

Senator Stephen H. Urquhart proposes the following substitute bill:

FORCIBLE ENTRY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Bradley G. Last

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure regarding the use of forcible entry when serving a search warrant or making an arrest.

Highlighted Provisions:

This bill:

- amends existing law regarding the use of forcible entry by a law enforcement officer when executing a warrant;

requires that the Utah Peace Officer Standards and Training Council recommend guidelines and procedures regarding use of force in executing a warrant;

- requires a law enforcement officer to wear a badge, label, or clothing that identifies that person as a peace officer;

- provides that if the deploying law enforcement agency owns and operates body camera devices, the officer who executes a warrant shall be equipped with a body camera that actively records through the duration of the execution of the warrant;

- provides that a search or administrative warrant may not be issued by a justice court judge;

provides that a warrant authorizing forceful entry may not be issued solely for the purpose of an alleged controlled substance or for drug paraphernalia; and

- provides that any evidence obtained in violation of these provisions is not admissible in any civil, criminal, or administrative proceeding.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**27 ~~§~~ → [None] This bill provides a coordination clause. ← ~~§~~28 **Utah Code Sections Affected:**

29 AMENDS:

30 77-7-8, as last amended by Laws of Utah 2014, Chapter 297

31 77-23-210, as last amended by Laws of Utah 2014, Chapter 297

32

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

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

35 **77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a**
36 **warrant.**37 (1) (a) Subject to Subsection (2), a peace officer when making an arrest may forcibly
38 enter the building in which the person to be arrested is located, or in which there is probable
39 cause for believing [~~him~~] the person to be.

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

41 (i) identify himself or herself as a law enforcement officer; [~~and~~]

42 (ii) demand admission;

42a ~~§~~ → (iii) wait a reasonable period of time for an occupant ~~§~~ → to ← ~~§~~ admit access; ← ~~§~~ and
43 ~~§~~ → [~~(iii)~~] (iv) ← ~~§~~ explain the purpose for which admission is desired.44 (c) (i) The officer need not give a demand and explanation, or identify himself or
45 herself, before making a forcible entry under the exceptions in Section 77-7-6 or where there is
46 probable cause to believe evidence will be easily or quickly [~~secreted or~~] destroyed.47 (ii) The officer shall identify himself or herself and state the purpose [~~of~~] for entering
48 the premises as soon as practicable after entering the premises.49 (d) The officer may use only that force which is reasonable and necessary to effectuate
50 forcible entry under this section.51 (2) If the building to be entered under Subsection (1) appears to be a private residence
52 or the officer knows the building is a private residence, and if there is no consent to enter or
53 there are no exigent circumstances, the officer shall, before entering the building:54 (a) obtain an arrest or search warrant if the building is the residence of the person to be
55 arrested; or

56 (b) obtain a search warrant if the building is a residence, but not the residence of the

57 person whose arrest is sought.

57a ~~§~~→ (3) Notwithstanding any other provision of this chapter, forcible entry under this section
 57b may not be made solely for the alleged:

57c (a) possession or use of a controlled substance under Section 58-37-8; or

57d (b) the possession of drug paraphernalia as defined in Section 58-37a-3. ←~~§~~

58 Section 2. Section 77-23-210 is amended to read:

59 77-23-210. Force used in executing a search warrant -- When notice of authority
 60 is required as a prerequisite.

61 (1) (a) No later than July 1, 2015, any law enforcement agency that seeks a warrant
 62 under this section shall comply with guidelines and procedures which are, at a minimum, in
 63 accordance with state law and model guidelines and procedures recommended by the ~~§~~→ [Utah
 64 Department of Public Safety] Utah Peace Officer Standards and Training Council created in
 64a Section 53-6-106 ←~~§~~ .

65 (b) Written policies adopted pursuant to this section, shall be subject to public
 66 disclosure and inspection, in accordance with Title 63G, Chapter 2, Government Access and
 67 Management Act.

