



Ohio Revised Code

Section 2933.231 Waiving the statutory precondition for nonconsensual entry.

Effective: November 20, 1990

Legislation: Senate Bill 258 - 118th General Assembly

(A) As used in this section:

(1) "Law enforcement officer" has the same meaning as in section 2901.01 of the Revised Code and in Criminal Rule 2.

(2) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code, and includes any prosecuting attorney as defined in Criminal Rule 2.

(3) "Statutory precondition for nonconsensual entry" means the precondition specified in section 2935.12 of the Revised Code that requires a law enforcement officer or other authorized individual executing a search warrant to give notice of his intention to execute the warrant and then be refused admittance to a dwelling house or other building before he legally may break down a door or window to gain entry to execute the warrant.

(B) A law enforcement officer, prosecutor, or other authorized individual who files an affidavit for the issuance of a search warrant pursuant to this chapter or Criminal Rule 41 may include in the affidavit a request that the statutory precondition for nonconsensual entry be waived in relation to the search warrant. A request for that waiver shall contain all of the following:

(1) A statement that the affiant has good cause to believe that there is a risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant if they are required to comply with the statutory precondition for nonconsensual entry;

(2) A statement setting forth the facts upon which the affiant's belief is based, including, but not limited to, the names of all known persons who the affiant believes pose the risk of serious physical harm to the law enforcement officers or other authorized individuals who will execute the warrant at the particular dwelling house or other building;



(3) A statement verifying the address of the dwelling house or other building proposed to be searched as the correct address in relation to the criminal offense or other violation of law underlying the request for the issuance of the search warrant;

(4) A request that, based on those facts, the judge or magistrate waive the statutory precondition for nonconsensual entry.

(C) If an affidavit for the issuance of a search warrant filed pursuant to this chapter or Criminal Rule 41 includes a request for a waiver of the statutory precondition for nonconsensual entry, if the request conforms with division (B) of this section, if division (E) of this section is satisfied, and if the judge or magistrate issues the warrant, the judge or magistrate shall include in it a provision that waives the statutory precondition for nonconsensual entry for purposes of the search and seizure authorized under the warrant only if he determines there is probable cause to believe that, if the law enforcement officers or other authorized individuals who execute the warrant are required to comply with the statutory precondition for nonconsensual entry, they will be subjected to a risk of serious physical harm and to believe that the address of the dwelling house or other building to be searched is the correct address in relation to the criminal offense or other violation of law underlying the issuance of the warrant.

(D)(1) A waiver of the statutory precondition for nonconsensual entry by a judge or magistrate pursuant to division (C) of this section does not authorize, and shall not be construed as authorizing, a law enforcement officer or other authorized individual who executes a search warrant to enter a building other than a building described in the warrant.

(2) The state or any political subdivision associated with a law enforcement officer or other authorized officer who executes a search warrant that contains a provision waiving the statutory precondition for nonconsensual entry is liable in damages in a tort action for any injury, death, or loss to person or property that is proximately caused by the officer's execution of the warrant in accordance with the waiver at an address of a dwelling house or other building that is not described in the warrant.

(E) Any proceeding before a judge or magistrate that involves a request for a waiver of the statutory precondition for nonconsensual entry shall be recorded by shorthand, by stenotype, or by any other



mechanical, electronic, or video recording device. The recording of and any transcript of the recording of such a proceeding shall not be a public record for purposes of section 149.43 of the Revised Code until the search warrant is returned by the law enforcement officer or other authorized officer who executes it. This division shall not be construed as requiring, authorizing, or permitting, and does not require, authorize, or permit, the making available for inspection, or the copying, under section 149.43 of the Revised Code of any confidential law enforcement investigatory record or trial preparation record, as defined in that section.