

Law Enforcement Liability

More Police Reform In Colorado: Senate Bill 23-254 Makes Significant and Immediate Changes to Search Warrant Requirements

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Editor's Note: If your city or town is a CIRSA member, CIRSA will, as a service to its members, make available the assistance of one of its defense panel attorneys to review and comment on your draft updates to any of your policies that are prepared to address the requirements of Senate Bill 23-254. CIRSA will provide up to three hours of attorney time to your entity for this assistance, at no member expense. This service is not a substitute for legal and other advice from your entity's city or town attorney, police legal advisor, and law enforcement professionals. If your entity would like to obtain this CIRSA assistance, please call or email Sam Light, CIRSA Deputy Executive Director/General Counsel, at 720-605-8002 or saml@cirsa.org.

Law enforcement reform continues in Colorado with each passing legislative session. Once again, reform has come to our State likely by way of reaction to events that did not even occur in Colorado. The 2023 legislative session saw the passage of [Senate Bill 23-254](#), which has changed the way that search warrants will be executed in Colorado.

Colorado Governor Jared Polis signed Senate Bill 23-254 into law on June 6, 2023. Given that this bill was signed with a safety clause, the bill took effect immediately that day. All of the bill's new requirements explained in this article are now the law in Colorado.

The bill makes two significant structural changes in Colorado law. First, it imposes a new requirement for an officer to obtain a "no-knock" search warrant. Second, it changes to when an officer may enter a structure without a warrant, without announcing themselves (known as a "no-knock" search warrant).

To obtain a no-knock search warrant, an officer must now show that the no-knock entry is necessary because of a credible threat to the life of any person, including the peace officers executing the warrant. This is in addition to requirements already in place prior to enactment of Senate Bill 23-254, including that there be a specific request for the issuance of a no-knock search warrant and that the request affidavit has been reviewed and approved for legal sufficiency and signed by a district attorney. The effect of these changes is discussed further below in this article.

Senate Bill 23-254 also modifies the manner in which search warrants for a dwelling may be executed. First, the timing of the execution for those warrants is now limited to between 7 a.m. to 7 p.m., unless a judge expressly authorizes the execution of that warrant at a different time. Second, an officer executing a warrant must either be in uniform or wearing a visible law enforcement badge, and must wear and activate their body worn camera. Third, an officer executing a warrant must clearly identify themselves as a law enforcement officer, knock at the door of the dwelling, announce their presence loudly, and delay entry for a reasonable amount of time to allow someone to come to the door (and also wait if the officer has reason to believe someone is coming to the door with the intent of voluntarily allowing the officer to enter).

The three requirements above must be followed unless one of two possible conditions are met. First, an officer may choose to not follow the three requirements above if they have a no-knock warrant. Second, an officer may ignore the above requirements if the officer (at the time of executing the warrant) learns of an emergency threatening either the life of or grave injury to a person. Importantly, that emergency cannot be created by law enforcement.

Senate Bill 23-254 has dramatically changed when "no-knock" warrants may be obtained from a judge. Previously, a no-knock warrant could be obtained to prevent the destruction of evidence, if that was deemed to be likely to happen if

a standard “knock and announce” warrant were to be executed. Now, the potential destruction of evidence is explicitly deemed not to be a permissible reason to execute a no-knock warrant. Instead, an officer may only apply for a no-knock warrant when the service of a knock and announce warrant would pose a credible threat to the life of any person. Because of this, no-knock warrants are significantly less likely to be signed by judges.

Because there will be much fewer no-knock warrants granted, the changes to the requirements for the execution of knock and announce warrants matter significantly more. Officers will need to be keenly aware of the timing of the execution of search warrants on residences and will need to be prepared to allow sufficient time for any resident to answer the door.

In light of this new law, it is recommended that CIRSA members examine their policies and procedures concerning the application and execution of search warrants and update them where an update may be needed to comply with the new requirements of Senate Bill 23-254. If your member agency would like the assistance of one of CIRSA's defense panel attorneys to review and comment on your draft updates, please call or e-mail Sam Light, CIRSA Deputy Executive Director/General Counsel, at 720-605-8002 or saml@cirsa.org.

If you have questions regarding this article, please call our Liability Hotline at 720-605-8002 to speak to CIRSA's General Counsel, Sam Light.