68 [(+) (2) When a search warrant has been issued authorizing entry into any building,
 69 room, conveyance, compartment, or other enclosure, the officer executing the warrant may
 70 enter:

71 (a) if, after giving notice of the officer's authority and purpose, there is no response or
 72 the officer is not admitted with reasonable promptness; or

73 (b) without notice of the officer's authority and purpose as provided in Subsection (3).

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

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

78 [(b)] (3) (a) The officer may enter without notice only if:

79 (i) there is [~~reason~~] reasonable suspicion to believe that the notice will endanger the
 80 life or safety of the officer or another person;

81 (ii) there is probable cause to believe that evidence may be easily or quickly [~~secreted~~
 82 ~~or~~] destroyed; or

83 (iii) the magistrate, having found probable cause based upon proof provided under
 84 oath, that the object of the search may be easily or quickly [~~secreted or~~] destroyed, or having
 85 found reason to believe that physical harm may result to any person if notice were given, has
 86 directed that the officer need not give notice of authority and purpose before entering the
 87 premises to be searched under [~~Rule 40;~~] the Rules of Criminal Procedure[-]; or

88 (iv) the officer physically observes and documents a previously unknown event or
 89 circumstance at the time the warrant is being executed which creates probable cause to believe
 90 the object of the search is being destroyed, or creates ~~§~~ → **reasonable suspicion** ← ~~§~~ to
 90a believe that physical harm may
 91 result to any person if notice were given.

92 (b) The officer shall identify himself or herself and state the purpose for entering the
 93 premises as soon as practicable after entering.

94 (4) An officer executing a warrant under this section may use only that force which is
 95 reasonable and necessary to execute the warrant.

96 (5) An officer executing a warrant under this section shall wear readily identifiable
 97 markings, including a badge and vest or clothing with a distinguishing label or other writing
 98 which indicates that he or she is a law enforcement officer.

99 (6) (a) An officer executing a warrant under this section shall comply with the officer's
 100 employing agency's body worn camera policy when the officer is equipped with a body worn
 101 camera.

102 (b) The employing agency's policy regarding the use of body worn cameras shall
 103 include a provision that an officer ~~§~~ → **executing a warrant under this section** ← ~~§~~ shall wear a
 103a body worn camera when a camera is available,
 104 except in exigent circumstances where it is not practicable to do so.

105 ~~[(4)]~~ (7) (a) The officer shall take reasonable precautions in execution of any search
 106 warrant to minimize the risks of unnecessarily confrontational or invasive methods which may
 107 result in harm to any person.

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

112 (8) Notwithstanding any provision in this chapter, a warrant ~~H~~ → **authorizing forceful**
 112a **entry without prior announcement** ← ~~H~~ may not be issued under
 113 this section, solely for:

114 (a) the alleged possession or use of a controlled substance; or

115 (b) the alleged possession of drug paraphernalia as provided in Section

115a ~~§~~ → ~~[53-37a-3]~~ **58-37a-3** ← ~~§~~ .

115b ~~H~~ → [~~§~~ → ~~Section 3. Coordinating S.B. 82 with H.B. 348~~ ~~§~~ → ~~[7]~~ ← ~~§~~ ~~—Modifying substantive~~
 115b1 ~~language.~~

115c ~~If this S.B. 82 and H.B. 348, Criminal Justice Programs and Amendments, both pass and~~

115d ~~become law, the Legislature intends that the Office of Legislative Research and~~ ↻

House Committee Amendments 3-10-2015 lp/sca

Senate 3rd Reading Amendments 3-3-2015 lp/sca

Senate 2nd Reading Amendments 3-2-2015 lp/sca

Senate Committee Amendments 2-18-2015 lp/sca

- 115e ~~☉ General Counsel, in preparing the Utah Code database for publication:~~
- 115f ~~(1) amend Subsection 77-23-210(8)(a) to read:~~
- 115g ~~—— "(8)(a) the alleged possession or use of marijuana or a controlled substance under~~
- 115h ~~Section 58-37-4.2; or" ; and~~
- 115i ~~(2) amend Subsection 7-23-210(8)(b) to read:~~
- 115j ~~—— "(b) the alleged possession or use of drug paraphernalia as provided in Section~~
- 115k ~~53-37a-3." ←§] ←Ĥ~~