

### **Rule 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.

**Effective:** June 29, 2021

**History:** Created 2021 Ky. Acts ch. 202, sec. 5, effective June 29, 2021.

**Formerly codified as** Rule 403A.

**Legislative Research Commission Note** (8/25/2021). This rule was created as a new section of Kentucky Rules of Evidence (KRE) 401 to 412 in 2021 RS SB 4 (2021 Ky. Acts ch. 202, sec. 5) and numbered 403A in codification. On August 25, 2021, the Kentucky Supreme Court entered Order 2021-31, adopting KRE 410A, a new Rule of Evidence identical to Rule 403A, and stating:

"[T]he 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."

Under the authority of KRS 7.136, the Reviser of Statutes has renumbered Rule 403A as Rule 410A to correspond to the number assigned by the Kentucky Supreme Court.