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Practical Solutions to Improving the Use of No-Knock Warrants

Key Points

- Several high-profile deaths highlight the need for Texas to limit the use of no-knock warrants.
- Almost 30 states and more than 20 cities have placed restrictions on no-knock warrants.
- Texas should limit the use of no-knock warrants to specific exigent circumstances in order to protect both the public and law enforcement from harm.

Executive Summary

In the majority of cases, law enforcement officers are required to knock and announce themselves prior to entering private property to recover suspected individuals or evidence. However, when law enforcement officers believe knocking and announcing their presence may endanger themselves or others present or could lead to suspects fleeing or to the destruction of evidence, law enforcement can request a “no-knock warrant” from the presiding judge.

Over the years, the issuance and execution of no-knock warrants have raised widespread concern regarding their inappropriate use and their effectiveness. With several high-profile deaths associated with no-knock warrant executions, reassessing the process of how they are managed has become a legislative priority for state legislators across the country—with some states implementing a ban on the use of no-knock warrants ([Kan et al., 2022](#)). To this end, improving the practical execution of and limiting the use of no-knock warrants to those exigent circumstances involving the foreseeable and imminent threat of physical harm to law enforcement, a victim, or the bystanders ensures against unnecessary escalation of hostilities between an arresting officer and the accused or others who may be in proximity.

The Current Legal Framework for No Knock Warrants

A significant thread within the debate on the legality of no-knock warrants is the relationship between the warrant and the Fourth Amendment. The Fourth Amendment of the U.S. Constitution protects citizens against the unreasonable search of their person or property, as well as their seizure (arrest). It specifically provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. ([U.S. Constitution, 4th Amendment](#))

Notably, the Fourth Amendment does not hinder the state from executing a search and seizure. Instead, it simply requires that they be reasonable—a standard that early Supreme Court cases established involves balancing the state’s legitimate law enforcement interests against the interests of the individual under the Fourth Amendment ([Delaware v. Prouse, 1979](#)). In assessing whether a warrant request is reasonable, the court may consider factors including precedent, general practice, privacy expectations, and legislative action. The Supreme Court ruled that when

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executing a search or arrest warrant, law enforcement should typically first knock and announce their presence and authority in order to satisfy the reasonableness standard (*Wilson v. Arkansas*, 1995).

The Supreme Court has ruled that law enforcement may only enter a dwelling to execute a warrant without first knocking and announcing their authority when there is “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” (*Richards v. Wisconsin*, 1997, p. 3). In practice, this has meant that law enforcement may secure a no-knock warrant if they can demonstrate a threat of bodily harm or that evidence will be destroyed if law enforcement is required to announce their presence.

Texas law does not limit the usage of no-knock warrants beyond the framework outlined by the Supreme Court of the United States. Under [Article 15](#), Texas Code of Criminal Procedure, when executing an arrest warrant, law enforcement is authorized “to take the body of the person accused of an offense, to be dealt with according to law” ([Art. 15.01](#)) utilizing “all reasonable means,” but “[n]o greater force shall be resorted to than is necessary to secure the arrest and detention of the accused” ([Art. 15.24](#)). Law enforcement should announce themselves to ensure that it is “made known to the accused under what authority the arrest is made” ([Art. 15.26](#)). Additionally, [Article 18.06](#), Texas Code of Criminal Procedure, requires law enforcement to present a copy of the warrant to the owner of the property or the person in possession of the property that is subject to search.

Due to the lack of uniform reporting, tracking the actual number of approved no-knock warrants throughout the U.S. remains elusive ([Task Force on Policing](#), 2021). Texas falls within the unavailable data due to inadequate

reporting and transparency among the public. According to the Texas Office of Court Administration's 2021 fiscal year report, 21,354 search warrants and 63,445 arrest warrants for felony offenses were issued in Texas in 2021 ([Office of Court Administration](#), 2021, p. 147). However, the data do not specify the number of warrants executed as no-knock entries.

The use of no-knock warrants to prevent the destruction of evidence alone has raised concerns by the public and law enforcement when comparing the potential benefit with the increase in risk. With several recent high-profile deaths associated with no-knock warrant executions, reassessing the process of how they are managed has become a priority for state legislators across the country ([Kan et al.](#), 2022). Currently, five states have outright banned the use of no-knock warrants ([Marchese](#), 2022, p. 6). In their current form, the use of no-knock warrants in Texas need review to ensure the rights of individuals are upheld under the Fourth Amendment while also safeguarding law enforcement and those in question from extreme bodily harm.

The Safety Risks of No-Knock Warrants and Limits

The use of no-knock warrants can be dangerous to all individuals present at the time the warrant is conducted, even if they are not the focus of the raid. A recent investigation by the *Washington Post* found that at least 22 people have been killed during the execution of a no-knock warrant since 2015—with 5 raids resulting in the death of someone who was not the intended subject of the raid ([Dungca & Abelson](#), 2022a). While the death of Breonna Taylor during a no-knock warrant execution in Kentucky has been well documented ([Oppel et al.](#), 2022), similar tragedies in Texas have occurred. In 2019, Houston residents Dennis Tuttle and Rhogena Nicolas were shot and killed in their home following a no-knock raid performed by Houston police officers, commonly referred to as the Harding Street raid. A local magistrate issued a no-knock warrant based on false information that Tuttle had dealt narcotics. In addition to incorrect information for the warrant, independent forensics indicated inconsistencies with the police report, raising questions about how the shootout began and whether the decedents fired first. A total of four officers were wounded by gunfire and local prosecutors have now charged two of the officers involved in carrying out the warrant with murder ([Blakinger et al.](#), 2019; [Barned-Smith](#), 2022).

