Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

"No-Knock" Warrants and Other Law Enforcement Identification Considerations

June 23, 2020

In the wake of protests over the death of George Floyd while in police custody, some Members of Congress have expressed interest in passing legislation that would alter the policing practices of federal, state, and local law enforcement officers. One set of practices addressed in recently introduced reform legislation concerns law enforcement identification. The issue has arisen in at least two recent contexts. First, reports of federal law enforcement officers responding to protest activity without displaying badges or other identifying information have prompted questions about whether police may forego such identification when acting in an official capacity in public. Second, questions have arisen as to when officers are required to identify themselves before entering a home when executing a search warrant. An issue of particular focus in this context has been so-called "no-knock" warrants—that is, warrants that permit law enforcement officers to enter a home without the need to identify their authority and purpose beforehand. In one case that has received renewed attention, a Louisville woman named Breonna Taylor was shot and killed in her home by police during execution of such a warrant.

Given congressional interest and legislation that has recently been introduced on both fronts, this Legal Sidebar provides an overview of law enforcement identification issues in the context of (1) public identification and (2) identification prior to execution of a warrant. This Sidebar additionally considers how several bills in the 116th Congress could alter practices on both fronts.

Public Identification of Law Enforcement Officers

Overview

According to various reports, certain federal law enforcement officers at recent protests did not wear badges or nameplates and, in some cases, refused to identify themselves when asked. The presence of unidentified law enforcement officers has raised the question of when, if ever, police must identify themselves in public. The answer to that question, however, will depend on the jurisdiction in which the officer operates and, potentially, the agency or department at issue. At the federal level, there is no generally applicable requirement in statute that federal law enforcement officers identify themselves or display identifying information on their person when acting in public. Additionally, although individual agencies could have identification requirements through regulation, it appears that most do not. Whether

Congressional Research Service
https://crsreports.congress.gov
LSB10499

and when officers are required to display identifying information or identify themselves upon request is thus generally governed by internal agency policies, to the extent such policies exist. For instance, with respect to Bureau of Prisons (BOP) officers who were present at recent protests without identification, BOP Director Michael Carvajal observed that such officers "normally operate within the confines of [the] institution" and thus "don't need to identify [them]selves."

At the state and local level, requirements for public law enforcement officer identification vary by jurisdiction. For example, the State of California has a general statutory requirement that "uniformed peace officer[s] . . . wear a badge, nameplate, or other device which bears clearly on its face the identification number or name of the officer," and the Baltimore Police Department has detailed requirements for displaying issued badges and furnishing an officer's "name and badge number to any person upon request." That said, while a comprehensive survey is beyond the scope of this Sidebar, some states or localities may lack identification requirements for their law enforcement officials.

Separate from any express requirements in statute, regulation, or policy, the Fourth Amendment to the U.S. Constitution may require that an officer publicly identify him or herself *as an officer*, though not necessarily provide his or her name or badge number, in certain situations. The Fourth Amendment requires "searches and seizures" by law enforcement to be reasonable. A "seizure" for purposes of the Amendment can include a "stop" made "without any physical contact, such as when an officer makes certain displays of force like pointing a weapon or using language or a tone of voice that indicates compliance is mandatory." When a seizure occurs, its reasonableness under the Fourth Amendment will depend on the facts and circumstances of the particular case. And one circumstance that may weigh against the constitutionality of a seizure is where the officer involved is not in uniform and fails to identify him or herself as law enforcement. One federal appellate court has pronounced that "it is generally not a reasonable tactic for plainclothes officers to fail to identify themselves when conducting a stop." Nevertheless, because the reasonableness of a seizure is ultimately fact-dependent, failure to identify might not always be considered unreasonable. As the same court noted, "certain dangerous circumstances may permit plainclothes officers to initiate stops without identifying themselves, but that is . . . a rare exception, not the rule." Regardless, it appears that wearing a uniform or some other display of law enforcement involvement such as a marked patrol car may be sufficient identification to be considered reasonable even if there is no verbal identification. And even assuming a constitutional violation, other judicial doctrines may limit available remedies.

