

USE OF FORCE REVISIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: Daniel McCay

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 2021, Chapters 150 and 260

76-2-408, as last amended by Laws of Utah 2021, Chapter 150

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 enforcement officer use of deadly force.

(1) As used in this section:



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

31 (b) "Officer" means an officer described in Section 53-13-102.

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

33 (2) The defense of justification applies to the use of deadly force by an officer, or an
 34 individual acting by the officer's command in providing aid and assistance, when:

35 (a) the officer is acting in obedience to and in accordance with the judgment of a
 36 competent court in executing a penalty of death under Subsection 77-18-113(2), (3), or (4);

37 (b) effecting an arrest or preventing an escape from custody following an arrest, if:

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

40 (ii) (A) the officer has probable cause to believe that the suspect has committed a
 41 felony offense involving the infliction or threatened infliction of death or serious bodily injury;
 42 or

43 (B) the officer has probable cause to believe the suspect poses a threat of death or
 44 serious bodily injury to the officer or to an individual other than the suspect if apprehension is
 45 delayed; or

46 (c) the officer reasonably believes that the use of deadly force is necessary to prevent
 47 death or serious bodily injury to the officer or an individual other than the suspect.

48 (3) If feasible, ~~Ĥ~~→ [H] a verbal warning should be given by the officer [H] ←~~Ĥ~~ prior to
 48a any use of

49 deadly force under Subsection (2)(b) or (2)(c) ~~Ĥ~~→ [~~a peace officer~~ ~~Ĥ~~→ [~~shall~~] ~~may~~ ←~~Ĥ~~ ~~identify~~
 49a1 himself

49a or herself

50 as a peace officer and give a clear oral warning of his or her intent to use a firearm or other
 51 physical force ←~~Ĥ~~ .

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

53 **76-2-408. Officer use of force -- Investigations.**

54 (1) As used in this section:

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

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

59 injury to [~~a person~~] an individual.

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

- 62 (i) a detention to secure attendance as a witness in a criminal case;
63 (ii) an arrest for or charging with a crime and committing for trial;
64 (iii) committing for contempt, upon civil process, or by other authority of law; or
65 (iv) sentencing to imprisonment on conviction of a crime.

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

69 (e) "Officer" means an officer described in Section 53-13-102.

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

- 71 (i) an officer's use of deadly force;
72 (ii) an officer's use of a dangerous weapon against [~~a person~~] an individual who causes
73 injury to any [~~person~~] individual;

74 (iii) death or serious bodily injury to any [~~person~~] individual, other than the officer,
75 resulting from an officer's:

- 76 (A) use of a motor vehicle while the officer is on duty; or
77 (B) use of a government vehicle while the officer is off duty;
78 (iv) the death of [~~a person~~] an individual who is in custody, but excluding a death that
79 is the result of disease, natural causes, or conditions that have been medically diagnosed prior
80 to the [~~person's~~] individual's death; or

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

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

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

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

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

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

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

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

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

102 (5) Each law enforcement agency that is part of or administered by the state or any of
 103 the state's political subdivisions shall adopt and post on the agency's publicly accessible
 104 website:

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

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

111 (6) Once a criminal investigation is turned over from law enforcement, ~~it~~ **→ [all**
 112 **investigations] the county or district attorney's findings or analyses ←** ~~it~~ **into an officer's use of**
 112a **force shall be completed within 180 days of the** ~~incident~~ **→ [incident**
 113 **occurring] turnover ←** ~~it~~ **. If** ~~an investigation~~ **→ [an investigation] the findings or analyses ←** ~~it~~ **is not**
 113a ~~completed~~ **→ [completed] published ←** ~~it~~ **within 180 days** ~~of the turnover~~ **→ [of the turnover] ←** ~~it~~ **, the county or district**
 113b **attorney**
 114 **shall post a public statement on the county or district attorney's website stating a reasonable**
 115 **estimate when the** ~~investigation~~ **→ [investigation] findings or analyses ←** ~~it~~ **will be complete and the reason for**
 115a **the delay.**

116 (7) Subject to the requirements of Title 63G, Chapter 2, Government Records Access
 117 and Management Act, ~~all~~ **→ [all investigative reports and any] the county or district attorney's ←** ~~it~~ **resulting findings or analyses shall be**
 117a **published on the county or district attorney's website within five business days of completion.**
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