

SENTENCING ENHANCEMENT

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Greg J. Curtis

AN ACT RELATING TO THE CRIMINAL CODE; AMENDING PROVISIONS REGARDING SENTENCING ENHANCEMENTS TO REFLECT A RECENT UTAH SUPREME COURT RULING; AND PROVIDING AN EFFECTIVE DATE.

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

AMENDS:

76-3-203, as last amended by Chapter 289, Laws of Utah 1997

76-3-203.1, as last amended by Chapter 11, Laws of Utah 1999

76-3-203.2, as last amended by Chapter 289, Laws of Utah 1997

76-3-203.5, as last amended by Chapter 97, Laws of Utah 1999

76-6-109, as enacted by Chapter 115, Laws of Utah 1998

76-10-508, as last amended by Chapter 295, Laws of Utah 1999

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

Section 1. Section **76-3-203** is amended to read:

76-3-203. Felony conviction -- Indeterminate term of imprisonment -- Increase of sentence if dangerous weapon used.

(1) As used in this section, "dangerous weapon" has the same definition as in Section 76-1-601.

(2) A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

~~[(1)]~~ (a) In the case of a felony of the first degree, for a term ~~[at]~~ of not less than five years, unless otherwise specifically provided by law, and which may be for life, but if the trier of fact finds beyond a reasonable doubt that a dangerous weapon~~[, as defined in Section 76-1-601,]~~ was used in the commission or furtherance of the felony, the court shall ~~[additionally]~~ sentence the person convicted for a term of ~~[one year to run consecutively and not concurrently, and the court may additionally sentence the person convicted for an indeterminate term not to exceed five years to run~~

~~consecutively and not concurrently]~~ not less than six years, and which may be for life.

~~[(2)]~~ (b) In the case of a felony of the second degree, for a term ~~[at]~~ of not less than one year nor more than 15 years, but if the trier of fact finds beyond a reasonable doubt that a dangerous weapon~~[-, as defined in Section 76-1-601,]~~ was used in the commission or furtherance of the felony, the court shall ~~[additionally]~~ sentence the person convicted for a term of ~~[one year to run consecutively and not concurrently]~~ not less than two years nor more than 15 years; and the court may ~~[additionally]~~ sentence the person convicted for ~~[an indeterminate term not to exceed five years to run consecutively and not concurrently]~~ a term of not less than two years nor more than 20 years.

~~[(3)]~~ (c) In the case of a felony of the third degree, for a term not to exceed five years, but if the trier of fact finds beyond a reasonable doubt that a dangerous weapon~~[-, as defined in Section 76-1-601,]~~ was used in the commission or furtherance of the felony, the court shall sentence the person convicted for a term of not less than one year nor more than five years; and the court may ~~[additionally]~~ sentence the person convicted ~~[for an indeterminate term not to exceed five years to run consecutively and not concurrently]~~ for a term of not less than one year nor more than ten years.

~~[(4) Any]~~ (d) If the trier of fact finds beyond a reasonable doubt that any person who has been sentenced to a term of imprisonment for a felony in which a dangerous weapon[-, as defined in Section 76-1-601,] was used [or involved] in the [accomplishment] commission of or furtherance of the felony and is subsequently convicted of another felony when a dangerous weapon was used [or involved] in the [accomplishment] commission of or furtherance of the felony shall, in addition to any other sentence imposed, be sentenced for an indeterminate term to be not less than five nor more than ten years to run consecutively and not concurrently.

Section 2. Section **76-3-203.1** is amended to read:

**76-3-203.1. Offenses committed in concert with two or more persons -- Notice --
Enhanced penalties.**

(1) (a) A person who commits any offense listed in Subsection (4) ~~[in concert with two or more persons]~~ is subject to an enhanced penalty for the offense as provided ~~[below]~~ in Subsection (3) if the trier of fact finds beyond a reasonable doubt that the person acted in concert with two or more persons.

(b) "In concert with two or more persons" as used in this section means the defendant ~~[and two or more other persons participated as parties to the offense under Section 76-2-202]~~ was aided or encouraged by at least two other persons in committing the offense and was aware that he was so aided or encouraged, and each of the other persons:

(i) was physically present; or

(ii) participated as a party to any offense listed in Subsection (4).

~~[(c) In determining if a convicted person committed an offense in concert with two or more persons, the standard of proof applied by the sentencing judge shall be the preponderance of the evidence.]~~

(c) For purposes of Subsection (1)(b)(ii):

(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and

(ii) a minor is a party if the minor's actions would cause him to be a party if he were an adult.

