

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 IN THE DIRECTION OF A PERSON, BUILDING, OR VEHICLE.

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 -- Penalties.

- (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, corral, feeding pen, or stockyard.
- (b) It shall be a defense to any charge for violating this section that the person being

accused had actual permission of the owner or person in charge of the property at the time in question.

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

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

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

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

(3) (a) If a conviction is for a violation of Subsection (2), the convicted person shall be sentenced to an enhanced minimum term of three years in prison.

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

(c) If the subscription is not included initially, the court may subsequently allow the prosecutor to amend the charging document to include the subscription if the court finds the charging documents, including any statement of probable cause, provide notice to the defendant of the allegation he committed a violation of Subsection (2), or if the court finds the defendant has not otherwise been substantially prejudiced by the omission.

(d) The sentencing judge rather than the jury shall decide whether to impose the enhanced penalty under this Subsection (3). The imposition of the penalty is contingent upon a finding by the sentencing judge that this Subsection (3) is applicable. In conjunction with sentencing the court shall enter on the record findings of fact concerning the applicability of this section.

(e) The court may suspend the imposition or execution of the sentence required under this

section if the court:

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

(ii) states the specific circumstances justifying the disposition on the record.

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

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

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