

**Representative A. Cory Maloy** proposes the following substitute bill:

**DUTY TO RETREAT AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: A. Cory Maloy**

Senate Sponsor: Margaret Dayton

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**LONG TITLE**

**General Description:**

This bill clarifies that a person is not required to retreat from an aggressor.

**Highlighted Provisions:**

This bill:

- ▶ provides that a person is not required to retreat from an aggressor even if there is a safe place to retreat to; and

- ▶ prohibits a trier of fact from considering whether a person who did not retreat from an aggressor acted reasonably.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-2-402**, as last amended by Laws of Utah 2010, Chapters 324 and 361

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

Section 1. Section **76-2-402** is amended to read:



26 **76-2-402. Force in defense of person -- Forcible felony defined.**

27 (1) (a) A person is justified in threatening or using force against another when and to  
28 the extent that the person reasonably believes that force or a threat of force is necessary to  
29 defend the person or a third person against another person's imminent use of unlawful force.

30 (b) A person is justified in using force intended or likely to cause death or serious  
31 bodily injury only if the person reasonably believes that force is necessary to prevent death or  
32 serious bodily injury to the person or a third person as a result of another person's imminent use  
33 of unlawful force, or to prevent the commission of a forcible felony.

34 (2) (a) A person is not justified in using force under the circumstances specified in  
35 Subsection (1) if the person:

36 (i) initially provokes the use of force against the person with the intent to use force as  
37 an excuse to inflict bodily harm upon the assailant;

38 (ii) is attempting to commit, committing, or fleeing after the commission or attempted  
39 commission of a felony; or

40 (iii) was the aggressor or was engaged in a combat by agreement, unless the person  
41 withdraws from the encounter and effectively communicates to the other person his intent to do  
42 so and, notwithstanding, the other person continues or threatens to continue the use of unlawful  
43 force.

44 (b) For purposes of Subsection (2)(a)(iii) the following do not, by themselves,  
45 constitute "combat by agreement":

46 (i) voluntarily entering into or remaining in an ongoing relationship; or

47 (ii) entering or remaining in a place where one has a legal right to be.

48 ~~[(3) A person does not have a duty to retreat from the force or threatened force~~  
49 ~~described in Subsection (1) in a place where that person has lawfully entered or remained,~~  
50 ~~except as provided in Subsection (2)(a)(iii).]~~

51 (3) Except as provided in Subsection (2)(a)(iii):

52 (a) a person does not have a duty to retreat from the force or threatened force described  
53 in Subsection (1) in a place where that person has lawfully entered or remained, even if safety  
54 could be achieved by retreating; and

55 (b) the failure to retreat may not be introduced as evidence nor may any trier of fact  
56 consider failure to retreat regarding whether a person acted reasonably in any trial on the issue

57 of self-defense.

58 (4) (a) For purposes of this section, a forcible felony includes aggravated assault,  
59 mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping,  
60 rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a  
61 child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76,  
62 Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76,  
63 Chapter 6, Offenses Against Property.

64 (b) Any other felony offense which involves the use of force or violence against a  
65 person so as to create a substantial danger of death or serious bodily injury also constitutes a  
66 forcible felony.

67 (c) Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible  
68 felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

69 (5) In determining imminence or reasonableness under Subsection (1), the trier of fact  
70 may consider, but is not limited to, any of the following factors:

71 (a) the nature of the danger;

72 (b) the immediacy of the danger;

73 (c) the probability that the unlawful force would result in death or serious bodily  
74 injury;

75 (d) the ~~[other's]~~ other person's prior violent acts or violent propensities; and

76 (e) any patterns of abuse or violence in the parties' relationship.