Legislation in the 116th Congress

Recently introduced legislation would impose new identification requirements on federal law enforcement officers (as well as members of the armed forces). First, the PEACE Act, one section of the Justice in Policing Act of 2020 (H.R. 7120), would impose a limited requirement that federal law enforcement officers identify themselves as officers, among other things, "[w]hen feasible" prior to using force against any person. Separately, bills introduced in the House and Senate would require federal officers "engaged in any form of crowd control, riot control, or arrest or detainment of individuals engaged in an act of civil disobedience, demonstration, protest, or riot in the United States" to "at all times display identifying information in a clearly visible fashion," including the agency, last name, and badge number of the officer. It thus appears that the latter bills seek to respond directly to the recent reports of unidentified federal law enforcement officers policing protests following George Floyd's death, as the legislation would only apply to specified activity and would not impose broader identification requirements. Additionally, because terms such as "crowd control" and "clearly visible fashion" are not defined, the bills would appear to give some discretion to individual agencies to determine when the identification display requirements are applicable and how to comply with them. The bills might also raise questions of enforcement, as they do not include a remedy, such as a penalty or other enforcement mechanism, for failure to comply with the identification provisions.

Law Enforcement Identification When Executing a Warrant

Overview

As noted above, amid recent calls for legislative changes to police practices, another area that has received attention concerns the authority for law enforcement officers to execute a warrant by entering a home without first seeking consensual entry by announcing themselves and their purpose. As a default, law enforcement officers must comply with the knock and announce rule— an "ancient" common-law doctrine, which generally requires officers to knock and announce their presence before entering a home to execute a search warrant. The Supreme Court has interpreted the Fourth Amendment's reasonableness requirement as generally mandating compliance with the knock and announce rule. The knock and announce rule is also codified in a federal statute, but the Supreme Court has interpreted that statute as "prohibiting nothing" and "merely [authorizing] officers to damage property [upon entry] in certain instances." When officers violate the knock and announce rule, they may be subject to civil lawsuits and "internal police discipline." However, in *Hudson v. Michigan* the Supreme Court curtailed the remedies available for knock and announce violations by concluding that evidence obtained following such a violation is not subject to the exclusionary rule, which "prevents the government from using most evidence gathered in violation of the United States Constitution."

There are two closely related exceptions to the knock and announce rule, the first of which is for exigent circumstances. Exigent circumstances are those where the "police have a 'reasonable suspicion' that knocking and announcing would be dangerous, futile, or destructive to the purposes of the investigation." Typical examples include instances where police believe that the suspect is armed or likely to destroy evidence. Exigent circumstances must be based on the "particular circumstances" of each case, and may not amount to a "blanket exception to the [knock and announce] requirement" for "entire categor[ies] of criminal activity." For example, the Supreme Court rejected an assertion that "police officers are *never* required to knock and announce their presence when executing a search warrant in a felony drug investigation." Instead, "in each case, it is the duty of a court confronted with the question to determine whether the facts and circumstances of the particular entry justified dispensing with the knock-and-announce requirement."

The second exception is for no-knock warrants, which provide explicit authority for judges to grant so-called "no-knock" entry in the warrant itself, upon a finding of certain factual predicates. The justifications for no-knock warrants are similar to, and sometimes described interchangeably with, the concept of exigent circumstances. No-knock warrants, and exigent circumstances, both typically involve instances where there is a risk that knocking and announcing would endanger officers or result in the destruction of evidence. A key distinction between no-knock warrants and no-knock entry pursuant to the exigent circumstances exception is temporal. With no-knock warrants, officers "have anticipated exigent circumstances before searching, and have asked for pre-search judicial approval to enter without knocking." In contrast, when officers lack a no-knock warrant and enter without knocking due to exigent circumstances the justification for bypassing knock and announce requirements may arise as late as when the officers are at the door. A number of states have statutes that authorize magistrate judges to grant no-knock warrants in certain circumstances. Although a federal statute previously authorized no-knock warrants for certain drug searches, Congress repealed it. As a result, the legal status of federal no-knock search warrants is unsettled, although federal officers do sometimes employ no-knock warrants or act pursuant to no-knock warrants issued by state courts when serving on joint state-federal task forces.

