

The Law and Practice of No-Knock Search Warrants in North Carolina

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Introduction

A no-knock search warrant is a warrant that allows an officer to force his or her way into a premises without first knocking on the door and announcing his or her presence and purpose. These warrants are controversial. Since Breonna Taylor was killed during the execution of a no-knock warrant, they have been the subject of a national debate.¹ They have been addressed in the media² and in law reviews.³

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1. See, e.g., Richard A. Oppel, Jr., et al., *What to Know about Breonna Taylor’s Death*, N.Y. TIMES, Apr. 26, 2021 (noting that the case has drawn “national attention” and involved a no-knock warrant, though there is a dispute over whether officers actually executed the warrant without knocking and announcing).

2. See, e.g., Courtney Kan et al., *What to Know about No-Knock Warrants*, WASH. POST, Apr. 6, 2022.

3. Compare, e.g., Blanche Bong Cook, *Something Rots in Law Enforcement and It’s the Search Warrant: The Breonna Taylor Case*, 102 B.U. L. REV. 1 (2022) (arguing that no-knock warrants have become routine), and Brian Dolan, Note, *To Knock or Not to Knock: No Knock Warrants and Confrontational Policing*, 93 ST. JOHN’S L. REV. 201 (2019) (critiquing no-knock warrants), with Donald B. Allegro, Note, *Police Tactics, Drug Trafficking, and Gang Violence: Why the No Knock Warrant Is an Idea Whose Time Has Come*, 64 NOTRE DAME L. REV. 552 (1989) (supporting no-knock warrants).

Many criminal justice reformers want no-knock warrants restricted or eliminated.⁴ Some states have taken steps in that direction,⁵ and President Biden has issued an executive order limiting the authority of federal law enforcement agencies to make no-knock entries.⁶ On the other hand, some supporters of no-knock warrants see them as vital tools for preventing the destruction of evidence and for getting a tactical advantage over potentially dangerous suspects.⁷

Critics contend that no-knock warrants are issued routinely and with little scrutiny.⁸ Proponents argue that no-knock warrants are rare and carefully considered.⁹

This bulletin takes a deep dive into the law and practice regarding no-knock warrants in North Carolina. Among the conclusions are: (1) there is no explicit authority for North Carolina judicial officials to issue no-knock warrants; (2) judicial officials sometimes issue such warrants anyway; (3) no-knock warrants seem to be very rare; (4) when an application for a no-knock warrant is granted, the resulting warrant does not always include an express judicial determination regarding the need for a no-knock entry or an express judicial authorization of such an entry; and (5) quick-knock entries, where officers knock and announce their presence and then immediately force entry, may be widespread.

4. See, e.g., John Guzman, *Breonna Taylor, Amir Locke, and the Dangers of Warrant Executions*, NAACP LEGAL DEF. FUND (Mar. 18, 2022, <https://www.naacpldf.org/end-no-knock-warrants/>) (arguing that ending no-knock warrants is “the bare minimum”); Campaign Zero, *END ALL NO KNOCKS*, <https://endallnoknocks.org/> (last visited May 5, 2022) (arguing that no-knock warrants should be banned and that police should be required to wait at least thirty seconds after knocking and announcing to enter).

5. See *infra* notes 84–89 and accompanying text.

6. Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety (May 25, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/> (limiting federal agencies’ use of no-knock warrants and requiring certain recordkeeping and reporting).

7. See, e.g., Emily R. Daniel, *No Knock Warrants: Mend Them, Don’t End Them*, MINNEAPOLIS STAR TRIB., Nov. 8, 2020, <https://www.startribune.com/no-knock-warrants-mend-them-don-t-end-them/572996872/> (asserting that while “dramatic limits” on no-knock warrants are appropriate, they “are needed in imminent danger cases”); Wesley E. Nunn, *No Knock Warrants a Valuable Tool*, ATLANTA J.-CONST., June 18, 2014, <https://www.ajc.com/news/opinion/knock-warrants-valuable-tool/Tcl4g5l8uJZgwixfhANnj/> (arguing that no-knock warrants are used rarely, in extraordinary circumstances, after judicial review). Notably, the National Tactical Officers’ Association has recently concluded that “[n]o-knock search warrants, though well-intended, no longer pass the test of tactical science, risk mitigation practices, and liability-conscious decision-making.” National Tactical Officers’ Association, *NTOA Releases Position Statement on No Knock Warrant Service* (Feb. 25, 2022), <https://www.ntoa.org/ntoa-releases-position-statement-on-no-knock-warrant-service/>.

8. See, e.g., The Justice Collaborative Institute, *End No-Knock Raids 2* (June 2020), https://www.filesforprogress.org/memos/no_knock_raids.pdf (arguing that “no-knock warrants are not reserved for the most egregious of crimes” and are often used against unarmed drug suspects); Dolan, *supra* note 3, at 223 (asserting that “magistrate judges give no-knock authorization lightly and routinely”); Kevin Sack, *Door-Busting Raids Leave a Trail of Blood*, N.Y. TIMES, Mar. 18, 2017 (“The no-knock process often begins with unreliable informants and cursory investigations that produce affidavits signed by unquestioning low-level judges.”).

9. See, e.g., John Henderson, *Here’s How Often No-Knock Warrants Are Used in Fayetteville*, FAYETTEVILLE OBSERVER, Dec. 24, 2020 (recounting police chief’s statement that no-knock warrants have not been used in years and that they are appropriate only in “extreme cases, such as a hostage situation in which there is a need for stealth to avoid putting a hostage’s life in danger”); Nunn, *supra* note 7.

I. The Law of No-Knock Warrants

Law enforcement officers in North Carolina are bound to follow the United States Constitution, the state constitution, and state statutory law—all as interpreted by the state’s appellate courts and the Supreme Court of the United States. Over the past several decades, those courts have issued many decisions about no-knock warrants and related matters. This section summarizes existing law.

A. Federal Law

The Fourth Amendment says nothing about how an officer may execute a search warrant beyond the general command that all searches must be reasonable. In *Wilson v. Arkansas*, the U.S. Supreme Court ruled unanimously that the “common-law ‘knock and announce’ principle forms a part of the reasonableness inquiry under the Fourth Amendment.”¹⁰ *Wilson* did not say that an officer must knock and announce in every case, or even clearly establish that knocking and announcing should be the rule rather than the exception. Looking to English common law, it held only that “in some circumstances an officer’s unannounced entry into a home might be unreasonable under the Fourth Amendment.”¹¹

This modest statement has been strengthened in subsequent cases. For example, the Court has since said that “the Fourth Amendment incorporates the common law requirement that police officers entering a dwelling must knock on the door and announce their identity and purpose before attempting forcible entry.”¹² The Court has recognized that knocking and announcing serves at least three purposes: (1) it reduces the risk that a sudden entry will “provoke violence in supposed self-defense by the surprised resident”; (2) it protects the occupants’ property by allowing the occupants to open the door rather than having the officers break it down; and (3) it protects the dignity of the occupants by allowing them to get out of bed, get dressed, and prepare to receive the police.¹³ The risk of violence in self-defense may be especially acute in states, like North Carolina, that embrace the so-called Castle Doctrine, which presumes that a person who unlawfully and forcibly enters another’s home is there to commit a violent crime, presumes that the resident fears death or great bodily harm from an unlawful and forcible entry, and therefore presumptively entitles the resident to respond with deadly force.¹⁴

10. 514 U.S. 927, 929 (1995).

11. *Id.* at 934.

12. *Richards v. Wisconsin*, 520 U.S. 385, 387 (1997).

13. *Hudson v. Michigan*, 547 U.S. 586, 594 (2006).

14. See Chapter 14, Section 51.2 of the North Carolina General Statutes (hereinafter G.S.). The presumptions discussed in the text do not apply when an officer knocks and announces before entry. G.S. 14-51.2(c)(4) (stating that the presumption of reasonable fear does not apply when “[t]he person against whom the defensive force is used is a law enforcement officer . . . who enters or attempts to enter . . . in the lawful performance of his or her official duties, and the officer . . . identified himself or herself in accordance with any applicable law”). See also Carly Amendola, *Cops, Not Robbers: The Clash Between No-Knock Warrants and the Castle Doctrine*, CAMPBELL L. OBSERVER, Jan. 2, 2021, <http://campbelllawobserver.com/cops-not-robbers-the-clash-between-no-knock-warrants-and-the-castle-doctrine/> (“One does not need to be a legal expert to understand that there is a dangerous overlap between no-knock warrants and the castle doctrine. Since the proliferation of no-knock warrants in the 1980s countless civilians and law enforcement officers have been killed carrying out no-knock warrants.”).

