

FORCIBLE ENTRY AND WARRANTS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to the forcible entry of an officer into a building.

Highlighted Provisions:

This bill:

- ▶ amends the requirements an officer must undertake before a forcible entry;
- ▶ restricts when a forcible entry can be made without notice;
- ▶ requires supervisory officials to conduct a review of a request for forcible entry;
- ▶ requires certain information in affidavits requesting specific warrants;
- ▶ addresses when forcible 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:

77-7-5, as last amended by Laws of Utah 2019, Chapter 406

77-7-8, as last amended by Laws of Utah 2015, Chapter 317

77-23-210, as last amended by Laws of Utah 2018, Chapter 281



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

29 Section 1. Section 77-7-5 is amended to read:

30 **77-7-5. Issuance of summons or warrant -- Time and place arrests may be made**
31 **-- Contents of warrant or summons -- Responsibility for transporting prisoners -- Court**
32 **clerk to dispense restitution for transportation.**

33 (1) As used in this section:

34 (a) daytime hours are the hours of 6 a.m. to 10 p.m.; and

35 (b) nighttime hours are the hours after 10 p.m. and before 6 a.m.

36 ~~[(1)]~~ (2) A magistrate may issue a warrant for arrest in lieu of a summons for the
37 appearance of the accused only upon finding:

38 (a) probable cause to believe that the person to be arrested has committed a public
39 offense; and

40 (b) under the Utah Rules of Criminal Procedure, and this section that a warrant is
41 necessary to:

42 (i) prevent risk of injury to a person or property;

43 (ii) secure the appearance of the accused; or

44 (iii) protect the public safety and welfare of the community or an individual.

45 ~~[(2)]~~ (3) If the offense charged is:

46 (a) a felony, the arrest upon a warrant may be made at any time of the day or night; or

47 (b) a misdemeanor, the arrest upon a warrant can be made ~~[at night]~~ during nighttime
48 hours only if:

49 (i) the magistrate has endorsed authorization to do so on the warrant;

50 (ii) the person to be arrested is upon a public highway, in a public place, or in a place
51 open to or accessible to the public; or

52 (iii) the person to be arrested is encountered by a peace officer in the regular course of
53 that peace officer's investigation of a criminal offense unrelated to the misdemeanor warrant for
54 arrest.

55 ~~[(3) For the purpose of Subsection (1):]~~

56 ~~[(a) daytime hours are the hours of 6 a.m. to 10 p.m.; and]~~

57 ~~[(b) nighttime hours are the hours after 10 p.m. and before 6 a.m.]~~

58 (4) (a) If the magistrate determines that the accused must appear in court, the

59 magistrate shall include in the arrest warrant the name of the law enforcement agency in the
60 county or municipality with jurisdiction over the offense charged.

61 (b) (i) The law enforcement agency identified by the magistrate under Subsection (4)(a)
62 is responsible for providing inter-county transportation of the defendant, if necessary, from the
63 arresting law enforcement agency to the court site.

64 (ii) The law enforcement agency named on the warrant may contract with another law
65 enforcement agency to have a defendant transported.

66 (c) (i) The law enforcement agency identified by the magistrate under Subsection (4)(a)
67 as responsible for transporting the defendant shall provide to the court clerk of the court in
68 which the defendant is tried, an affidavit stating that the defendant was transported, indicating
69 the law enforcement agency responsible for the transportation, and stating the number of miles
70 the defendant was transported.

71 (ii) The court clerk shall account for restitution paid under Subsection 76-3-201(5) for
72 governmental transportation expenses and dispense restitution money collected by the court to
73 the law enforcement agency responsible for the transportation of a convicted defendant.

74 (5) The law enforcement agency identified by the magistrate under Subsection (4)(a)
75 shall indicate to the court within 48 hours of the issuance, excluding Saturdays, Sundays, and
76 legal holidays if a warrant issued pursuant to this section is an extradition warrant.

77 (6) The law enforcement agency identified by the magistrate under Subsection (4)(a)
78 shall report any changes to the status of a warrant issued pursuant to this section to the Bureau
79 of Criminal Identification.

