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PENALTY FOR DRIVE-BY SHOOTINGS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Marda Dillree

AN ACT RELATING TO THE CRIMINAL CODE; IMPOSING AN ENHANCED PENALTY FOR THE DISCHARGE OF A FIREARM AT A HABITABLE STRUCTURE WITH INTENT TO HARASS A PERSON OR TO DAMAGE THE STRUCTURE.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

76-10-508, as last amended by Chapter 23, Laws of Utah 1995

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

Section 1. Section **76-10-508** is amended to read:

76-10-508. Discharge of firearm from a vehicle, near highway, or in direction of any person, building, or vehicle.

(1) (a) A person may not discharge any kind of dangerous weapon or firearm:

(i) from an automobile or other vehicle;

(ii) from, upon, or across any highway;

(iii) at any road signs placed upon any highways of the state;

(iv) at any communications equipment or property of public utilities including facilities, lines, poles, or devices of transmission or distribution;

(v) at railroad equipment or facilities including any sign or signal;

(vi) within Utah State Park buildings, designated camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches; or

(vii) without written permission to discharge the dangerous weapon from the owner or person in charge of the property within 600 feet of:

(A) a house, dwelling, or any other building; or

(B) any structure in which a domestic animal is kept or fed, including a barn, poultry yard,

28 corral, feeding pen, or stockyard.

29 (b) It shall be a defense to any charge for violating this section that the person being
30 accused had actual permission of the owner or person in charge of the property at the time in
31 question.

32 (2) A violation of any provision of this section is a class B misdemeanor unless the actor
33 discharges a firearm under any of the following circumstances not amounting to criminal homicide
34 or attempted criminal homicide, in which case it is a third degree felony:

35 (a) the actor discharges a firearm in the direction of any person or persons, knowing or
36 having reason to believe that any person may be endangered;

37 (b) the actor, with intent to intimidate or harass another or with intent to damage a
38 habitable structure as defined in Subsection 76-6-101(2), discharges a firearm in the direction of
39 any building; or

40 (c) the actor, with intent to intimidate or harass another, discharges a firearm in the
41 direction of any vehicle.

42 (3) (a) If a ~~h~~ **CONVICTION IS FOR A h** violation of Subsection (2) ~~h~~ **[(b) includes the**
42a **discharging of the firearm in the**
43 **direction of a habitable structure as defined in Section 76-6-101] h** , the convicted person shall be
44 sentenced to an enhanced minimum term of three years in prison.

45 (b) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be
46 subscribed upon the information or indictment notice that the defendant is subject to the enhanced
47 penalty provided under this Subsection (3). The notice shall be in a clause separate from and in
48 addition to the substantive offense charged.

49 (c) If the subscription is not included initially, the court may subsequently allow the
50 prosecutor to amend the charging document to include the subscription if the court finds the
51 charging documents, including any statement of probable cause, provide notice to the defendant
52 of the allegation he committed a violation of Subsection (2) ~~h~~ **[(b) involving discharging a firearm at**
53 **a habitable structure] h** , or if the court finds the defendant has not otherwise been substantially
54 prejudiced by the omission.

55 (d) The sentencing judge rather than the jury shall decide whether to impose the enhanced
56 penalty under this Subsection (3). The imposition of the penalty is contingent upon a finding by
57 the sentencing judge that this Subsection (3) is applicable. In conjunction with sentencing the
58 court shall enter ~~h~~ **[written] ON THE RECORD h** findings of fact concerning the applicability of this
58a section.

59 (e) The court may suspend the imposition or execution of the sentence required under this
60 section if the court:

61 (i) finds that the interests of justice would be best served; and

62 (ii) states the specific circumstances justifying the disposition on the record ~~h~~ ~~and in~~

62a writing] h .

63 [(3)] (4) This section does not apply to a person:

64 (a) who discharges any kind of firearm when that person is in lawful defense of self or
65 others; or

66 (b) who is performing official duties as provided in Sections 23-20-1.5 and 76-10-523 and
67 as otherwise provided by law.

Legislative Review Note
as of 1-13-99 12:52 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel