attach to the warrant a copy of the return, inventory, and all other documents in connection therewith, including any affidavit in application for the warrant, and shall file them with the clerk of the district court for the county of origin. If a case has been filed in the district court after issuance of the warrant, the clerk of the district court shall notify the clerk of the county court which issued it that the warrant has been filed in the district court. When the warrant has been issued by the county judge and there is no subsequent filing in the district court, after the issuance of the warrant, the documents shall remain in the county court. Any documents transmitted by fax or electronic transmission to the judge to obtain the warrant and the documents transmitted by the judge to the applicant shall be filed with the clerk of the court.

(g) Suppression of Confession or Admission. A defendant aggrieved by an alleged involuntary confession or admission made by him, may make a motion under this Rule to suppress said confession or admission. The motion shall be made and heard before trial unless opportunity therefor did not exist or defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial. The judge shall receive evidence on any issue of fact necessary to the decision of the motion.

(h) Scope and Definition. This Rule does not modify any statute, inconsistent with it, regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

Credits

Amended effective November 1, 1992; October 4, 2001. Corrected effective October 4, 2001. Amended effective October 25, 2001. Amended May 7, 2009, effective July 1, 2009. Amended effective February 10, 2011; June 16, 2011; July 1, 2012; January 11, 2018.

Editors' Notes

COMMITTEE COMMENT

For purposes of this rule, the term “electronic signature” has the same meaning as used in [C.R.S. § 16-1-106\(4\)\(c\)](#).

This rule is intended to facilitate the issuance of warrants by eliminating the need to physically carry the supporting affidavit to the judge.

[Notes of Decisions \(1004\)](#)

Rules Crim. Proc. Rule 41, CO ST RCRP Rule 41
Current with amendments received through April 1, 2024.

Proposed Changes to Rule 41 (*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law*)

Rule 41 - Search, Seizure, and Confession

(a) Authority to Issue Warrant. A search warrant authorized by this Rule may be issued by any judge of a court of record.

(b) Grounds for Issuance. A search warrant may be issued under this Rule to search for and seize any property:

- (1) Which is stolen or embezzled; or
- (2) Which is designed or intended for use as a means of committing a criminal offense; or
- (3) Which is or has been used as a means of committing a criminal offense; or
- (4) The possession of which is illegal; or
- (5) Which would be material evidence in a subsequent criminal prosecution in this state or in another state; or
- (6) The seizure of which is expressly required, authorized, or permitted by any statute of this state; or
- (7) Which is kept, stored, maintained, transported, sold, dispensed, or possessed in violation of a statute of this state, under circumstances involving a serious threat to public safety or order, or to public health.

(c) Application for Search Warrant.

(1) A search warrant shall issue only on affidavit sworn or affirmed to before the judge, except as provided in (c)(3). Such affidavit shall relate facts sufficient to:

- (I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;
- (II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;
- (III) Establish the grounds for issuance of the warrant, or probable cause to believe that such grounds exist; and
- (IV) Establish probable cause to believe that the property to be searched for, seized, or inspected is located at, in, or upon the premises, person, place, or thing to be searched.

(2) The affidavit required by this section may include sworn testimony reduced to writing and signed under oath by the witness giving the testimony before issuance of the warrant. A copy of the affidavit and a copy of the transcript of testimony taken in support of the request for a search warrant shall be attached to the search warrant filed with the court.

(2.5) A no-knock search warrant, which means, for purposes of this section, a search warrant authorized by the court to be executed by law enforcement officers ~~through a forcible entry without first announcing their identity, purpose, and authority,~~ MEETING THE REQUIREMENTS OF SECTION 16-3-305(7)(D), C.R.S, shall be issued only if the affidavit for such warrant:

Proposed Changes to Rule 41 (*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law*)

(I) Complies with the provisions of subsections (1) and (2) of this section (c) and section 16-3-303(4), C.R.S.;

(II) Specifically requests the issuance of a no-knock search warrant;

(III) ~~Relates sufficient circumstances to support the issuance of a no-knock search warrant~~ ESTABLISHES THAT A NO-KNOCK ENTRY IS NECESSARY BECAUSE OF A CREDIBLE THREAT TO THE LIFE OF ANY PERSON, INCLUDING THE PEACE OFFICERS EXECUTING THE WARRANT

(IV) Has been reviewed and approved for legal sufficiency and signed by a district attorney with the date and his or her attorney registration number on the affidavit, pursuant to section 20-1-106.1(2), C.R.S.; and

(V) If the grounds for the issuance of a no-knock warrant are established by a confidential informant, the affidavit for such warrant shall contain a statement by the affiant concerning when such grounds became known or were verified by the affiant, but such statement shall not identify the confidential informant.

