

HB0092S01 compared with HB0092

~~{Omitted text}~~ shows text that was in HB0092 but was omitted in HB0092S01

inserted text shows text that was not in HB0092 but was inserted into HB0092S01

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1 Private Individual Force and Detention Amendments

. 2025 GENERAL SESSION

. STATE OF UTAH

. Chief Sponsor: Walt Brooks

. Senate Sponsor:

2 LONG TITLE

3 General Description:

4 This bill concerns ~~{a detention made by}~~ the ability of a private individual to use force or detain
5 another individual.

6 Highlighted Provisions:

7 This bill:

8 ▶ amends the circumstances under which a private individual may use force in defense of
personal property;

8 ▶ amends the circumstances under which a private individual may lawfully detain another
individual, including removing the use of the term "arrest";

10 ▶ provides a limitation on civil and criminal liability for a private individual who temporarily
detains another individual under certain circumstances;

12 ▶ ~~{revises provisions concerning}~~ amends the ~~{use of force when conducting an arrest or}~~ force
in arrest statute to provide that the statute applies to law enforcement officers and creates a new statute
for when force can be used by a private individual when making a temporary detention;

14 ▶

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amends procedures that govern the subsequent arrest and transportation of an individual who has been temporarily detained by another private individual; {and}

19 ▶ adds a coordination clause between this bill and S.B. 79, Technical Code Amendments, to provide that the changes to Section 77-7-3 will supersede the changes to that section in S.B. 79; and

16 ▶ makes technical and conforming changes.

23 Money Appropriated in this Bill:

24 None

25 This bill provides a coordination clause.

28 AMENDS:

29 **76-2-406 , as last amended by Laws of Utah 2024, Chapter 189 , as last amended by Laws of Utah 2024, Chapter 189**

30 **77-7-3** , as enacted by Laws of Utah 1980, Chapter 15 , as enacted by Laws of Utah 1980, Chapter 15

31 **77-7-7** , as enacted by Laws of Utah 1980, Chapter 15 , as enacted by Laws of Utah 1980, Chapter 15

32 **77-7-23** , as last amended by Laws of Utah 2018, Chapter 140 , as last amended by Laws of Utah 2018, Chapter 140

33 **78B-6-1605** , as enacted by Laws of Utah 2009, Chapter 187 , as enacted by Laws of Utah 2009, Chapter 187

34 **80-6-201** , as last amended by Laws of Utah 2024, Chapter 301 , as last amended by Laws of Utah 2024, Chapter 301

35 ENACTS:

36 **77-7-7.1 , Utah Code Annotated 1953 , Utah Code Annotated 1953**

37 Utah Code Sections affected by Coordination Clause:

38 **77-7-3** , as enacted by Laws of Utah 1980, Chapter 15 , as enacted by Laws of Utah 1980, Chapter 15

39

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

41 Section 1. Section 76-2-406 is amended to read:

42 **76-2-406. Force in defense of property -- Affirmative defense.**

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- 43 (1) Except as provided in Section 76-2-405, an actor is justified in using force, other than deadly force,
against another individual when and to the extent that the actor reasonably believes that force
is necessary to prevent or terminate the individual's criminal interference with ~~real property or~~
personal property]:
- 47 (a) real or personal property lawfully in the actor's possession;
- 48 (b) real or personal property lawfully in the possession of a member of the actor's immediate family;
[or]
- 50 (c) real or personal property belonging to an individual whose property the actor has a legal duty to
protect[-] ; or
- 52 (d) personal property that the actor reasonably believes belongs to another person and that individual's
criminal interference is meant to deprive the other person of the person's personal property.
- 55 (2) In determining reasonableness under Subsection (1), the trier of fact shall, in addition to any other
factors, consider the following factors:
- 57 (a) the apparent or perceived extent of the damage to the property;
- 58 (b) property damage previously caused by the other individual;
- 59 (c) threats of personal injury or damage to property that have been made previously by the other
individual; and
- 61 (d) any patterns of abuse or violence between the actor and the individual.

