

**OFFICE OF POLICY AND LEGAL ANALYSIS  
BILL ANALYSIS**

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**TO: Members, Joint Standing Committee on Criminal Justice and Public Safety**

**FROM: Jane Orbeton, Legislative Analyst**

**DATE: May 2, 2021**

**LD: 1043 An Act Concerning the Unannounced Execution of Search Warrants**

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**Summary**

This bill requires law enforcement agencies to adopt written policies regarding the unannounced execution of search warrants by enacting a new Title 25, section 2803-B, subsection 1, paragraph N. The amendments to paragraphs L and M in the bill are housekeeping amendments. L and M are existing law.

Current law requires mandatory policies to meet the minimum standards set by the Board of Trustees of the Maine Criminal Justice Academy (MCJA). The deadline for adoption by the board is December 31. Under current law agencies are required to certify annually that they have adopted the required policies.

The bill amends Title 25, section 2803-B, subsection 1, which is printed below.

See also printed below Maine Rules of Unified Criminal Procedure Rule 41, section f (2) (C) on unannounced execution of a search warrant.

**Testimony**

**Proponents:**

1. Representative McCrea presented the bill and submitted written testimony. Representative Dan Costain spoke in support and submitted written testimony.
2. Speaking in support of the bill were District Attorney Sahrbeck for the Maine Prosecutors Association, Director Richard Desjardins for the Maine Criminal Justice Academy, Chief Jared Mills for the Chiefs of Police Association, Attorney General Aaron Frey and Tina Nadeau for the Maine Association of Criminal Defense Lawyers (MACDL)

**Opponents:**

None

**Neither for nor against:**

None

**Possible Amendments**

1. Tina Nadeau, MACDL, suggested amending the bill to require policies on circumstances for no knock arrest warrants and policies that provide remedial measures to address violations of policy, such as disciplinary measures.

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## **Title 25, §2803-B. Requirements of law enforcement agencies**

**1. Law enforcement policies.** All law enforcement agencies shall adopt written policies regarding procedures to deal with the following:

A. Use of physical force, including the use of electronic weapons and less-than-lethal munitions; [PL 2009, c. 336, §18 (AMD).]

B. Barricaded persons and hostage situations; [PL 1993, c. 744, §5 (NEW).]

C. [PL 2013, c. 147, §16 (RP).]

D. Domestic violence, which must include, at a minimum, the following:

(1) A process to ensure that a victim receives notification of the defendant's release from jail;

(2) A process for the collection of information regarding the defendant that includes the defendant's previous history, the parties' relationship, whether the commission of an alleged crime included the use of strangulation as defined in [Title 17-A, section 208, subsection 1, paragraph C](#), the name of the victim and a process to relay this information to a bail commissioner before a bail determination is made;

(3) A process for the safe retrieval of personal property belonging to the victim or the defendant that includes identification of a possible neutral location for retrieval, the presence of at least one law enforcement officer during the retrieval and giving the victim the option of at least 24 hours' notice to each party prior to the retrieval;

(4) Standard procedures to ensure that protection from abuse orders issued under [Title 19-A, section 4006](#) or 4007 are served on the defendant as quickly as possible; and

(5) A process for the administration of a validated, evidence-based domestic violence risk assessment recommended by the Maine Commission on Domestic and Sexual Abuse, established in [Title 5, section 12004-I, subsection 74-C](#), and approved by the Department of Public Safety and the conveyance of the results of that assessment to the bail commissioner, if appropriate, and the district attorney for the county in which the domestic violence occurred. [PL 2015, c. 329, Pt. A, §14 (RPR).]

E. Hate or bias crimes. A policy adopted under this paragraph must include a policy statement that prohibits stops, detentions, searches or asset seizures and forfeitures efforts based on race, ethnicity, gender, sexual orientation, gender identity, religion, socioeconomic status, age, national origin or ancestry by members of the law enforcement agency, states that individuals may be stopped or detained only when legal authority exists to do so and states that members of the law enforcement agency must base their enforcement actions solely on an individual's conduct and behavior or specific suspect information; [PL 2019, c. 410, §2 (AMD).]

F. Police pursuits; [PL 1993, c. 744, §5 (NEW).]

G. Citizen complaints of police misconduct; [PL 2003, c. 370, §1 (AMD).]

H. Criminal conduct engaged in by law enforcement officers; [PL 2003, c. 656, §1 (AMD); PL 2003, c. 677, §1 (AMD).]

I. Death investigations, including at a minimum the protocol of the Department of the Attorney General regarding such investigations; [RR 2003, c. 2, §89 (COR).]