(3) Application and Issuance of a Warrant by Facsimile or Electronic Transmission. A warrant, signed affidavit, and accompanying documents may be transmitted by electronic facsimile transmission (fax) or by electronic transfer with electronic signatures to the judge, who may act upon the transmitted documents as if they were originals. A warrant affidavit may be sworn to or affirmed by administration of the oath over the telephone by the judge. The affidavit with electronic signature received by the judge or magistrate and the warrant approved by the judge or magistrate, signed with electronic signature, shall be deemed originals. The judge or magistrate shall facilitate the filing of the original affidavit and original warrant with the clerk of the court and shall take reasonable steps to prevent the tampering with the affidavit and warrant. The issuing judge or magistrate shall also forward a copy of the warrant and affidavit, with electronic signatures, to the affiant. This subsection (c)(3) does not authorize the court to issue warrants without having in its possession either a faxed copy of the signed affidavit and warrant or an electronic copy of the affidavit and warrant with electronic signatures.

(d) Issuance, Contents, Execution, and Return of Warrant.

(1) If the judge is satisfied that grounds for the application exist, or that there is probable cause to believe that such grounds exist, he shall issue a search warrant, which shall:

(I) Identify or describe, as nearly as may be, the premises, person, place, or thing to be searched;

(II) Identify or describe, as nearly as may be, the property to be searched for, seized, or inspected;

(III) State the grounds or probable cause for its issuance; and

(IV) State the names of the persons whose affidavits of testimony have been taken in support thereof.

(2) The search warrant may also contain such other and further orders as the judge may deem necessary to comply with the provisions of a statute, charter, or ordinance, or to provide for the

Proposed Change #2
per 16-3-303(4)(a.5)

Proposed Changes to Rule 41 (*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law*)

custody or delivery to the proper officer of any property seized under the warrant, or otherwise to accomplish the purposes of the warrant.

Proposed Change #3
per 16-3-305(7)

(3) Unless the court otherwise directs, **AND AS LIMITED FOR SEARCH WARRANTS OF DWELLINGS AS OUTLINED IN C.R.S. 16-3-305(7)**, every search warrant authorizes the officer executing the same:

- (I) To execute and serve the warrant at any time; and
- (II) To use and employ such force as may reasonably be necessary in the performance of the duties commanded by the warrant.

(4) Joinder. The search of one or more persons, premises, places, or things, may be commanded in a single warrant or in separate warrants, if compliance is made with Rule 41(c)(1)(IV) of these Rules.

(5) Execution and Return.

(I) Except as otherwise provided in this Rule, a search warrant shall be directed to any officer authorized by law to execute it in the county wherein the property is located.

Proposed Change #4
per 16-3-305(7)

~~(II) Any judge issuing a search warrant, for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported may make an order authorizing a peace officer to be named in such warrant to execute the same, and the person named in such order may execute such warrant anywhere in the state. All sheriffs, coroners, police officers, and officers of the Colorado State Patrol, when required, in their respective counties, shall aid and assist in the execution of such warrant. The order authorized by this subsection (5) may also authorize execution of the warrant by any officer authorized by law to execute it in the county wherein the property is located.~~ **WHEN A PEACE OFFICER, HAVING A WARRANT FOR THE SEARCH OF A DWELLING, EXECUTES THE SEARCH WARRANT, THE OFFICER SHALL:**

(A) EXECUTE THE WARRANT BETWEEN THE HOURS OF 7 A.M. AND 7 P.M. UNLESS THE JUDGE, FOR GOOD CAUSE, EXPRESSLY AUTHORIZES EXECUTION AT ANOTHER TIME;

(B) BE READILY IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER IN UNIFORM OR WEARING A VISIBLE LAW ENFORCEMENT BADGE AND CLEARLY IDENTIFY THEMSELVES AS A LAW ENFORCEMENT OFFICER;

