

Effective 5/5/2021

76-2-309 Justified use of force.

- (1) An individual who uses or threatens to use force as permitted in Section 76-2-402, 76-2-404, 76-2-405, 76-2-406, 76-2-407, or 76-2-408 is justified in that conduct.
- (2) The pretrial justification hearing process described in Subsections (3)(a) and (b) does not apply if:
 - (a)
 - (i) the individual against whom force was used or threatened is a law enforcement officer, as defined in Section 53-13-103;
 - (ii) the officer was acting lawfully in the performance of the officer's official duties; and
 - (iii)
 - (A) the officer was identified as an officer by the officer in accordance with applicable law; or
 - (B) the individual using or threatening to use force knew or reasonably should have known that the officer was a law enforcement officer; or
 - (b) the charge filed against the defendant for which the defendant seeks a pretrial justification hearing is an infraction, a class B or C misdemeanor, or a domestic violence offense as defined in Section 77-36-1.
- (3)
 - (a) Upon motion of the defendant filed in accordance with Rule 12 of the Utah Rules of Criminal Procedure, the court shall hear evidence on the issue of justification under this section and shall determine as a matter of fact and law whether the defendant was justified in the use or threatened use of force.
 - (b) At the pretrial justification hearing, after the defendant makes a prima facie claim of justification, the state has the burden to prove by clear and convincing evidence that the defendant's use or threatened use of force was not justified.
 - (c)
 - (i) If the court determines that the state has not met the state's burden described in Subsection (3)(b), the court shall dismiss the charge with prejudice.
 - (ii) The state may appeal a court's order dismissing a charge under Subsection (3)(c)(i) in accordance with Section 77-18a-1.
 - (iii) If a court determines after the pretrial justification hearing that the state has met the state's burden described in Subsection (3)(b), the issue of justification may be raised by the defendant to the jury at trial and, if raised by the defendant, the state shall have the burden to prove beyond a reasonable doubt that the defendant's use or threatened use of force was not justified.
 - (iv) At trial, a court's determination that the state met the state's burden under Subsection (3)(c) (iii) is not admissible and may not be referenced by the prosecution.

Enacted by Chapter 147, 2021 General Session