

FORCIBLE ENTRY WARRANT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matthew H. Gwynn

Senate Sponsor: Michael K. McKell

LONG TITLE

General Description:

This bill amends the requirements for law enforcement officers to forcibly enter a premises.

Highlighted Provisions:

This bill:

- defines terms;
- provides an exception to the requirement that a law enforcement officer knock and demand admission and wait a reasonable time before forcibly entering a premises in certain circumstances; and
- makes technical and conforming 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 2022, Chapter 131

77-7-8.1, as enacted by Laws of Utah 2022, Chapter 131

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

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

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

(1) As used in this section:

- (a) "Daytime hours" means the same as that term is defined in Section 77-7-5.
- (b) ~~["Forcible entry"]~~ "Forcibly enter" means entering any ~~[building, room, conveyance,~~

- 29 ~~compartment, or other enclosure]~~ premises by force.
- 30 (c) "Knock" means to knock with reasonably strong force in a quick succession of three
 31 or more contacts with a door or other point of entry into a building that would allow
 32 the occupant to reasonably hear the peace officer's demand for entry.
- 33 (d) "Knock and announce warrant" means a lawful search warrant that authorizes entry
 34 into a building after knocking and demanding entry onto ~~[property or building as~~
 35 ~~outlined]~~ a premises described in Subsection (2).
- 36 (e) "Nighttime hours" means the same as that term is defined in Section 77-7-5.
- 37 (f) "Peace officer" means the same as that term is defined in Section 53-1-102.
- 38 (g) "Premises" means any building, room, conveyance, compartment, or other enclosure.
- 39 ~~[(f)]~~ (h) (i) "Supervisory official" means a command-level officer ~~[and]~~ .
- 40 (ii) "Supervisory official" includes [all sheriffs, heads of law enforcement agencies] a
 41 sheriff, a head of a law enforcement agency, and [all] a supervisory enforcement [
 42 officers] officer equivalent to a sergeant rank or higher.
- 43 (2) (a) Subject to the provisions of this ~~[subsection, an]~~ Subsection (2), a peace officer
 44 when making a lawful arrest, or serving a [lawful] knock and announce warrant, may [
 45 make forcible entry] forcibly enter a premises:
- 46 (i) ~~[where the person]~~ if the individual to be arrested is located~~[,]~~ within the premises;
 47 or
- 48 (ii) ~~[where]~~ if there is probable cause [for believing the person to be] to believe that
 49 the individual is located within the premises.
- 50 (b) (i) ~~[Before making the forcible entry, the]~~ Subject to Subsection (3), before
 51 forcibly entering a premises as described in Subsection (2)(a), a peace officer shall:
- 52 ~~[(i)]~~ (A) wear readily identifiable markings, including a badge and vest or clothing
 53 with a distinguishing label or other writing ~~[which]~~ that identifies the ~~[person]~~
 54 individual as a law enforcement officer;
- 55 ~~[(ii)]~~ (B) audibly identify himself or herself as a law enforcement officer;
- 56 ~~[(iii)]~~ (C) knock and demand admission more than once;
- 57 ~~[(iv)]~~ (D) wait a reasonable period of time for an occupant to admit access after
 58 knocking and demanding admission; and
- 59 ~~[(v)]~~ (E) explain the purpose for which admission is desired.
- 60 ~~[(e)]~~ (3) ~~[(i)]~~ (a) ~~[The officer need not knock, give a demand and explanation, or identify~~
 61 ~~himself or herself, before making a forcible entry]~~ A peace officer does not need to:
- 62 (i) comply with the requirements of Subsection (2)(b)(i)(B), (2)(b)(i)(C), (2)(b)(i)(D),