From a Fourth Amendment standpoint, the Supreme Court has indicated some approval of "[t]he practice of allowing magistrates to issue no-knock warrants . . . when sufficient cause to do so can be demonstrated ahead of time," assuming that the practice does not amount to a blanket exception to knock and announce. However, one unresolved question is whether federal courts have authority to issue no-

knock warrants in the absence of a statute expressly providing that power, as federal courts "possess only that power authorized by Constitution and statute . . . ." The DOJ has concluded that federal courts are authorized to do so, in large part because the federal rule governing search warrants has been broadly interpreted by courts in other contexts to include specific searches that it does not expressly authorize.

In one sense, the legal vitality of federal no-knock warrants may be of limited practical significance; as noted, federal law enforcement officers may still be permitted to enter a home without knocking and announcing if exigent circumstances are present. However, some courts have concluded that no-knock warrants shield officers from responsibility for independently assessing the existence of exigent circumstances at the time of entry. To the extent that is true, no-knock warrants could permit no-knock entry where the exigent circumstances exception would not—for example, in an instance where the factors that justified the no-knock warrant are no longer present at the time of entry. Relatedly, if a valid no-knock warrant provides such a shield against the responsibility of reassessing exigent circumstances at the time of entry, it could limit the availability of civil lawsuits as a remedy where officers disregard knock and announce requirements pursuant to a no-knock warrant, but exigent circumstances no longer exist at the time of entry.

Legislation in the 116th Congress

At least two bills introduced in the 116th Congress would change the legal landscape regarding unannounced home entry by law enforcement during execution of search warrants. (A third bill, the JUSTICE Act, while not directly altering existing practices, would require reporting on the use of no-knock warrants.) In the House, one section of the Justice in Policing Act of 2020 (H.R. 7120) would establish that search warrants issued in federal drug cases must "require that a law enforcement officer execute the search warrant only after providing notice of his or her authority and purpose." The bill would also require states and localities that receive certain federal funds to "have in effect a law that prohibits the issuance of a no-knock warrant in a drug case."

At least with respect to the requirement for states and localities in H.R. 7120, it appears that unannounced entry would still be permitted in exigent circumstances. The bill only requires states and localities to prohibit the issuance of no-knock *warrants* in drug cases to receive the specified federal funding, and as noted above, it is well-established that law enforcement officers may dispense with the knock-and-announce requirement when they have reasonable suspicion of exigent circumstances regardless of whether the warrant authorizes no-knock entry. The more difficult question may be what effect the requirement for federal drug warrants in H.R. 7120 would have. Under the bill's terms, *all* warrants authorized in federal drug cases would have to expressly *require* that they be executed "only after" a law enforcement officer has provided notice of his or her authority and purpose. As such, were the bill to become law, it could possibly create tension between the "exigent circumstances" exception to the knock and announce rule and the required terms of warrants under the new statute. For example, officers might encounter a situation where knocking and announcing would be "dangerous" or "destructive of the purposes of the investigation" and thus excused under Supreme Court doctrine, yet the terms of the warrant would still expressly require knocking and announcing without exception. In this scenario, the bill's blanket requirement might produce uncertainty as to the officers' authority. That said, though warrants would require notice under the proposal, and officers who did not comply with that requirement would violate the terms of the warrant, it is not clear that no-knock entry in such a circumstance would lead to consequences like evidence exclusion. In other contexts where warrants have been executed in ways that exceed the warrants' terms, some courts have declined to suppress evidence in the absence of "extreme" violations or "flagrant disregard for the terms" at issue. A court might also interpret H.R. 7120 as implicitly incorporating the exigent circumstances exception. The Supreme Court has taken this view of the federal statute that codifies the common-law knock-and-announce rule and has observed more generally that when a magistrate declines to authorize no-knock entry in advance, that decision "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."

Broader legislation introduced in the Senate (S. 3955) would establish that federal law enforcement officers "may not execute a warrant" without providing notice of authority and purpose and would prohibit state and local law enforcement agencies receiving federal funds from executing warrants that do not "require" the serving officer to provide notice of authority and purpose prior to forcible entry. Because S. 3955 does not reference exigent circumstances or otherwise delineate exceptions, the bill raises similar questions as H.R. 7120 regarding its relationship to current knock-and-announce doctrine.

Author Information

Peter G. Berris
Legislative Attorney

Michael A. Foster
Legislative Attorney

Disclaimer