J. Public notification regarding persons in the community required to register under [Title 34-A, chapters 15 and 17](#); [PL 2013, c. 147, §17 (AMD).]

J. (REALLOCATED TO T. 25, §2803-B, sub-§1, ¶[K]) [RR 2003, c. 2, §91 (RAL); PL 2003, c. 677, §3 (NEW).]

K. (REALLOCATED FROM T. 25, §2803-B, sub-§1, ¶J) Digital, electronic, audio, video or other recording of law enforcement interviews of suspects in murder, Class A, Class B and Class C crimes and the preservation of investigative notes and records in such cases; [PL 2019, c. 466, §1 (AMD).]

L. Mental illness and the process for involuntary commitment, and the process pursuant to [Title 34-B, section 3862-A](#); and [PL 2019, c. 411, Pt. C, §3 (AMD); PL 2019, c. 411, Pt. D, §3 (AFF).]

M. Freedom of access requests. The chief administrative officer of a municipal, county or state law enforcement agency shall certify to the board annually that the agency has adopted a written policy regarding procedures to deal with a freedom of access request and that the chief administrative officer has designated a person who is trained to respond to a request received by the agency pursuant to [Title 1, chapter 13](#). [PL 2013, c. 147, §20 (NEW).]

The chief administrative officer of each agency shall certify to the board that attempts were made to obtain public comment during the formulation of policies.

[PL 2019, c. 410, §2 (AMD); PL 2019, c. 411, Pt. C, §3 (AMD); PL 2019, c. 411, Pt. D, §3 (AFF); PL 2019, c. 466, §1 (AMD).]

**2. Minimum policy standards.** The board shall establish minimum standards for each law enforcement policy pursuant to subsection 1 with the exception of the freedom of access policy under [subsection 1, paragraph M](#). Minimum standards of new mandatory policies enacted by law must be adopted by the board no later than December 31st of the year in which the law takes effect.

[PL 2013, c. 147, §21 (RPR).]

**3. Agency compliance.** The chief administrative officer of each law enforcement agency shall certify to the board annually no later than January 1st of each year that the agency has adopted written policies consistent with the minimum standards established or amended by the board and that all officers have received orientation and training with respect to new mandatory policies or new mandatory policy changes pursuant to subsection 2. New mandatory policies enacted by law must be implemented by all law enforcement agencies no later than the July 1st after the board has adopted the minimum standards.

[PL 2013, c. 147, §22 (RPR).]

**4. Penalty.**

[PL 2005, c. 331, §17 (RP).]

**5. Annual standards review.** The board shall review annually the minimum standards for each policy to determine whether changes in any of the standards are necessary to incorporate improved procedures identified by critiquing known actual events or by reviewing new enforcement practices demonstrated to reduce crime, increase officer safety or increase public safety.

[PL 1993, c. 744, §5 (NEW).]

**6. Freedom of access.**

[PL 2013, c. 147, §23 (RP).]

**7. Certification by record custodian.**

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## Maine Rules of Unified Criminal Procedure Rule 41 - Search and Seizure

(a) Scope. This Rule does not modify any special statutory provision regulating search, seizure, or the issuance and execution of search warrants.

(b) Authority to Issue a Search Warrant. A search warrant may be issued by the court or a justice of the peace as authorized by law.

(c) Grounds to Issue a Search Warrant. A warrant may be issued under this Rule to search for and seize any (1) property that constitutes evidence of the commission of a crime; or (2)

contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as the means of committing a crime; or (4) person for whose arrest there is probable cause, or who is unlawfully restrained.

(d) Definition of Property. The term "property" is used in this Rule and in Rules 41A and 41B to include, but not be limited to, the following:

- (1) Documents, books, papers, and any other tangible objects;
- (2) Electronically stored information;
- (3) Information derived from a tracking device;
- (4) Biological materials, including hair, blood, saliva, fingernail clippings or scrapings and materials obtainable by swab;
- (5) Fingerprints, palmprints, and footprints; and
- (6) Photographs, videos, or any other digital image of any person or object.

(e) Requesting a Search Warrant.

(1) In General. A search warrant request must be made in the presence of the court or justice of the peace unless the court or justice of the peace, upon request of the applicant, determines it reasonable under the circumstances to allow a search warrant request to be made outside the presence of the court or justice of the peace.