The interests that support the knock-and-announce requirement are not absolute. The Court stated in *Wilson* that an officer might not be required to knock and announce, for example, “under circumstances presenting a threat of physical violence,” or “where police officers have reason to believe that evidence would likely be destroyed if advance notice were given.”¹⁵

In *Richards v. Wisconsin*,¹⁶ the Court found it “indisputable” that drug investigations will frequently involve both of those factors, though it rejected the idea that officers are *categorically* excused from knocking and announcing in drug cases. The Court noted that knocking and announcing may be necessary even in a drug case where the only people present are not suspects or when the nature of the drugs would not allow for quick disposal.

The *Richards* Court provided what is still the most succinct encapsulation of the constitutional standard for no-knock entries:

In order to justify a “no-knock” entry, the police must have a 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 by, for example, allowing the destruction of evidence.¹⁷

Two points are worth highlighting about *Richards*. First, the Court indicated that reasonable suspicion, rather than probable cause, is the quantum of evidence necessary to establish an exception to the knock-and-announce requirement.¹⁸ Second, the potential justifications for no-knock entry are stated in the disjunctive: an officer need not knock and announce if doing so would be dangerous *or* futile *or* would allow the destruction of evidence.

Richards is also significant because it highlighted the distinction between a no-knock *warrant* and a no-knock *entry*. The officer who obtained the warrant in that case asked the issuing magistrate for a no-knock warrant. The magistrate issued a standard search warrant, deleting the no-knock language from the warrant before signing it. The officers who executed the warrant nonetheless made a no-knock entry, and the Supreme Court said that was permissible, as the magistrate’s determination “does not alter the reasonableness of the officers’ decision, which must be evaluated as of the time they entered the motel room.”¹⁹ In a footnote, the Court stated: “The practice of allowing magistrates to issue no-knock warrants seems entirely reasonable when sufficient cause to do so can be demonstrated ahead of time. But, as the facts of this case demonstrate, a magistrate’s decision not to authorize a no-knock entry should not be interpreted to remove the officers’ authority to exercise independent judgment concerning the wisdom of a no-knock entry at the time the warrant is being executed.”²⁰

When officers do knock and announce, they may force entry if the occupants do not answer the door sufficiently quickly. However, the Supreme Court has not established a fixed amount of time that officers must wait after knocking and announcing before they may force entry. In *United States v. Banks*,²¹ the Court found a fifteen-to-twenty-second wait sufficient given that

15. *Wilson*, 514 U.S. at 936.

16. 520 U.S. 385 (1997).

17. *Id.* at 394.

18. *Id.* at 395 (footnote omitted) (concluding that officers could dispense with knocking and announcing because they “had a reasonable suspicion that [an occupant] might destroy evidence if given further opportunity to do so”).

19. *Id.* at 395.

20. *Id.* at 396 n.7.

21. 540 U.S. 31 (2003).

the investigation concerned illegal drugs that could quickly be flushed down a toilet or otherwise destroyed. The defendant argued that was not enough time for him to get to the front door, but the Court responded that “when circumstances are exigent because a pusher may be near the point of putting his drugs beyond reach, it is imminent disposal, not travel time to the entrance, that governs when the police may reasonably enter.”²²

When officers enter without knocking and announcing (or after knocking and announcing, if not promptly admitted by an occupant), they may damage the property to do so. The Court stated in *United States v. Ramirez* that the lawfulness of a no-knock entry does not “depend[] on whether property is damaged in the course of the entry.”²³ In *Ramirez*, officers broke a window, though it is more common for officers to break doors. Either may be permissible, though gratuitous or excessive property damage may run afoul of the Fourth Amendment’s reasonableness requirement.²⁴

In *Hudson v. Michigan*,²⁵ the Court ruled that a failure to knock and announce does not require the suppression of evidence seized in the ensuing search. It reasoned that “[t]he interests protected by the knock-and-announce requirement . . . do not include the shielding of potential evidence from the government’s eyes,” so a violation of the rule should not result in the exclusion of evidence.²⁶ And it found that the cost of suppressing important evidence was not justified by the need to deter misconduct, given the deterrence potential of civil suits against police.²⁷

Federal statutory law codifies the knock-and-announce requirement. Under 18 U.S.C. § 3109, an “officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute a search warrant, if, after notice of his authority and purpose, he is refused admittance or when necessary to liberate himself or a person aiding him in the execution of the warrant.” The Supreme Court of the United States has held that this statute incorporates the common law exceptions to the knock-and-announce rule discussed above.²⁸ Because this ruling leaves little daylight between the statutory and constitutional analyses, and because the statutory provision may apply only to federal investigations,²⁹ further discussion of this provision is beyond the scope of this bulletin.

22. *Id.* at 40.

23. 523 U.S. 65, 70 (1998).

24. *Id.* at 71 (“Excessive or unnecessary destruction of property in the course of a search may violate the Fourth Amendment, even though the entry itself is lawful and the fruits of the search are not subject to suppression.”).

25. 547 U.S. 586 (2006).

26. *Id.* at 593.

27. *Id.* at 595–98.

28. *Ramirez*, 523 U.S. at 73 (stating that the statute “codifies the common law in this area, and the common law in turn informs the Fourth Amendment”).

29. A majority of federal courts have held that 18 U.S.C. § 3109 does not apply to state officers. *See United States v. Gatewood*, 60 F.3d 248, 249 (6th Cir. 1995) (stating that the statute “regulates only federal officers”); *United States v. Moore*, 956 F.2d 843, 847–48 (8th Cir. 1992) (holding, along with “the majority of federal courts,” that the statute does not apply to state officers in the course of state investigations); *United States v. Moore*, 91 F.3d 96, 98 (10th Cir. 1996) (opining that the statute “does not directly apply to state actors,” though it may be a guide to the constitutional analysis); *United States v. Jones*, 133 F.3d 358, 361 (5th Cir. 1998) (“The federal ‘knock and announce’ rule codified at 18 U.S.C. § 3109 does not apply, because the search of Jones’ apartment was conducted by state officers.”). The Fourth Circuit has said that the statute “governs” searches by federal officers and “provides the proper framework” for analyzing

B. North Carolina Law

Article I, Section 20 of the North Carolina Constitution prohibits general warrants as “dangerous to liberty.” The state constitution does not mention probable cause and does not expressly include a reasonableness requirement. The texts of the state and federal constitutions therefore differ significantly. Even if they did not, they could be interpreted differently: North Carolina’s state courts are “not bound by opinions of the Supreme Court of the United States construing even identical provisions in the Constitution of the United States.”³⁰

Nonetheless, as a general matter, the Supreme Court of North Carolina has held that the state constitution “provides the same protection against unreasonable searches and seizures” as the federal Constitution does.³¹ Our appellate courts therefore give Supreme Court opinions concerning the Fourth Amendment “great weight”³² when interpreting the state constitution, and only rarely have North Carolina’s appellate courts diverged from the Supreme Court’s Fourth Amendment rulings.³³ Some opinions have gone so far as to say that “there is no variance between the search and seizure law of North Carolina and the requirements of the Fourth Amendment as interpreted by the Supreme Court of the United States.”³⁴ Therefore, it is unlikely that Article I, Section 20 constrains no-knock warrants more than the Fourth Amendment does.

State statutory law codifies the knock-and-announce requirement, providing that an

officer executing a search warrant must, before entering the premises, give appropriate notice of his identity and purpose to the person to be searched, or the person in apparent control of the premises to be searched. If it is unclear whether anyone is present at the premises to be searched, he must give the notice in a manner likely to be heard by anyone who is present.³⁵

searches by state officers given that it encompasses the constitutional requirements of the Fourth Amendment. *United States v. Kennedy*, 32 F.3d 876, 882 (4th Cir. 1994).

30. *State v. Arrington*, 311 N.C. 633, 642 (1984).

31. *State v. Elder*, 368 N.C. 70, 73 (2015). *See also* *State v. Campbell*, 359 N.C. 644, 659 (2005) (reciting that the state constitution provides protection “similar” to the Fourth Amendment).

32. *Campbell*, 359 N.C. at 642. *See also* *State v. McLendon*, 350 N.C. 630, 635 (1999) (finding the Supreme Court’s reasoning “compelling”).

33. The most notable example of divergence is *State v. Carter*, 322 N.C. 709 (1988), where the Supreme Court of North Carolina declined to follow the Supreme Court of the United States in finding an exception to the exclusionary rule for searches conducted in good-faith reliance on a search warrant. Interestingly, just four years later, in *State v. Garner*, 331 N.C. 491 (1992), the court said that “there is nothing to indicate anywhere in the text of Article I, Section 20 any enlargement or expansion of rights beyond those afforded in the Fourth Amendment” and that the state constitution “should not be viewed as a vehicle for any inventive expansion of our law” beyond what the Fourth Amendment provides. *Id.* at 506.

