

## HB0237S02 compared with HB0237S01

~~deleted text~~ shows text that was in HB0237S01 but was deleted in HB0237S02.

inserted text shows text that was not in HB0237S01 but was inserted into HB0237S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

**Representative Jennifer Dailey-Provost** proposes the following substitute bill:

### LETHAL FORCE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer Dailey-Provost**

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

---

#### LONG TITLE

##### General Description:

This bill modifies when a peace officer may use deadly force.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires a law enforcement officer in certain situations to have an objectively reasonable belief that the use of deadly force is necessary; and
- ▶ makes technical changes.

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

None

## HB0237S02 compared with HB0237S01

### 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. ~~{ Law }~~ Law enforcement officer use of deadly force.

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

(1) As used in this section:

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

(b) "Necessary" means that, based on the totality of circumstances ~~{ known or reasonably perceived by the officer at the time the decision is made }~~, an objectively reasonable officer in the same situation would conclude that no reasonably feasible and effective alternative ~~{ exists }~~ appears to exist that would prevent death or serious bodily injury to the officer or to an individual other than the individual against whom force would be used.

(c) "Officer" means ~~{ "law enforcement;" an officer }~~ as that term is defined } described in Section ~~{ 53-13-103 } 53-13-102.~~

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

~~{ (1) A peace } (2) An officer, or any [person] individual }~~ (e) (i) "Totality of circumstances" means all facts and information known or reasonably perceived by the officer at the time the decision is made, including consideration of:

(A) the severity of the crime at issue;

(B) the nature and immediacy of the apparent threat posed by the individual;

(C) the conduct of the individual and the officer;

(D) whether the speed or uncertainty of events reasonably requires quick judgment by the officer regarding whether deadly force is necessary; and

(E) any other factors the finder of fact determines are relevant.

## HB0237S02 compared with HB0237S01

(ii) "Totality of circumstances" does not include consideration of facts or information:

(A) unknown to the officer; or

(B) known or reasonably perceived by the officer only after the decision regarding deadly force is made.

(2) The defense of justification applies to the use of deadly force by an officer, or an individual acting by the officer's command in providing aid and assistance, ~~[is justified in using deadly force when:] is eligible to raise the defense of justification for the use of 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]~~ if:

(i) the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

~~[(+)]~~ (ii) (A) 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

~~[(+)]~~ (B) 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)]~~ (3) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection ~~[(+)]~~ (2)(b) or ~~[(+)]~~ (2)(c).

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

76-2-408. 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.

(b) "Deadly force" means a force that creates or is likely to create, or that the person

## HB0237S02 compared with HB0237S01

using the force intends to create, a substantial likelihood of death or serious bodily injury to a person.

(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] an officer described in Section 53-13-102.

(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 [that] who causes injury to any person;

(iii) death or serious bodily injury to any person, 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 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 death; or

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

(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

## HB0237S02 compared with HB0237S01

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 critical incident involves multiple investigations.

(3) 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) 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) Each law enforcement agency that is part of or administered by the state or any of [its] the state's political subdivisions shall[, by December 31, 2015,] adopt and post on [its] the agency's 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] the agency's jurisdiction and one of [its] the agency's 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] the agency's jurisdiction are conducted professionally, thoroughly, and impartially.