

FORCIBLE ENTRY AND WARRANTS AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marc K. Roberts

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to entry of peace officers to conduct search or make arrest.

Highlighted Provisions:

This bill:

- ▶ addresses firearms in private residences;
- ▶ requires certain information in affidavits requesting specific warrants;
- ▶ limits when forcible entry may be used; and
- ▶ makes technical 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 2015, Chapter 317

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



28 **warrant.**

29 (1) (a) Subject to ~~[Subsection (2)]~~ the other provisions of this section, a peace officer
30 when making an arrest may forcibly enter the building in which the person to be arrested is
31 located, or in which there is probable cause for believing the person to be.

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

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

34 (ii) demand admission;

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

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

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

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

42 (d) The peace officer may use only that force ~~[which]~~ that is reasonable and necessary
43 to effectuate forcible entry under this section.

44 (2) ~~[H]~~ Subject to Subsection (3), if the building to be entered under Subsection (1)
45 appears to be a private residence or the peace officer knows the building is a private residence,
46 and if there is no consent to enter or there are no exigent circumstances, the peace officer shall,
47 before entering the building:

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

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

52 (3) The presence of a firearm within a private residence, in the absence of other
53 information suggesting that the firearm might be used against a peace officer executing a
54 warrant, is not relevant in determining whether forcible entry may be authorized.

55 (4) A judge or magistrate issuing a warrant pursuant to Subsection (2) shall ensure that
56 the affidavit for the warrant:

57 (a) explains why a peace officer is unable to detain the suspect or search the residence
58 using less invasive or confrontational methods;

59 (b) explains why the warrant cannot be executed during daytime, which is the hours
60 beginning at 6 a.m. and ending at 10 p.m. local time, if the warrant is to be executed at night;
61 and

62 (c) describes:

63 (i) investigative activities that have been, or will be, undertaken before execution of the
64 warrant to ensure that the correct building is identified and that potential harm to innocent third
65 parties, the building, and peace officers may be minimized; or

66 (ii) why no investigative activities are needed.

67 ~~[(3)]~~ (5) Notwithstanding any other provision of this chapter, forcible entry under this
68 section may not be made solely for the alleged:

69 (a) possession or use of a controlled substance under Section [58-37-8](#), with or without
70 the intent to distribute; or

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

Legislative Review Note
Office of Legislative Research and General Counsel