34. *State v. Hendricks*, 43 N.C. App. 245, 251–52 (1979). Notably, *Hendricks* was decided before *Carter*.

35. G.S. 15A-249.

State statutory law also contains exceptions to the requirement. Importantly, these are narrower than the exceptions in the Fourth Amendment case law. Under G.S. 15A-251:

An officer may break and enter any premises or vehicle when necessary to the execution of the warrant if:

- (1) The officer has previously announced his identity and purpose as required by G.S. 15A-249 and reasonably believes either that admittance is being denied or unreasonably delayed or that the premises or vehicle is unoccupied; or
- (2) The officer has probable cause to believe that the giving of notice would endanger the life or safety of any person.

As discussed above, the risk of destruction of evidence can render an unannounced entry “reasonable” for Fourth Amendment purposes. But it cannot support an unannounced entry under G.S. 15A-251(2)—only a danger to a person’s life or safety may do so. Courts have considered the potential for destruction of evidence when determining whether entry has been unreasonably delayed under G.S. 15A-251(1), but that subsection only allows entry after the officer has knocked and announced.

Another difference between the requirements of Fourth Amendment law and those imposed by state statute concerns the risk of injury to any person. Under the statute, an officer must have probable cause to believe that knocking and announcing would endanger a person, while the Fourth Amendment requires only reasonable suspicion to dispense with the knock-and-announce requirement.

Although this bulletin focuses on search warrants, it is worth mentioning that the knock-and-announce requirement also applies by statute when an officer enters a premises to execute an arrest warrant, subject to exceptions similar to those for search warrants.³⁶

State case law has addressed several common issues regarding the knock-and-announce requirement as it pertains to search warrants. For example, actually knocking on the door is not always required. The essence of the knock-and-announce requirement is making the occupants aware of the officers’ presence and purpose, and the relevant state statute requires only that an officer “give appropriate notice of his identity and purpose.”³⁷ Thus, if a door is standing open, an officer may announce his or her presence without knocking on the door.³⁸ Likewise, when officers set off a “distraction device” and shouted “Sheriff’s Department, search warrant,” they “certainly had announced their presence and purpose” even though they did not knock on the door.³⁹

36. See G.S. 15A-401(e) (providing that an officer may enter private premises by force to effect an arrest with a warrant only if “[t]he officer has given, or made reasonable effort to give, notice of his authority and purpose” and reasonably believes that admittance is being denied or unreasonably delayed, or if there is “reasonable cause to believe that the giving of such notice would present a clear danger to human life.” No appellate case explores the significance, if any, of the use of “probable cause” in G.S. 15A-251(2) but “reasonable cause” in G.S. 15A-401(e)(2).

37. G.S. 15A-249.

38. *State v. Rudisill*, 20 N.C. App. 313, 315 (1973) (an officer executing a search warrant entered through an open door and announced his presence; the existence of the “open door obviated the demand for admittance by first knocking,” as knocking would have been a “vain act” and the announcement alone provided proper notice to the occupants).

39. *State v. Pelham*, 164 N.C. App. 70, 82 (2004).

The most frequently litigated issue in the state appellate cases is how long officers must wait after knocking and announcing before forcing entry. The standard of unreasonable delay in G.S. 15A-251(1) is a flexible one: “The amount of time required to be given between notice and entry must depend on the particular circumstances.”⁴⁰ The relevant circumstances include those behind the knock-and-announce rule itself, such as whether the occupants have had sufficient time to gather themselves, prepare to receive visitors, and answer the door. Other pertinent factors may include the size of the residence (it takes longer to get to the door of a large home than a hotel room); the time of day or night (if the occupants are likely sleeping, they may need more time to rouse themselves and admit the officers); and perhaps the age and mobility of the occupants. Evidence that the occupants are moving around without answering the door may also be relevant, especially if they are moving quickly or seem to be concerned by the presence of law enforcement. After considering all the facts and circumstances, reviewing courts have repeatedly approved of officers forcing entry after short waits, sometimes just a few seconds.

The precise reasoning on which courts have upheld these entries varies. In some cases, courts have simply ruled that the officers waited long enough to comply with the knock-and-announce requirement.⁴¹ In other cases, courts have concluded that the occupants unreasonably delayed entry under G.S. 15A-251(1). As noted above, although destruction of evidence is not expressly mentioned in G.S. 15A-251(1), courts have frequently considered the risk of destruction of evidence in determining whether entry has been unreasonably delayed.⁴²

40. *State v. Gaines*, 33 N.C. App. 66, 70 (1977) (nothing improper about officer’s entry shortly after announcing where no one objected and door was standing open).

41. In *State v. Terry*, 207 N.C. App. 311 (2010), the court found that the officer complied with the knock-and-announce requirement despite the short time between announcement and entry. The court did not directly address the exceptions in G.S. 15A-251, stating simply that “the knock and announce procedure was properly executed.” *Id.* at 319. Its reasoning nonetheless factored in the risk of destruction of evidence, stating that “[s]ince [marijuana, the target of the search warrant] was a drug that could be easily and quickly disposed of, we hold that the brief delay between notice and entry was reasonable in this case.” *Id.* See also *State v. Barfield*, 23 N.C. App. 619, 622 (1974) (in a case that arose before G.S. Chapter 15A was enacted, the court ruled that a delay of ninety seconds to two minutes before forced entry was sufficient, stating that “[t]he officers did knock, announce their identity, state the source of their authority, request admission, and then wait a reasonable length of time before entering the house”).

42. For example, *State v. Marshall*, 94 N.C. App. 20 (1989), is a drug case where the court considered a delay of just “a couple of seconds” after announcement. Citing only to G.S. 15A-251(1), the court found that the officers had “reason to believe that admittance was being denied or unreasonably delayed” because after announcement they heard people running and the word “police” inside the residence. *Id.* at 30. Similarly, in *State v. Vick*, 130 N.C. App. 207 (1998), the court approved of officers forcing entry to execute a search warrant for drugs ten to fifteen seconds after knocking and announcing. The court reasoned that entry was being unreasonably delayed under G.S. 15A-251(1), given the afternoon hour and the destructibility of drug evidence.

In several cases, courts have found probable cause that a longer delay would have endangered the officers or others, and thus that entry was supported by G.S. 15A-251(2).⁴³ And courts have often mentioned the concept of exigent circumstances, especially as it pertains to the risk of destruction of evidence—a concept that might support immediate entry, almost without regard to the existence of the warrant.⁴⁴

Another issue that the appellate courts have discussed is the remedy for a violation of the knock-and-announce rule. Some older cases concluded that the suppression of evidence was a proper remedy,⁴⁵ while others found that relatively minor violations of the rule—such as announcing an officer’s presence, but not his or her purpose—were not grave enough to require suppression.⁴⁶ After the Supreme Court of the United States ruled categorically in 2006 that knock-and-announce violations do not require suppression as a matter of federal constitutional law,⁴⁷ however, the North Carolina Court of Appeals quickly followed suit as a matter of state statutory law. In *State v. White*,⁴⁸ officers knocked and announced, “may” have waited about five seconds, then broke down the defendant’s door. There was no evidence of any factor requiring a rapid forcible entry, and the parties agreed that this was a substantial violation of G.S. 15A-251. Still, the State argued, and the appellate court agreed, that suppression of evidence found in the search was not appropriate, as the evidence was not found “as a result” of the unlawful entry as required by G.S. 15A-974. The court noted that “the cocaine would have likely been located even in the absence of the forced entry.”⁴⁹

43. An example of this type of case is *State v. Lyons*, 340 N.C. 646 (1995), a drug case in which an informant reported that the suspect had a “nasty attitude,” was “mean,” and might have a firearm in his apartment. The court ruled that officers were justified in entering the home by force after a minimal announcement as they had “probable cause to believe that the giving of notice would endanger the life or safety of any person” as required by G.S. 15A-251(2). *Id.* at 673 (quoting statutory language).

44. An often-cited case in this area is *State v. Knight*, 340 N.C. 531 (1995), where officers investigating a murder obtained a search warrant for the suspect’s house. The officers believed that the suspect might be armed and could potentially take others in the home hostage. They knocked and announced at 4:00 a.m., and after waiting thirty to sixty seconds, forced their way in. The reviewing court found that this was proper, invoking both the “exigent circumstances” that justified the entry and also citing G.S. 15A-251(2). *See also* *State v. Reid*, 151 N.C. App. 420, 426 (2002) (officers executing a search warrant for drugs knocked and announced, waited six to eight seconds, then forced entry; this did not violate the defendant’s constitutional or statutory rights; the court cited G.S. 15A-251(1) and also stated that “exigent circumstances may be found to exist where police are executing a search warrant for narcotics which may be easily disposed of prior to being discovered”).