(2) ~~[(a)]~~ The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the ~~[complaint in misdemeanor cases or the]~~ information or indictment ~~[in felony cases]~~ notice that the defendant is subject to the enhanced penalties provided under this section. ~~[The notice shall be in a clause separate from and in addition to the substantive offense charged.]~~

~~[(b) 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 the offense in concert with two or more persons, or if the court finds the defendant has not otherwise been substantially prejudiced by the omission.]~~

(3) The enhanced ~~[penalties]~~ penalty for ~~[offenses committed under this section are]~~ a:

(a) ~~[If the offense is a] class B misdemeanor[; the convicted person shall serve a minimum term of 90 consecutive days in a jail or other secure correctional facility.]~~ is a class A misdemeanor;

(b) ~~[If the offense is a] class A misdemeanor[; the convicted person shall serve a minimum term of 180 consecutive days in a jail or other secure correctional facility.]~~ is a third degree felony;

(c) ~~[If the offense is a] third degree felony[; the convicted person shall be sentenced to an~~

~~enhanced minimum term of three years in prison.]~~ is a second degree felony;

(d) ~~[If the offense is a] second degree felony[, the convicted person shall be sentenced to an enhanced minimum term of six years in prison.]~~ is a first degree felony;

(e) ~~[If the offense is a] first degree felony[, the convicted person shall be sentenced to]~~ is an enhanced minimum term of nine years in prison[-]; and

(f) ~~[If the offense is a] capital offense for which a life sentence is imposed[, the convicted person shall be sentenced to]~~ is a minimum term of 20 years in prison.

(4) Offenses referred to in Subsection (1) are:

(a) any criminal violation of Title 58, Chapter 37, 37a, 37b, or 37c, regarding drug-related offenses;

(b) assault and related offenses under Title 76, Chapter 5, Part 1;

(c) any criminal homicide offense under Title 76, Chapter 5, Part 2;

(d) kidnapping and related offenses under Title 76, Chapter 5, Part 3;

(e) any felony sexual offense under Title 76, Chapter 5, Part 4;

(f) sexual exploitation of a minor as defined in Section 76-5a-3;

(g) any property destruction offense under Title 76, Chapter 6, Part 1;

(h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2;

(i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3;

(j) theft and related offenses under Title 76, Chapter 6, Part 4;

(k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-503, 76-6-504, 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

(l) any offense of obstructing government operations under ~~[Part 3,]~~ Title 76, Chapter 8, Part 3, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

(m) tampering with a witness or other violation of Section 76-8-508;

(n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;

(o) any explosives offense under Title 76, Chapter 10, Part 3;

(p) any weapons offense under Title 76, Chapter 10, Part 5;

(q) pornographic and harmful materials and performances offenses under Title 76, Chapter 10, Part 12;

(r) prostitution and related offenses under Title 76, Chapter 10, Part 13;

(s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

(t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

(u) communications fraud as defined in Section 76-10-1801;

(v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and

(w) burglary of a research facility as defined in Section 76-10-2002.

~~[(5) (a) This section does not create any separate offense but provides an enhanced penalty for the primary offense.]~~

~~[(b)] (5) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.~~

~~[(c) (i) The sentencing judge rather than the jury shall decide whether to impose the enhanced penalty under this section.]~~

~~[(ii) The imposition of the penalty is contingent upon a finding by the sentencing judge by a preponderance of the evidence that this section is applicable.]~~

~~[(iii) In conjunction with sentencing the court shall enter written findings of fact concerning the applicability of this section.]~~

~~[(6) The court may suspend the imposition or execution of the sentence required under this section if the court:]~~

~~[(a) finds that the interests of justice would be best served; and]~~

~~[(b) states the specific circumstances justifying the disposition on the record and in writing.]~~

Section 3. Section **76-3-203.2** is amended to read:

76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or about school premises -- Enhanced penalties.

(1) (a) ~~["On"]~~ As used in this section and Section 76-10-505.5, "on or about school premises"

[as used in this section and Section 76-10-505.5] means any of the following:

- (i) in a public or private elementary, secondary, or on the grounds of any of those schools;
- (ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions;
- (iii) in those portions of any building, park, stadium, or other structure or grounds which are, at the time of the act, being used for an activity sponsored by or through a school or institution under Subsections (1)(a)(i) and (ii);
- (iv) in or on the grounds of a preschool or child-care facility; and
- (v) within 1,000 feet of any structure, facility, or grounds included in Subsections (1)(a)(i), (ii), (iii), and (iv).

(b) As used in this section:

(i) "Dangerous weapon" has the same definition as in Section 76-1-601.

~~(i)~~ (ii) "Educator" means any person who is employed by a public school district and who is required to hold a certificate issued by the State Board of Education in order to perform duties of employment.

~~(ii)~~ (iii) "Within the course of employment" means that an educator is providing services or engaging in conduct required by the educator's employer to perform the duties of employment.

(2) Any person who, on or about school premises, commits any offense and uses or threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the offense is subject to an enhanced degree of offense as provided in Subsection (4).

