

**USE OF FORCE REVISIONS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Kera Birkeland**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill addresses the use of force by peace officers.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ requires that officers who observe other officers violating certain procedure and conduct rules file a report outlining the violations;
- ▶ sets penalties; 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

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

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



28 **76-2-404. Peace officer's use of deadly force.**

29 (1) As used in this section:

30 (a) (i) "Imminent" means that, based on the totality of the circumstances, a reasonable  
31 peace officer in the same situation would believe an individual has the present ability,  
32 opportunity, and apparent intent to immediately cause death or serious bodily injury to the  
33 peace officer or another individual, and that the threat of harm must be immediately confronted  
34 and addressed.

35 (ii) "Imminent" does not mean merely a fear of future harm, no matter how great the  
36 fear or likelihood of harm, or the threat of harm that is not immediate.

37 (b) "Necessary" means given the totality of the circumstances, a reasonable peace  
38 officer in the same situation would conclude that there was no reasonable or non-lethal  
39 alternative to the use of deadly force that would prevent death or serious bodily injury to the  
40 peace officer or to another individual.

41 (c) "Totality of circumstances" means all facts known to the peace officer at the time,  
42 including the nature of the offense for which the individual is being apprehended, whether  
43 non-lethal or a lesser level of force is reasonably available and likely to be more or as effective  
44 as lethal force, the conduct of the individual, and the tactical conduct and decisions of the  
45 officer, including whether the officer escalated the situation, necessitating the use of force.

46 (2) (a) A peace officer may not employ physical force, including non-lethal force,  
47 against an individual if the individual is already subdued and under the physical control of a  
48 peace officer or fully cooperating with a peace officer's commands:

49 (b) Notwithstanding Subsection (2)(a), a peace officer may use reasonable force against  
50 the individual if the individual presents an imminent threat of serious bodily injury or death to  
51 another individual.

52 (3) (a) If a peace officer knowingly observes another officer using physical force that  
53 exceeds the degree of force permitted under the circumstances, or knowingly observes another  
54 officer violating department policy or state law, the officer shall, without regard for chain of  
55 command, if the officer can reasonably do so:

56 (i) intervene to prevent or stop the use of force or misconduct; or

57 (ii) attempt to de-escalate the other officer's excessive use of force; and

58 (iii) promptly document and file a report of the incident with the department's internal

59 affairs division, regardless of whether the officer intervened or attempted de-escalation.

60 (b) If a law enforcement agency determines that an officer has intentionally violated  
61 Subsection (3)(a), the agency shall report the violation to the Peace Officer Standards and  
62 Training Division in accordance with Subsection 53-6-211(6).

63 ~~[(1)]~~ (4) A peace officer, or any ~~[person]~~ individual acting by the officer's command in  
64 providing aid and assistance, is justified in using deadly force when:

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

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

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

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

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

78 ~~[(2)]~~ (5) If feasible, ~~[a verbal warning should be given by the officer]~~ prior to any use  
79 of deadly force, the peace officer shall:

80 (a) identify himself or herself as a peace officer and give a clear verbal warning of his  
81 or her intent to use a firearm or other physical force under Subsection ~~[(1)(b) or (1)(c)].~~ (4)(b)  
82 or (4)(c), with sufficient time for the warning to be observed and followed, unless doing so  
83 would place the officer or an individual other than the suspect at risk of imminent serious  
84 bodily injury or death; and

85 (b) attempt to de-escalate the situation prior to resorting to deadly force.

