

HB0070S02 compared with HB0070S01

~~text~~ shows text that was in HB0070S01 but was deleted in HB0070S02.

text shows text that was not in HB0070S01 but was inserted into HB0070S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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

Cosponsors:

Lee B. Perry

Ryan D. Wilcox

Brian M. Greene

V. Lowry Snow

Larry B. Wiley

Eric K. Hutchings

Mark A. Wheatley

Brian S. King

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;

HB0070S02 compared with HB0070S01

- ▶ amends existing law regarding the use of forcible entry by law enforcement officers ~~{to include searches}~~ when executing a warrant;
- ▶ 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 without first issuing a demand or explanation if there is probable cause to believe that evidence will be easily or quickly destroyed, or there is reason to believe giving notice will endanger the officer or another person;
- ▶ requires law enforcement officers to use the least amount of force necessary when executing forcible entry, as authorized; and
- ▶ ~~{requires that any application for a warrant to forcibly enter a place of residence shall:~~
 - ~~demonstrate why law enforcement officials cannot use less invasive or confrontational methods to effectuate the necessary search or arrest; 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}~~ providing an effective date.

Money Appropriated in this Bill:

None

Other Special Clauses:

~~{None}~~ This bill takes effect on July 1, 2014.

Utah Code Sections Affected:

AMENDS:

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

77-23-210, as last amended by Laws of Utah 2007, Chapter 153

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

HB0070S02 compared with HB0070S01

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]~~ is probable cause for 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 may use 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) Subject to the provisions of Rule 40, Utah}~~ Section 2. Section 77-23-210 is amended to read:

77-23-210. Force used in executing a search warrant -- When notice of authority is required as a prerequisite.

(1) When a search warrant has been issued authorizing entry into any building, room,

HB0070S02 compared with HB0070S01

conveyance, compartment, or other enclosure, the officer executing the warrant may [use such force as is reasonably necessary to] enter:

[~~(1)~~] (a) if, after notice of the officer's authority and purpose, there is no response or the officer is not admitted with reasonable promptness; or

[~~(2)~~] (b) without notice of the officer's authority and purpose[~~, if the magistrate issuing the warrant directs in the warrant that the officer need not give notice.~~] as provided in Subsection (3).

(2) The officer executing the warrant under Subsection (1) may use only that force which is reasonable and necessary to execute the warrant.

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

(b) The officer may enter without notice only if:

(i) there is reason to believe the notice will endanger the life or safety of the officer or another person;

(ii) there is probable cause to believe that evidence may be easily or quickly secreted or destroyed; or

(iii) the magistrate, having found probable cause based upon proof provided under oath, that the object of the search may be easily or quickly secreted or destroyed, or having found reason to believe that physical harm may result to any person if notice were given, has directed that the officer need not give notice of authority and purpose before entering the premises to be searched under Rule 40, Rules of Criminal Procedure, a judge or magistrate issuing a warrant pursuant to Subsection (2) shall make a finding that the affidavit:

—— (a) demonstrates why law enforcement officers are unable to detain the suspect or search the residence using less invasive or;

(4) (a) The officer shall take reasonable precautions in execution of any search warrant to minimize the risks of unnecessarily confrontational {methods; and

—— (b) describes:

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

HB0070S02 compared with HB0070S01

for invasive methods which may result in harm to any person.

(b) The officer shall minimize the risk of searching the wrong premises by verifying that the premises being searched is consistent with a particularized description in the search warrant, including such factors as the type of structure, the color, the address, and orientation of the target property in relation to nearby structures as is reasonably necessary.

Section 3. Effective date.

This bill takes effect on July 1, 2014.