

Representative Kera Birkeland proposes the following substitute bill:

USE OF FORCE REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Derek L. Kitchen

LONG TITLE

General Description:

This bill addresses the use of force by peace officers.

Highlighted Provisions:

This bill:

- ▶ sets a timeline for completion of investigations into an officer's use of force;
- ▶ requires that certain information be posted online; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-2-404, as last amended by Laws of Utah 2015, Chapter 47

76-2-408, as last amended by Laws of Utah 2019, Chapter 395

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

Section 1. Section **76-2-404** is amended to read:



76-2-404. Peace officer's use of deadly force.

(1) A peace officer, or any ~~[person]~~ individual acting by the officer's command in providing aid and assistance, is justified in using deadly force when:

(a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection ~~77-18-5.5~~(2), (3), or (4);

(b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

(i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction ~~of~~ **[H] or threatened infliction [H]** ~~of~~ death ~~of~~ **[H] or serious bodily injury [H]** ; or

(ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to ~~[others]~~ an individual other than the suspect if apprehension is delayed; or

(c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or ~~[another person]~~ an individual other than the suspect.

(2) If feasible, ~~[a verbal warning should be given by the officer]~~ prior to any use of deadly force ~~[under Subsection (1)(b) or (1)(c).]~~, a peace officer should identify himself or herself as a peace officer and give a clear oral warning of his or her intent to use a firearm or other physical force.

Section 2. Section **76-2-408** is amended to read:

76-2-408. Peace officer use of force -- Investigations.

(1) As used in this section:

(a) "Dangerous weapon" means a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury to ~~[a person]~~ an individual.

(b) "Deadly force" means a force that creates or is likely to create, or that the ~~[person]~~ individual using the force intends to create, a substantial likelihood of death or serious bodily injury to ~~[a person]~~ an individual.

(c) "In custody" means in the legal custody of a state prison, county jail, or other correctional facility, including custody that results from:

(i) a detention to secure attendance as a witness in a criminal case;

- (ii) an arrest for or charging with a crime and committing for trial;
- (iii) committing for contempt, upon civil process, or by other authority of law; or
- (iv) sentencing to imprisonment on conviction of a crime.

(d) "Investigating agency" means a law enforcement agency, the county or district attorney's office, or an interagency task force composed of officers from multiple law enforcement agencies.

(e) "Officer" means the same as the term "law enforcement officer" as that term is defined in Section 53-13-103.

(f) "Officer-involved critical incident" means any of the following:

- (i) an officer's use of deadly force;
- (ii) an officer's use of a dangerous weapon against ~~[a person]~~ an individual that causes injury to any ~~[person]~~ individual;
- (iii) death or serious bodily injury to any ~~[person]~~ individual, other than the officer, resulting from an officer's:

(A) use of a motor vehicle while the officer is on duty; or

(B) use of a government vehicle while the officer is off duty;

(iv) the death of ~~[a person]~~ an individual who is in custody, but excluding a death that is the result of disease, natural causes, or conditions that have been medically diagnosed prior to the ~~[person's]~~ individual's death; or

(v) the death of or serious bodily injury to ~~[a person]~~ an individual not in custody, other than an officer, resulting from an officer's attempt to prevent ~~[a person's]~~ an individual's escape from custody, to make an arrest, or otherwise to gain physical control of ~~[a person]~~ an individual.

(g) "Serious bodily injury" means the same as that term is defined in Section 76-1-601.

(2) When an officer-involved critical incident occurs:

(a) upon receiving notice of the officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney having jurisdiction where the incident occurred; and

(b) the chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred shall:

- (i) jointly designate an investigating agency for the officer-involved critical incident;

88 and

89 (ii) designate which agency is the lead investigative agency if the officer-involved
90 critical incident involves multiple investigations.

91 (3) The investigating agency under Subsection (2) may not be the law enforcement
92 agency employing the officer who is alleged to have caused or contributed to the
93 officer-involved critical incident.

94 (4) This section does not preclude the law enforcement agency employing an officer
95 alleged to have caused or contributed to the officer-involved critical incident from conducting
96 an internal administrative investigation.

97 (5) Each law enforcement agency that is part of or administered by the state or any of
98 its political subdivisions shall[, by December 31, 2015,] adopt and post on its publicly
99 accessible website:

100 (a) the policies and procedures the agency has adopted to select the investigating
101 agency if an officer-involved critical incident occurs in its jurisdiction and one of its officers is
102 alleged to have caused or contributed to the officer-involved incident; and

103 (b) the protocols the agency has adopted to ensure that any investigation of
104 officer-involved incidents occurring in its jurisdiction are conducted professionally,
105 thoroughly, and impartially.

106 (6) Once a criminal investigation is turned over from law enforcement, all
107 investigations into an officer's use of force shall be completed within ~~§→ [120]~~ 180 ~~←§~~ days ~~§→~~
107a of the incident occurring ~~←§~~ ~~→~~ [of the incident
108 occurring] ~~←§~~ ~~→~~ . If an investigation is not completed within ~~§→ [120]~~ 180 ~~←§~~ days, the county or
108a district attorney

109 shall post a public statement on the county or district attorney's website stating a reasonable
110 estimate when the investigation will be complete and the reason for the delay.

111 (7) ~~§→ [A#]~~ Subject to the requirements of Title 63G, Chapter 2, Government Records
111a Access and Management Act, ~~←§~~ investigative reports and any resulting findings or analyses shall
111b be published
112 on the county or district attorney's website within five business days of completion.