

HB0154S01 compared with HB0154

~~{deleted text}~~ shows text that was in HB0154 but was deleted in HB0154S01.

inserted text shows text that was not in HB0154 but was inserted into HB0154S01.

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Representative Kera Birkeland proposes the following substitute bill:

USE OF FORCE REVISIONS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: _____

LONG TITLE

General Description:

This bill addresses the use of force by peace officers.

Highlighted Provisions:

This bill:

- ▶ ~~{defines terms}~~ sets a timeline for completion of investigations into an officer's use of force;
- ▶ requires that ~~{officers who observe other officers violating certain procedure and conduct rules file a report outlining the violations;~~
- ▶ ~~sets penalties~~ certain information be posted online; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

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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) As used in this section:~~

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

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

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

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

~~(2) force.~~

~~(1) (a) A peace officer may not employ physical force, including non-lethal force, against an individual if the individual is already subdued and under the physical control of a~~

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~~peace officer or fully cooperating with a peace officer's commands:~~

~~—— (b) Notwithstanding Subsection (2)(a), a peace officer may use~~ is justified in using
reasonable force against ~~the~~ an individual if the individual presents an imminent threat of ~~serious~~
bodily injury or death to another individual.

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

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

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

~~—— (iii) promptly document and file a report of the incident with the department's internal affairs division, regardless of whether the officer intervened or attempted de-escalation.~~

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

~~—— (1) (4)~~ is not justified in using unreasonable force against an individual to effectuate an arrest if the individual being arrested is not resisting, cooperative, and compliant.

~~(1) (2)~~ (2) 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 ~~or threatened infliction~~ of death ~~or serious bodily injury~~; or

(ii) the officer has probable cause to believe the suspect poses ~~a~~ an imminent 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 imminent death or serious bodily injury to the officer or ~~another person~~ an individual other

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than the suspect.

[(2)] (~~(5)~~3) 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)].~~ ~~the~~ a peace officer ~~shall:~~

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

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

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

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

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

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

~~(d) the officer's conduct unnecessarily escalated the situation}.~~

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

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(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;
and

(ii) designate which agency is the lead investigative agency if the officer-involved

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critical incident involves multiple investigations.

~~{ (3) The county or district attorney's office in Subsection (2)(a) shall consider the totality of circumstances surrounding the event, including:~~

~~— (a) the sequence of events leading up to the use of force from the time the officer was first made aware of the circumstances;~~

~~— (b) whether non-lethal or less violent force was reasonably available as an option to the officer;~~

~~— (c) whether the officer attempted to de-escalate the situation prior to use of force, if it was feasible to do so;~~

~~— (d) whether the officer's conduct escalated the situation;~~

~~— (e) whether the officer identified himself or herself and gave a verbal warning in accordance with Subsection 76-2-404(5), if it was feasible to do so; and~~

~~— (f) whether the force used was necessary.~~

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

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

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

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

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

~~{ (7) (6) }~~ ~~{ AH }~~ Once a criminal investigation is turned over from law enforcement, all investigations involving an officer's misconduct or use of force shall be completed within ~~{ 90 } 120~~ days of the incident occurring. If an investigation is not completed within ~~{ 90 } 120~~

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

(~~18~~7) All investigative reports and any resulting findings or analyses shall be published on the county or district attorney's website within five business days of completion.