(C) WEAR AND ACTIVATE A BODY-WORN CAMERA AS REQUIRED BY SECTION 24-31-902 (1)(a)(II)(A) WHEN ENTERING A PREMISES FOR THE PURPOSE OF ENFORCING THE LAW; AND

(D) KNOCK-AND-ANNOUNCE THE OFFICER'S PRESENCE AT A VOLUME LOUD ENOUGH FOR THE OFFICER TO REASONABLY BELIEVE THE OCCUPANTS INSIDE CAN HEAR, ALLOW A REASONABLE AMOUNT OF TIME BEFORE ENTERING GIVEN THE SIZE

OF THE DWELLING FOR SOMEONE TO GET TO THE DOOR, AND DELAY ENTRY IF THE OFFICER HAS REASON TO BELIEVE THAT SOMEONE IS APPROACHING THE DWELLING'S ENTRANCE WITH THE INTENT OF VOLUNTARILY ALLOWING THE OFFICER TO ENTER THE DWELLING; EXCEPT THAT THIS SUBSECTION (D) DOES NOT APPLY IF:

(i) A COURT AUTHORIZES A NO-KNOCK WARRANT PURSUANT TO SECTION 16-3-303; OR

(ii) THE CIRCUMSTANCES KNOWN TO THE OFFICER AT THE TIME THE WARRANT IS TO BE EXECUTED PROVIDE AN OBJECTIVELY REASONABLE BASIS TO BELIEVE THAT A NO KNOCK ENTRY OR NOT WAITING A REASONABLE AMOUNT OF TIME IS NECESSARY BECAUSE OF AN EMERGENCY THREATENING THE LIFE OF OR GRAVE INJURY TO A PERSON, PROVIDED THAT THE IMMINENT DANGER IS NOT CREATED BY LAW ENFORCEMENT ITSELF.

Proposed Change #5
per 16-3-305(7)

(III) ANY JUDGE ISSUING A SEARCH WARRANT, FOR THE SEARCH OF A PERSON OR FOR THE SEARCH OF ANY MOTOR VEHICLE, AIRCRAFT, OR OTHER OBJECT WHICH IS MOBILE OR CAPABLE OF BEING TRANSPORTED MAY MAKE AN ORDER AUTHORIZING A PEACE OFFICER TO BE NAMED IN SUCH WARRANT TO EXECUTE THE SAME, AND THE PERSON NAMED IN SUCH ORDER MAY EXECUTE SUCH WARRANT ANYWHERE IN THE STATE. ALL SHERIFFS, CORONERS, POLICE OFFICERS, AND OFFICERS OF THE COLORADO STATE PATROL, WHEN REQUIRED, IN THEIR RESPECTIVE COUNTIES, SHALL AID AND ASSIST IN THE EXECUTION OF SUCH WARRANT. THE ORDER AUTHORIZED BY THIS SUBSECTION (5) MAY ALSO AUTHORIZE EXECUTION OF THE WARRANT BY ANY OFFICER AUTHORIZED BY LAW TO EXECUTE IT IN THE COUNTY WHEREIN THE PROPERTY IS LOCATED.

When any officer, having a warrant for the search of a person or for the search of any motor vehicle, aircraft, or other object which is mobile or capable of being transported, shall be in pursuit thereof and such person, motor vehicle, aircraft, or other object shall cross or enter into another county, such officer is authorized to execute the warrant in such other county.

(IV) It shall be the duty of all peace officers into whose hands any search warrant shall come, to execute the same, in their respective counties or municipalities, and make due return thereof.

(V) The officers executing a search warrant shall first announce their identity, purpose, and authority, and if they are not admitted, may make a forcible entry into the place to be searched; however, the officers may make forcible entry without such prior announcement if the warrant expressly authorizes them to do so AND ESTABLISHES THAT A NO-KNOCK ENTRY IS NECESSARY BECAUSE OF A CREDIBLE THREAT TO THE LIFE OF ANY PERSON, INCLUDING THE PEACE OFFICERS EXECUTING THE WARRANT.

Proposed Change #6
- Option A (per 16-3-303 (a.5))

or

Proposed Change #6
- Option B (per 16-3-305 (7))

AND THE CIRCUMSTANCES KNOWN TO THE OFFICER AT THE TIME THE WARRANT IS TO BE EXECUTED PROVIDE AN OBJECTIVELY REASONABLE BASIS TO BELIEVE THAT A NO KNOCK ENTRY OR NOT WAITING A REASONABLE AMOUNT OF TIME IS NECESSARY BECAUSE OF AN EMERGENCY THREATENING THE LIFE OF OR GRAVE INJURY TO A PERSON, PROVIDED THAT THE IMMINENT DANGER IS NOT CREATED BY LAW ENFORCEMENT ITSELF.

