

# Utah cops would have to answer more questions before getting a no-knock warrant, under new proposal

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It all began with an anonymous tip.

Children were living in unhealthy conditions, an American Fork police sergeant wrote in a March search warrant. There might even be drug use in the house on 200 East.

Sgt. Ryan Archuleta did not alert the Division of Child and Family Services. Instead, he opened a drug investigation — rooting through the trash and finding burnt foil, hollowed-out pens and plastic baggies that field-tested positive for methamphetamine.

Archuleta thought that gave him probable cause to search the home for illegal drug use. He sought a judge's electronic approval just before 7 p.m. Two minutes and 29 seconds later, 4th District Judge Jennifer Brown signed off.

But Archuleta didn't rush to search the home. With seven officers in tow, he knocked on the door more than two weeks later. No answer.

Then the officers broke in.

## Forcible entry

This is but one of the hundreds of times Utah police have forced their way into homes, businesses and vehicles around the state each year. It could be for a robbery or murder, but overwhelmingly it is for drug crimes, according to the state's annual law enforcement transparency reports.

Police typically use no-knock warrants when they believe announcing themselves as law enforcement could lead to danger, or that a suspect could quickly destroy evidence. Critics say bursting into someone's home unannounced can cause confusion about who is breaking in, which in the past has led to [deadly shootouts in Utah](#) and elsewhere.

Responding to groups, such as the American Civil Liberties Union and the Libertas Institute, Utah lawmakers have placed new restrictions on when officers can break down doors — and even more limitations could come during the 2018 legislative session, which begins later this month.

In 2014, Rep. Marc Roberts, R-Santaquin, sponsored a bill that raised the standard relied on by judges when approving a warrant from "reasonable suspicion" to "probable cause." It also

required law enforcement to employ “only that force which is reasonable and necessary” to arrest a suspect or search property.

The Legislature passed a bill a year later that prohibited police from using force to enter a home if it was believed the suspect’s only crime was possessing drugs. They also are not allowed to seek so-called “no-knock warrants” for possession-only cases.

This year, Roberts will introduce HB83, which would require a judge to ensure an officer has explained several factors when seeking a no-knock or knock-and-announce warrant:

- Why officers are unable to detain the suspect or search the residence using less invasive or confrontational methods?
- Why the warrant cannot be executed during daylight hours? (Most no-knock warrants are executed at night, according state data.)
- What investigative activities have taken place or why no investigation is needed?

Roberts’ initially sought these changes in his 2014 bill, but dropped them at the request of the state courts officials, who said they would make those changes on their own.

They didn’t, according to Roberts, so he’s making another run at passing the changes into law. And in light of data that show a majority of warrants are approved quickly — in less than 10 minutes — Roberts said it’s important to ensure judges are providing proper oversight.

“If we’re going to use that much force to break into somebody’s home, let’s make sure we’re doing it for the right reasons, and we’re asking the right questions,” he said. “The judge authorizes the warrant, so [the bill] just kind of puts the burden back on them to make sure that what they’re authorizing, that the people requesting it have done their due diligence.” HB83 also includes one other big change: It would prohibit a police officer from using force to enter a home if the suspect is accused of possession with the intent to distribute — a charge that generally alleges a person has a “distributable” amount of illegal drugs. It would still allow for forcible entry if an officer can show there is probable cause that a suspect was actually selling drugs.

#### Changing laws

Brent Jex, president of the Utah Fraternal Order of Police, said he has talked to Roberts, plans to work with him on the bill and ultimately believes the FOP will support it.

But Jex said constant changes to laws regulating police officers can be confusing and can hinder how effective they are at combating drug trafficking. Utah law enforcement will comply with any changes, Jex said, but if crime rates rise or other negative impacts are seen as a result of more restrictions on police, blame the lawmakers.

“When the music stops at the end,” he said, “we’re not going to be the one left without a chair.”

Jex guessed there are likely several agencies not fully aware of current law and restrictions.

When asked specifically about the American Fork case involving Archuleta, Jex said he was surprised that such an investigation arose from a Utah police agency — he doesn't usually hear of aggressive searches for such minor crimes as drug use. Police generally have bigger crimes to pursue, he said.

"In the world that I operate in, that doesn't happen," he said.

In American Fork, the police contend their search of the home on 200 East was legal.

Sgt. Josh Christensen said police in Utah can force their way into any property on any warrant if the owner doesn't grant access. He said his department, and others throughout the state, routinely force entry in drug possession cases.

The Salt Lake Tribune contacted a handful of legal experts and received conflicting interpretations of the statute. Sim Gill, Salt Lake County district attorney, said he doubts mere possession is sufficient to invade someone's privacy, but a judge has to consider all of the circumstances, such as other evidence supporting drug sales.

Archuleta's police report asserts only that he expected to find items associated "with the use/distribution of controlled substances and related paraphernalia."

A defense attorney could have challenged the legality of the warrant and search, had the case been brought to court. It never was.

Though officers found rooms full of trash on the day of the search — conditions that Archuleta believed were "unlivable," he wrote in a police report — they found no evidence of drug use and made no arrests.

Archuleta closed the case in April. The officer, however, did contact DCFS in December — days after a Tribune reporter filed a records request on the case — and learned the living situation had been investigated by child welfare workers, and that case was also closed.

'Long-standing concerns'

Groups critical of no-knock warrants say the intent-to-distribute provision in HB83 was drafted to address instances similar to the American Fork case.

Libertas Institute President Connor Boyack, whose organization helped draft HB83, said Roberts' proposal will address this and other "long-standing concerns." It would ensure, in the law, that judges are providing proper oversight on risky warrants.

It's unclear whether that is currently happening, said Marina Lowe, legislative and policy counsel for the American Civil Liberties Union of Utah.

"Before we have law enforcement knocking down people's doors in these really aggressive manners," Lowe said, "we want to just make sure there are some provisions or considerations being taken into account."

Boyack said the bill seeks to restrict no-knocks involving "intent to distribute" cases, because defense attorneys raised concerns that officers were just adding the phrase to their warrants without showing any evidence that suspects were intending to sell drugs.

If officers have evidence of actual distribution, Boyack said, they can still get a warrant allowing them to bust into a home.

“The Legislature would be declaring that possession of controlled substances is not a valid reason to barge into somebody’s home, creating hazard that may lead to unnecessary injury or death of the homeowner or the officers,” Boyack said. “Drugs aren’t worth killing people over.”