

To: Attorney General Phil Weiser
From: No-Knock Warrant and Forced Entry Study Group enacted by HB21-1250
Date: December 31, 2021
Re: Recommendations

Overview

Enacted under Colo. Rev. Stat. 24-31-114(2)(a), a Study Group was formed and tasked to review No-Knock Warrants & Forced Entry with the requirement to turn in their recommendations and findings to the Attorney General by December 31, 2021. The Attorney General shall include the study group's findings in its annual report before the House of Representatives and Senate Committees of Reference pursuant to section 2-7-203 made during the 2022 legislative session. The following 12 members were appointed to the Study Group by the relevant appointing authorities as required by Section 24-31-114(2)(a), C.R.S.

- **Amy Foley** – a representative of the district attorneys appointed by the executive director of the Colorado district attorneys' council;
- **Tony Spurlock** – a representative of county sheriffs appointed by the director of a statewide organization representing sheriffs;
- **Daniel McCasky** – a representative of the chiefs of police appointed by the president of a statewide organization of chiefs of police;
- **Michael Kim** – a representative of police officers appointed by the president of a statewide organization representing police officers;
- **Travis Weiner** – the state public defender or his or her designee;
- **Tristan Gorman** – a criminal defense attorney appointed by a statewide organization representing criminal defense attorneys;
- **Juston Cooper** – one of two representatives of statewide organizations advocating criminal justice or sentencing reform appointed by the attorney general;
- **LaQunya L. Baker** – one of two representatives of statewide organizations advocating criminal justice or sentencing reform appointed by the attorney general;
- **Sen. Rhonda Fields** – one of four legislative members appointed by House and Senate leadership;
- **Sen. John Cooke** – one of four legislative members appointed by House and Senate leadership;
- **Rep. Serena Gonzales Gutierrez** – one of four legislative members appointed by House and Senate leadership; and
- **Rep. Mike Lynch** – one of four legislative members appointed by House and Senate leadership.

Procedure

Over the course of six meetings, the Study Group completed the requirements under C.R.S. 24-31-114(3)(a)-(e) to survey evidence-based policies and national best practices regarding procedures related to the use of no-knock warrants; review the efficacy of the use of no-knock warrants and forced entry; survey policies and procedures in law enforcement agencies throughout the state regarding the use of no-knock warrants and forced entry; and

gather stakeholder feedback regarding the execution of no-knock warrants and forced entry. In its final meeting on December 17, 2021, the group arrived at consensus agreement on five recommendations, while also providing three additional recommendations that were not in full consensus. All these recommendations are to convey the broad concepts and ideas discussed by the study group. Specific details with regards to actual statutory language and policy will require further stakeholding.

Consensus Recommendations

The Study Group arrived at **consensus agreement** on these five recommendations:

1. Acknowledgment that No-Knock Warrants (“NKW”) are undesirable and should be avoided.
 - a. The Study Group agrees that NKWs are undesirable and dangerous for both residents and law enforcement officers. As such, the Study Group recommends minimizing the practice of NKW to the greatest extent possible and reserving it only for extenuating circumstances.
2. Changing conditions for granting NKW and limiting the scope of use.
 - a. The Study Group recommends that NKW should only be granted if there is a demonstrable-nexus to violent crime, such as active warrants for violent offenses concerning the alleged occupant of the home, and if there is evidence of, or a good-faith basis for, the subject of the search having possession of, or access to, deadly weapons. NKW should not be utilized to prevent the destruction of evidence, such as narcotics.
3. Requiring specialized training for officers who conduct NKW.
 - a. The Study Group recommends that NKW should only be served by specially trained officers, such as those who have received tactical entry training.
4. Accountability after NKW are performed.
 - a. The Study Group recommends that if there is clear negligence by law enforcement, restitution shall be made to any resident that experienced damage to their property or themselves.
5. Data collection and reporting.
 - a. The Study Group recommends that data be collected regarding the race, ethnicity, gender, and location of the subject of all warrants, both requested and executed. Law enforcement should be collecting and reporting data as statutorily required by Senate Bill 20-217 and House Bill 21-1250.

Additional Recommendations:

The Study Group also put forward three recommendations that **did not reach consensus agreement**:

6. Codifying and addressing the use of Knock-and-Announce Warrants (“KAAW”) as well.
 - a. Some members of the Study Group recommend that, when requesting a search warrant, law enforcement must explicitly state that if a warrant is not a NKW, then it is a KAAW, and codifying rules for KAAW under statute instead of relying on case law. Rules would include requiring officers to wait a determined amount of time before entering the residence.
 - i. Members in agreement: Juston Cooper, LaQunya L. Baker, Travis Weiner, Tristan Gorman, Rep. Serena Gonzales-Guitterez, Sen. Rhonda Fields.

- ii. Members opposed: Chief Daniel McCasky, Michael Kim
- 7. Providing a Racial Impact Statement in addition to data collection and reporting.
 - a. A couple members of the Study Group recommend requiring analysis of the breakdown of requested warrants by race, specifically calling out any disproportionate impact on subjects who identify as BIPOC.
 - i. Members in agreement: Juston Cooper, Rep. Serena Gonzales-Gutierrez.
 - ii. Members opposed: Chief Daniel McCasky.
- 8. Use of evidence from no-knock warrants in court.
 - a. A couple members of the Study Group recommend that any evidence obtained from a no-knock warrant in violation of the execution requirements shall not be admitted into evidence in any prosecution related to this search.
 - i. Member in agreement: Rep. Serena Gonzales-Gutierrez, Sen. Rhonda Fields.
 - ii. Members opposed: Chief Daniel McCasky, Michael Kim.