45. *See, e.g.*, *State v. Brown*, 35 N.C. App. 634 (1978) (finding a substantial violation of the knock-and-announce rule and suppressing evidence under G.S. 15A-974 in a drug case; officers created a distraction outside the suspect’s house, then entered, in plain clothes and without knocking or announcing, while the suspect was outside looking at the distraction).

46. *See* *State v. Willis*, 58 N.C. App. 617, 622 (1982) (where “the police officer, at best, announced his identity as he entered the front door” but did not state his purpose, the violation of the knock-and-announce rule was not so substantial as to require suppression). *See also* *State v. Sumpter*, 150 N.C. App. 431, 434 (2002) (an officer executing a search warrant for drugs “announced his presence and purpose simultaneously with the opening of the door and entry into the dwelling”; this violated the knock-and-announce requirement, but under the circumstances—including that the door was unlocked and that the officer was looking for readily destructible items—the violation was not substantial enough to require suppression).

47. *Hudson v. Michigan*, 547 U.S. 586 (2006).

48. 184 N.C. App. 519 (2007).

49. *Id.* at 525.

The lack of a suppression remedy appears to have reduced litigation over the knock-and-announce rule and its exceptions. There are very few North Carolina appellate cases on this issue after 2007.⁵⁰ This may be because there is little incentive for criminal defendants to raise the issue in the trial courts or on appeal. Of course, alleged violations of the knock-and-announce rule may form the basis for civil lawsuits, but the volume of civil suits is small compared to the number of criminal appeals.

C. Is There Legal Authority to Issue No-Knock Warrants in North Carolina?

North Carolina's appellate courts have never directly addressed whether judicial officials have the authority to issue no-knock warrants. In some states, the answer to that question is obvious because there are statutes authorizing judicial officials to issue such warrants under certain circumstances. For example, a New York statute provides that a search warrant application may contain a "request that the search warrant authorize the executing police officer to enter premises to be searched without giving notice of his authority and purpose" if knocking and announcing would risk the destruction of evidence or create a danger to any person.⁵¹ In Arizona, "[o]n a reasonable showing that an announced entry to execute the warrant would endanger the safety of any person or would result in the destruction of any of the items described in the warrant, the magistrate shall authorize an unannounced entry."⁵²

By contrast, some states have statutes that effectively prohibit the issuance of no-knock warrants. For example, Virginia recently amended its search warrant statute to provide:

No law-enforcement officer shall seek, execute, or participate in the execution of a no-knock search warrant. A search warrant for any place of abode authorized under this section shall require that a law-enforcement officer be recognizable and identifiable as a uniformed law-enforcement officer and provide audible notice of his authority and purpose reasonably designed to be heard by the occupants of such place to be searched prior to the execution of such search warrant.⁵³

North Carolina is not in either of these camps. The search warrant statutes in North Carolina are silent about whether judicial officials may issue no-knock search warrants.⁵⁴ As noted above, the search warrant statutes generally require that an officer "give appropriate notice of

50. One exception is *State v. Winchester*, 260 N.C. App. 418, 426 (2018) (finding no violation of the statute where officers knocked, announced, and then entered the defendant's vacant home, notwithstanding the defendant's contention that "officers deliberately waited until [he] vacated the premises before breaking open the door").

51. N.Y. CRIM. PROC. LAW § 690.35(4)(b).

52. ARIZ. REV. STAT. § 13-3915(B).

53. VA. CODE § 19.2-56B.

54. The issue is addressed obliquely in the official commentary to the search warrant statutes, which provides: "Section 15A-249 and G.S. 15A-251 deal with an issue to which the most serious and close attention was given: whether search warrants may be executed without giving notice of the officer's identity and purpose. Section 15A-249 simply states the general rule: An officer executing a search warrant must, before entering the premises, give notice of his identity and purpose. The only exception is contained in G.S. 15A-251(2). There was general agreement that an officer should have the authority to execute a warrant without notice and with the use of force whenever he had probable cause, either at the time of applying for or at the time of executing the warrant, to believe that notice would endanger the life or safety of any person." G.S. Ch. 15A, Art. 11, Official Commentary. The reference to "probable

his identity and purpose”⁵⁵ before entering but also allow an officer to enter without notice if the officer has probable cause to believe that knocking and announcing would endanger any person.⁵⁶ In other words, it is clear that officers have the authority to make a no-knock entry under certain circumstances. But the statutes that directly address the role of a judicial official in issuing a warrant and the required contents of a warrant do not speak at all to a court’s authority to waive the knock-and-announce requirement in advance.⁵⁷

One could argue that a judicial official authorized to issue a search warrant has the inherent authority to address related matters, such as the manner of execution, when necessary to the administration of justice. For example, it is common practice, though without specific appellate authority in North Carolina, for officers seeking search warrants for meth labs to ask the issuing official to authorize in advance the destruction of hazardous chemicals found during execution.⁵⁸ And North Carolina’s appellate courts have upheld several types of investigative orders not specifically permitted by statute, including investigative orders for records⁵⁹ and anticipatory search warrants.⁶⁰

On the other hand, inherent authority generally is available “to fill in gaps not addressed by the statutes or rules . . . [but] does not empower a court to override legislative decisions.”⁶¹ One could argue that the absence of any reference to no-knock warrants in the statutes was an intentional decision by the General Assembly to deny no-knock authority to judicial officials, especially given that G.S. 15A-251(2) appears to assign to the executing officer the decision whether knocking and announcing creates a risk to any person.

There is no appellate case in North Carolina adopting one or the other of the above arguments. Courts in other states are split on the issue.⁶² Until there is a North Carolina case on point, the authority of North Carolina judicial officials to issue no-knock warrants is uncertain.

cause . . . at the time of applying for . . . the warrant” could be read as supporting the issuance of no-knock warrants, but the fact that no procedure for seeking such warrants was included in the statutes makes any inference a weak one.

55. G.S. 15A-249.

56. G.S. 15A-251(2).

57. See G.S. 15A-245, -246.

58. For a discussion of some of the legal issues involved in these warrants, see Jeff Welty, *Search Warrants for Meth Labs*, N.C. CRIM. L.: A UNC SCH. OF GOV’T BLOG (Feb. 6, 2014), <https://nccriminallaw.sog.unc.edu/search-warrants-for-meth-labs/>.

59. See, e.g., *In re Super. Ct. Order Dated Apr. 8, 1983*, 315 N.C. 378, 380 (1986) (holding that a superior court judge may issue investigative orders compelling the production of records to a district attorney when “the interests of justice so require,” despite the lack of statutory authorization for such an order).

60. See *State v. Smith*, 124 N.C. App. 565, 571 (1996) (finding no “real issue” regarding whether an anticipatory warrant may issue given the lack of any constitutional impediment and the provision in G.S. 15A-231 that “[c]onstitutionally permissible searches and seizures which are not regulated by the General Statutes of North Carolina are not prohibited”).

61. Michael Crowell, *Inherent Authority*, N.C. SUPERIOR COURT JUDGES’ BENCHBOOK 1 (Jan. 2015), <https://benchbook.sog.unc.edu/general/inherent-authority>.

62. A leading treatise states that “[t]he prevailing but not unanimous view is that a magistrate may not issue a so-called no-knock search warrant in the absence of [an express] statutory provision.” WAYNE R. LAFAVE, 2 SEARCH AND SEIZURE § 4.8(g) (6th ed. 2020). Cases finding no inherent authority to issue no-knock warrants include *State v. Bamber*, 630 So. 2d 1048, 1050 (Fla. 1994) (finding no statutory authority for issuance and stating that no-knock warrants are “limited largely to those states that have enacted statutory provisions authorizing their issuance”; stating further that conditions may change and are best assessed at the time of entry, not the time of issuance), and *Davis v. State*, 859 A.2d 1112,

II. The Prevalence and Practice of No-Knock Warrants in North Carolina

Whether or not North Carolina judicial officials properly may issue no-knock warrants, court officials sometimes do issue them. This section of this bulletin provides information about the prevalence and practice concerning no-knock warrants in North Carolina.