(2) Requesting a Search Warrant in the Presence of the Court or Justice of the Peace. A search warrant request made in the presence of the court or justice of the peace must be in the form of a written affidavit sworn to before the court or justice of the peace. The affidavit must specifically designate the person or place or other property to be searched or the tracking device to be installed and used, and the person or property to be searched for or tracked. Before ruling on the request the court or justice of the peace may hear evidence under oath or affirmation which shall be taken down by a court reporter or recording equipment or recorded in a manner that is capable of producing a record adequate for purposes of review.

(3) Requesting a Search Warrant Outside the Presence of the Court or Justice of the Peace. A search warrant request to be made outside the presence of the court or justice of the peace, if permitted by the court or justice of the peace, shall be as provided by Rule 41C.

(f) Issuing a Search Warrant.

(1) Duty of the Court or Justice of the Peace. If the court or justice of the peace to whom the search warrant request is made concludes that there is probable cause to believe that the grounds for the search exist, the court or justice of the peace shall issue a search warrant designating, except as otherwise provided in Rule 41B, the person, place, or

other property to be searched, and the person or place or other property to be searched for.

(2) Contents of the Search Warrant.

(A) In General. The search warrant shall be directed to any officer authorized to enforce or assist in enforcing any law of the State of Maine. It shall state the names of the persons whose affidavits have been taken in support thereof. Except as otherwise provided in Rule 41B it shall command the officer to search the person or place named for the person or property specified. It shall designate the Unified Criminal Docket to which it shall be returned. A copy of the search warrant shall promptly be filed with the Unified Criminal Docket designated in the warrant by the applicant.

(B) Nighttime Search Warrant. The warrant shall direct that it be executed between the hours of 7 a.m. and 9 p.m., unless the court or justice of the peace, by appropriate provision in the warrant, and for reasonable cause shown, authorizes its execution at another time.

(C) Unannounced Execution of Search Warrant. The warrant may direct that it be executed by an officer without providing notice of the officer's purpose and office if the court or justice of the peace so directs by appropriate provision in the warrant. The court or justice of the peace may so direct in the warrant upon a finding of reasonable cause showing that (1) The property sought may be quickly or easily altered, destroyed, concealed, removed, or disposed of if prior notice is given; (2) The escape of the person sought may be facilitated if prior notice is given; (3) The person sought, the person from whom or from whose premises the property is sought, or an occupant thereof, may use deadly or nondeadly force in resistance to the execution of the warrant, and dispensing with prior notice is more likely to ensure the safety of officers, occupants, or others; (4) Such facts and circumstances exist as would render reasonable the warrant's execution without notice.

(g) Execution and Return with Inventory. The warrant may be executed and returned only within 14 days after its date. Upon the expiration of the 14 days, the warrant must be returned to the Unified Criminal Docket designated in the warrant. The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken. If the person is not present, the officer shall leave the copy of the warrant and the receipt at the premises. The return shall be accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person from whose possession or premises the property was taken, if the person is present, or in the presence of at least one credible person other than the applicant for the warrant. It shall be verified by the officer. Upon request the justice or judge sitting in the Unified Criminal Docket designated in the warrant shall deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(h) Return of Papers to Clerk. The justice or judge sitting in the Unified Criminal Docket to which a search warrant is returned shall attach to the warrant a copy of the return, inventory, and

all other papers in connection therewith and shall file them with the clerk of the Unified Criminal Docket for the district and division in which the property was seized. The warrant and affidavit materials shall be treated as impounded until the return is filed. The court, upon motion or upon the court's own motion, may for good cause order the clerk to impound some or all of the warrant materials until a specified date or event. 2 Rule 41 - Search and Seizure Me. R. Crim. P. 41

(i) Attorney for State to File Notice. If a complaint, indictment, or information is filed subsequent to a search, the attorney for the State must file a notice with the clerk of the Unified Criminal Docket of the district in which the search took place stating the venue of the case. The clerk will transfer the search warrant to the court having jurisdiction and venue over the criminal action instituted by the complaint, indictment, or information.

(j) Motion for Return of Property. A person aggrieved by an unlawful seizure of property may file a motion in the Unified Criminal Docket for the return of the property on the ground that it was illegally seized. The court shall receive evidence on any issue of fact necessary to the decision of the motion. If the motion is granted the court shall order that the property be restored unless otherwise subject to lawful detention. The motion may be joined with a motion to suppress evidence. Me. R. Uni. Crim. P. 41 Last amended effective November 2, 2016.