63 Section 2. Section **77-7-3** is amended to read:

64 **77-7-3. Temporary detention made by a private individual.**

- 32 (1) A private ~~person~~ individual may ~~arrest~~ temporarily detain another individual:
- 33 ~~(1)~~ (a) ~~For~~ for a public offense committed or attempted in ~~his~~ the private individual's presence; or
- 35 ~~(2)~~ (b) ~~When~~ when a felony has been committed and ~~he~~ the private individual has reasonable
cause to believe the ~~person arrested~~ individual who the private individual seeks to temporarily
detain has committed ~~it~~ the felony.
- 38 (2)
- . (a) A temporary detention under Subsection (1) is lawful only if:
- 39 (i) the private individual immediately contacts law enforcement to notify law enforcement of the
situation and the temporary detention; and
- 41 (ii) the temporary detention lasts only until a law enforcement officer arrives.

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(b) A private individual is not required to immediately contact law enforcement as described in Subsection (2)(a)(i) if the private individual knows that another individual has already contacted law enforcement to notify law enforcement of the situation and the temporary detention.

79 (3) A private individual who in good faith conducts a lawful temporary detention under this section is:

46 ~~{(3)}~~ (a) {A private individual who in good faith conducts a lawful temporary detention under this section is} not liable for ~~{criminal-or}~~ civil damages or penalties as a result of an act or omission by the private individual in performing the temporary detention unless the private individual was grossly negligent~~{.}~~; and

84 (b) not subject to criminal prosecution for an act or omission by the private individual in performing the temporary detention unless the private individual was criminally negligent.

87 (4) A private individual may use force while temporarily detaining another individual under this section as described in Section 77-7-7.1.

89 Section 3. Section ~~77-7-7~~ is amended to read:

90 ~~77-7-7. {Force}~~ Use of force in making an arrest ~~{or temporary detention}~~ by a law enforcement officer.

52 (1) If ~~{a person{}}~~ an individual who is being arrested ~~{and{}}~~ by a peace officer, or temporarily detained by a private individual under Section 77-7-3, flees or forcibly resists after being informed of the intention to make the arrest~~{-or the temporary detention}~~, the [person arresting] ~~{peace}~~ law enforcement officer ~~{who is effecting}~~ making the arrest~~{, or the private individual who is effecting the temporary detention.}~~ may use reasonable force to effect the arrest~~{-or temporary detention}~~.

58 (2) Deadly force in making an arrest may be used only as provided in Section 76-2-404.

95 Section 4. Section ~~4~~ is enacted to read:

96 **77-7-7.1. Use of force in making a temporary detention by a private individual.**

If a private individual temporarily detains another individual under Section 77-7-3, the private individual may use reasonable force to effect the temporary detention of the other individual if:

100 (1) the other individual who is being temporarily detained flees or forcibly resists after being informed of the private individual's intention to make the temporary detention; and

102 (2) the private individual's temporary detention of the other individual is lawful.

103 Section 5. Section ~~77-7-23~~ is amended to read:

104

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77-7-23. Delivery of an individual arrested without a warrant to a magistrate -- Transfer to a court with jurisdiction -- Transfer of duties -- Violation as misdemeanor.

62 (1)

. (a) [~~When~~]

63 (i)

. (A) If an arrest is made without a warrant by a peace officer~~[or private person]~~, the ~~[person arrested]~~ individual who has been arrested shall be taken by a peace officer without unnecessary delay to the magistrate in the district court, the precinct of the county, or the municipality in which the offense occurred, except under Subsection (2).

68 (B) An information stating the charge against the ~~[person]~~ arrested individual shall be made before the magistrate.

70 (ii) If a private individual temporarily detains another individual under Section 77-7-3, a peace officer shall determine whether to release or arrest the individual who has been detained, and if the peace officer arrests the individual who has been detained, the peace officer shall follow the procedures described in Subsection (1)(a)(i).

75 (b) If the justice court judge of the precinct or municipality or the district court judge is not available, the arrested ~~[person]~~ individual shall be taken before the magistrate within the same county who is nearest to the scene of the alleged offense or nearest to the jail under Subsection (2), who may act as committing magistrate for arraigning the accused individual, setting bail, or issuing warrants.

