

Representative Karianne Lisonbee proposes the following substitute bill:

SELF DEFENSE AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Karianne Lisonbee

Senate Sponsor: David P. Hinkins

Cosponsor: Travis M. Seegmiller

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

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



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

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

27 **76-2-309. Justified use of force.**

28 (1) An individual who uses or threatens to use force as permitted in Section [76-2-402](#),
29 [76-2-404](#), [76-2-405](#), [76-2-406](#), [76-2-407](#), or [76-2-408](#) is justified in that conduct.

30 (2) The pretrial justification hearing process described in Subsections (3)(a) and (b)
31 does not apply if:

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

34 (ii) the officer was acting lawfully in the performance of the officer's official duties;
35 and

36 (iii) (A) the officer was identified as an officer by the officer in accordance with
37 applicable law; or

38 (B) the individual using or threatening to use force knew or reasonably should have
39 known that the officer was a law enforcement officer; or

40 (b) the charge filed against the defendant for which the defendant seeks a pretrial
41 justification hearing is an infraction, a class B or C misdemeanor, or a domestic violence
42 offense as defined in Section [77-36-1](#).

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

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

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

52 (ii) The state may appeal a court's order dismissing a charge under Subsection (3)(c)(i)
53 in accordance with Section [77-18a-1](#).

54 (iii) If a court determines after the pretrial justification hearing that the state has met
55 the state's burden described in Subsection (3)(b), the issue of justification may be raised by the

56 defendant to the jury at trial and, if raised by the defendant, the state shall have the burden to
 57 prove beyond a reasonable doubt that the defendant's use or threatened use of force was not
 58 justified.

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

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

62 **77-18a-1. Appeals -- When proper.**

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

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

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

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

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

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

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

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

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

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

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

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

80 (f) an order granting a new trial;

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

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

84 (i) an order finding, pursuant to Title 77, Chapter 19, Part 2, Competency for
 85 Execution, that an inmate sentenced to death is incompetent to be executed;

86 (j) an order reducing the degree of offense pursuant to Section [76-3-402](#); [or]

- 87 (k) an illegal sentence[-]; or
- 88 (l) an order dismissing a charge pursuant to Subsection [76-2-309\(3\)](#).
- 89 (4) In addition to any appeal permitted by Subsection (3), the prosecution may seek
- 90 discretionary appellate review of any interlocutory order entered before jeopardy attaches.