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SELF-DEFENSE AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: A. Cory Maloy

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill clarifies that an individual is not required to retreat from an aggressor.

Highlighted Provisions:

This bill:

- ▶ provides that an individual is not required to retreat from an aggressor even if there is a safe place to which the individual can retreat;
- ▶ provides that an individual's failure to retreat is not relevant when determining whether the individual acted reasonably; 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

76-10-506, as last amended by Laws of Utah 2014, Chapter 248

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

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



28 **76-2-402. Force in defense of person -- Forcible felony defined.**

29 (1) As used in this section:

30 (a) "Forcible felony" means aggravated assault, mayhem, aggravated murder, murder,
 31 manslaughter, kidnapping and aggravated kidnapping, rape, forcible sodomy, rape of a child,
 32 object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child,
 33 and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person,
 34 and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property.

35 (b) "Forcible felony" includes any other felony offense that involves the use of force or
 36 violence against an individual that poses a substantial danger of death or serious bodily injury.

37 (c) "Forcible felony" does not include burglary of a vehicle, defined in Section
 38 76-6-204, except when the vehicle is occupied at the time unlawful entry is made or attempted.

39 [(†)] (2) (a) [A person] An individual is justified in threatening or using force against
 40 another individual when and to the extent that the [person] individual reasonably believes that
 41 force or a threat of force is necessary to defend the [person or a third person against another
 42 person's] individual or another individual against the imminent use of unlawful force.

43 (b) [A person] An individual is justified in using force intended or likely to cause death
 44 or serious bodily injury only if the [person] individual reasonably believes that force is
 45 necessary to prevent death or serious bodily injury to the [person or a third person as a result of
 46 another person's] individual or another individual as a result of imminent use of unlawful force,
 47 or to prevent the commission of a forcible felony.

48 [(2)] (3) (a) [A person] An individual is not justified in using force under the
 49 circumstances specified in Subsection [(†)] (2) if the [person] individual:

50 (i) initially provokes the use of force against [the person] another individual with the
 51 intent to use force as an excuse to inflict bodily harm upon the [assailant] other individual;

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

54 (iii) was the aggressor or was engaged in a combat by agreement, unless the [person]
 55 individual withdraws from the encounter and effectively communicates to the other [person
 56 his] individual the intent to [do so] withdraw from the encounter and, notwithstanding, the
 57 other [person] individual continues or threatens to continue the use of unlawful force.

58 (b) For purposes of Subsection [(2)] (3)(a)(iii) the following do not, [by themselves]

59 alone, constitute "combat by agreement":

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

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

62 ~~[(3) A person does not have a duty to retreat from the force or threatened force~~
63 ~~described in Subsection (1) in a place where that person has lawfully entered or remained,~~
64 ~~except as provided in Subsection (2)(a)(iii).]~~

65 (4) Except as provided in Subsection (3)(a)(iii):

66 (a) an individual does not have a duty to retreat from the force or threatened force
67 described in Subsection (2) in a place where that individual has lawfully entered or remained,
68 even if safety could be achieved by retreating; and

69 (b) the failure of an individual to retreat under the provisions of Subsection (4)(a) is not
70 a relevant factor in determining whether the individual who used or threatened force acted
71 reasonably.

72 ~~[(4) (a) For purposes of this section, a forcible felony includes aggravated assault,~~
73 ~~mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping,~~
74 ~~rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a~~
75 ~~child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76,~~
76 ~~Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76,~~
77 ~~Chapter 6, Offenses Against Property.]~~

78 ~~[(b) Any other felony offense which involves the use of force or violence against a~~
79 ~~person so as to create a substantial danger of death or serious bodily injury also constitutes a~~
80 ~~forcible felony.]~~

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

83 (5) In determining imminence or reasonableness under Subsection [(+) (2)], the trier of
84 fact may consider[, but is not limited to, any of the following factors]:

85 (a) the nature of the danger;

86 (b) the immediacy of the danger;

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

89 (d) the [other's] other individual's prior violent acts or violent propensities; [and]

90 (e) any patterns of abuse or violence in the parties' relationship[-]; and

91 (f) any other relevant factors.

92 Section 2. Section **76-10-506** is amended to read:

93 **76-10-506. Threatening with or using dangerous weapon in fight or quarrel.**

94 (1) As used in this section:

95 (a) "Dangerous weapon" means an item that in the manner of its use or intended use is
96 capable of causing death or serious bodily injury. The following factors shall be used in
97 determining whether an item, object, or thing is a dangerous weapon:

98 (i) the character of the instrument, object, or thing;

99 (ii) the character of the wound produced, if any; and

100 (iii) the manner in which the instrument, object, or thing was exhibited or used.

101 (b) "Threatening manner" does not include:

102 (i) the possession of a dangerous weapon, whether visible or concealed, without
103 additional behavior which is threatening; or

104 (ii) informing another of the actor's possession of a deadly weapon in order to prevent
105 what the actor reasonably perceives as a possible use of unlawful force by the other and the
106 actor is not engaged in any activity described in Subsection 76-2-402[~~(2)~~](3)(a).

107 (2) Except as otherwise provided in Section 76-2-402 and for those [persons]
108 individuals described in Section 76-10-503, [~~a person~~] an individual who, in the presence of
109 two or more [persons] individuals, and not amounting to a violation of Section 76-5-103, draws
110 or exhibits a dangerous weapon in an angry and threatening manner or unlawfully uses a
111 dangerous weapon in a fight or quarrel is guilty of a class A misdemeanor.

112 (3) This section does not apply to [~~a person~~] an individual who, reasonably believing
113 the action to be necessary in compliance with Section 76-2-402, with purpose to prevent
114 another's use of unlawful force:

115 (a) threatens the use of a dangerous weapon; or

116 (b) draws or exhibits a dangerous weapon.

117 (4) This section does not apply to [~~a person~~] an individual listed in Subsections
118 76-10-523(1)(a) through (e) in performance of the [person's] individual's duties.

Legislative Review Note
Office of Legislative Research and General Counsel