

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: Anthony Mata
Chief of Police

SUBJECT: SEE BELOW

DATE: September 10, 2021

APPROVED

Memo# 2021-025

SUBJECT: DUTY MANUAL REVISION: L 2819 WARRANTLESS ARRESTS INSIDE DWELLINGS OR OTHER STRUCTURES

BACKGROUND

Under the Fourth Amendment to the United States Constitution, warrantless entries into a residence are generally presumed illegal unless justified by consent or exigent circumstances. The warrant requirement is subject to certain exceptions. One such exception is for exigent circumstances. An officer may make a warrantless entry when “the exigencies of the situation make the needs of law enforcement so compelling that [a] warrantless search is objectively reasonable.”¹ The exception enables law enforcement officers to handle “emergenc[ies]”—situations presenting a “compelling need for official action and no time to secure a warrant.”² For example, an officer may enter a home to protect an occupant from imminent injury, to provide emergency assistance to an injured occupant, to ensure the officer’s own safety, to prevent the destruction of evidence, or to prevent a suspect’s escape.³

The Supreme Court on June 23, 2021 issued a decision in the case of *Lange v. California*, 141 S.Ct. 2011 (2021), which considered whether the pursuit of a fleeing misdemeanor suspect categorically qualifies as an exigent circumstance, or if a “case-by-case basis” application of the exigent-circumstances exception is warranted.⁴ The Court noted that its Fourth Amendment precedents had generally applied a “case-specific” approach “looking to the totality of circumstances” confronting the officer as he decides to make a warrantless entry.⁵ The Court observed that misdemeanors “run the gamut of seriousness,” and they may be minor. States tend to apply the misdemeanor label to less violent and less dangerous crimes.⁶

In *Lange v. California*, the United States Supreme Court held that an officer’s pursuit of a fleeing misdemeanor suspect does not categorically justify a warrantless entry into a home. Instead, Supreme

¹ *Kentucky v. King*, 563 U. S. 452, 460 (2011)

² *Riley*, 573 U.S., at 402, 134 S.Ct. 2473; *Missouri v. McNeely*, 569 U.S. 141, 149, 133 S.Ct. 1552, 185 L.Ed.2d 696 (2013)

³ *Brigham City*, 547 U. S., at 403

⁴ *Lange v. California*, 141 S.Ct. at 2018, citing *Birchfield v. North Dakota*, 579 U. S. 438 (2016)

⁵ *Missouri v. McNeely*, 569 U. S. 141, 149 (2013)

⁶ *Welsh v. Wisconsin*, 466 U. S. 740, 753 (1984)

Court precedent requires a case-by-case assessment of exigency is required when deciding whether a suspected misdemeanor's flight justifies a warrantless home entry. An officer must consider the totality of circumstances in a pursuit to determine whether a law enforcement emergency has arisen. If the officer has time to get a warrant, he must do so, even if the misdemeanor suspect has fled.

ANALYSIS

The Duty Manual has been revised to reflect the changes described below. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike-through~~ form.

L 2819 WARRANTLESS ARRESTS INSIDE DWELLINGS OR OTHER STRUCTURES:

Revised 09-10-21

Under the Fourth Amendment to the United States Constitution, warrantless entries into a residence to effectuate a warrantless arrest are generally presumed illegal unless justified by consent or exigent circumstances. The exigent circumstances exception to the warrant requirement enables law enforcement officers to handle "emergencies," which are situations where presenting both a compelling need for official action and no time to secure a warrant. Officers must make a totality of the circumstances determination that an emergency has arisen. In this regard, officers shall not make a warrantless arrest in a private dwelling at any time unless consent or one of the following categories of exigent circumstances justify the warrantless entry:

EXIGENT CIRCUMSTANCES: Officers may enter to make a warrantless arrest in a private dwelling when there is an exigent situation requiring swift action to prevent one of the following:

- Imminent danger to life
- Escape of ~~a the~~ *misdemeanor* suspect where a lawful detention or arrest was initiated in a public place and the officer is in hot pursuit of the suspect who has retreated into a private place in order to thwart the lawful detention or arrest. ~~The crime at issue needs to be a jailable offense, i.e., a felony or a misdemeanor.~~
- *Escape of a felony suspect where a lawful detention or arrest was initiated in a public place and the officer is in hot pursuit of the suspect who has retreated into a private place in order to thwart the lawful detention or arrest*
- Imminent destruction of evidence
- Imminent serious damage to property

EXAMPLES:

- Entry under circumstances which indicate life or property is in danger, e.g., cries for help, gunshots, fire, evidence of a burglary such as a verified response under Duty Manual Chapter L 1600
- Entry in hot pursuit where ~~a the~~ *misdemeanor* suspect flees into a home to escape the police or to evade an arrest on the street *and the totality of the circumstances determines a law enforcement emergency has arisen*

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- Entry in hot pursuit where a ~~the~~ felony suspect flees into a home to escape the police or to evade an arrest on the street
- Entry into a home after overhearing a conversation from outside that such suspect is about to destroy evidence, or reliable information that the suspect is presently about to destroy evidence

One of the above circumstances must be present at the time of entry in order to make a warrantless arrest in a home. When a warrantless arrest in a home is made, officers will report the circumstances surrounding such an arrest and document the existence of any exigent circumstances present in a General Offense report.

ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual section.



Anthony Mata
Chief of Police

AM:SD:DK