80 (2)

. (a) If the arrested ~~[person]~~ individual under Subsection (1) must be transported from jail to a magistrate, the ~~[person]~~ individual may be taken before the magistrate nearest to the jail rather than the magistrate specified in Subsection (1) for arraignment, setting bail, or issuing warrants.

84 (b) The case shall then be transferred to the court having jurisdiction.

85 (3) If a jail accepts custody of ~~[a person]~~ an individual arrested under Subsection (1), the duties under this section of the peace officer ~~[or private person]~~ who makes the arrest are transferred to the jail and the jail's personnel.

88 (4) This section does not confer jurisdiction upon a court unless otherwise provided by law.

89 (5) ~~[Any officer or person violating this section is guilty of]~~ A violation of this section is a class B misdemeanor.

135 Section 6. Section **78B-6-1605** is amended to read:

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136 **78B-6-1605. Reservation of legal options -- Ordinances.**

93 (1)

. (a) This part may not be construed as a waiver by a local entity of a right to seek reimbursement for actual costs of response services through another legal remedy or procedure.

96 (b) The procedure provided for in this part is in addition to any other civil or criminal statute.

98 (c) This part does not limit the authority of a law enforcement officer to make an arrest, or a private ~~[citizen to make an arrest]~~ individual to make a lawful temporary detention under Section 77-7-3, for a criminal offense arising out of conduct regulated by this part.

102 (2) A local entity may impose by ordinance a stricter provision related to the conduct of an underage drinking gathering, including the imposition of a different civil penalty amount, except that the ordinance shall provide that a civil penalty for an underage drinking gathering may only be imposed by a local entity for which an emergency response provider provides services at the underage drinking gathering.

151 Section 7. Section **80-6-201** is amended to read:

152 **80-6-201. Minor taken into temporary custody by peace officer, private individual, or probation officer -- Grounds -- Protective custody.**

110 (1) A minor may be taken into temporary [-]custody by a peace officer without a court order, or a warrant under Section 80-6-202, [-]if the peace officer has probable cause to believe that:

113 (a) the minor has committed an offense under municipal, state, or federal law;

114 (b) the minor seriously endangers the minor's own welfare or the welfare of others and taking the minor into temporary custody appears to be necessary for the protection of the minor or others;

117 (c) the minor has run away or escaped from the minor's parents, guardian, or custodian; or

119 (d) the minor is:

120 (i) subject to the state's compulsory education law; and

121 (ii) subject to Sections 53G-6-208 and 53G-8-211, absent from school without legitimate or valid excuse.

123 (2) A private ~~[citizen]~~ individual may take a minor into temporary [-]custody if under the circumstances the private ~~[citizen could make a citizen's arrest]~~ individual would be lawfully able to effect a temporary detention under Section 77-7-3 [-]if the minor was an adult.

127 (3) A juvenile probation officer may take a minor into temporary custody:

128 (a) under the same circumstances as a peace officer in Subsection (1); or

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129 (b) if the juvenile probation officer has a reasonable suspicion that [-]the minor has violated the
conditions of the minor's probation.

131 (4)

. (a) Nothing in this part shall be construed to prevent a peace officer or the Division of Child and Family
Services from taking a minor into protective custody under Section 80-2a-202 or 80-3-204.

134 (b) If a peace officer or the Division of Child and Family Services takes a minor into protective custody,
the provisions of Chapter 2, Child Welfare Services, Chapter 2a, Removal and Protective Custody
of a Child, and Chapter 3, Abuse, Neglect, and Dependency Proceedings shall govern.

182 Section 8. **Effective date.**

This bill takes effect on May 7, 2025.

184 Section 9. **Coordinating H.B. 92 with S.B. 79.**

If H.B. 92, Private Individual Force and Detention Amendments, and S.B. 79, Technical
Code Amendments, both pass and become law, the Legislature intends that, on May 7, 2025,
the amendments to Section 77-7-3 in H.B. 92 supersede the amendments to Section 77-7-3 in
S.B. 79.

2-2-25 8:00 PM