

FORCIBLE ENTRY WARRANT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matthew H. Gwynn

Senate Sponsor: _____

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, compartment, or other enclosure]~~ premises by force.

(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 peace officer's demand for entry.

(d) "Knock and announce warrant" means a lawful search warrant that authorizes entry into a building after knocking and demanding entry onto ~~[property or building as outlined]~~ a premises described in Subsection (2).

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

(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.

~~[(f)]~~ (h) (i) "Supervisory official" means a command-level officer ~~[and]~~.

(ii) "Supervisory official" includes [all sheriffs, heads of law enforcement agencies] a sheriff, a head of a law enforcement agency, and [all] a supervisory enforcement [officers] officer equivalent to a sergeant rank or higher.

(2) (a) Subject to the provisions of this ~~[subsection, an]~~ Subsection (2), a peace officer when making a lawful arrest, or serving a ~~[lawful]~~ knock and announce warrant, may ~~[make forcible entry]~~ forcibly enter a premises:

(i) [where the person] if the individual to be arrested is located[;] within the premises;
or

(ii) [where] if there is probable cause [for believing the person to be] to believe that the individual is located within the premises.

(b) ~~(i) [Before making the forcible entry, the]~~ Subject to Subsection (3), before forcibly entering a premises as described in Subsection (2)(a), a peace officer shall:

~~[(i)]~~ (A) wear readily identifiable markings, including a badge and vest or clothing with

a distinguishing label or other writing ~~[which]~~ that identifies the ~~[person]~~ individual as a law enforcement officer;

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

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

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

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

~~(3) [(c)] (a) [(i)] The officer need not knock, give a demand and explanation, or identify himself or herself, before making a forcible entry]~~ A peace officer does not need to:

(i) comply with the requirements of Subsection (2)(b)(i)(B), (2)(b)(i)(C), (2)(b)(i)(D), and (2)(b)(i)(E) before forcibly entering a premises:

(A) under the exceptions in Section 77-7-6 or 77-7-8.1;

(B) where there is probable cause to believe exigent circumstances exist due to the destruction of evidence; or

(C) where there is reasonable suspicion to believe exigent circumstances exist due to the physical safety of ~~[an]~~ a peace officer or individual inside or in near proximity to the ~~[building.]~~ premises; or

(ii) comply with the requirements described in Subsections (2)(b)(i)(C) and (2)(b)(i)(D) before forcibly entering a premises if the officer, or another peace officer:

(A) has been near the premises for an extended amount of time and a reasonable person would conclude that an individual on the premises knows or should know that a peace officer is present;

(B) has demanded admission; and

(C) has complied with Subsections (2)(b)(i)(A), (2)(b)(i)(B), and (2)(b)(i)(E).

~~[(ii)]~~ (b) ~~[The]~~ If a peace officer forcibly enters a premises under Subsection (3)(a)(i), the peace officer shall identify himself or herself and state the purpose for entering the premises as soon as practicable after entering the premises.

~~[(d)]~~ (4) The peace officer may use only that force ~~[which]~~ that is reasonable and necessary to ~~[effectuate forcible entry]~~ forcibly enter a premises under this section.

~~[(3)]~~ (5) Subject to Subsection ~~[(4)]~~ (6), if the ~~[building]~~ premises to be entered under Subsection ~~[(2)]~~ (2)(a) appears to be a private residence or the peace officer knows the

[building] premises is a private residence, and if there is no consent to enter or there are no exigent circumstances, the peace officer shall, before entering the [building] premises:

(a) obtain an arrest or search warrant if the [building] premises is the residence of the [person] individual to be arrested; or

(b) obtain a search warrant if the building is a private residence, but not the residence of the [person] individual whose arrest is sought.

~~[(4)]~~ (6) Before seeking a warrant from a judge or magistrate under Subsection ~~[(2)]~~ (2)(a), 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.

~~[(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 office 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.

152 (5) ~~[Upon serving a no-knock warrant, an]~~ An officer shall wear readily identifiable
153 markings when serving a no-knock warrant, including a badge and vest or clothing with a
154 distinguishing label or other writing ~~[which]~~ that shows that the ~~[person]~~ individual is a ~~[law~~
155 ~~enforcement]~~ peace officer.

156 (6) Notwithstanding any other provision of this chapter, ~~[an]~~ a peace officer may not
157 request a no-knock warrant if the warrant is solely for a misdemeanor investigation.

158 Section 3. **Effective date.**

159 This bill takes effect on May 1, 2024.