The information presented here is necessarily incomplete. North Carolina, like most but not all states, does not track the issuance of no-knock warrants.⁶³ The author's efforts to understand the prevalence and practice of no-knock warrants included reviewing hundreds of search warrants obtained by dozens of law enforcement agencies in clerks' offices across the state;⁶⁴ searching the appellate records of cases in which court opinions referenced no-knock warrants; tracking down no-knock warrants mentioned in media articles; asking for examples of no-knock warrants from law enforcement agency attorneys and from criminal defense lawyers;

1121, 1124, 1132 (Md. 2004) (noting that "Maryland does not statutorily authorize its judicial officers to issue 'no-knock' warrants"; collecting cases and stating that "[t]here is a split of authority among states that do not have 'no-knock' warrant statutes as to whether judicial officers may, nevertheless, authorize 'no-knock' entries when they issue a search and seizure warrant"; and "com[ing] out on the side of those courts that, in the absence of valid statutory authority, refuse to authorize a judicial officer to make an advance determination of exigency," instead leaving the decision to the officer on scene). Courts allowing the issuance of no-knock warrants despite a lack of clear statutory authorization include *State v. Henderson*, 629 N.W.2d 613, 622 (Wis. 2001) (citing *State v. Cleveland*, 348 N.W.2d 512 (Wis. 1984)) (the court stated that "[i]n Wisconsin, judicial officers are authorized to issue no-knock warrants," despite the lack of statutory authorization, and indicated that both citizens and officers may benefit from judicial review of the need for entry without notice; the court also noted that judicial approval is not required and that officers always may enter without notice if circumstances support doing so), and *State v. Smith*, 467 S.E.2d 221, 222 (Ga. Ct. App. 1996) (citing *Jones v. State*, 193 S.E.2d 38 (Ga. Ct. App. 1972)) (stating that "[a] search warrant with a no-knock provision may be issued where the facts set out in the affidavit demonstrate exigent circumstances").

63. Chapter 626, Section 14(4) of the Minnesota Statutes now requires agencies that obtain no-knock warrants to report them to the commissioner of public safety. About five months after the law took effect, local media reported that seventy no-knock warrants had been obtained statewide, forty-nine of which were executed as no-knocks. Only 23 percent of the warrants were obtained in drug investigations, and about three-fourths targeted Black suspects. See Hannah Flood, *BCA: 70 "No-Knock" Search Warrants Issued Since September*, FOX 9 (Feb. 9, 2022), <https://www.fox9.com/news/bca-82-of-search-warrants-executed-since-september-were-no-knock>.

64. The author reviewed 279 search warrants, sought by 38 different agencies, at 6 clerks' offices across the state, focusing mainly on search warrants for residences because those are the most likely to be no-knock warrants. None of the warrants contained no-knock language. In order to review a large number of warrants efficiently, the author focused on warrants in the alphabetical file of returned warrants, not yet associated with a criminal case. See N.C. Admin. Off. of the Cts., *Rules of Recordkeeping*, Rule 9.4 ("When the original warrant or order is returned to the clerk, it shall be filed in the folder of the case to which it pertains. Where there is no related pending case, the original warrant or order shall be filed alphabetically in a file section designated for these documents."). Most of the warrants were issued in connection with investigations concerning drug offenses or violent crimes. These are the types of investigations in which no-knock authority is most likely to be sought. However, no-knock language may be more common in search warrants located in criminal case files than in warrants located in the alphabetical file. No-knock warrants are often sought when a suspect is believed to be present at a residence, in which case, an arrest and criminal charges may often follow immediately upon execution of the warrant, resulting in the warrant being placed immediately in a criminal case file. This is one of many reasons why the sample of warrants reviewed by the author is not necessarily scientific or representative.

and consulting with law enforcement agencies about their use of no-knock warrants. This procedure resulted in the collection of a significant amount of information, but it is necessarily impressionistic and may not reflect practices in all parts of the state.

A. Prevalence of No-Knock Warrants

No-knock warrants appear to be very rare in North Carolina. None of the 279 warrants the author reviewed in spot checks of clerks' offices across the state were no-knock warrants—even though the author focused mostly on search warrants for residences in cases involving drugs or violent crimes, which are the types of cases in which no-knock warrants are most likely to be sought.

A search of appellate court opinions found just three references to no-knock warrants.⁶⁵ Consultations with agencies revealed no agencies that seek no-knock warrants routinely, though several agencies indicated that they did so occasionally, and some produced examples of no-knock warrants.⁶⁶ Of course, police practices change over time and the recent focus on no-knock warrants may have led agencies to seek such warrants less frequently. But the author is aware of no evidence that the practice has ever been prevalent in North Carolina.

A variety of judicial officials issued the no-knock warrants identified by the author, including magistrates, superior court judges, and at least one district court judge. That is consistent with the pattern for search warrants more broadly, where magistrates appear to issue the majority of warrants, with superior court judges fairly close behind, district court judges next, and clerks only rarely issuing warrants.⁶⁷

B. Justifications in No-Knock Applications

Every no-knock warrant the author located was issued in connection with a drug investigation. Approximately half of all search warrants are issued in drug investigations, and drug cases often involve a risk of destruction of evidence and the potential presence of weapons.⁶⁸ It is therefore not surprising that many no-knock warrants are issued in such cases.

65. *See* *State v. Daye*, 253 N.C. App. 408 (2017) (unpublished) (drug case from Iredell County; issues on appeal did not relate to the no-knock authorization, which was based on “the extensive weapons charges on [the target]”); *State v. McLean*, 245 N.C. App. 131 (2016) (unpublished) (drug case from Lincoln County; issues on appeal did not relate to the no-knock authorization, which was based on the target’s criminal history and the possible presence of firearms); *State v. Holmes*, 195 N.C. App. 598 (2009) (unpublished) (gun possession and drug case from Brunswick County; issues on appeal did not relate to the no-knock authorization, which was based on the target’s criminal history and known possession of firearms).

66. Agency policies regarding no-knock warrants are discussed below at notes 102–10 and accompanying text.

67. The order in this list is based on the author’s review of warrants as well as discussions with judicial officials and attorneys for law enforcement agencies.

68. *See, e.g., State v. Tripp*, 381 N.C. 617, 633 (2022) (“Firearms are tools of the trade for individuals involved in the illegal distribution of drugs.”); *State v. Smith*, 99 N.C. App. 67, 72 (1990) (“As a practical matter, firearms are frequently involved for protection in the illegal drug trade.”).

The specific justifications provided for no-knock entry most often referenced the criminal record of the suspect and the likely presence of firearms. For example, the application in one case contained the following:

Affiant, taking into consideration the past criminal history and numerous felony convictions of Adolph Holmes and the recent knowledge of him possessing firearms for security of his cocaine, requests that the court issue a NO KNOCK AND ANNOUNCE SEARCH WARRANT based on his past history of violence toward Law Enforcement Officers.

Similarly, in another case the affidavit stated:

Based on the criminal history of the target in this investigation, Adrian Bernard McLean, the possibility of firearms readily available in the residence and the possibility of injury to the officer[s] executing this search warrant this applicant requests the court authorize a No-Knock search warrant . . .

As the samples above reflect, the justifications for no-knock entry were typically a few sentences long. Fewer than half of the affidavits specifically referenced the probable cause standard of G.S. 15A-251(2), but most expressly identified officer safety as the concern animating the request for no-knock authority. Very few identified threats to civilians as a factor. One application emphasized the suspect's affiliation with a violent street gang as part of the basis for the request.

C. Documentation of Permission for No-Knock Entry

In each of the cases examined by the author, the affidavit by the applicant requested no-knock authority and a judicial official issued a warrant based on the application. However, none of the warrants contained an express judicial finding that no-knock entry was justified, nor did any of the warrants expressly authorize no-knock entry. In each instance, the judicial official simply signed Side One of AOC-CR-119, the search warrant form promulgated by the North Carolina Administrative Office of the Courts.⁶⁹ The official's signature is affixed beneath a block of text that provides in part:

I, the undersigned, find that there is probable cause to believe that the property and person described in the application on the reverse side and related to the commission of a crime is located as described in the application.

You are commanded to search the premises, vehicle, person and other place or item described in the application for the property and person in question. If the property and/or person are found, make the seizure and keep the property subject to Court Order and process the person according to law.

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.

69. A current version of the form is available at <https://www.nccourts.gov/documents/forms/search-warrant/search-warrant>.

Figure 1. Space on AOC-CR-119 That Could Be Used to Document Approval of No-Knock Entry

You are directed to execute this Search Warrant within forty-eight (48) hours from the time indicated on this Warrant and make due return to the Clerk of the Issuing Court.				
This Search Warrant is issued upon information furnished under oath or affirmation by the person(s) shown.				
<i>Approval language could go here.</i>				
Date Issued	Time Issued	<input type="checkbox"/> AM <input type="checkbox"/> PM	Name (type or print)	Signature
<input type="checkbox"/> Deputy CSC	<input type="checkbox"/> Assistant CSC	<input type="checkbox"/> CSC	<input type="checkbox"/> Magistrate	<input type="checkbox"/> District Ct. Judge <input type="checkbox"/> Superior Ct. Judge

The judicial official's signature represents a finding of probable cause and an order to carry out a search of the place described in the application within forty-eight hours of issuance. The pre-printed text contains no finding regarding danger to any person and no order authorizing unannounced entry. Absent any handwritten notation on those points, it is at least an open question whether the warrants in these cases actually provided judicial imprimatur for no-knock entry.