(3) (a) Any person who commits an offense against an educator when the educator is acting within the course of employment is subject to an enhanced degree of offense as provided in Subsection (4).

(b) As used in Subsection (3)(a), "offense" means:

(i) an offense under Title 76, Chapter 5, Offenses Against The Person; and

~~(c)~~ (ii) an offense under Title 76, Chapter 6, Part 3, Robbery.

(4) ~~The~~ If the trier of fact finds beyond a reasonable doubt that the defendant, while on or about school premises, commits any offense and in the commission of the offense uses or threatens

to use a dangerous weapon, or that the defendant committed an offense against an educator when the educator was acting within the course of his employment, the enhanced [degree of offense for offenses committed under this section are] penalty for a:

- (a) ~~[if the offense is otherwise a]~~ class B misdemeanor ~~[it]~~ is a class A misdemeanor;
- (b) ~~[if the offense is otherwise a]~~ class A misdemeanor ~~[it]~~ is a third degree felony;
- (c) ~~[if the offense is otherwise a]~~ third degree felony ~~[it]~~ is a second degree felony; or
- (d) ~~[if the offense is otherwise a]~~ second degree felony ~~[it]~~ is a first degree felony.
- (5) The enhanced penalty for a first degree felony offense of a convicted person:

(a) ~~[shall be]~~ is imprisonment for a term of not less than five years and which may be for life, and imposition or execution of the sentence may not be suspended unless the court finds that the interests of justice would be best served and states the specific circumstances justifying the disposition on the record; and

(b) ~~[shall be]~~ is subject also to the dangerous weapon enhancement provided in Section 76-3-203 except for an offense committed under Subsection (3) that does not involve a firearm.

(6) ~~[(a)]~~ The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice upon the information or indictment that the defendant is subject to the enhanced degree of offense or penalty under Subsection (4) or (5). ~~[The notice shall be in a clause separate from and in addition to the substantive offense charged.]~~

~~[(b) If the notice is not included initially, the court may subsequently allow the prosecutor to amend the charging documents to include the notice if the court finds the charging document, including any statement of probable cause, provide notice to the defendant of the allegation he committed the offense on or about school premises, or if the court finds the defendant has not otherwise been substantially prejudiced by the omission.]~~

(7) In cases where an offense is enhanced pursuant to Subsection (4)(a), (b), (c), or (d), or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve a firearm, the convicted person ~~[shall]~~ is not ~~[be]~~ subject to the dangerous weapon enhancement in Section 76-3-203.

Section 4. Section **76-3-203.5** is amended to read:

76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.

(1) As used in this section:

(a) "Felony" means any offense against a criminal statute of the state, any other state, the United States, or any district, possession, or territory of the United States for which the maximum punishment the offender may be subjected to exceeds one year in prison.

(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who, on at least two previous occasions [~~as provided in Subsection (2),~~] has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.

(c) (i) "Violent felony" means any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of these offenses punishable as a felony:

(A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief under Title 76, Chapter 6, Part 1, Property Destruction;

(B) aggravated assault under Title 76, Chapter 5, Part 1, Assault and Related Offenses;

(C) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

(D) aggravated kidnapping and kidnapping under Title 76, Chapter 5, Part 3, Kidnaping;

(E) rape, Section 76-5-402;

(F) rape of a child, Section 76-5-402.1;

(G) object rape, Section 76-5-402.2;

(H) object rape of a child, Section 76-5-402.3;

(I) forcible sodomy, Section 76-5-403;

(J) sodomy on a child, Section 76-5-403.1;

(K) forcible sexual abuse, Section 76-5-404;

(L) aggravated sexual abuse of a child and sexual abuse of a child, Section 76-5-404.1;

(M) aggravated sexual assault, Section 76-5-405;

(N) sexual exploitation of a minor, Section 76-5a-3;

(O) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,

Burglary and Criminal Trespass;

- (P) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- (Q) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- (R) tampering with a witness under Subsection 76-8-508(2)(c);
- (S) tampering with a juror under Subsection 76-8-508.5(2)(c);
- (T) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b), and (i);
- (U) damage or destruction of school or institution of higher education property by explosives or flammable materials under Section 76-8-715;
- (V) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);
- (W) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;
- (X) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;
- (Y) unlawful discharge of a firearm under Section 76-10-508;
- (Z) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
- (AA) bus hijacking under Section 76-10-1504; and
- (BB) discharging firearms and hurling missiles under Section 76-10-1505; or
- (ii) any felony offense against a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

~~[(2) (a) The penalty enhancement provisions of this section apply, if during the ten years immediately preceding the commission of the violent felony, the person has been:]~~

~~[(i) convicted of any felony;]~~

~~[(ii) incarcerated, on parole, or on probation for any felony; or]~~

~~[(iii) the subject of an unexecuted felony arrest warrant.]~~

~~[(b) The provisions of Subsection (2)(a) include any conviction, incarceration, parole;~~