- 63 and (2)(b)(i)(E) before forcibly entering a premises:
64 (A) under the exceptions in Section 77-7-6 or 77-7-8.1;
65 (B) where there is probable cause to believe exigent circumstances exist due to the
66 destruction of evidence; or
67 (C) where there is reasonable suspicion to believe exigent circumstances exist due
68 to the physical safety of [an] a peace officer or individual inside or in near
69 proximity to the [building-] premises; or
70 (ii) comply with the requirements described in Subsections (2)(b)(i)(C) and
71 (2)(b)(i)(D) before forcibly entering a premises if the officer, or another peace
72 officer:
73 (A) has been near the premises for an extended amount of time and a reasonable
74 person would conclude that an individual on the premises knows or should
75 know that a peace officer is present;
76 (B) has demanded admission and announced an intent to enter the premises more
77 than once; and
78 (C) has complied with Subsections (2)(b)(i)(A), (2)(b)(i)(B), and (2)(b)(i)(E).
79 [(ii)] (b) [The-] If a peace officer forcibly enters a premises under Subsection (3)(a)(i), the
80 peace officer shall identify himself or herself and state the purpose for entering the
81 premises as soon as practicable after entering the premises.
82 [(d)] (4) The peace officer may use only that force [which] that is reasonable and necessary
83 to [effectuate forcible entry-] forcibly enter a premises under this section.
84 [(3)] (5) Subject to Subsection [(4)-] (6), if the [building-] premises to be entered under
85 Subsection [(2)-] (2)(a) appears to be a private residence or the peace officer knows the [
86 building] premises is a private residence, and if there is no consent to enter or there are
87 no exigent circumstances, the peace officer shall, before entering the [building-] premises:
88 (a) obtain an arrest or search warrant if the [building-] premises is the residence of the [
89 person-] individual to be arrested; or
90 (b) obtain a search warrant if the building is a private residence, but not the residence of
91 the [person-] individual whose arrest is sought.
92 [(4)] (6) Before seeking a warrant from a judge or magistrate under Subsection [(2)-] (2)(a), a
93 supervisory official shall, using the peace officer's affidavit:
94 (a) independently perform an assessment to evaluate the totality of the circumstances;
95 (b) ensure reasonable intelligence gathering efforts have been made;
96 (c) ensure a threat assessment was completed on the [person or building-] individual or

premises to be searched; and

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

~~[(5)] (7)~~ Notwithstanding any other provision of this chapter, ~~[forcible entry under this section-]~~ a peace officer may not ~~[be made-]~~ forcibly enter a premises based solely [for the alleged-] on:

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

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

~~[(6)] (8)~~ All arrest warrants are subject to the conditions ~~[set forth-]~~ described in Subsection 77-7-5(2).

~~[(7)] (9)~~ ~~[Unless specifically requested by the affiant and approved by a judge or magistrate, all knock and announce warrants shall be served-]~~ A peace officer shall serve a knock and announce warrant during daytime hours unless a peace officer has requested, and a judge or magistrate has approved, for the warrant to be served during nighttime hours.

Section 2. Section 77-7-8.1 is amended to read:

77-7-8.1 . Forcible entry to conduct a search -- Conditions requiring a warrant -- No-knock warrants.

(1) As used in this section:

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

(b) ~~["Forcible entry-"]~~ "Forcibly enter" means the same as that term is defined in Section 77-7-8.

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

(d) "No-knock warrant" means a lawful search warrant that authorizes entry ~~[into a building]~~ onto a premises without notice to any occupant ~~[in the property or building]~~ on the premises at the time of service.

(e) "Supervisory official" means the same as that term is defined in Section 77-7-8.

(f) "Peace officer" means the same as that term is defined in Section 53-1-102.

(g) "Premises" means any property, building, room, conveyance, compartment, or other enclosure.

(2) Subject to the provisions of this section, ~~[an]~~ a peace officer serving a lawful no-knock warrant may ~~[make a forcible entry onto the property or building]~~ forcibly enter a premises to be searched without notice.

(3) Before seeking a no-knock warrant from a judge or magistrate under Subsection (2), a supervisory official shall, using the peace officer's affidavit:

- (a) independently perform an assessment to evaluate the totality of the circumstances;
(b) ensure reasonable intelligence gathering efforts have been made;
(c) ensure a threat assessment was completed on the ~~[person or building]~~ individual or premises to be searched; and
(d) determine either that there is a sufficient basis to support seeking a warrant or require that the peace officer continue evidence gathering efforts.

- (4) (a) The affidavit for a no-knock warrant shall describe:
(i) why the peace officer believes the suspect is unable to be detained or the residence searched using less invasive or less confrontational methods;
(ii) investigative activities that have been undertaken to ensure that the correct [~~building~~ premises is identified and that potential harm to innocent third parties, the ~~[building]~~ premises, and officers may be minimized; or
(iii) the present or imminent threat of serious bodily injury or death to ~~[a person]~~ an individual inside, outside, or in near proximity to the ~~[building]~~ premises.
(b) ~~[A]~~ A peace officer shall serve a no-knock warrant ~~[shall be served]~~ during daytime hours unless ~~[the]~~ a peace officer's affidavit states sufficient grounds to believe a search is necessary during nighttime hours.

- (5) ~~[Upon serving a no-knock warrant, an]~~ An officer shall wear readily identifiable markings ~~when serving a no-knock warrant~~, including a badge and vest or clothing with a distinguishing label or other writing ~~[which]~~ that shows that the ~~[person]~~ individual is a ~~[law enforcement]~~ peace officer.
(6) Notwithstanding any other provision of this chapter, ~~[an]~~ a peace officer may not request a no-knock warrant if the warrant is solely for a misdemeanor investigation.

Section 3. **Effective date.**

This bill takes effect on May 1, 2024.