

FORCIBLE ENTRY AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen H. Urquhart

House Sponsor: Bradley G. Last

LONG TITLE

General Description:

This bill modifies the Utah Code of Criminal Procedure regarding the use of forcible entry when serving a search warrant or making an arrest.

Highlighted Provisions:

This bill:

- ▶ amends existing law regarding the use of forcible entry by a law enforcement officer when executing a warrant;
- ▶ requires that the Utah Peace Officer Standards and Training Council recommend guidelines and procedures regarding use of force in executing a warrant;
- ▶ requires a law enforcement officer to wear a badge, label, or clothing that identifies that person as a peace officer;
- ▶ provides that if the deploying law enforcement agency owns and operates body camera devices, the officer who executes a warrant shall be equipped with a body camera that actively records through the duration of the execution of the warrant;
- ▶ provides that a search or administrative warrant may not be issued by a justice court judge;
- ▶ provides that a warrant authorizing forcible entry may not be issued solely for the purpose of an alleged controlled substance or for drug paraphernalia; and
- ▶ provides that any evidence obtained in violation of these provisions is not admissible in any civil, criminal, or administrative proceeding.

Money Appropriated in this Bill:

None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **77-7-8**, as last amended by Laws of Utah 2014, Chapter 297

35 **77-23-210**, as last amended by Laws of Utah 2014, Chapter 297



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

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

39 **77-7-8. Forcible entry to conduct search or make arrest -- Conditions requiring a**
40 **warrant.**

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

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

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

46 (ii) demand admission;

47 (iii) wait a reasonable period of time for an occupant to admit access; and

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

49 (c) (i) The officer need not give a demand and explanation, or identify himself or
50 herself, before making a forcible entry under the exceptions in Section **77-7-6** or where there is
51 probable cause to believe evidence will be easily or quickly [~~secreted or~~] destroyed.

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

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

56 (2) If the building to be entered under Subsection (1) appears to be a private residence
57 or the officer knows the building is a private residence, and if there is no consent to enter or

58 there are no exigent circumstances, the officer shall, before entering the building:

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

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

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

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

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

67 Section 2. Section 77-23-210 is amended to read:

68 **77-23-210. Force used in executing a search warrant -- When notice of authority**
69 **is required as a prerequisite.**

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

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

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

80 (a) if, after giving notice of the officer's authority and purpose, there is no response or
81 the officer is not admitted with reasonable promptness; or

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

83 ~~[(2) The officer executing the warrant under Subsection (1) may use only that force~~
84 ~~which is reasonable and necessary to execute the warrant.]~~

85 ~~[(3) (a) The officer shall identify himself or herself and state the purpose of entering~~

86 ~~the premises as soon as practicable.]~~

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

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

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

92 (iii) the magistrate, having found probable cause based upon proof provided under
93 oath, that the object of the search may be easily or quickly ~~[secreted or]~~ destroyed, or having
94 found reason to believe that physical harm may result to any person if notice were given, has
95 directed that the officer need not give notice of authority and purpose before entering the
96 premises to be searched under ~~[Rule 40;]~~ the Rules of Criminal Procedure[-]; or

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

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

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

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

108 (6) (a) An officer executing a warrant under this section shall comply with the officer's
109 employing agency's body worn camera policy when the officer is equipped with a body worn
110 camera.

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

114 practicable to do so.

115 ~~[(4)]~~ (7) (a) The officer shall take reasonable precautions in execution of any search
116 warrant to minimize the risks of unnecessarily confrontational or invasive methods which may
117 result in harm to any person.

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

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

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

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