86 (6) An officer's use of deadly force is not justified if:

87 (a) another officer gave conflicting commands to the individual who was killed at the  
88 time the force was used which would cause a reasonable individual to be confused about which  
89 commands to follow;

90           **(b) an individual was killed due to the criminally negligent conduct of the officer,**  
91 **including situations in which the victim is an individual other than the individual that the**  
92 **officer was seeking to arrest, retain in custody, or defend against;**

93           **(c) the officer failed to comply with Subsection (5); or**

94           **(d) the officer's conduct unnecessarily escalated the situation.**

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

96           **76-2-408. Peace officer use of force -- Investigations.**

97           (1) As used in this section:

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

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

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

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

106           (ii) an arrest for or charging with a crime and committing for trial;

107           (iii) committing for contempt, upon civil process, or by other authority of law; or

108           (iv) sentencing to imprisonment on conviction of a crime.

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

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

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

115           (i) an officer's use of deadly force;

116           (ii) an officer's use of a dangerous weapon against a person that causes injury to any  
117 person;

118           (iii) death or serious bodily injury to any person, other than the officer, resulting from  
119 an officer's:

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

- 121 (B) use of a government vehicle while the officer is off duty;
- 122 (iv) the death of [~~a person~~] an individual who is in custody, but excluding a death that
- 123 is the result of disease, natural causes, or conditions that have been medically diagnosed prior
- 124 to the [~~person's~~] individual's death; or
- 125 (v) the death of or serious bodily injury to [~~a person~~] an individual not in custody, other
- 126 than an officer, resulting from an officer's attempt to prevent [~~a person's~~] an individual's escape
- 127 from custody, to make an arrest, or otherwise to gain physical control of [~~a person~~] an
- 128 individual.
- 129 (g) "Serious bodily injury" means the same as that term is defined in Section [76-1-601](#).
- 130 (2) When an officer-involved critical incident occurs:
- 131 (a) upon receiving notice of the officer-involved critical incident, the law enforcement
- 132 agency having jurisdiction where the incident occurred shall, as soon as practical, notify the
- 133 county or district attorney having jurisdiction where the incident occurred; and
- 134 (b) the chief executive of the law enforcement agency and the county or district
- 135 attorney having jurisdiction where the incident occurred shall:
- 136 (i) jointly designate an investigating agency for the officer-involved critical incident;
- 137 and
- 138 (ii) designate which agency is the lead investigative agency if the officer-involved
- 139 critical incident involves multiple investigations.
- 140 (3) The county or district attorney's office in Subsection (2)(a) shall consider the
- 141 totality of circumstances surrounding the event, including:
- 142 (a) the sequence of events leading up to the use of force from the time the officer was
- 143 first made aware of the circumstances;
- 144 (b) whether non-lethal or less violent force was reasonably available as an option to the
- 145 officer;
- 146 (c) whether the officer attempted to de-escalate the situation prior to use of force, if it
- 147 was feasible to do so;
- 148 (d) whether the officer's conduct escalated the situation;
- 149 (e) whether the officer identified himself or herself and gave a verbal warning in
- 150 accordance with Subsection [76-2-404\(5\)](#), if it was feasible to do so; and
- 151 (f) whether the force used was necessary.

152           ~~[(3)]~~ (4) The investigating agency under Subsection (2) may not be the law  
153 enforcement agency employing the officer who is alleged to have caused or contributed to the  
154 officer-involved critical incident.

155           ~~[(4)]~~ (5) This section does not preclude the law enforcement agency employing an  
156 officer alleged to have caused or contributed to the officer-involved critical incident from  
157 conducting an internal administrative investigation.

158           ~~[(5)]~~ (6) Each law enforcement agency that is part of or administered by the state or  
159 any of its political subdivisions shall~~[, by December 31, 2015,]~~ adopt and post on its publicly  
160 accessible website:

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

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

167           (7) All investigations involving an officer's misconduct or use of force shall be  
168 completed within 90 days of the incident occurring. If an investigation is not completed within  
169 90 days, the county or district attorney shall post a public statement on the county or district  
170 attorney's website stating a reasonable estimate when the investigation will be complete and the  
171 reason for the delay.

172           (8) All investigative reports and any resulting findings or analyses shall be published  
173 on the county or district attorney's website within five business days of completion.