~~probation, escape, absconction, and arrest warrant under the laws of this state, any other state, the United States, or any district, possession, or territory of the United States.]~~

~~[(3)]~~ (2) If a person is convicted in this state of a violent felony by plea or by verdict and the ~~[sentencing court]~~ trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:

- (a) third degree felony ~~[shall be]~~ is as if the conviction were for a first degree felony;
- (b) second degree felony ~~[shall be]~~ is as if the conviction were for a first degree felony; or
- (c) first degree felony ~~[shall remain]~~ remains the penalty for a first degree penalty except:
 - (i) the convicted person is not eligible for probation; and
 - (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual

violent offender as an aggravating factor to determine the length of incarceration.

~~[(4)]~~ (3) (a) In all cases, notice that the prosecution intends to seek punishment as a habitual violent offender under this section shall be provided in writing and shall be served upon the defendant or his attorney not later than ten days prior to trial. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

(b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:

- (A) the defendant is the person who was convicted or committed;
- (B) the defendant was represented by counsel or had waived counsel; or
- (C) the defendant's plea was understandingly or voluntarily entered.

(ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.

~~[(c) The court shall determine if this section applies prior]~~

(4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a jury, the jury may not be told until after it returns its verdict on the underlying felony charge, of the:

(i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or

(ii) allegation against the defendant of being a habitual violent offender.

(b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives the jury, in which case the allegation shall be tried immediately to the court.

(c) (i) Prior to or at the time of sentencing the trier of fact shall determine if this section applies.

(ii) The [court] trier of fact shall consider any evidence presented at trial and [a shall afford] the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.

(iii) Prior to sentencing under this section, the [court] trier of fact shall determine whether this section is applicable [by a preponderance of the evidence] beyond a reasonable doubt.

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived his right to have counsel present, and that his plea was understandingly and voluntarily entered.

(e) If the [court] trier of fact finds this section applicable, [it] the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the [court] trier of fact to be a habitual violent offender and is sentenced under this section.

(5) The habitual violent offender provisions of this section are [not] an element of the offense, and proof of a defendant's conduct as a habitual violent offender is [not] necessary at a preliminary hearing or at trial.

(6) (a) The sentencing enhancement provisions of Sections 76-3-407 and 76-3-408 [~~shall~~] apply to a felony conviction defined in Title 76, Chapter 5, Part 4, Sexual Offenses, and [~~shall~~] supersede the provisions of this section.

(b) Notwithstanding Subsection (6)(a):

(i) the convictions under Sections 76-5-404 and 76-5a-3 ~~[shall be]~~ are governed by the enhancement provisions of this section; and

(ii) the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

Section 5. Section **76-6-109** is amended to read:

**76-6-109. Offenses committed against timber, mining, or agricultural industries --
Enhanced penalties.**

(1) A person who commits any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful management, cultivation, or harvesting of trees or timber, or the management or operations of agricultural or mining industries is subject to an enhanced penalty for the offense as provided below. However, this section does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151 et seq.

(2) ~~[(a)]~~ The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the complaint in misdemeanor cases or the information or indictment in felony cases notice that the defendant is subject to the enhanced penalties provided under this section. ~~[The notice shall be in a clause separate from and in addition to the substantive offense charged.]~~

~~[(b) 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 the offense as described in Subsection (1), or if the court finds the defendant has not otherwise been substantially prejudiced by the omission.]~~

(3) ~~[The]~~ If the trier of fact finds beyond a reasonable doubt that the defendant committed any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful management, cultivation, or harvesting of trees or timber, or the management or operations of agricultural or mining industries, the penalties are enhanced as provided in this Subsection (3):

(a) a class C misdemeanor is a class B misdemeanor, with a mandatory fine of not less than

\$1,000, which is in addition to any term of imprisonment the court may impose;

(b) a class B misdemeanor is a Class A misdemeanor, with a fine of not less than \$2,500, which is in addition to any term of imprisonment the court may impose;

(c) a class A misdemeanor is a third degree felony, with a fine of not less than \$5,000, which is in addition to any term of imprisonment the court may impose;

(d) a third degree felony is a second degree felony, with a fine of not less than \$7,500, which is in addition to any term of imprisonment the court may impose; and

(e) a second degree felony is subject to a fine of not less than \$10,000, which is in addition to any term of imprisonment the court may impose.

~~[(4) This section does not create any separate offense but provides an enhanced penalty for the primary offense.]~~

Section 6. Section **76-10-508** is amended to read:

76-10-508. Discharge of firearm from a vehicle, near a 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 and the convicted person shall be sentenced to an enhanced minimum term of three years in prison:

(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.]~~

~~[(4)]~~ (3) 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.

Section 7. Effective date.

If approved by two-thirds of all the members elected to each house, this act takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.