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## BILL ANALYSIS



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House Bill 4321 (Substitute H-2 as passed by the House)  
Sponsor: Representative Peter J. Lucido  
House Committee: Criminal Justice  
Senate Committee: Judiciary

Date Completed: 2-16-16

**CONTENT**

**The bill would amend the Code of Criminal Procedure to do the following:**

- **Prohibit a law enforcement officer from entering or searching a residence without a search warrant, if a resident expressly objected to the entry or search, regardless of whether another resident consented.**
- **Provide that evidence knowingly obtained in violation of that prohibition would be inadmissible in a criminal action against the person who objected, but could be used to revoke parole or probation or impeach a defendant's testimony.**
- **Specify that the prohibition would not apply if a resident who consented to an entry or search were the victim of an alleged crime committed by a resident who objected to the entry or search.**

Specifically, except in exigent circumstances or as otherwise provided in the bill, a law enforcement officer could not enter or search a residence without a valid search warrant if a resident expressly objected to the entry or search. This prohibition would apply even if another resident consented to the entry or search after the objecting resident was no longer physically present at the residence.

Evidence knowingly obtained in violation of the prohibition described above would be inadmissible in any criminal action against a person who objected to the entry or search by which the evidence was improperly obtained. That evidence, however, could be used to revoke parole or probation or impeach a defendant's testimony as otherwise provided by law.

The bill's prohibition would not apply to a circumstance in which a resident who consented to an entry or search was the victim of an alleged criminal act committed by a resident who objected to the search for which a law enforcement officer's purpose in entering the residence was to obtain evidence of the alleged criminal act.

The bill would take effect 90 days after its enactment.

Proposed MCL 764.25c

**BACKGROUND**

In a 2014 case, *Fernandez v California* (571 U.S. \_\_\_\_), the U.S. Supreme Court upheld a police entry and search of residential premises after one occupant consented to the search and another objected. The court refused to apply a limited exception to the validity of such searches that the Court had previously allowed.

The *Fernandez* Court cited "firmly established" precedent that police may search premises that are jointly occupied if one of the occupants consents. The Court considered whether an exception to that rule, adopted in *Georgia v Randolph*, 547 U.S. 103 (2006), existed in the *Fernandez* case. In *Randolph*, the Court "recognized a narrow exception" to the rule of allowing a search based on one resident's consent. It held that "the consent of one occupant is insufficient when another occupant is present and objects to the search". In the earlier case, the Court opined that "a physically present inhabitant's express refusal of consent to a police search...is dispositive as to him, regardless of the consent of a fellow occupant". The *Fernandez* decision stated, "The Court's opinion went to great lengths to make clear that its holding was limited to situations in which the objecting occupant is present."

In the *Fernandez* case, police officers were investigating a reported assault and theft, and were notified that the perpetrator was in an apartment. Officers heard screaming and sounds of fighting from the apartment. They knocked on the door, which was answered by an injured woman. After police asked her to leave the apartment so they could search it, Fernandez appeared at the door and objected to the officers' entry. Suspecting him of assaulting the woman, police removed Fernandez from the premises and arrested him. About one hour later, police informed the woman that Fernandez had been arrested and they requested and received her consent to search the apartment, where they found evidence of Fernandez's gang involvement and crimes.

Fernandez moved to suppress evidence obtained from the search of the apartment based on his earlier objection to police entry, but the motion was denied after a hearing. The denial of that motion was affirmed on appeal to the California Court of Appeal. Since *Randolph* did not overturn prior Supreme Court decisions recognizing an occupant's ability to consent to a search of a shared residence, the appeals court ruled that a co-occupant's physical presence is necessary to the narrow exception outlined in that case. In *Fernandez*, the U.S. Supreme Court upheld the finding of the California appellate court.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.