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"NO-KNOCK" WARRANTS

House Bill 4215 (Substitute H-4)
Sponsor: Rep. Frank M. Fitzgerald

House Bill 4296 with committee
amendments
Sponsor: Rep. Thomas C. Mathieu

First Analysis (2-24-93)
Committee: Judiciary

THE APPARENT PROBLEM:

When executing a search warrant, a law enforcement officer must give notice of his or her authority and purpose before entering a house or building. The officer may break down a door or window if he or she is refused admittance, or if it is necessary to "liberate" the officer or another person. Case law has established that a refusal of admittance need not be an "affirmative denial" and that certain exigent circumstances (including the likelihood that evidence is being destroyed) allow an officer to disregard the "knock and announce" requirement. Still, it is up to the officers at the scene to determine whether there is a silent refusal to admit them or if exigent circumstances exist. Law enforcement officials argue that the requirement that officers announce their presence and give the occupants a reasonable opportunity to respond before breaking in leaves officers vulnerable to physical attack and allows suspects the opportunity to destroy evidence. Further, they argue that an officer's use of discretion to determine whether the knock and announce requirement may be disregarded can open the possibility of legal challenges to the execution of a warrant and thus jeopardize a conviction. The state police and others maintain that police need the authority to seek special warrants that allow entry without first knocking and identifying themselves.

THE CONTENT OF THE BILLS:

House Bill 4215 would amend Public Act 189 of 1966 (MCL 780.656), which governs the use of search warrants, to allow an officer to request and execute a search warrant that allowed the officer to enter a house or building immediately without

giving notice of the officer's purpose or waiting until admittance was refused. The circumstances of the warrant would have to involve a felony, and a judge, in issuing the warrant, would have to determine from the officer's affidavit that a delay in executing the warrant could jeopardize the collection of evidence or the safety of the officer or another person. The bill would retain existing provisions that allow an officer to break into a house when admittance is refused or when necessary to liberate himself or herself or another person assisting him or her.

The bill also would provide for liability for property damage caused when an officer executing a search warrant broke into a house. If an officer damaged a house or building or its contents, the unit of government that employed the officer would be liable to the property owner for the damage if the warrant incorrectly described the place to be searched, or if the officer went to and searched the wrong place.

House Bill 4296 would amend Public Act 170 of 1964 (MCL 691.1407), the governmental immunity statute, to specify that the act does not grant to a governmental agency immunity from liability for damage arising under House Bill 4215.

The bills would take effect October 1, 1993. Neither bill could take effect unless both were enacted.

FISCAL IMPLICATIONS:

Fiscal information is not available. (2-23-93)

House Bills 4215 and 4296 (2-24-93)

ARGUMENTS:***For:***

"Knock and announce" requirements can be dangerous: according to testimony before the House Judiciary Committee in 1990, of the eight law enforcement officers believed killed nationwide while executing search warrants in 1988, seven were killed in knock-required situations. Where the law requires officers to knock and give occupants and reasonable amount of time to respond before forcefully entering a building, the delay can allow occupants to prepare an ambush. Further, evidence in drug cases can be quickly and easily destroyed by flushing it down a drain or burning it in acid. Police officers have often been frustrated by such loss of evidence, and are sometimes placed at great risk due to the knock and announce requirements, especially when undertaking a search where there is believed to be a cache of weapons. House Bill 4215 would create a process for obtaining special warrants for no-knock searches, which could aid law enforcement officials in their efforts to stem serious crime, including the war on drugs. It would allow officers to know with certainty that the use of no-knock entry would be legally sanctioned, thus avoiding suppression of evidence because of improper searches, and would help guard the safety of police officers working in the riskiest of situations.

