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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) [~~"Foreible 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~~

97 premises to be searched; and

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

100 ~~[(5)] (7)~~ Notwithstanding any other provision of this chapter, ~~[foreible entry under this~~
101 section] a peace officer may not ~~[be made]~~ forcibly enter a premises based solely [for the
102 alleged] on:

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

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

105 ~~[(6)] (8)~~ All arrest warrants are subject to the conditions ~~[set forth]~~ described in Subsection
106 77-7-5(2).

107 ~~[(7)] (9)~~ ~~[Unless specifically requested by the affiant and approved by a judge or magistrate,~~
108 ~~all knock and announce warrants shall be served]~~ A peace officer shall serve a knock
109 and announce warrant during daytime hours unless a peace officer has requested, and a
110 judge or magistrate has approved, for the warrant to be served during nighttime hours.

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

112 **77-7-8.1 . Forcible entry to conduct a search -- Conditions requiring a warrant --**
113 **No-knock warrants.**

114 (1) As used in this section:

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

116 (b) ~~["Foreible entry"]~~ "Forcibly enter" means the same as that term is defined in Section
117 77-7-8.

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

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

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

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

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

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

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

- 131 (a) independently perform an assessment to evaluate the totality of the circumstances;
132 (b) ensure reasonable intelligence gathering efforts have been made;
133 (c) ensure a threat assessment was completed on the ~~[person or building]~~ individual or
134 premises to be searched; and
135 (d) determine either that there is a sufficient basis to support seeking a warrant or require
136 that the peace officer continue evidence gathering efforts.
- 137 (4) (a) The affidavit for a no-knock warrant shall describe:
138 (i) why the peace officer believes the suspect is unable to be detained or the residence
139 searched using less invasive or less confrontational methods;
140 (ii) investigative activities that have been undertaken to ensure that the correct [
141 building] premises is identified and that potential harm to innocent third parties,
142 the [building] premises, and officers may be minimized; or
143 (iii) the present or imminent threat of serious bodily injury or death to [~~a person~~] an
144 individual inside, outside, or in near proximity to the [building] premises.
- 145 (b) ~~[A]~~ A peace officer shall serve a no-knock warrant ~~[shall be served]~~ during daytime
146 hours unless ~~[the]~~ a peace officer's affidavit states sufficient grounds to believe a
147 search is necessary during nighttime hours.
- 148 (5) ~~[Upon serving a no-knock warrant, an]~~ An officer shall wear readily identifiable
149 markings when serving a no-knock warrant, including a badge and vest or clothing with
150 a distinguishing label or other writing ~~[which]~~ that shows that the ~~[person]~~ individual is a [
151 ~~law enforcement~~] peace officer.
- 152 (6) Notwithstanding any other provision of this chapter, ~~[an]~~ a peace officer may not request
153 a no-knock warrant if the warrant is solely for a misdemeanor investigation.

154 Section 3. **Effective date.**

155 This bill takes effect on May 1, 2024.