



LEGAL BULLETIN #2001-04 OFFICE OF LEGAL AFFAIRS

WARRANTLESS ENTRY - EXIGENT CIRCUMSTANCES AND HOT PURSUIT



Legal Flag:

Two situations in which courts have allowed officers to make a warrantless, non consensual entry into an area where a person has a reasonable expectation of privacy are: (1) When there are exigent circumstances and/or (2) when an officer is in hot pursuit.

The Fourth Amendment to the U.S. Constitution guarantees “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” The Fourth Amendment generally prohibits police from entering a private residence without a warrant.

There are consequences when an officer makes an unconstitutional entry into a residence. The most obvious is that the criminal case is often lost because evidence is suppressed.

Other consequences can be more personal. For example, in some cases, the officer could face Departmental discipline up to and including termination. Another possibility is that the officer could be sued and face devastating financial consequences as well. While the City may be held liable for compensatory damages there may also be an award to the plaintiff for punitive damages. Under state law, punitive damages cannot be paid by the City, instead, the officer must pay them. As the name suggests, punitive damages are designed to punish. If the jury finds that the officer acted with malice, willfulness or callous and reckless indifference to the rights of others, she may be held liable. Financial information gathered during depositions regarding aspects of the officer’s financial status may be brought before the jury and the officer’s financial assets will be at risk.

Does this mean that you should never be willing to make a warrantless entry? No. What it does

mean is that you should examine each situation carefully and follow the law to the best of your ability.

In the case of *Payton v. New York*,¹ the U.S. Supreme Court recognized a legal exception to the Fourth Amendment warrant requirement in cases that involve an “emergency or dangerous situation.” Following the ruling in *Payton*, the Illinois Supreme Court, in *People v. Abney*,² discussed a set of factors that are still, twenty years later, the cornerstone for determining whether an officer was justified in making a warrantless, non consensual entry.

Exigent Circumstances permit police officers to make a warrantless entry to effect an arrest when a sudden and unexpected happening or an unforeseen occurrence calls for immediate action or remedy and there is no time to get a warrant.

The purpose of this Legal Bulletin is to help you determine whether the facts of a particular situation you may confront constitute exigent circumstances. **The principle that should guide you is objective reasonableness.** Each case will be evaluated based upon the totality of the circumstances known to the officer at the time of the warrantless entry.

¹ *Payton v. New York*, 100 S.Ct. 1371 (1980)

² *People v. Abney*, 407 N.E.2d 543 (1980)

Illinois courts consider eight (8) factors when applying the exigent circumstances test. While it is important that officers be cognizant of all of the factors that the court will be considering, if the officer does not have at minimum the first five (5)

factors she will not have enough exigency to justify a warrantless, non consensual entry.

1. **The offense must be grave.** It is important to note that the distinction lies not in whether the crime is classified as a felony or misdemeanor, but whether or not a dangerous situation is present. Examples of offenses the courts have considered to be “grave” are first degree murder, armed robbery and aggravated assault.
2. **The offense must be in progress or very recently committed.** Since exigent circumstances require immediate attention, this will be an investigation that is urgent and fresh. The officer will likely be in the midst of a violent crime that was just committed and quick apprehension of the suspect is of primary importance.
3. **There must be probable cause to believe that this particular suspect committed the offense.** The officer must have at least enough probable cause to obtain an arrest warrant for the suspect if sufficient time were available.
4. **The suspect must present a danger to others at the time of entry.** The officer must believe that the suspect poses a danger if not immediately apprehended. This belief must be based upon reasonably trustworthy information. For example, the situation is not likely to be considered urgent if the suspect is alone in the residence posing no danger to anyone. Under these circumstances the Court may conclude that the officer had time to secure the premise and obtain a warrant.
5. **There must be a strong reason to believe that the suspect is inside the premises being entered.** The officer must

have received information from a reliable source, or have made personal observations, that lead her to reasonably conclude that the suspect is inside the premise.

Once the officer’s analysis has confirmed the existence of the previous five critical factors, then the following factors should be considered as well:

6. **There should not have been any deliberate or unjustifiable delay by the officer during which time a warrant could have been obtained.** The officer should be able to explain why there was no time to get a warrant.
7. **There should be a risk that the suspect will escape if not immediately apprehended.** The officer should have an objectively reasonable belief, based upon specific information, that the offender represents a flight risk.
8. **The entry, even though non consensual, should be made in as peaceable a manner as possible.** The entry should be made in as peaceable a manner as the circumstances and the actions of the suspect allow.

HOT PURSUIT

“Hot pursuit” is another exception to the warrant requirement. Hot pursuit involves a chase from a public place to a private place. Courts have allowed officers to proceed without a warrant into the private area in limited instances even though all of the exigent circumstances are not present. The hot pursuit exception has two general requirements:

1. **The pursuit must be immediate and continuous, and**
2. **The offense must be very serious or grave.** (See discussion in Item #1 above.)

Remember, when an officer enters a private area without first consulting a judge and obtaining a

warrant, the officer has made a decision that a judge would ordinarily make. The judge hearing the case will want to know why. The officer must know the law and articulate her reasoning.

This Bulletin was prepared by Ms. Sandy Brode, a former Cook County Assistant State's Attorney, who is a staff attorney in the Office of Legal Affairs.

© Chicago Police Department, April 2001