(VI) A search warrant shall be executed within 14 days after its date. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property or shall leave the copy and receipt at the place from which the property was taken. The return shall be made promptly and shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the applicant for the warrant and the person from whose possession or premises the property was taken, if they are present, or in the presence of at least one credible person other than the applicant for the warrant or the person from whose possession or premises the property was taken, and shall be verified by the officer. In a case involving the seizure of electronic storage media or the seizure or copying of electronically stored information, the inventory may be limited to describing the physical storage media that were seized or copied. The officer may retain a copy of the electronically stored information that was seized or copied. The judge upon request shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(VII) A warrant under Rule 41(b) may authorize the seizure of electronic storage media or the seizure or copying of electronically stored information. Unless otherwise specified, the warrant authorizes a later review of the media or information consistent with the warrant. The time for executing the warrant in Rule 41(d)(5)(VI) refers to the seizure or on-site copying of the media or information, and not to any later off-site copying or review.

(e) Motion for Return of Property and to Suppress Evidence. A person aggrieved by an unlawful search and seizure may move the district court for the county where the property was seized for the return of the property and to suppress for use as evidence anything so obtained on the ground that:

- (1) The property was illegally seized without warrant; or
- (2) The warrant is insufficient on its face; or
- (3) The property seized is not that described in the warrant; or
- (4) There was not probable cause for believing the existence of the grounds on which the warrant was issued; or
- (5) The warrant was illegally executed.

The judge shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the property shall be restored unless otherwise subject to lawful detention and it shall not be admissible in evidence at any hearing or trial. The motion to suppress evidence may also be made in the court where the trial is to be had. The motion shall be made and heard

Proposed Changes to Rule 41 (*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law*)

before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial.

(f) **Return of Papers to Clerk.** The judge who has issued a warrant shall attach to the warrant a copy of the return, inventory, and all other documents in connection therewith, including any affidavit in application for the warrant, and shall file them with the clerk of the district court for the county of origin. If a case has been filed in the district court after issuance of the warrant, the clerk of the district court shall notify the clerk of the county court which issued it that the warrant has been filed in the district court. When the warrant has been issued by the county judge and there is no subsequent filing in the district court, after the issuance of the warrant, the documents shall remain in the county court. Any documents transmitted by fax or electronic transmission to the judge to obtain the warrant and the documents transmitted by the judge to the applicant shall be filed with the clerk of the court.

(g) **Suppression of Confession or Admission.** A defendant aggrieved by an alleged involuntary confession or admission made by him, may make a motion under this Rule to suppress said confession or admission. The motion shall be made and heard before trial unless opportunity therefor did not exist or defendant was not aware of the grounds for the motion, but the court, in its discretion, may entertain the motion at the trial. The judge shall receive evidence on any issue of fact necessary to the decision of the motion.

(h) **Scope and Definition.** This Rule does not modify any statute, inconsistent with it, regulating search, seizure, and the issuance and execution of search warrants in circumstances for which special provision is made.

An Act

SENATE BILL 23-254

BY SENATOR(S) Fields and Gonzales, Bridges, Buckner, Coleman, Cutter, Danielson, Exum, Fenberg, Jaquez Lewis, Kolker, Moreno, Rodriguez, Winter F., Hansen, Marchman, Sullivan;
also REPRESENTATIVE(S) Epps and Weissman, Bacon, deGruy Kennedy, English, Garcia, Gonzales-Gutierrez, Jodeh, Lindsay, Mabrey, Sharbini, Velasco, Woodrow, Amabile, Boesenecker, Brown, Dickson, Herod, Lindstedt, Michaelson Jenet, Sirota, Story, Valdez, Vigil, Willford, McCluskie.

