

HB0070S01 compared with HB0070

~~deleted text~~ shows text that was in HB0070 but was deleted in HB0070S01.

inserted text shows text that was not in HB0070 but was inserted into HB0070S01.

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Representative Marc K. Roberts proposes the following substitute bill:

FORCIBLE ENTRY AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: Luz Robles

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure regarding the use of forcible entry by law enforcement officers when conducting a search or making an arrest.

Highlighted Provisions:

This bill:

- ▶ requires that the issuance of a warrant under the provisions of this bill shall be in accordance with Rule 40, Utah Rules of Criminal Procedure;
- ▶ amends existing law regarding the use of forcible entry by law enforcement officers to include searches;
- ▶ requires law enforcement officers to identify themselves before forcing entry into a building;
- ▶ amends existing law to allow law enforcement officers to force entry into a building

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without first issuing a demand or explanation if there is probable cause to believe that evidence will be easily or quickly destroyed;

- ▶ requires law enforcement officers to use the least amount of force necessary when executing forcible entry, as authorized;
- ▶ requires that any application for a warrant to forcibly enter a place of residence shall:
 - ~~{explain}~~demonstrate why law enforcement officials cannot use less invasive or confrontational methods to effectuate the necessary search or arrest;~~;~~
 - ~~explain why the search or arrest cannot be executed during the day, if it is to be executed at night, as defined;~~ and
 - describe investigative activities that have been or will be undertaken prior to executing the search or arrest to ensure that the correct building has been identified or explain why no investigative activities are needed; and
- ▶ clarifies that any information or property obtained in violation of these provisions is inadmissible in court.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-7-8, as last amended by Laws of Utah 2003, Chapter 29

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 77-7-8 is amended to read:

77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a warrant.

(1) (a) Subject to ~~[Subsection]~~ Subsections (2) and (3), a peace officer, when conducting a search or making an arrest, may forcibly enter the building:

(i) in which the target of a search is reasonably believed to be located; or

(ii) where the person to be arrested is, or in which there are reasonable grounds for

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believing ~~[him]~~ the person to be.

(b) Before making the forcible entry, the officer shall:

(i) identify himself or herself as a law enforcement officer; and

(ii) demand admission and explain the purpose for which admission is desired.

(c) (i) The officer need not give a demand and explanation, or identify himself or herself, before making a forcible entry under the exceptions in ~~[Section]~~ Subsection 77-7-6(1)(a) or where there is ~~[reason]~~ probable cause to believe evidence will be easily or quickly secreted or destroyed.

(ii) The officer shall identify himself or herself and state the purpose of entering the premises as soon as practicable after entering the premises.

(d) The officer ~~{shall}~~ may use ~~{the least amount of}~~ only that force which is reasonable and necessary to effectuate forcible entry under this section.

(2) If the building to be entered under Subsection (1) appears to be a private residence or the officer knows the building is a private residence, ~~[and]~~ if there is no consent to enter ~~[or there are no exigent circumstances]~~, if there are no exceptions present under Subsection 77-7-6(1)(a), and if there is no probable cause to believe evidence will be easily or quickly secreted or destroyed, the officer shall, before entering the building:

(a) obtain an arrest or search warrant if the building is the residence of the person to be arrested; or

(b) obtain a search warrant if the building is a residence, but not the residence of the person whose arrest is sought.

(3) ~~{A}~~ Subject to the provisions of Rule 40, Utah Rules of Criminal Procedure, a judge or magistrate issuing a warrant pursuant to Subsection (2) shall ~~{ensure}~~ make a finding that the affidavit:

(a) ~~{explains}~~ demonstrates why law enforcement officers are unable to detain the suspect or search the residence using less invasive or confrontational methods; ~~{~~

~~— (b) explains why the warrant cannot be executed during daylight hours, if the warrant is to be executed at night, which is the time between one hour after sunset on one day and one hour before sunrise on the following day; }~~ and

~~{c}~~ b describes:

(i) investigative activities that have been, or will be, undertaken prior to execution of

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the warrant to ensure that the correct building is identified and that potential harm to innocent third parties, the building, and law enforcement officers may be minimized; or

(ii) why no investigative activities are needed.

~~{ (4) Any information or property obtained in violation of this section is inadmissible in any judicial proceedings.~~

Legislative Review Note

~~as of 1-2-14 8:09 AM~~

~~Office of Legislative Research and General Counsel}~~