Nationally, between 2010 and 2016, officers represented 20% of fatalities in no-knock warrants, compared to 10%

in standard knock-and-announce warrants despite many being conducted to prevent evidence destruction rather than immediate threat to a person ([Marchese, 2022, p. 5](#)). For example, in 2014, Charles Dinwiddie of the Killeen Police Department died following gunshot wounds sustained during a no-knock warrant execution; three additional officers were shot. The shooter, Marvin Guy, claims he believed someone was attempting to rob or kill him, and began to fire his gun after officers shattered his window and pushed a battering ram through his front door. The no-knock warrant was issued to recover narcotics; however, officers failed to find any drugs in Guy's apartment ([Dungca & Abelson, 2022b](#)).

Tragedies like those of Taylor, Dinwiddie, Tuttle, and Nicolas have prompted city and state officials to seek a ban on the use of no-knock warrants by local law enforcement ([Riess & Waldrop, 2020](#); [Franklin, 2021](#)). Similar actions have occurred in Houston and at least 20 cities where reform efforts have taken place ([End All No Knocks, n.d.](#)). More recently, the city of Austin voted to ban the use of no-knock warrants, passing the proposition with 85% of voter support ([McGlinchy, 2022](#)).

In some states, statewide limits to the use of no-knock warrants have been enacted following the Breonna Taylor case. In 2021, the Kentucky Legislature passed SB 4 ([2021](#)), limiting the use of no-knock warrants to circumstances where there is clear and convincing evidence that the subject of the offense is violent in nature and officer announcement would endanger life. The law also adds further protections, such as requiring body cameras to be worn during the execution of the warrant and requiring approval from supervising law enforcement or the county attorney before presenting the warrant request to a judge. Moreover, to mitigate the inherent safety risks associated with no-knock warrants, Kentucky's reform requires they be executed by specially trained law enforcement teams, such as SWAT, within the hours of 6 a.m. and 10 p.m. absent exigent circumstances related to the safety of the individuals involved, and with emergency medical personnel in proximity.

That same year, the Louisiana Legislature enacted similar limits to the use of no-knock warrants through SB 34 ([2021](#)), while Tennessee enacted a complete ban on the use of no-knock warrants with the enactment of SB 1380 ([2021](#)). As of September 2022, 29 states have some form of restrictions on no-knock entries and five states—Florida, Virginia, Tennessee, Connecticut, and Oregon—have placed a ban on the use of no-knocks entirely ([End All No Knocks, n.d.](#); [Marchese, 2022, p. 6](#))

Recommendations for Reforming No-Knock Warrants in Texas

Texas has already engaged in discussions around reforming its current no-knock warrant practice. Most recently, in 2021, the Texas Legislature proposed HB 492 ([2021a](#)). The final version resulting from the Conference Committee report required the chief administrator of the law enforcement agency or the chief's designee to sign off on a no-knock entry, as well as for the officers to be in identifiable clothing during the execution of a warrant. However, it ultimately failed to be enacted ([HB 492, 2021b](#); [Associated Press, 2021](#)).

While a complete prohibition against the use of no-knock warrants is not advisable as there are unsafe situations that could warrant the legitimate use of a no-knock entry, the Texas Legislature should revisit the reforms it contemplated in 2021. Texas should limit the issuance of a no-knock warrant to only those instances where there are reasonable threats to the physical safety of law enforcement, the occupants of the property, or a victim—prohibiting no-knock entries strictly for the potential of destruction of evidence.

Upon review of previous legislation and current best practices of law enforcement, the following recommendations would protect both the public and law enforcement from harm during the execution of no-knock warrants.

Reforms to ensure legal compliance prior to execution of a warrant

- **Senior law enforcement approval:** Requiring the chief administrator of the law enforcement agency or the chief administrator's designee to review and sign off on all no-knock requests will ensure the agency follows the proper chain of command and responsibility.
- **District attorney/legal counsel review:** If time and opportunity permit, the affidavit and warrant should be reviewed by the district attorney or legal counsel prior to presenting it to a magistrate.
- **Magisterial review and approval:** The warrant request must be given to a magistrate for review and approval with any documentation revealing whether the warrant request had been previously denied by another magistrate.

Reforms to the execution of an approved no-knock warrant

- **Time of warrant execution:** An officer may execute a search warrant either during the day or at night. The time of day selected to execute the warrant should take into consideration the likelihood that a specific category of individuals (i.e., children or elderly) will or will not be present. Officer safety will also be considered in determining when to execute a warrant.
- **Trained and qualified teams:** Ensure the execution of the warrant is carried out by a trained team in high-risk situations, such as SWAT or special response units.
- **Medical personnel present:** EMT or other medical professionals trained in triage should be present to respond to any medical emergencies resulting from the execution of the warrant.
- **Recognizable attire:** All members of the search team must be in uniform or have visible insignias or other defining clothing.
- **Tracking and reporting:** Agencies should report the number of no-knock warrants executed each year to provide transparency to their community.

Conclusion

Of the stakeholders that comprise the criminal justice system, law enforcement officers assume the bulk of personal safety risk. Law and order are only maintained when law enforcement officers make the valiant choice to put their own safety on the line to preserve the safety of the public. Thus, it is incumbent on the function of government to mitigate unnecessary risks to officer safety and that of the public they are sworn to protect.

Texas should continue to lead in criminal justice by presenting itself as a model for rational warrant reform. Lawmakers should scrutinize no-knock warrants with an eye toward limiting the use of these warrants to instances where there is a reasonable belief that a knock and announce would place human life at risk. By streamlining the policies and practices of no-knock warrants, Texas can mitigate risks and preserve the integrity of law enforcement. ★

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