



MICHIGAN STATE POLICE LEGAL UPDATE

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SEARCH AND SEIZURE

Consent-once-removed doctrine

The consent-once-removed doctrine applies to the warrantless entry into a residence by backup officers summoned to assist an undercover officer with making an arrest when the undercover officer's initial entry into the residence was based on consent of someone with authority to consent.

The doctrine is based on the theory that, because an undercover officer who establishes probable cause to arrest the suspect may in fact arrest the suspect then and there, the undercover officer should be entitled to call in the officer with whom he is working to assist in the arrest.

In [O'Neill v. Louisville/Jefferson County Metro Gov't](#), the plaintiff granted two undercover officers permission to enter the home. The undercover officers spoke with the plaintiff and then left the residence. The undercover officers returned momentarily with several uniformed officers. The officers then entered the plaintiff's home without a warrant or consent. Inside the residence, the officers seized property, but never arrested or intended to arrest anyone.

The consent-once-removed doctrine allows officers to enter a suspect's residence to arrest the suspect without a warrant if undercover officers entered at the express invitation of someone with authority to consent; at that point the undercover officers established the existence of probable cause to effectuate an arrest or search; and the undercover officers immediately summoned help from other officers. The intent of the entry by the backup officers must be to immediately effectuate an arrest.

The Court refused to extend the consent-once-removed doctrine to this case because the undercover officers had left the residence and the backup officers did not rush in to effectuate an arrest nor did they intend to make an arrest inside the residence.

BACK TO BASICS

Note: The following material does not represent new law. Instead, it is intended to reinforce basic rules of law that police officers frequently apply.

Restrictions on entry into a residence to make an arrest with a warrant or a warrantless felony arrest

[MCL 764.21](#) provides officers with the statutory authority to enter a residence to make an arrest. [MCL 764.21](#) allows an officer to forcibly enter a residence to make an arrest with a warrant or to make a warrantless felony arrest. [MCL 764.21](#) only applies to a residence where the suspect is located or reasonably suspected to be located **and** only when the officer has been refused admittance to the residence after announcing his or her presence. Additionally, courts have restricted the use of [MCL 764.21](#) as explained below.

In [Payton v. New York](#), the United States Supreme Court held an officer cannot forcibly enter a residence to make a warrantless felony arrest unless exigent circumstances are present, regardless of whether there is a State statute that gives the officer the authority to forcibly enter to the residence.

Officers are reminded that [MCL 764.21](#) does not always authorize officers to make a forcible entry into a residence to effectuate a warrantless felony arrest. Exigent circumstances must exist before a police officer can make a forcible, non-consensual entry into a residence to effectuate a warrantless felony arrest. Examples of exigent circumstances include hot pursuit, substantial need to prevent a suspect's escape, and significant and apparent danger to the police or others.

Officers are encouraged to review [Legal Update No. 53 \(March 2007\)](#) for additional information regarding entering a residence to effectuate a felony arrest with a warrant, a misdemeanor arrest, and entering third party residences.

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