

Representative Brian M. Greene proposes the following substitute bill:

USE OF FORCE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: Jacob L. Anderegg

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.

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



26 defend the person or a third person against another person's imminent use of unlawful force.

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

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

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

35 (ii) is attempting to commit, committing, or fleeing after the commission or attempted
36 commission of a felony, unless the use of force is a reasonable response to factors unrelated to
37 the commission, attempted commission, or fleeing after the commission of that felony; 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 intent to do
40 so and, notwithstanding, the other person continues or threatens to continue the use of unlawful
41 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 aggravated assault,
50 mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping,
51 rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a
52 child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76,
53 Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76,
54 Chapter 6, Offenses Against Property.

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

57 forcible felony.

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

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

62 (a) the nature of the danger;

63 (b) the immediacy of the danger;

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

66 (d) the other's prior violent acts or violent propensities; and

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