If an issuing official concludes that he or she is authorized to issue a no-knock warrant, a better practice may be for the issuing official to make findings supporting the need for no-knock entry and to grant such authority expressly. As shown in Figure 1, there is a small amount of space on the AOC-CR-119 where that could be written in. Alternatively, the applicant could draft and present to the judicial official an additional brief document with the appropriate findings and order.⁷⁰

D. Quick-Knock Entries

The scarcity of no-knock warrants may be explained in part by the prevalence of so-called “quick-knock,” “minimal delay,” or “dynamic entry” procedures. None of these terms are statutorily defined, but all refer to a practice in which officers announce their presence and immediately force entry, moving quickly to overwhelm occupants before anyone who is inclined to resist is able to do so. One law professor and former police officer describes the practice as follows:

[A] no-knock or quick-knock raid is designed to ensure that the occupant is caught off guard, is unclear about what is happening, and is generally too disoriented to react in a considered way. Ideally, officers establish control of the scene so quickly that, by the time the suspect has overcome his confusion, he has no opportunity to resist.⁷¹

70. At least one agency routinely does this when seeking authorization for a quick-knock entry. See email correspondence from Ronnie Mitchell, Attorney for the Cumberland County Sheriff's Office, to author (Apr. 28, 2022) (on file with author) (explaining the process and attaching a sample document).

71. Motion by Seth Stoughton for Leave to File a Brief as Amicus Curiae, and Amicus Curiae Brief Supporting Petitioner, *Kane v. Lewis*, 577 U.S. 947 (2015) (No. 15-193), 2015 WL 5451031.

For simplicity, this bulletin will use the term “quick-knock entry” to refer to this procedure. As discussed above, there is no fixed amount of time that officers must wait after knocking and announcing, and traditional knock-and-announce entries may themselves involve relatively short waits for the occupants to open the door.⁷² But if the entry is nearly simultaneous with the announcement and occupants have virtually no time to answer the door or prepare for the officers’ arrival, the entry may be classified as a quick-knock entry.⁷³

For some law enforcement officers, quick-knock entries may be seen as offering the best of both worlds. By announcing their presence, officers reduce the risk that they will be mistaken for intruders and greeted with violence. Yet a rapid entry allows officers to seize the initiative and reduces the time occupants have to access weapons or destroy evidence. “The theory underlying the tactic is that by entering a home quickly and with overwhelming force, law enforcement can discourage or prevent any attempt by the occupants to arm themselves or destroy evidence.”⁷⁴

No statewide data are available on the prevalence of quick-knock entries in North Carolina. The author’s discussions with those in the field suggest that such entries are common—likely the norm in some agencies. This impression is bolstered by more systematic examinations of practices in other states. A study of seventy-three search warrants executed in Louisville, Kentucky, found that “every entry involved using a ram to break the door down” and that officers “announce their presence and purpose in conjunction with the first hit on the door.”⁷⁵ In litigation regarding the execution of a search warrant in Topeka, Kansas, an officer testified that the police department’s Street Crime Action Team “developed a pattern of executing drug search warrants as ‘dynamic entries’ by breaking the door with a battering ram without knocking.”⁷⁶ The officer estimated that only 5 to 10 percent of warrants were executed after knocking and announcing.⁷⁷ And a Dallas officer testified that “we always make what we refer to as dynamic entries . . . we do not go up and announce our presence until we are actually knocking down the door.”⁷⁸

Whatever their prevalence, quick-knock entries do not serve all the purposes of the knock-and-announce requirement.⁷⁹ They may serve the first purpose, reducing the risk that occupants will respond to an unannounced intrusion with violence in self-defense. They do not serve the

72. See *supra* notes 21–22, 41 and accompanying text.

73. The line between a quick-knock entry and a traditional knock-and-announce entry is a blurry one, as illustrated by *State v. Vick*, 130 N.C. App. 207 (1998). In that case, members of a tactical team that specialized in “dynamic entries” executed a search warrant at a drug dealer’s home. A sergeant in the tactical unit explained that in executing a search warrant, officers “don’t want . . . for people to be able to prepare . . . [or] arm themselves” so they are “as quiet as possible until the last second we make the entry.” *Id.* at 211. In total, about ten seconds elapsed from the first knock on the suspect’s door until the officers forced entry. The reviewing court found that this was sufficient given the destructibility of evidence and the potential for danger to the officers, concluding specifically that “[t]he officers’ assumption . . . that entry was being denied or unreasonably delayed was reasonable,” thus indicating that the entry was justified under G.S. 15A-251(2). *Id.* at 217.

74. *Estate of Brown v. Thomas*, 7 F. Supp. 3d 906, 916 (E.D. Wis. 2014).

75. Brian Patrick Schaefer, *Knocking on the Door: Police Decision Points in Executing Search Warrants* 128 (May 2015) (Ph.D. dissertation, University of Louisville), <https://doi.org/10.18297/etd/2095>.

76. *State v. Shively*, 999 P.2d 259, 261 (Kan. 2000).

77. See *id.*

78. *Wickware v. State*, No. 05-95-01767-CR, 2000 WL 1195682, at *1 (Tex. Ct. App. Aug. 23, 2000) (unpublished).

79. These purposes are discussed above at notes 13–14 and accompanying text.

second purpose, preserving the occupants' property, because they typically entail breaking the door in rather than allowing the occupants to open it. And they do not serve the third purpose, allowing occupants time to dress and prepare to receive visitors, because of the brevity of the delay.

For these reasons, courts generally have treated quick-knock entries as noncompliant with the knock-and-announce requirement.⁸⁰ Thus, as a constitutional matter, they are permissible only when there is a legal basis for excusing that requirement, such as reasonable suspicion that knocking and announcing would endanger a person or result in the destruction of evidence.⁸¹ As a state statutory matter, they are permissible only when there is probable cause to believe that knocking and announcing would endanger a person or when entrance has been “unreasonably delayed.” As discussed above, the risk of destruction of evidence may be considered in determining whether a delay is unreasonable. But it seems difficult to justify near-simultaneous announcement and forced entry as the result of an unreasonable delay—at that point, there has been no delay of any kind.

The author is aware of only one agency that regularly seeks court approval before carrying out quick-knock entries. Other agencies may choose not to do so for a variety of reasons, including the lack of clear judicial authority to grant such approval; the statutory authorizations in G.S. 15A-251(1) and (2); or a belief that because quick-knock entries do typically include an announcement of officers' presence and purpose, they are compliant with the knock-and-announce requirement despite the immediate forced entry.

Quick-knock entries have been the subject of several recent civil suits against law enforcement agencies.⁸² Given the current level of public interest in how search warrants are executed, and the apparent prevalence of quick-knock entries, more litigation in this area is likely.

80. *See* *State v. Sumpter*, 150 N.C. App. 431, 434 (2002) (an officer executing a search warrant for drugs “announced his presence and purpose simultaneously with the opening of the door and entry into the dwelling”; this violated the knock-and-announce requirement; but under the circumstances—including that the door was unlocked and that the officer was looking for readily destructible items—the violation was not substantial enough to require suppression); *State v. Willis*, 58 N.C. App. 617, 622 (1982) (“the facts show that the police officer, at best, announced his identity as he entered the front door” and did not state his purpose; this “violated the statutory requirements for execution of the search warrant”; but the violation was not so substantial as to require suppression). Significant cases outside North Carolina include *Terebesi v. Torreso*, 764 F.3d 217 (2d Cir. 2014) (analyzing a “dynamic entry” as non-compliant with the knock-and-announce rule and denying qualified immunity to officers who killed a houseguest while making a dynamic entry into a home based on suspected possession of personal-use amounts of drugs); *Moore v. City of Memphis*, 853 F.3d 866 (6th Cir. 2017) (analyzing a “dynamic entry” as violating the knock-and-announce rule but finding it justified based on the suspect’s prior threats against officers and other factors); and *Doran v. Eckold*, 409 F.3d 958 (8th Cir. 2005) (en banc) (similar).

81. *See generally* G.S. 15A-251(2). If an officer may dispense with knocking and announcing completely, it follows that the officer may take the lesser step of knocking and announcing but waiting only a brief time before entering. *See generally* *State v. Lyons*, 340 N.C. 646, 671–74, 673 (1995) (officers announced their presence at the same time as they hit the door with a battering ram; the reviewing court found that the circumstances posed a risk to the officers’ lives and that an unannounced entry was justified under G.S. 15A-251(2); the fact that the officers did announce their presence was immaterial as there is “nothing in the statute to forbid an announcement of police presence and purpose when officers also face exigent circumstances”).

