

Representative Marc K. Roberts proposes the following substitute bill:

FORCIBLE ENTRY AND WARRANTS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill modifies provisions related to entry of officers to conduct search or make arrest.

Highlighted Provisions:

This bill:

- ▶ requires supervisory officials to conduct reviews;
- ▶ requires certain information in affidavits requesting specific warrants;
- ▶ addresses when forceable entry may or may not be used; and
- ▶ makes technical changes.

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 2015, Chapter 317

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



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

27 **77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a**
 28 **warrant.**

29 (1) As used in this section:

30 (a) "Daytime hours" and "nighttime hours" mean the same as those terms are described
 31 in Subsection 77-7-5(3).

32 (b) "Supervisory official" means a ~~H~~→ [county sheriff or chief deputy sheriff, a police chief
 33 or assistant police chief, the officer in charge of an investigative task force or the assistant
 34 officer in charge, or the attorney general or an assistant attorney general] command level officer
 34a within a law enforcement agency ←~~H~~ .

35 [(H)] (2) (a) Subject to [Subsection (2), a peace] the other provisions of this section, an
 36 officer when making an arrest may forcibly enter the building in which the person to be
 37 arrested is located, or in which there is probable cause for believing the person to be.

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

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

40 (ii) demand admission;

41 (iii) wait a reasonable period of time for an occupant to admit access; and

42 (iv) explain the purpose for which admission is desired.

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

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

48 (d) The officer may use only that force [~~which~~] that is reasonable and necessary to
 49 effectuate forcible entry under this section.

50 [(2)] (3) [H] Subject to Subsections (4) and (5), if the building to be entered under
 51 Subsection [(H)] (2) appears to be a private residence or the officer knows the building is a
 52 private residence, and if there is no consent to enter or there are no exigent circumstances, the
 53 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.

58 (4) Before seeking a warrant from a judge or magistrate pursuant to Subsection (3), a
59 supervisory official shall, using the officer's affidavit and other relevant information,
60 independently perform a risk assessment to evaluate the totality of the circumstances and
61 ensure reasonable intelligence gathering efforts have been made.

62 (5) (a) The affidavit for a warrant seeking forcible entry shall describe ~~H→~~ [;
63 ~~—— (i) why the officer believes the suspect is unable to be detained, or the residence~~
64 ~~searched, using less invasive or less confrontational methods; and~~
65 ~~—— (ii) ←H~~ investigative activities that have been undertaken to ensure that the correct building
66 is identified and that potential harm to innocent third parties, the building, and officers may be
67 minimized.

68 (b) Notwithstanding Subsection 77-7-5(2)(a), and pursuant to Rule 40 of the Utah
69 Rules of Criminal Procedure, a warrant shall be served during daytime hours unless the
70 affidavit states sufficient grounds to believe a search is necessary during nighttime hours.

71 ~~[(3)]~~ (6) H→ [(a)] ←H Notwithstanding any other provision of this chapter, forcible
71a entry under
72 this section may not be made solely for the alleged:

73 ~~[(a)]~~ H→ [(ii)] (a) ←H possession or use of a controlled substance under
73a Section ~~58-37-8~~ H→ [with or
74 without the intent to distribute] ←H ; or

75 ~~[(b) the]~~ H→ [(ii)] (b) ←H possession of drug paraphernalia as defined in Section ~~58-37a-3~~.
76 H→ [(b) Forcible entry may be made for distribution of a controlled substance.] ←H