

FORCIBLE ENTRY WARRANT MODIFICATIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matthew H. Gwynn

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill provides parameters for knock and announce, and no-knock warrants and specifies the conditions under which they may be acquired and used.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires officers serving knock and announce and no-knock warrants to wear readily identifiable markings or clothing that identify them as law enforcement officers;
- ▶ requires that officers knock and announce themselves more than once before forcibly entering a building;
- ▶ sets a preference for warrants to be served during daytime hours;
- ▶ allows for exigent circumstances when serving knock and announce warrants;
- ▶ prohibits the use of no-knock warrants for misdemeanor charges; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 77-7-5, as last amended by Laws of Utah 2021, Chapter 260

29 77-7-8, as last amended by Laws of Utah 2015, Chapter 317

30 ENACTS:

31 77-7-8.1, Utah Code Annotated 1953



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

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

35 **77-7-5. Issuance of summons or warrant -- Time and place arrests may be made**
36 **-- Contents of warrant or summons -- Responsibility for transporting prisoners -- Court**
37 **clerk to dispense costs for transportation.**

38 (1) As used in this section:

39 (a) "Daytime hours" means the hours after 6 a.m. and before 10 p.m.

40 (b) "Nighttime hours" means the hours after 10 p.m. and before 6 a.m.

41 ~~(1)~~ (2) A magistrate may issue a warrant for arrest in lieu of a summons for the
42 appearance of the accused only upon finding:

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

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

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

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

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

50 ~~(2)~~ (3) If the offense charged is:

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

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

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

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

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

59 arrest.

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

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

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

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

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

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

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

76 (ii) The court clerk shall:

77 (A) account for a cost paid under Subsection 76-3-201(4)(b) for government
78 transportation; and

79 (B) dispense money collected by the court under Subsection (4)(c)(ii)(A) to the law
80 enforcement agency responsible for the transportation of a convicted defendant.

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

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

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

88 **77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a**
89 **warrant.**

90 (1) As used in this section:

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

92 (b) "Forcible entry" means entering any building, room, conveyance, compartment, or
93 other enclosure by force.

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

97 (d) "Knock and announce warrant" means a lawful search warrant that authorizes entry
98 into a building after knocking and demanding entry onto property or building as outlined in
99 Subsection (2).

100 (e) "Nighttime hours" means the same as that term is defined in Section 77-7-5.

101 (f) "Supervisory official" means a command-level officer and includes all sheriffs,
102 heads of law enforcement agencies, and all supervisory enforcement officers equivalent to a
103 sergeant rank or higher.

104 ~~[(+)]~~ (2) (a) Subject to [Subsection (2), a peace] the provisions of this subsection, an
105 officer when making [an arrest may forcibly enter the building in which] a lawful arrest or
106 servng a lawful knock and announce warrant, may make forcible entry where the person to be
107 arrested is located, or [in which] where there is probable cause for believing the person to be.

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

109 (i) wear readily identifiable markings, including a badge and vest or clothing with a
110 distinguishing label or other writing which identifies the person as a law enforcement officer;

111 ~~[(+)]~~ (ii) audibly identify himself or herself as a law enforcement officer;

112 ~~[(+)]~~ (iii) knock and demand admission more than once;

113 ~~[(+)]~~ (iv) wait a reasonable period of time for an occupant to admit access after
114 knocking and demanding admission; and

115 ~~[(+)]~~ (v) explain the purpose for which admission is desired.

116 (c) (i) The officer need not knock, give a demand and explanation, or identify himself
117 or herself, before making a forcible entry;

118 (A) under the exceptions in Section 77-7-6 [or];

119 (B) where there is probable cause to believe [evidence will be easily or quickly
120 destroyed.] exigent circumstances exist due to the destruction of evidence; or

121 (C) there is reasonable suspicion to believe exigent circumstances exist due to the
122 physical safety of an officer or individual inside or in near proximity to the building.

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

125 (d) The officer may use only that force which is reasonable and necessary to effectuate
126 forcible entry under this section.

127 [~~(2)~~] (3) [H] Subject to Subsection (4), if the building to be entered under Subsection
128 [H] (2) appears to be a private residence or the officer knows the building is a private
129 residence, and if there is no consent to enter or there are no exigent circumstances, the officer
130 shall, before entering the building:

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

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

135 (4) Before seeking a warrant from a judge or magistrate under Subsection (2), a
136 supervisory official shall, using the officer's affidavit:

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

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

139 (c) ensure a threat assessment was completed on the person or building to be searched;

140 and

141 (d) determine either that there is a sufficient basis to support seeking a warrant or
142 require that the officer continue evidence gathering efforts.

143 [~~(3)~~] (5) Notwithstanding any other provision of this chapter, forcible entry under this
144 section may not be made solely for the alleged:

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

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

147 (6) All arrest warrants are subject to the conditions set forth in Subsection 77-7-5(2).

148 (7) Unless specifically requested by the affiant and approved by a judge or magistrate,
149 all knock and announce warrants shall be served during daytime hours.

150 Section 3. Section 77-7-8.1 is enacted to read:

151 **77-7-8.1. Forcible entry to conduct a search -- Conditions requiring a warrant --**

152 **No-knock warrants.**153 (1) As used in this section:154 (a) "Daytime hours" means the same as that term is defined in Section 77-7-5.155 (b) "Forcible entry" means the same as that term is defined in Section 77-7-8.156 (c) "Nighttime hours" means the same as that term is defined in Section 77-7-5.157 (d) "No-knock warrant" means a lawful search warrant that authorizes entry into a
158 building without notice to any occupant in the property or building at the time of service.159 (e) "Supervisory official" means the same as that term is defined in Section 77-7-8.160 (2) Subject to the provisions of this section, an officer serving a lawful no-knock
161 warrant may make a forcible entry onto the property or building to be searched without notice.162 (3) Before seeking a no-knock warrant from a judge or magistrate under Subsection
163 (2), a supervisory official shall, using the officer's affidavit:164 (a) independently perform an assessment to evaluate the totality of the circumstances;165 (b) ensure reasonable intelligence gathering efforts have been made;166 (c) ensure a threat assessment was completed on the person or building to be searched;167 and168 (d) determine either that there is a sufficient basis to support seeking a warrant or
169 require that the officer continue evidence gathering efforts.170 (4) (a) The affidavit for a no-knock warrant shall describe:171 (i) why the officer believes the suspect is unable to be detained or the residence
172 searched using less invasive or less confrontational methods;173 (ii) investigative activities that have been undertaken to ensure that the correct building
174 is identified and that potential harm to innocent third parties, the building, and officers may be
175 minimized; or176 (iii) the present or imminent threat of serious bodily injury or death to a person inside,
177 outside, or in near proximity to the building.178 (b) A no-knock warrant shall be served during daytime hours unless the affidavit states
179 sufficient grounds to believe a search is necessary during nighttime hours.180 (5) Upon serving a no-knock warrant, an officer shall wear readily identifiable
181 markings, including a badge and vest or clothing with a distinguishing label or other writing
182 which shows that the person is a law enforcement officer.

183 (6) Notwithstanding any other provision of this chapter, ~~H→~~ **an officer may not**
183a **request** ~~←H~~ a no-knock warrant ~~H→~~ **[may not be**
184 **granted]** ~~←H~~ if the warrant is solely for a misdemeanor investigation.