82. Cases that have resulted in published federal appellate opinions include *Bellote v. Edwards*, 629 F.3d 415 (4th Cir. 2011) (analyzing a dynamic entry as a no-knock entry, finding it unjustified in a child pornography case, and denying qualified immunity); *Terebesi*, 764 F.3d 217 (analyzing a dynamic entry

III. Efforts to Prohibit or to Limit the Use of No-Knock Warrants

In recent years, officials at all levels of government have taken action with respect to no-knock warrants and no-knock entries. There have been far fewer efforts to regulate quick-knock entries. This section of this bulletin summarizes the actions that have been taken by state and local governments across the country and notes the status of each in North Carolina.⁸³

A. Legislative Action

Legislatures in several states have prohibited no-knock warrants. For example, in 2020, Virginia passed a bill providing that “[n]o law enforcement officer shall seek, execute, or participate in the execution of a no-knock search warrant.”⁸⁴ In 2021, Tennessee enacted legislation providing that “[a] magistrate shall not issue a ‘no knock’ search warrant.”⁸⁵

Other states have limited the use of no-knock warrants without banning them entirely. In Kentucky, the legislature limited no-knock warrants to investigations of violent crimes and required officers seeking such warrants to have supervisory approval and to consult with a prosecutor.⁸⁶ It also required such warrants to be executed by SWAT teams or other specially trained personnel, with body cameras or other recording equipment active.⁸⁷ Utah prohibited the use of no-knock warrants in misdemeanor investigations and required that an officer seek supervisory review before applying for a no-knock warrant in a felony case.⁸⁸ The supervisor is required to “ensure reasonable intelligence gathering efforts have been made” and “ensure a threat assessment was completed on the person or building to be searched” before approving the submission of an application for a no-knock warrant.⁸⁹

The North Carolina General Assembly has not enacted legislation restricting no-knock search warrants. Several bills were introduced in the 2021 legislative session that would have limited no-knock warrants or entries, but none passed.⁹⁰

as a no-knock entry in a case involving small quantities of drugs; finding such entry, including the use of “flashbang” devices, unjustified; and denying qualified immunity); *Moore*, 853 F.3d 866 (analyzing a dynamic entry as a no-knock entry and finding it justified in a case where the suspect had previously cursed at and threatened to kill officers and was believed to have a weapon); and *Doran*, 409 F.3d 958 (divided en banc court analyzes dynamic entry to execute a drug search warrant as a no-knock entry; the majority finds the entry reasonable). Quick-knock executions are at issue in a current case pending against the Raleigh Police Department. See Virginia Bridges, *Federal Lawsuit Demands Raleigh Police Change No-Knock and Quick-Knock Raid Policies*, RALEIGH NEWS & OBSERVER, May 6, 2022, <https://www.newsobserver.com/news/local/crime/article261108052.html>; Maggie Brown, *Lawsuit Accuses Raleigh Police of Illegally Raiding Two Families' Homes Using No-Knock Warrant*, WRAL.COM (Feb. 22, 2022), <https://www.wral.com/lawsuit-accuses-raleigh-police-of-illegally-raiding-two-families-homes-using-no-knock-warrant/20153669/>.

83. Federal reforms have generally been limited to federal law enforcement agencies and so are beyond the scope of this bulletin.

84. H.B. 5099, § 1.B., 161st Gen. Assemb., 1st Spec. Sess. (Va. 2020), *amending* VA. CODE § 19.2-56.

85. S.B. 1380, § 5, 112th Gen. Assemb., Reg. Sess. (Tenn. 2021), *amending* TENN. CODE § 40-6-105.

86. S.B. 4, § 1, 2021 Gen. Assemb., Reg. Sess. (Ky. 2021), *adding* KY. REV. STAT. § 455.180, <https://apps.legislature.ky.gov/recorddocuments/bill/21RS/sb4/bill.pdf>.

87. *Id.*

88. H.B. 124, § 3, 2022 State Leg., Gen. Sess. (Utah 2022), *adding* UTAH CODE § 77-7-78.1, <https://le.utah.gov/~2022/bills/static/HB0124.html>.

89. *Id.*

90. See, e.g., H.B. 532, § 6.1, 2021 Gen. Assemb., Reg. Sess. (N.C. 2021) (bill would have required search warrant application to include allegations establishing safety threat before officer would be permitted

B. Court System Action

Individual judicial officials address no-knock warrants by issuing them or by declining to do so, and by ruling on their legality after the fact in the course of suppression hearings or civil lawsuits. In some jurisdictions, the court system has also addressed no-knock warrants and entries administratively. For example, in South Carolina, the chief justice of the state supreme court issued an administrative order concerning no-knock warrants expressing concern that magistrates “do not understand the gravity of no-knock warrants,” do not understand the requirements for issuing them, and routinely issue them “without further inquiry.”⁹¹ The order therefore imposed “a moratorium upon the issuance of no-knock warrants by all circuit and summary court judges of this state.”⁹² The prohibition is to “remain in effect until instruction is provided to circuit and summary court judges statewide as to the criteria to be used to determine whether a requested no-knock warrant should be issued.”⁹³

In Arizona, the chief justice of the state supreme court issued an administrative order creating a Task Force on Issuing Search Warrants.⁹⁴ The mandate of the Task Force was to “review the process for issuing no-knock and nighttime search warrants” and make recommendations. The Task Force recommended a new court rule regarding no-knock warrants and nighttime execution of warrants, plus judicial education about the new rule.⁹⁵

In North Carolina, neither the Chief Justice of the North Carolina Supreme Court nor the Administrative Office of the Courts have publicly convened a body to study no-knock warrants, and no system-wide guidance has been issued to court officials. However, some judicial education regarding no-knock warrants has been offered: a session entitled “No Knock Searches and Arrest Entries” was presented at the superior court judges’ educational conference in June 2021.⁹⁶

to make a no-knock entry pursuant to G.S. 15A-251); S.B. 656, § 6.1, 2021 Gen. Assemb., Reg. Sess. (N.C. 2021) (same); H.B. 656, § 1 2021 Gen. Assemb., Reg. Sess. (N.C. 2021) (bill would have prohibited no-knock entries entirely except in hostage situations). The approach of requiring applicants to include a justification for no-knock entry in the affidavit was recommended by the North Carolina Task Force for Racial Equity in Criminal Justice (TREC). See TREC, *Report 2020*, Recommendation 26, p. 42 (Dec. 2020), https://ncdoj.gov/wp-content/uploads/2021/02/TRECReportFinal_02262021.pdf (proposing that G.S. 15A-251(2) be amended to require that “probable cause [supporting no-knock entry] is specifically listed in the warrant”).

91. Donald W. Beatty, Chief Justice, Supreme Court of South Carolina, Order, Issuance of No-Knock Search Warrants by Circuit and Summary Court Judges (July 10, 2020), <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-07-10-01> (citing the chief justice’s administrative role under article V, section 4 of the state constitution).

92. *Id.*

93. *Id.*

94. Robert Brutinel, Chief Justice, Arizona Supreme Court, Admin. Order No. 2021-34, Establishment of a Task Force on Issuing Search Warrants (Mar. 10, 2021), <https://www.azcourts.gov/Portals/22/admorder/Orders21/2021-34.pdf?ver=2021-03-10-130052-137>.

95. Arizona Supreme Court, *Report of the Task Force on Issuing Search Warrants to the Arizona Judicial Council* 10–13 (Oct. 21, 2021), <https://www.azcourts.gov/Portals/0/ISWReportOctober2021.pdf> (proposing a new court rule that would require an “application for an unannounced entry” to “discuss safety factors,” including seven enumerated considerations such as the nature of the criminal activity at issue; any history of violence among known occupants; and the presence of other persons, including children, the elderly, and persons experiencing mental health crises).

96. Robert C. Ervin, North Carolina superior court judge, “No Knock Searches and Arrest Entries,” presentation at the UNC School of Government’s Superior Court Judges Conference (June 16, 2021) (PowerPoint slides available at https://www.sog.unc.edu/sites/default/files/course_materials/No-Knock%20Search%20Warrants_Ervin.pdf).

C. Local Board Action

In some jurisdictions, local governing boards have directed law enforcement agencies to limit or eliminate no-knock entries. In Louisville, Kentucky, where Breonna Taylor was killed, the city council voted unanimously to prohibit no-knock entries.⁹⁷ The city council in Aurora, Colorado, adopted a similar measure.⁹⁸

The city council in Salisbury, North Carolina, confronted the issue of no-knock warrants after the 2016 shooting of Ferguson Claude Laurent Jr. during the execution of such a warrant.⁹⁹ The city council sought guidance from the North Carolina Department of Justice, which advised the council that local regulation of search warrants was preempted by the comprehensive statutory scheme in Chapter 15A of the General Statutes.¹⁰⁰ That advice relied in part on a previous advisory letter from the state Department of Justice concerning the Fayetteville City Council's attempt to direct the police department not to conduct certain consent searches. The Department of Justice concluded that consent searches are allowed by G.S. 15A-221 and that Chapter 15A represents a "complete and integrated regulatory scheme" concerning criminal procedure that local governments may not alter.¹⁰¹

Perhaps in part because of this advice from the Department of Justice, the Salisbury City Council ultimately did not issue any direction to the police department. As far as the author is aware, nor has any other local government board in North Carolina voted to ban or to restrict no-knock warrants.

