

## HB0227S03 compared with HB0227S02

~~deleted text~~ shows text that was in HB0227S02 but was deleted in HB0227S03.

inserted text shows text that was not in HB0227S02 but was inserted into HB0227S03.

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Representative Karianne Lisonbee proposes the following substitute bill:

### SELF DEFENSE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Karianne Lisonbee**

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

Cosponsor:

Travis M. Seegmiller

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#### LONG TITLE

##### General Description:

This bill addresses the justifiable use or threatened use of force.

##### Highlighted Provisions:

This bill:

- ▶ defines the defense of justifiable use or threatened use of force; and
- ▶ establishes procedures for determining the applicability of the defense.

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

None

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### Utah Code Sections Affected:

#### AMENDS:

77-18a-1, as last amended by Laws of Utah 2020, Chapter 185

#### ENACTS:

**76-2-309**, Utah Code Annotated 1953

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

Section 1. Section **76-2-309** is enacted to read:

**76-2-309. Justified use of force.**

(1) An individual who uses or threatens to use force as permitted in Sections 76-2-402, 76-2-405, 76-2-406, 76-2-407, or 76-2-408 is justified in that conduct.

(2) Subsection (1) does not apply if:

(a) the individual against whom force was used or threatened is a law enforcement officer, as defined in Section 53-13-103;

(b) the officer was acting in the performance of the officer's official duties; and

(c) (i) the officer was identified as an officer by the officer in accordance with any applicable law; or

(ii) the individual using or threatening to use force knew or reasonably should have known that the officer was a law enforcement officer.

(3) (a) Upon ~~{written}~~ motion of the defendant filed in accordance with Rule 12 of the Utah Rules of Criminal Procedure, the court shall hear evidence on the issue of justification under this section and shall determine as a matter of fact and law whether the defendant was justified in the use or threatened use of force.

~~{ (b) (i) The defendant shall make the motion at least 30 days before trial.~~

~~(ii) For good cause shown, the court may permit a filing that does not comply with the deadline in Subsection (3)(b)(i).~~

~~{ (c) (b) At the pretrial justification hearing, after the defendant makes a prima facie claim of justification, the prosecution has the burden to prove by clear and convincing evidence that the defendant's use or threatened use of force was not justified.~~

~~{ (c) (c) (i) If the court determines that the state has not met the state's burden described in Subsection (3)(c) (b), the court shall dismiss the charge with prejudice.~~

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(ii) The state may appeal a court's order dismissing a ~~case~~ charge under Subsection (3)(~~d~~)c(i) in accordance with Section 77-18a-1.

(iii) If a court determines after the pretrial justification hearing that the state has met the state's burden described in Subsection (3)(~~fe~~)b), the issue of justification may be raised by the defendant to the jury at trial and, if raised by the defendant, the state shall have the burden to prove beyond a reasonable doubt that the defendant's use or threatened use of force was not justified.

(iv) At trial, a court's determination that the state met the state's burden under Subsection (3)(~~d~~)c(iii) is not admissible and may not be referenced by the prosecution.

Section 2. Section 77-18a-1 is amended to read:

### 77-18a-1. Appeals -- When proper.

(1) A defendant may, as a matter of right, appeal from:

(a) a final judgment of conviction, whether by verdict or plea;

(b) an order made after judgment that affects the substantial rights of the defendant;

(c) an order adjudicating the defendant's competency to proceed further in a pending prosecution; or

(d) an order denying bail, as provided in Section 77-20-1.

(2) In addition to any appeal permitted by Subsection (1), a defendant may seek discretionary appellate review of any interlocutory order.

(3) The prosecution may, as a matter of right, appeal from:

(a) a final judgment of dismissal, including a dismissal of a felony information following a refusal to bind the defendant over for trial;

(b) a pretrial order dismissing a charge on the ground that the court's suppression of evidence has substantially impaired the prosecution's case;

(c) an order granting a motion to withdraw a plea of guilty or no contest;

(d) an order arresting judgment or granting a motion for merger;

(e) an order terminating the prosecution because of a finding of double jeopardy or denial of a speedy trial;

(f) an order granting a new trial;

(g) an order holding a statute or any part of it invalid;

(h) an order adjudicating the defendant's competency to proceed further in a pending

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### prosecution:

- (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for Execution, that an inmate sentenced to death is incompetent to be executed;
- (j) an order reducing the degree of offense pursuant to Section 76-3-402; [~~or~~]
- (k) an illegal sentence[-]; or
- (l) an order dismissing a charge pursuant to Subsection 76-2-309(3).
- (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek discretionary appellate review of any interlocutory order entered before jeopardy attaches.