80 Section 2. Section 77-7-8 is amended to read:

81 **77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a**
82 **warrant.**

83 (1) As used in this section:

84 (a) "Daytime hours" means the same as that term is defined in Subsection 77-7-5(1)(a).

85 (b) "Nighttime hours" means the same as that term is defined in Subsection
86 77-7-5(1)(b).

87 (c) "Supervisory official" means a command-level officer within a law enforcement
88 agency.

89 [(H)] (2) (a) Subject to [~~Subsection (2), a peace~~] the provisions of this section, an

90 officer when making an arrest may forcibly enter the building in which the person to be
91 arrested is located, or in which there is probable cause for believing the person to be.

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

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

94 (ii) knock loudly and demand admission at least three separate times;

95 (iii) wait ~~[a reasonable period of time]~~ at least 30 seconds for an occupant to admit
96 access after knocking and demanding admission for the third time; and

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

98 (c) (i) The officer need not give a demand and explanation, or identify himself or
99 herself, before making a forcible entry ~~[under the exceptions in Section 77-7-6 or where there~~
100 ~~is probable cause to believe evidence will be easily or quickly destroyed]~~ when there is an
101 existing, imminent threat of serious bodily injury or death to a person inside the building.

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

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

106 ~~[(2) If]~~ (3) Subject to Subsections (4) and (5), if the building to be entered under
107 Subsection [(+) (2) appears to be a private residence or the officer knows the building is a
108 private residence, and if there is no consent to enter or there are no exigent circumstances, the
109 officer shall, before entering the building:

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

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

114 (4) Before seeking a warrant from a judge or magistrate under Subsection (3), a
115 supervisory official shall, using the officer's affidavit and other relevant information:

116 (a) independently perform a risk assessment to evaluate the totality of the
117 circumstances;

118 (b) ensure reasonable intelligence-gathering efforts have been made; and

119 (c) determine either that there is a sufficient basis to support seeking a warrant or that
120 the officer must continue intelligence-gathering efforts.

121 (5) (a) The affidavit for a warrant seeking forcible entry shall describe:

122 (i) why the officer believes the suspect is unable to be detained, or the residence
123 searched, using less invasive or less confrontational methods; and

124 (ii) investigative activities that have been undertaken to ensure that the correct building
125 is identified and that potential harm to innocent third parties, the building, and officers may be
126 minimized.

127 (b) Notwithstanding Subsection 77-7-5(3)(a), and pursuant to Rule 40 of the Utah
128 Rules of Criminal Procedure, a forcible-entry warrant shall be served during daytime hours
129 unless the affidavit states sufficient grounds to believe a search is necessary during nighttime
130 hours.

131 ~~[(3)]~~ (6) (a) Notwithstanding any other provision of this chapter, forcible entry under
132 this section may not be made solely for the alleged:

133 ~~[(a)]~~ (i) possession or use of a controlled substance under Section 58-37-8, with or
134 without the intent to distribute; or

135 ~~[(b) the]~~ (ii) possession of drug paraphernalia as defined in Section 58-37a-3.

136 (b) Forcible entry may be made for distribution of a controlled substance.

137 Section 3. Section 77-23-210 is amended to read:

138 **77-23-210. Force used in executing a search warrant -- When notice of authority**
139 **is required as a prerequisite.**

140 (1) As used in this section:

141 (a) "Daytime hours" means the same as that term is defined in Subsection 77-7-5(1)(a).

142 (b) "Nighttime hours" means the same as that term is defined in Subsection
143 77-7-5(1)(b).

144 (c) "Supervisory official" means a command-level officer within a law enforcement
145 agency.

146 ~~[(1)]~~ (2) (a) ~~[No later than July 1, 2015, any]~~ A law enforcement agency that seeks a
147 warrant under this section shall comply with guidelines and procedures which are, at a
148 minimum, in accordance with state law and model guidelines and procedures recommended by
149 the Utah Peace Officer Standards and Training Council created in Section 53-6-106.

