

HB0245S03 compared with HB0245S02

~~text~~ shows text that was in HB0245S02 but was deleted in HB0245S03.

text shows text that was not in HB0245S02 but was inserted into HB0245S03.

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Representative Craig Hall proposes the following substitute bill:

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; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

HB0245S03 compared with HB0245S02

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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

(ii) secure the appearance of the accused; or

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

~~(2)~~ (3) If the offense charged is:

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

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

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

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

HB0245S03 compared with HB0245S02

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

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

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

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

(4) (a) If the magistrate determines that the accused must appear in court, the magistrate shall include in the arrest warrant the name of the law enforcement agency in the county or municipality with jurisdiction over the offense charged.

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

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

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

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

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

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

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

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

HB0245S03 compared with HB0245S02

(1) As used in this section:

(a) "Command-level officer" means the same as that term is defined in Section 77-23-102.

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

(c) "Knock" means to knock with reasonably strong force in a quick succession of three or more contacts with a door or other point of entry into a building that would allow the occupant to reasonably hear the officer's demand for entry.

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

(e) "No-knock warrant" means a forcible entry warrant that authorizes entry into a building without notice.

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

~~[(1)]~~ (2) (a) Subject to ~~[Subsection (2), a peace]~~ the provisions of this section, an officer when making an arrest may forcibly enter the building in which the person to be arrested is located, or in which there is probable cause for believing the person to be.

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

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

(ii) except as provided in Subsection (2)(c), knock and demand admission more than once;

(iii) wait a reasonable period of time ~~{sufficient}~~ for an occupant ~~{coming from the farthest point away in the building}~~ to admit access after knocking and demanding admission;
and

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

(c) The officer need not knock more than once, or continue to wait before entry, if the officer has probable cause to believe that an occupant has knowledge that the officer is demanding entry and is unwilling to promptly allow the officer entry.

~~[(c)]~~ (d) (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 77-7-6 or where there is probable cause to believe evidence will be easily or quickly destroyed]~~ when there is a present or imminent threat of serious bodily injury or death to a person inside or outside the

HB0245S03 compared with HB0245S02

building.

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

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

~~[(2) If]~~ (3) Subject to Subsections (4) and (5), if the building to be entered under Subsection [(1)] (2) 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, 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.

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

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

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

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

(5) (a) The affidavit for a no-knock warrant seeking forcible entry shall describe:

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

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

(iii) pursuant to Subsection (2)(d)(i), the present or imminent threat of serious bodily injury or death to a person inside or outside the building.

(b) Notwithstanding Subsection 77-7-5(3)(a), and pursuant to Rule 40 of the Utah Rules of Criminal Procedure, a no-knock warrant shall be served during daytime hours unless the affidavit states sufficient grounds to believe a search is necessary during nighttime hours.

HB0245S03 compared with HB0245S02

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

- (a) possession or use of a controlled substance under Section 58-37-8; or
- (b) ~~[the]~~ possession of drug paraphernalia as defined in Section 58-37a-3.

Section 3. 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) As used in this section:

(a) "Command-level officer" means the same as that term is defined in Section 77-23-102.

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

(c) "Knock" means to knock with reasonably strong force in a quick succession of three or more contacts with a door or other point of entry into a building that would allow the occupant to reasonably hear the officer's demand for entry.

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

(e) "No-knock warrant" means a forcible entry warrant that authorizes entry into a building without notice.

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

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

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

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

~~[(a) if, after giving notice of the officer's authority and purpose, there is no response or~~

HB0245S03 compared with HB0245S02

~~the officer is not admitted with reasonable promptness; or]~~

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

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

~~[(i) there is reasonable suspicion to believe that 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 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 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 the Rules of Criminal Procedure; or]~~

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

(a) if the officer first:

(i) identifies himself or herself as an officer;

(ii) knocks and demands admission more than once;

(iii) except as provided in Subsection (4)(a), waits a reasonable period of time ~~{sufficient}~~ for an occupant ~~{coming from the farthest point away in the building}~~ to admit access after knocking and demanding admission; and

(iv) explains the purpose for which admission is desired; or

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

(4) (a) The officer need not knock more than once, or continue to wait before entry, if the officer has probable cause to believe that an occupant has knowledge that the officer is demanding entry and is unwilling to promptly allow the officer entry.

(b) The officer may enter without notice only when there is a present or imminent threat of serious bodily injury or death to a person inside or outside the enclosure to be

HB0245S03 compared with HB0245S02

searched.

~~[(b)]~~ (c) The officer shall identify himself or herself and state the purpose for entering the premises as soon as practicable after entering.

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

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

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

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

~~[(7)]~~ (8) (a) The officer shall take reasonable precautions in execution of any search warrant to minimize the risks of unnecessarily confrontational or 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.

(c) Pursuant to Rule 40 of the Utah Rules of Criminal Procedure, a no-knock warrant under this section shall be served during daytime hours unless the affidavit states sufficient grounds to believe a search is necessary during nighttime hours.

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

(a) before seeking a warrant from a judge or magistrate, a supervisory official shall, using the officer's affidavit:

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

HB0245S03 compared with HB0245S02

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

(iii) determine either that there is a sufficient basis to support seeking a warrant or that the officer must continue intelligence-gathering efforts; and

(b) the officer shall describe in the affidavit:

(i) why the officer believes the residence cannot be searched using less invasive or less confrontational methods; ~~and~~

(ii) investigative activities that have been undertaken to ensure that the correct enclosure is identified and that potential harm to innocent third parties, the enclosure, and officers may be minimized~~;~~ and

(iii) pursuant to Subsection (4)(b), the present or imminent threat of serious bodily injury or death to a person inside or outside the enclosure to be searched.

[(8)] (10) Notwithstanding any provision in this chapter, a warrant authorizing forcible entry without prior announcement may not be issued under this section, solely for:

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

(b) the alleged possession of drug paraphernalia as provided in Section 58-37a-3.