

# Supreme Court of Kentucky

2021-31

## ORDER

**IN RE: ADOPTION OF RULE 410A OF THE KENTUCKY RULES OF EVIDENCE**

During the 2021 legislative session, the Kentucky General Assembly passed Senate Bill (SB) 4 (Act of Apr. 9, 2021, ch. 202 § 5, 2021 Ky. Acts 1508), which created a new evidence rule for Kentucky Rules of Evidence (KRE) 401-412. The rule relates to the admissibility of evidence obtained from an arrest or search warrant that authorized entry without notice, more familiarly known as a “no knock” warrant.

KRE 1102 sets forth the process for amending the evidence rules. Although KRE 1102(b) authorizes the General Assembly to “adopt amendments or additions to the Kentucky Rules of Evidence not reported to the General Assembly by the Supreme Court,” it specifically prohibits the General Assembly from adopting amendments or additions to the KRE “that constitute rules of practice and procedure under Section 116 of the Constitution of Kentucky.” In addition, KRE 1102(c) contains the admonition that “[n]either the Supreme Court nor the General Assembly should undertake to amend or add to the Kentucky Rules of Evidence without first obtaining a review of proposed amendments or additions from the Evidence Rules Review Commission described in KRE 1103.”

The Supreme Court finds that the new evidence rule created by the General Assembly in SB 4 (2021) constitutes a rule of practice and procedure. Accordingly, its adoption violates Section 116 of the Constitution of Kentucky and KRE 1102(b). Nevertheless, under KRE 1103, the chair of the Kentucky Evidence Rules Review Commission called a meeting to review the proposed

new evidence rule. After a brief discussion, the Commission voted unanimously for the rule's adoption.

Because the Kentucky Evidence Rules Review Commission voted favorably for the new evidence rule, and because the Supreme Court agrees the rule should be granted comity, it is ORDERED under Section 116 of the Constitution of Kentucky that the new evidence rule set forth below, KRE 410A, Arrest or search warrant authorizing entry without notice, is hereby adopted.

**KRE 410A – Arrest or search warrant authorizing entry without notice.**

- (a) Except as provided in subdivision (b) of this rule, the following evidence is not admissible in any civil or criminal proceeding:
  - (1) Evidence gathered by use of an arrest warrant or search warrant authorizing entry without notice that did not comply with applicable statutes; or
  - (2) Evidence gathered by use of an arrest warrant or search warrant authorizing entry without notice that was obtained through perjury or material false statement.
  
- (b) Evidence excluded in subdivision (a) of this rule is admissible if otherwise admissible under these rules, and:
  - (1) In a civil case, offered by the plaintiff in an action for damages arising from the warrant; or
  - (2) In a criminal proceeding for perjury or material false statement in the application for the warrant, offered against the defendant.

COMMENT

As of the adoption of this rule, the applicable statutes referenced in Section (a)(1) of this rule are contained in Kentucky Revised Statutes (KRS) 455.180-.200.

Entered this 25th day of August 2021.

  
CHIEF JUSTICE

All sitting; all concur.