

USE OF FORCE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies criminal provisions related to use of force.

Highlighted Provisions:

This bill:

- ▶ addresses when a person is not justified in using force; and
- ▶ makes technical changes.

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

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

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

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

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



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

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

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

36 (ii) is attempting to commit, committing, or fleeing after the commission or attempted
37 commission of a felony that is directly related and necessary to the use of force; or

38 (iii) was the aggressor or was engaged in a combat by agreement, unless the person
39 withdraws from the encounter and effectively communicates to the other person ~~[his]~~ the
40 person's intent to ~~[do so]~~ withdraw and, notwithstanding, the other person continues or
41 threatens to continue the use of unlawful force.

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

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

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

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

49 (4) (a) For purposes of this section, a forcible felony includes:

50 (i) the following as defined in Chapter 5, Offenses Against the Person:

51 (A) aggravated assault[:];

52 (B) mayhem[:];

53 (C) aggravated murder[:];

54 (D) murder[:];

55 (E) manslaughter[:];

56 (F) kidnapping~~[-and]~~[:];

57 (G) aggravated kidnapping[:];

58 (H) rape[:];

- 59 (I) forcible sodomy[;];
60 (J) rape of a child[;];
61 (K) object rape[;];
62 (L) object rape of a child[;];
63 (M) sexual abuse of a child[;];
64 (N) aggravated sexual abuse of a child[;]; and
65 (O) aggravated sexual assault [~~as defined in Title 76, Chapter 5, Offenses Against the~~
66 ~~Person,~~]; and
67 (ii) the following as defined in Chapter 6, Offenses Against Property:
68 (A) arson[;];
69 (B) robbery[;]; and
70 (C) burglary [~~as defined in Title 76, Chapter 6, Offenses Against Property~~].
71 (b) Any other felony offense [~~which~~] that involves the use of force or violence against
72 a person so as to create a substantial danger of death or serious bodily injury also constitutes a
73 forcible felony.
74 (c) Burglary of a vehicle, defined in Section [76-6-204](#), does not constitute a forcible
75 felony except when the vehicle is occupied at the time unlawful entry is made or attempted.
76 (5) In determining imminence or reasonableness under Subsection (1), the trier of fact
77 may consider, but is not limited to, any of the following factors:
78 (a) the nature of the danger;
79 (b) the immediacy of the danger;
80 (c) the probability that the unlawful force would result in death or serious bodily
81 injury;
82 (d) the other's prior violent acts or violent propensities; and
83 (e) any patterns of abuse or violence in the parties' relationship.