97. See Rebekah Reiss & Theresa Waldrop, *Louisville Council Passes "Breonna's Law" Banning No-Knock Warrants*, CNN.COM (June 11, 2020), <https://www.cnn.com/2020/06/11/us/louisville-breonnas-law-no-knock-warrants-ban/index.html> (noting that the council vote was 26-0).

98. See John Aguilar, *Aurora Becomes First Colorado City to Ban "No-Knock" Warrants*, DENVER POST, Oct. 19, 2020, <https://www.denverpost.com/2020/10/19/aurora-police-no-knock-warrant-breonna-taylor/> (noting that the city council voted to ban "no knock raids" in the wake of Ms. Taylor's death).

99. See Amanda Raymond, *Autopsy: Laurent Had 10 Gunshot Wounds from Execution of No-Knock Warrant*, SALISBURY POST, Jan. 12, 2017, <https://www.salisburypost.com/2017/01/12/autopsy-laurent-shot-10-times-execution-no-knock-warrant/>.

100. Letter from Hal F. Askins, Special Deputy Attorney General, to F. Rivers Lawther, Jr., Salisbury City Attorney (Feb. 24, 2017) (on file with author). See also City of Salisbury, N.C., *Rumor Control* (May 30, 2017), <https://salisburync.gov/Government/Communications/Rumor-Control> (stating that the Attorney General advised the city that "a local government agency cannot restrict law enforcement tactics that are outlined in . . . state statute."). After the city council in Lexington, Kentucky, voted to prohibit no-knock warrants, the Fraternal Order of Police sued, arguing in part that the ban was preempted by state law allowing no-knock entries under certain circumstances. The suit was dismissed by the trial court. Order, Fraternal Order of Police, Bluegrass Lodge No. 4 v. Lexington-Fayette Urban Cnty. Gov't, Civil Action No. 21-CI-01972 (entered Dec. 8, 2021) (finding that state law did not create a "comprehensive scheme" sufficient to preempt local measures concerning no-knock warrants). An appeal remains pending as of this writing. See Kentucky Ct. App. case no. 2022-CA-0029.

101. Letter from John J. Aldridge III, Special Deputy Attorney General, to Tom Bergamine, Fayetteville Chief of Police (Feb. 21, 2012) (on file with author).

D. Agency Action

Many law enforcement agencies have adopted policies limiting or prohibiting the use of no-knock warrants. Because agency reforms are so numerous, this section focuses only on steps taken by North Carolina agencies. Agencies in this state have considered or implemented at least the following policies:

- **Prohibiting no-knock entries.** Some agencies have determined that there are no circumstances under which no-knock warrants or entries should be used. For example, the Buncombe County Sheriff's Office has announced that it will not seek or execute no-knock warrants.¹⁰² The Raleigh Police Department has taken the same position.¹⁰³ Other agencies likewise have formal or informal policies prohibiting no-knock entries.¹⁰⁴
- **Limiting no-knock warrants to narrow circumstances.** Some agencies have determined that no-knock warrants should be obtained, or no-knock entries made, only under narrow circumstances. For example, the Asheville Police Department policy is that it will “not seek or serve ‘no-knock’ search warrants unless circumstances exist that would compromise the safety of the officer(s) or another individual,” such as in a hostage situation.¹⁰⁵ This is in line with G.S. 15A-251(2) but is more restrictive than federal constitutional law allows, as it does not permit no-knock entry to prevent the destruction of evidence.¹⁰⁶
- **Requiring supervisory review.** Some agencies require supervisory or legal review of some or all search warrant applications. For example, the Burlington Police Department policy provides that “No officer should apply for or execute a ‘No Knock’ search warrant, without the permission of the Chief of Police or his designee.”¹⁰⁷ The Salisbury Police Department

102. Andrew Jones, *Update: Buncombe Sheriff Candidates Speak on Miller's New Ban on No-Knock Warrants*, ASHEVILLE CITIZEN TIMES, Apr. 26, 2022, <https://www.citizen-times.com/story/news/2022/04/26/buncombe-county-sheriff-bans-no-knock-warrants/7451502001/>.

103. Joe Fisher, *RPD Says They Don't Use No-Knock Warrants Amid Criticism from Civil Rights Groups*, WRAL.COM (Feb. 23, 2022), <https://www.wral.com/rpd-says-they-don-t-use-no-knock-warrants-amid-criticism-from-civil-rights-groups/20155737/> (quoting police chief's statement that “As far as I am concerned and where I stand, that will be the position of this organization, that we do not seek or utilize no-knock warrants”).

104. See, e.g., CHARLOTTE-MECKLENBURG POLICE DEP'T, INTERACTIVE DIRECTIVES GUIDE, Directive 500-004-D, “Search Warrants,” § IV.C.3.a (effective Sept. 15, 2022), <https://charlottenc.gov/CMPD/Documents/Resources/CMPDDirectives.pdf> (“CMPD will not seek or serve ‘no-knock’ search warrants.”); FAYETTEVILLE POLICE DEP'T, POLICY MANUAL, “Operating Procedures” ch. 4, § 4.2.2.B (effective Mar. 4, 2022), <https://www.fayettevillenc.gov/home/showpublisheddocument/21665/637976242264870000> (stating that “THE EXECUTION OF NO-KNOCK WARRANTS IS PROHIBITED. UNDER NO CIRCUMSTANCES WILL AN OFFICER ATTEMPT TO OR MAKE ENTRY INTO A PREMISE WITHOUT GIVING NOTICE OF HIS/HER IDENTITY AND PURPOSE FOR BEING ON THE PREMISES,” but later stating that “[i]f there is probable cause to believe that giving notice would endanger the life or safety of any person, then forcible entry may be made without notice. Facts supporting this belief should be included in the search warrant affidavit if available at the time the affidavit is drafted.”). Additionally, several agency attorneys have advised the author that their agencies do not permit no-knock entries.

105. Jones, *supra* note 102.

106. Regarding the relationship between federal constitutional law and the statute, see note 35 and accompanying text, above.

107. BURLINGTON, N.C., POLICE DEP'T, DIRECTIVES, p. 10, (effective Feb. 19, 2021).

requires that all applications for no-knock warrants be reviewed by the chief of police and another senior officer.¹⁰⁸ The Raleigh Police Department requires that a supervisor be present for the execution of all residential search warrants, no-knock or otherwise.¹⁰⁹

- **Limiting execution to tactical personnel.** Because no-knock entries are typically made under circumstances involving danger to officers and civilians, some agencies require that such entries be made only by officers with advanced tactical training, such as SWAT teams. For example, in Greensboro, all no-knock warrants must be served by the Special Response Team.¹¹⁰

Conclusion

In recent years, no-knock warrants and unannounced entries have been the subject of tremendous public interest. Yet they have not been the focus of many significant appellate opinions over the past decade, likely in part because both the state and federal courts have ruled that the suppression of evidence is not the proper remedy for violations of the knock-and-announce requirement. The lack of legal development and the variety of local practices that have emerged over time have left officers, agencies, courts, legislative officials, and the public with little current information about no-knock warrants, no-knock entries, and quick-knock entries. The author hopes that this bulletin provides a starting point for discussion of these important practices and is helpful to those investigating this area of the law.

108. City of Salisbury, N.C., *Rumor Control* (May 30, 2017), <https://salisburync.gov/Government/Communications/Rumor-Control> (noting a new policy requiring “oversight and final approval by Chief Stokes and Major Barnes to obtain future knock and announce warrants”). See also Andrew Jones, *supra* note 102 (noting that the Asheville Police department requires that applications for no-knock warrants be approved by the chief of police or his or her designee).

109. RALEIGH POLICE DEP’T, WRITTEN DIRECTIVES, No. 1110-08, “Searches and Seizures: Investigative Stops and Frisks,” “Search Warrants: Searches of Residences” (effective May 17, 2022), <https://cityofraleigh0drupal.blob.core.usgovcloudapi.net/drupal-prod/COR23/rpd-written-directives.pdf> (“Any officer who intends to execute a search warrant of a residence must ensure that a police supervisor is present.”).

110. Email from Andrea Harrell, Greensboro Police Department Attorney, to author (May 25, 2022) (on file with author).