CONCERNING ENTRY INTO A DWELLING BY A PEACE OFFICER.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 16-3-303, **amend** (6); and **add** (4)(a.5) as follows:

16-3-303. Search warrants - application - definition. (4) A no-knock search warrant shall be issued only if the affidavit for such warrant:

(a.5) ESTABLISHES THAT A NO-KNOCK ENTRY IS NECESSARY BECAUSE OF A CREDIBLE THREAT TO THE LIFE OF ANY PERSON, INCLUDING THE PEACE

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

OFFICERS EXECUTING THE WARRANT;

(6) For the purposes of this section, unless the context otherwise requires, "no-knock search warrant" means a search warrant ~~served by entry without prior identification~~ THAT DOES NOT REQUIRE COMPLIANCE WITH SECTION 16-3-305 (7)(d).

SECTION 2. In Colorado Revised Statutes, 16-3-305, **amend** (1); and **add** (1.5) and (7) as follows:

16-3-305. Search warrants - direction - execution and return - legislative declaration. (1) ~~Except as otherwise provided in this section, a search warrant shall be directed to any officer authorized by law to execute it in the county wherein the property is located.~~ THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) WHEN LAW ENFORCEMENT ENTERS A DWELLING, THE SAFETY AND PRESERVATION OF LIFE OF ALL OCCUPANTS AND LAW ENFORCEMENT OFFICERS IS PARAMOUNT;

(b) A NO-KNOCK ENTRY INTO A DWELLING CAN INCREASE DANGER AND CONFUSION BECAUSE OCCUPANTS MAY NOT RECOGNIZE LAW ENFORCEMENT IS MAKING ENTRY AND MAY MISTAKE THE ENTRY AS ENTRY BY AN UNLAWFUL INTRUDER;

(c) NO-KNOCK ENTRIES INTO DWELLINGS HAVE, IN SEVERAL INSTANCES ACROSS THE COUNTRY, INCLUDED NEGATIVE OUTCOMES AND THE LOSS OF LIFE;

(d) MAKING NO-KNOCK ENTRIES TO PREVENT THE DESTRUCTION OF EVIDENCE, ESPECIALLY IN DRUG CASES, DOES NOT JUSTIFY THE RISK TO HUMAN LIFE;

(e) NO-KNOCK ENTRIES SHOULD BE MADE ONLY WHEN DOING SO IS NECESSARY TO PROTECT HUMAN LIFE AND NOT WHEN DOING SO WOULD INCREASE THE RISK TO HUMAN LIFE; AND

(f) THE STANDARD FOR WARRANTLESS NO-KNOCK ENTRIES SHOULD BE SUBSTANTIALLY THE SAME AS THE STANDARD FOR NO-KNOCK WARRANTS.

(1.5) EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, A SEARCH WARRANT SHALL BE DIRECTED TO ANY OFFICER AUTHORIZED BY LAW TO EXECUTE IT IN THE COUNTY WHEREIN THE PROPERTY IS LOCATED.

(7) WHEN A PEACE OFFICER, HAVING A WARRANT FOR THE SEARCH OF A DWELLING, EXECUTES THE SEARCH WARRANT, THE OFFICER SHALL:

(a) EXECUTE THE WARRANT BETWEEN THE HOURS OF 7 A.M. AND 7 P.M. UNLESS THE JUDGE, FOR GOOD CAUSE, EXPRESSLY AUTHORIZES EXECUTION AT ANOTHER TIME;

(b) BE READILY IDENTIFIABLE AS A LAW ENFORCEMENT OFFICER IN UNIFORM OR WEARING A VISIBLE LAW ENFORCEMENT BADGE AND CLEARLY IDENTIFY THEMSELVES AS A LAW ENFORCEMENT OFFICER;

(c) WEAR AND ACTIVATE A BODY-WORN CAMERA AS REQUIRED BY SECTION 24-31-902 (1)(a)(II)(A) WHEN ENTERING A PREMISES FOR THE PURPOSE OF ENFORCING THE LAW; AND

(d) KNOCK-AND-ANNOUNCE THE OFFICER'S PRESENCE AT A VOLUME LOUD ENOUGH FOR THE OFFICER TO REASONABLY BELIEVE THE OCCUPANTS INSIDE CAN HEAR, ALLOW A REASONABLE AMOUNT OF TIME BEFORE ENTERING GIVEN THE SIZE OF THE DWELLING FOR SOMEONE TO GET TO THE DOOR, AND DELAY ENTRY IF THE OFFICER HAS REASON TO BELIEVE THAT SOMEONE IS APPROACHING THE DWELLING'S ENTRANCE WITH THE INTENT OF VOLUNTARILY ALLOWING THE OFFICER TO ENTER THE DWELLING; EXCEPT THAT THIS SUBSECTION (7)(d) DOES NOT APPLY IF:

