

**DUTY TO RETREAT AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: A. Cory Maloy**

Senate Sponsor: Margaret Dayton

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**LONG TITLE**

**General Description:**

This bill provides that a person is not required to retreat from an aggressor under certain circumstances.

**Highlighted Provisions:**

This bill:

- ▶ provides that a person is not required to retreat from an aggressor even if there is a safe place to retreat to;
- ▶ prohibits a trier of fact from considering whether a person who did not retreat from an aggressor acted reasonably; and
- ▶ prohibits a prosecutor from implying or arguing that a person who did not retreat acted unreasonably.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-2-402**, as last amended by Laws of Utah 2010, Chapters 324 and 361

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



28 Section 1. Section 76-2-402 is amended to read:

29 **76-2-402. Force in defense of person -- Forcible felony defined.**

30 (1) (a) A person is justified in threatening or using force against another when and to  
31 the extent that the person reasonably believes that force or a threat of force is necessary to  
32 defend the person or a third person against another person's imminent use of unlawful force.

33 (b) A person is justified in using force intended or likely to cause death or serious  
34 bodily injury only if the person reasonably believes that force is necessary to prevent death or  
35 serious bodily injury to the person or a third person as a result of another person's imminent use  
36 of unlawful force, or to prevent the commission of a forcible felony.

37 (2) (a) A person is not justified in using force under the circumstances specified in  
38 Subsection (1) if the person:

39 (i) initially provokes the use of force against the person with the intent to use force as  
40 an excuse to inflict bodily harm upon the assailant;

41 (ii) is attempting to commit, committing, or fleeing after the commission or attempted  
42 commission of a felony; or

43 (iii) was the aggressor or was engaged in a combat by agreement, unless the person  
44 withdraws from the encounter and effectively communicates to the other person his intent to do  
45 so and, notwithstanding, the other person continues or threatens to continue the use of unlawful  
46 force.

47 (b) For purposes of Subsection (2)(a)(iii) the following do not, by themselves,  
48 constitute "combat by agreement":

49 (i) voluntarily entering into or remaining in an ongoing relationship; or

50 (ii) entering or remaining in a place where one has a legal right to be.

51 (3) A person does not have a duty to retreat from the force or threatened force  
52 described in Subsection (1) in a place where that person has lawfully entered or remained,  
53 except as provided in Subsection (2)(a)(iii).

54 (a) A person is not required to retreat even if safety could be achieved by retreating.

55 (b) The trier of fact may not consider the possibility of retreat as a factor in determining  
56 whether a person who used or threatened force acted reasonably.

57 (c) The prosecutor may not suggest or imply, through testimony, argument, or  
58 otherwise, that the person acted unreasonably by not retreating, except as provided in

59 Subsection (2)(a)(iii).

60 (4) (a) For purposes of this section, a forcible felony includes aggravated assault,  
61 mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping,  
62 rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a  
63 child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76,  
64 Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76,  
65 Chapter 6, Offenses Against Property.

66 (b) Any other felony offense which involves the use of force or violence against a  
67 person so as to create a substantial danger of death or serious bodily injury also constitutes a  
68 forcible felony.

69 (c) Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible  
70 felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

71 (5) In determining imminence or reasonableness under Subsection (1), the trier of fact  
72 may consider, but is not limited to, any of the following factors:

73 (a) the nature of the danger;

74 (b) the immediacy of the danger;

75 (c) the probability that the unlawful force would result in death or serious bodily  
76 injury;

77 (d) the ~~[other's]~~ other person's prior violent acts or violent propensities; and

78 (e) any patterns of abuse or violence in the parties' relationship.

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**Legislative Review Note**  
**Office of Legislative Research and General Counsel**