150 (b) Written policies adopted pursuant to this section shall be subject to public
151 disclosure and inspection, in accordance with Title 63G, Chapter 2, Government Records

152 Access and Management Act.

153 ~~[(2)]~~ (3) When a search warrant ~~[has been]~~ is issued authorizing entry into any
154 building, room, conveyance, compartment, or other enclosure, the officer executing the warrant
155 may enter:

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

158 ~~[(b) without notice of the officer's authority and purpose as provided in Subsection
159 (3).]~~

160 ~~[(3) (a) The officer may enter without notice only if:]~~

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

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

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

170 ~~[(iv) the officer physically observes and documents a previously unknown event or
171 circumstance at the time the warrant is being executed which creates probable cause to believe
172 the object of the search is being destroyed, or creates reasonable suspicion to believe that
173 physical harm may result to any person if notice were given.]~~

174 (a) if the officer first:

175 (i) identifies himself or herself as an officer;

176 (ii) knocks loudly and demands admission at least three separate times;

177 (iii) waits at least 30 seconds for an occupant to admit access after knocking and
178 demanding admission for the third time; and

179 (iv) explains the purpose for which admission is desired.

180 (b) without the notice described in Subsection (3)(a) if the requirements in Subsection
181 (4) are met.

182 (4) (a) The officer may enter without notice only when there is an existing, imminent

183 threat of serious bodily injury or death to a person inside the enclosure to be searched.

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

186 [~~(4)~~] (5) An officer executing a warrant under this section may use only that force
187 which is reasonable and necessary to execute the warrant.

188 [~~(5)~~] (6) An officer executing a warrant under this section shall wear readily
189 identifiable markings, including a badge and vest or clothing with a distinguishing label or
190 other writing which indicates that he or she is a law enforcement officer.

191 [~~(6)~~] (7) (a) An officer executing a warrant under this section shall comply with the
192 officer's employing agency's body worn camera policy when the officer is equipped with a
193 body-worn camera.

194 (b) The employing agency's policy regarding the use of body-worn cameras shall
195 include a provision that an officer executing a warrant under this section shall wear a
196 body-worn camera when a camera is available, except in exigent circumstances where it is not
197 practicable to do so.

198 [~~(7)~~] (8) (a) The officer shall take reasonable precautions in execution of any search
199 warrant to minimize the risks of unnecessarily confrontational or invasive methods which may
200 result in harm to any person.

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

205 (c) Pursuant to Rule 40 of the Utah Rules of Criminal Procedure, a forcible-entry
206 warrant under this section shall be served during daytime hours unless the affidavit states
207 sufficient grounds to believe a search is necessary during nighttime hours.

208 (9) If the enclosure to be entered under Subsection (3) appears to be a private residence
209 or the officer knows the building is a private residence:

210 (a) before seeking a warrant from a judge or magistrate, a supervisory official shall,
211 using the officer's affidavit and other relevant information:

212 (i) independently perform a risk assessment to evaluate the totality of the
213 circumstances;

214 (ii) ensure reasonable intelligence-gathering efforts have been made; and
215 (iii) determine either that there is a sufficient basis to support seeking a warrant or that
216 the officer must continue intelligence-gathering efforts; and
217 (b) the officer shall describe in the affidavit:
218 (i) why the officer believes the residence cannot be searched using less invasive or less
219 confrontational methods; and
220 (ii) investigative activities that have been undertaken to ensure that the correct
221 enclosure is identified and that potential harm to innocent third parties, the enclosure, and
222 officers may be minimized.
223 [~~8~~] (10) (a) Notwithstanding any provision in this chapter, a warrant authorizing
224 forcible entry without prior announcement may not be issued under this section, solely for:
225 [~~a~~] (i) the alleged possession or use of a controlled substance, with or without the
226 intent to distribute; or
227 [~~b~~] (ii) the alleged possession of drug paraphernalia as provided in Section 58-37a-3.
228 (b) A warrant authorizing forcible entry may be made for distribution of a controlled
229 substance.