

# ARREST WARRANTS

## 1. WARRANTLESS ARRESTS

### a. **Warrantless arrests may occur if:**

1. Public offense committed in a peace officer's presence. §77-7-2(1)(a)
2. Peace officer has reasonable cause to believe a public offense was committed (though not in their presence) AND has reasonable cause to believe the person may:
  - Flee or conceal himself to avoid arrest;
  - Destroy or conceal evidence of the commission of the offense; OR
  - Injure another person or damage property belonging to another. §77-7-2(3)
3. Reasonable cause that a felony or class A misdemeanor was committed §77-7-2(2)
4. Person commits the offense of failure to disclose identity under §76-8-301.5. §77-7-2(4)
5. A magistrate may order a peace officer to arrest someone committing a public offense in his presence.

## 2. ARREST WARRANTS

### a. **When an Arrest Warrant May Be Served:**

1. Felony warrants may be executed at any time of the day or night. §77-7-5(1)(a)
2. Misdemeanor warrants may only be served during the day unless:
  - The magistrate specifically authorizes a night time service.
  - The arrestee is (1) on a public highway, (2) in a public place, or (3) in a place open to the public. §77-7-5(1)(b)
3. Daytime hours: 6:00 a.m. to 10:00 p.m.
4. Nighttime hours: 10:01 p.m. and 5:59 a.m. §77-7-5(2)

### b. **Where a Warrant May Be Served:**

1. *Payton v. New York*, 445 U.S. 573 (1980): Defendant's home if (1) reasonable belief the arrestee resides there and (2) probable cause to believe the arrestee is there at the time of entry. See §77-7-8.
2. *Steagald v. United States*, 451 U.S. 204 (1981): 3<sup>rd</sup> Party homes if police have probable cause to believe arrestee is there AND have a search warrant.
3. *Valdez v. McPheters*, 172 F.3d 1220 (10<sup>th</sup> Cir. 1999). "Transient exception": Residences don't belong to solely a suspect on one hand and 3<sup>rd</sup> parties on the other. So long as the suspect possesses common authority over, or some other significant relationship to the residence entered by police, a search warrant is not required. See also *United States v. Gay*, 240 F.3d 1222 (10<sup>th</sup> Cir. 2001).
4. *United States v. King*, 222 F.3d 1280 (10<sup>th</sup> Cir. 2000): suspects can have more than one residence. *Payton* does not void as "unreasonable" an officer's belief

that a suspect lives in a given dwelling merely because that suspect also “lives” in another.

**c. The Acceptable Amount of Force When Serving a Warrant**

1. Police may forcibly enter the building if they have probable cause that the arrestee is there.
2. But they may only use that force which is reasonable and necessary to effectuate the forcible entry. §77-7-8.

**d. Knock and Announce Requirements**

1. Before forcibly entering a residence, police must: (1) identify themselves as law enforcement; and (2) demand admission into the residence. §77-7-8(1)(b).
2. Constructive refusal: if occupants do not admit the officers within a reasonable amount of time, the police may be deemed to be constructively refused admittance, and may enter by force. *United States v. Moore*, 91 F.3d 96 (10<sup>th</sup> Cir. 1996).
3. How much time must police wait before a suspect has constructively refused their admittance does not turn on any hard and fast time limit. Rather, it depends on the circumstances confronting the officer serving the warrant. Such as: (1) size of the house; (2) presence of guns; (3) other exigent circumstances.
4. Rules of thumb:
  - 3 seconds is too short. *United States v. Moore*, 91 F.3d 96, 97-99 (10<sup>th</sup> Cir. 1996).
  - 5 seconds is too short. *United States v. Lutch*, 18 F.3d 541, 550-51 (8<sup>th</sup> Cir. 1996).
  - 10 seconds is reasonable. *United States v. Myers*, 106 F.3d 936, 940 (10<sup>th</sup> Cir. 1997).
  - 14-20 seconds is reasonable. *United States v. Jenkins*, 175 F.3d 1208, 1213-14 (10<sup>th</sup> Cir. 1999).
5. Exceptions to Knock and Announce rule:
  - Hot Pursuit: A suspect may not defeat an arrest which has been set in motion in a public place by trying to escape to a private place. *United States v. Santana*, 427 U.S. 38 (1976).
  - Destruction of evidence: police must have probable cause that evidence will be easily or quickly destroyed. §77-7-8
    - a. But see *Jenkins, supra*: “This is not to say that the mere likelihood that drugs or weapons will be found in the searched premises alone will support the reasonableness of a given waiting period. . . We note that a few extra seconds is unlikely to prevent a suspect from flushing large quantities of evidence down the toilet or destroying it in a kitchen disposal.”

- Threat of physical violence: police must have reason to believe notice will endanger the life or safety of the officer or another person. §77-7-8(1)(c)(i), §77-7-6(1)(a).
- Suspect escaping: police must have reasonable to believe notice will likely enable the party being arrested to escape. §77-7-6(1)(a).
- *United States v. King*, 222 F.3d 1280 (10<sup>th</sup> Cir. 2000): Police need not take unnecessary risks in the performance of their duties. The officer's interest in their own safety at the time of the arrest's seizure outweigh their intrusion upon the arrestee's Fourth Amendment interests.

**e. Felony vs. Misdemeanor**

1. *Welsh v. Wisconsin*, 466 U.S. 740 (1984), an important factor to be considered when determining whether any exigency exists is the gravity of the offense for which the arrest is being made.

- Application of the exigent circumstances exception in the context of a home entry should rarely be sanctioned when there is probable cause to believe that only a minor offense has been committed.
- We note that it is difficult to conceive of a warrantless home arrest that would not be unreasonable under the Fourth Amendment when the underlying offense is extremely minor.

2. *State v. Hamilton*, 710 P.2d 174 (1985): police in hot pursuit of an individual observed for committing a traffic offense may enter a residence under the exigent circumstances doctrine.

3. *Stanton v. Sims*, 134 S.Ct. 3 (2013): The severity of the crime is not of equal importance in cases of hot pursuit.