(I) A COURT AUTHORIZES A NO-KNOCK WARRANT PURSUANT TO SECTION 16-3-303; OR

(II) THE CIRCUMSTANCES KNOWN TO THE OFFICER AT THE TIME PROVIDE AN OBJECTIVELY REASONABLE BASIS TO BELIEVE THAT A NO-KNOCK ENTRY OR NOT WAITING A REASONABLE AMOUNT OF TIME IS NECESSARY BECAUSE OF AN EMERGENCY THREATENING THE LIFE OF OR GRAVE INJURY TO A PERSON, PROVIDED THAT THE IMMINENT DANGER IS NOT CREATED BY LAW ENFORCEMENT ITSELF.

SECTION 3. In Colorado Revised Statutes, **add** 16-3-312 as follows:

16-3-312. Warrantless entry of a dwelling. (1) WHEN A PEACE OFFICER MAKES A WARRANTLESS ENTRY INTO A DWELLING IN WHICH OCCUPANTS ARE UNAWARE LAW ENFORCEMENT IS PRESENT AND MAKING ENTRY, THE OFFICER SHALL:

(a) WEAR AND ACTIVATE A BODY-WORN CAMERA AS REQUIRED BY SECTION 24-31-902 (1)(a)(II)(A) WHEN ENTERING A PREMISES FOR THE PURPOSE OF ENFORCING THE LAW; AND

(b) KNOCK-AND-ANNOUNCE THE OFFICER'S PRESENCE AT A VOLUME LOUD ENOUGH FOR THE OFFICER TO REASONABLY BELIEVE THE OCCUPANTS INSIDE CAN HEAR, ALLOW A REASONABLE AMOUNT OF TIME BEFORE ENTERING GIVEN THE SIZE OF THE DWELLING FOR SOMEONE TO GET TO THE DOOR, AND DELAY ENTRY IF THE OFFICER HAS REASON TO BELIEVE THAT SOMEONE IS APPROACHING THE DWELLING'S ENTRANCE WITH THE INTENT OF VOLUNTARILY ALLOWING THE OFFICER TO ENTER THE DWELLING; EXCEPT THAT THIS SUBSECTION (1)(b) DOES NOT APPLY IF THE CIRCUMSTANCES KNOWN TO THE OFFICER AT THE TIME PROVIDE AN OBJECTIVELY REASONABLE BASIS TO BELIEVE THAT A NO-KNOCK ENTRY OR NOT WAITING A REASONABLE AMOUNT OF TIME IS NECESSARY BECAUSE:


(I) OF AN EMERGENCY THREATENING THE LIFE OF OR GRAVE INJURY TO A PERSON, PROVIDED THAT THE IMMINENT DANGER IS NOT CREATED BY LAW ENFORCEMENT ITSELF; OR

(II) THE OFFICER IS ENGAGED IN THE HOT PURSUIT OF A FLEEING SUSPECT.


(2) THIS SECTION DOES NOT APPLY TO A LAW ENFORCEMENT OFFICER WORKING IN AN UNDERCOVER CAPACITY.

SECTION 4. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.



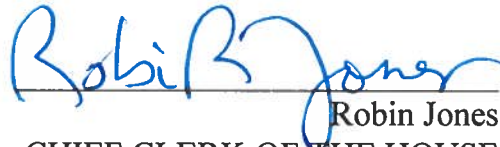
Steve Fenberg
PRESIDENT OF
THE SENATE



Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

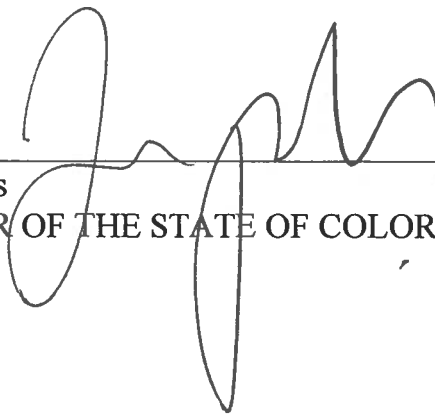


Cindi L. Markwell
SECRETARY OF
THE SENATE



Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED June 4, 2023 at 3:32 pm
(Date and Time)



Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO