

INSTRUCTIONAL ORDER

April 2016

Immediately

V.6:3

Distribution: All Employees

Subject: **WARRANTLESS FELONY ARRESTS**

Index as:	Exigent Circumstances Felony Arrest, Warrantless	Knock and Announce Probable Cause	Warrantless Felony Arrests
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Accreditation Standards: 1.2.5
 Cross Reference: G.O. I-3, Legal Authority of Police Officers
 §901.15, F.S.S.
 §901.19, F.S.S.
 §933.09, F.S.S.
 Replaces: I.O. V.6:3, Warrantless Felony Arrests (November 1, 2014)

This Order consists of the following sections:

- I. Purpose
- II. Policy
- III. Definitions
- IV. Probable Cause for Warrantless Felony Arrest
- V. Warrantless Felony Arrest in Public Places
- VI. Warrantless Felony Arrest in Suspect's Residence
- VII. Warrantless Felony Arrest in Residence of Third Party
- VIII. Knock and Announce
- IX. Exceptions to Knock and Announce and the Warrant Requirement
- X. After the Arrest/Entry: Scope of the Search

I. PURPOSE

This Order establishes guidelines and Departmental policy for making warrantless entries into a residence or other building to make felony arrests.

II. POLICY

It is the policy of this Department that an Officer shall not forcibly enter any residence or other building for the purpose of making a FELONY arrest without first announcing their authority and purpose, UNLESS the Officer is in "hot pursuit" or has an articulable reason to believe that they are faced with one or more other "exigent circumstances." Absent a hot pursuit or the presence of one or more other exigent circumstances, Officers shall comply with the knock and announce provisions of §901.19(1), F.S.S. An Officer may **NOT** enter a residence in hot pursuit for a MISDEMEANOR offense.

III. DEFINITIONS

A. EXIGENT CIRCUMSTANCES – one or more of the following:

1. Hot Pursuit – as used in this Order, means a pursuit during which one or more Officers involved:
 - a. Is in an actual pursuit of the suspect;
 - b. Has reason to believe that the suspect is aware of the pursuit;
 - c. Actually observes the suspect enter a residence or other building, and
 - d. Is in such close pursuit as to be able to enter the residence or other building immediately after the suspect.
2. Danger to police;
3. Danger to themselves or others;
4. Crime in progress;
5. Crime/homicide scene;
6. Medical emergency;
7. Destruction of evidence;
8. Flight or escape risk.

B. Probable Cause – More than bare suspicion. “Probable cause exists where the facts and circumstances within [the Officer’s] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that an offense has been or is being committed.” *Brinegar v. United States*, 338 U.S. 160, 175 (1949).

C. Knock and Announce – “If a peace officer fails to gain admittance after they have announced their authority and purpose in order to make an arrest, either by a warrant or when authorized to make an arrest for a felony without a warrant, they may use all necessary and reasonable force to enter any building or property where the person to be arrested is, or is reasonably believed, to be.” §901.19(1), F.S.S.

IV. PROBABLE CAUSE FOR WARRANTLESS FELONY ARREST

A. An Officer may make a warrantless felony arrest, when:

1. A felony has been committed and they reasonably believe that the person committed it; or
2. The Officer reasonably believes that a felony has been or is being committed and that the person to be arrested has committed or is committing it. §901.15(2)(3), F.S.S.

V. WARRANTLESS FELONY ARREST IN PUBLIC PLACES

If probable cause exists, no warrant is required to apprehend a suspected felon in a public place. *Steagald v. United States*, 451 U.S. 204 (1981).

VI. WARRANTLESS FELONY ARREST IN SUSPECT’S RESIDENCE

A. The Fourth Amendment to the U.S. Constitution, made applicable to the States by the Fourteenth Amendment, prohibits Police Officers from making a warrantless and non-consensual entry into a suspect’s residence/premises in order to make a routine felony arrest. *Payton v. New York*, 445 U.S. 573 (1980) (emphasis supplied).

B. EXCEPTION – A warrantless and non-consensual entry into the residence/premises of the suspect, to effect an arrest on a felony suspect, may be made where valid exigent circumstances exist, and the Officer can sufficiently articulate and document them for presentation in court.

VII. WARRANTLESS FELONY ARREST IN RESIDENCE OF THIRD PARTY

A. With or without an arrest warrant, a third person's home **may not** be searched for a non-resident defendant absent such person's consent, a search warrant, or exigent circumstances. *Steagald v. United States*, 451 U.S. 204 (1981).

B. EXCEPTION – A warrantless or non-consensual entry into the residence/premises of a third person to effect an arrest of a non-resident may be made where valid exigent circumstances exist, and the Officer can sufficiently articulate and document them for presentation in court.

VIII. KNOCK AND ANNOUNCE

A. Sections 901.19 and 933.09, Florida State Statutes relate to what is commonly referred to as the “knock and announce” rule. Essentially, these statutes allow a Law Enforcement Officer, after being denied access into a building, to use force in order to gain entry. The Florida Supreme Court has identified four elements which must be complied with prior to forceful entry. These elements are as follows:

1. The Officer must first knock or otherwise make known their presence.
2. The Officer must announce their authority; i.e., Police Officer - Deputy Sheriff - FDLE Special Agent, etc.
3. The Officer must also announce their reason for being there; i.e., arrest warrant, search warrant, etc.
4. Finally, the Officer must give the occupant(s) an opportunity to either permit entry or deny admission.

B. In addition to deference to the historical tradition of the sanctity of the home, one court has given as the purpose for this requirement as:

1. The prevention of violence and physical injury to the police and the occupants;
2. The unexpected exposure of the private activities of the occupants; and
3. The property damage resulting from forced entry.

C. Additional Circumstances:

1. Absent consent or exigent circumstances, Officers must comply with the knock and announce requirements in §901.19 or §933.09, F.S.S., as applicable. In addition, before entry into a defendant's residence to arrest for a “routine” felony, an arrest warrant is required (*Payton*). If entering the residence of a third party to arrest a non-resident, a search warrant for the person to be arrested is required (*Steagald*).

2. Florida courts have extended the protection afforded by the knock and announce statute to motel and hotel rooms.

3. In circumstances where forceful entry is made, an Officer must announce both their authority and purpose. Thus, where an Officer knocked on the door, announced their authority but not their purpose, waited for ten minutes then made a forceful entry, the drugs found when they made an arrest on a warrant were suppressed.

4. After knocking and announcing, an Officer must be refused entry before a forceful entry may be made. The refusal may be verbal or may be assumed, after an appropriate interval of time or observation of the occupant(s) acting inconsistent with granting entry. For example, an Officer knocks, announces authority and purpose, then observes the occupants run to the rear of the house.

5. In cases where the evidence was clear that forceful entry was made simultaneously, or nearly simultaneous to announcing authority and purpose, the knock and announce statute has been violated.

IX. EXCEPTIONS TO KNOCK AND ANNOUNCE AND THE WARRANT REQUIREMENT

A. The courts, including the U.S. Supreme Court, provide the following exceptions to the knock and announce requirement:

1. Consent:

a. The Florida Supreme Court has held that no particular form of consent to enter a home is required. A resident may verbalize consent to enter a home or express consent by actions. The following case summaries provide examples of consensual entry:

1) Officers knocked on a motel room door and identified themselves; and the defendant opened the door, identified himself, then turned and walked into the room leaving the door open.

2) Officers knocked on the door and entered a residence after the defendant's 15-year-old-son consented to their request to enter.

3) An Officer knocked on the defendant's door, identified himself to the defendant through a window. He mentioned he had previously spoken to him with regard to the death of defendant's wife. The defendant opened the door and stepped back. The officer entered and arrested the defendant for homicide.

b. Consensual entry by ruse (fraud, deception, or misplaced confidence) can be valid consent, which precludes the need to identify and announce purpose.

2. Exigent Circumstances – The courts have recognized a number of circumstances which justify non-compliance with the knock and announce or warrant requirement.

X. AFTER THE ARREST/ENTRY: SCOPE OF THE SEARCH

A. After making a lawful, warrantless arrest, an Officer has the right to conduct a search of the person arrested incidental to the arrest. Even searches of the person made prior to an arrest may be upheld as incidental to arrest if probable cause to make the arrest existed at the time of the search. However, the legality of that search depends on the legality of the arrest. Also incidental to the arrest, an Officer may search the area within the defendant's immediate control.

B. If a search of all or part of a premises is to be justified as a search incidental to arrest, the arrest must take place inside the premises. The area that may be searched depends on the circumstances of each case. The defendant may be a "gymnast," or may be disabled, or the room may be large or small with many hiding places or none. The defendant may meekly surrender or lead the Officers on a chase through the premises. If a search is made of an area incidental to arrest, the officer must be able to testify as to facts that show that the area was within the arrestee's control.

C. While making an arrest inside a building or residence, the U.S. Supreme Court has approved for warrantless "protective sweeps" when the searching Officer possesses a reasonable belief, based on specific and articulable facts which taken with the rational inferences from those facts, would warrant a reasonably prudent Officer to believe the area to be swept harbors an individual posing a danger to those on the arrest scene.

D. The protective sweep may extend only to a cursory inspection of those spaces where a person may be found, lasting no longer than is necessary to dispel the reasonable suspicion of danger and, in any event, no longer than it takes to complete the arrest and depart the premises.

E. Where two Officers made the arrest and, while one secured the person arrested, the other swept the apartment and found narcotics under a baseball cap and inside a paper bag in another room; the narcotics were suppressed as they were found in a place that could not hide a person.

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Chief of Police