Against:

Whether the authorization of no-knock entry would serve to protect the safety of police officers is a matter of debate. Given the frequent occurrence of violence among people involved in the drug trade, officers may well be more at risk bursting into a drug house unannounced, when they could be mistaken for thieves or people intent on violent revenge, than if they identified themselves as police officers before entering. There is also a great danger when bursting into the wrong house: a person, particularly someone in a violence-ridden neighborhood, may be quick to protect self and family by shooting any stranger breaking in. Further, under current statutory provisions and case law, law enforcement officers already have sufficient authority to enter buildings unannounced when their safety is in jeopardy or when they suspect that evidence is being destroyed. Using the procedure outlined in House Bill 4215 would place the discretion for deciding upon a no-knock entry with the judge, away from the scene, rather than with the

officers who are at the scene and better able to assess the situation.

Against:

House Bill 4215 would erode the Fourth Amendment right of citizens to be secure in their homes and protected against unreasonable searches. Knock and announce requirements exist because the Fourth Amendment demands a certain propriety on the part of police officers, even after they have been authorized to invade a person's privacy by issuance of a valid search warrant. Moreover, the whole concept of no-knock entry presumes the police are correctly targeting suspects of crime, but it is clear that cases of officers making mistakes and entering into the homes of innocent citizens are far from unheard of. The Rodney King and Malice Green cases have made many citizens understandably wary of an expansion of police powers, especially with regard to how those powers might affect African-Americans, yet it is an expansion of police powers, not protection of citizens, that appears to lie at the heart of the bill.

Response:

In providing for no-knock warrants when a person or evidence is endangered, the bill would echo case law: these are "exigent circumstances" that Michigan courts have recognized as excusing compliance with the knock-and-announce requirement. Rather than extending extraordinary powers to police, the bill would codify existing practice, with the additional safeguard of providing for review by a neutral third party, the issuing judge. No-knock provisions would be further balanced by making police departments responsible for damage caused when breaking into the wrong house.

Against:

House Bill 4215 is overbroad in several respects. First, it demands nothing in the way of substantiation from an officer seeking an no-knock warrant, and there are few warrant situations where an officer couldn't claim concerns for self or evidence; the bill would operate to make the exception the rule. Second, the bill would apply to all felony offenses, when the strongest need, if any, is with regard to drug-related search warrants. Considering the many doubts over whether no-knock legislation is justified, the bill should at least be limited to search warrants issued in connection with drug investigations.

Against:

It is unclear how House Bill 4215 might affect an officer's ability to act upon "exigent circumstances" unfolding at the scene. At present, an officer may disregard the knock-and-announce requirement and enter immediately if justified by exigent circumstances, as defined by case law. However, the bill inserts a judicial determination into the equation, raising the question of whether officers would retain the discretion that they now have to make on-the-scene decisions. In other words, if a judge denied a no-knock warrant, could an officer still enter immediately if exigent circumstances (such as reason to believe that evidence was about to be destroyed) arose at the scene?

A representative of the Michigan Conference of the NAACP testified in opposition to the bills. (2-23-93)

A representative of the Michigan Farm Bureau testified that the bureau opposes further expansion of police powers. (2-23-93)

The Michigan District Judges Association is reviewing the bills and has no position at this time. (2-23-93)

For:

The bills would improve upon current law by making police departments responsible for the damage they cause when breaking into the wrong house. As things are now, the unfortunate homeowner can be left with repair bills of hundreds of dollars when police break doors, locks, and more in their mistaken efforts.

Against:

The damage provisions can be criticized from opposing points of view. On the one hand, they would make police departments liable for property damage caused even if they targeted the right house, if the description in the warrant was incorrect. Liability could grow out of a mere technicality. On the other hand, the bills would do nothing to protect against property damage caused when officers run amok and cause unnecessary damage in a house; even though the house may be the right one, the property losses may affect innocent parties.

POSITIONS:

The Fraternal Order of Police supports the bills. (2-23-93)

The Department of State Police supports the concept of no-knock legislation. (2-23-93)

The State Appellate Defender's Office opposes the bills. (2-23-93)

The ACLU of Michigan opposes the enactment of "no-knock" legislation. (2-17-93)