

**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

28 person convicted for a term of [~~one year to run consecutively and not concurrently; and the court~~  
29 may additionally sentence the person convicted for an indeterminate term not to exceed five years

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

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

39 [(3)] (c) In the case of a felony of the third degree, for a term not to exceed five years, but  
40 if the trier of fact finds beyond a reasonable doubt that a dangerous weapon[~~, as defined in Section~~  
41 76-1-601;] was used in the commission or furtherance of the felony, the court shall sentence the  
42 person convicted for a term of not less than one year nor more than five years; and the court may  
43 [additionally] sentence the person convicted [~~for an indeterminate term not to exceed five years~~  
44 to run consecutively and not concurrently] for a term of not less than one year nor more than ten  
45 years.

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

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

54 **76-3-203.1. Offenses committed in concert with two or more persons -- Notice --**  
55 **Enhanced penalties.**

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

59 with two or more persons.

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

64 (i) was physically present; or

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

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

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

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

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

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

79 [~~(b) If the subscription is not included initially, the court may subsequently allow the~~  
80 ~~prosecutor to amend the charging document to include the subscription if the court finds the~~  
81 ~~charging documents, including any statement of probable cause, provide notice to the defendant~~  
82 ~~of the allegation he committed the offense in concert with two or more persons, or if the court~~  
83 ~~finds the defendant has not otherwise been substantially prejudiced by the omission.]~~

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

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

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

90 (c) [~~If the offense is a~~] third degree felony[~~;~~ ~~the convicted person shall be sentenced to an~~  
91 ~~enhanced minimum term of three years in prison.~~] is a second degree felony;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

110 (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-503,

111 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,

112 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

113 (l) any offense of obstructing government operations under [~~Part 3;~~] Title 76, Chapter 8,

114 Part 3, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

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

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

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

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

119 (q) pornographic and harmful materials and performances offenses under Title 76, Chapter  
120 10, Part 12;

- 121 (r) prostitution and related offenses under Title 76, Chapter 10, Part 13;  
 122 (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;  
 123 (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;  
 124 (u) communications fraud as defined in Section 76-10-1801;  
 125 (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency  
 126 Transaction Reporting Act; and  
 127 (w) burglary of a research facility as defined in Section 76-10-2002.

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

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

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

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

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

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

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

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

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

146 **76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or**  
 147 **about school premises -- Enhanced penalties.**

148 (1) (a) ~~["On"]~~ As used in this section and Section 76-10-505.5, "on or about school  
 149 premises" ~~[as used in this section and Section 76-10-505.5]~~ means any of the following:

- 150 (i) in a public or private elementary, secondary, or on the grounds of any of those schools;  
 151 (ii) in a public or private vocational school or postsecondary institution or on the grounds

152 of any of those schools or institutions;

153 (iii) in those portions of any building, park, stadium, or other structure or grounds which  
154 are, at the time of the act, being used for an activity sponsored by or through a school or institution  
155 under Subsections (1)(a)(i) and (ii);

156 (iv) in or on the grounds of a preschool or child-care facility; and

157 (v) within 1,000 feet of any structure, facility, or grounds included in Subsections (1)(a)(i),  
158 (ii), (iii), and (iv).

159 (b) As used in this section:

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

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

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

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

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

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

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

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

175 (4) [The] If the trier of fact finds beyond a reasonable doubt that the defendant, while on  
176 or about school premises, commits any offense and in the commission of the offense uses or  
177 threatens to use a dangerous weapon, or that the defendant committed an offense against an  
178 educator when the educator was acting within the course of his employment, the enhanced [degree  
179 of offense for offenses committed under this section are] penalty for a:

180 (a) ~~[if the offense is otherwise a]~~ class B misdemeanor ~~[it] is a class A misdemeanor;~~

181 (b) ~~[if the offense is otherwise a]~~ class A misdemeanor ~~[it] is a third degree felony;~~

182 (c) ~~[if the offense is otherwise a]~~ third degree felony ~~[it] is a second degree felony; or~~

183 (d) ~~[if the offense is otherwise a]~~ second degree felony ~~[it]~~ is a first degree felony.

184 (5) The enhanced penalty for a first degree felony offense of a convicted person:

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

189 (b) ~~[shall be]~~ is subject also to the dangerous weapon enhancement provided in Section  
190 76-3-203 except for an offense committed under Subsection (3) that does not involve a firearm.

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

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

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

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

205 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

206 (1) As used in this section:

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

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

214 probation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

232 (O) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,  
233 Burglary and Criminal Trespass;

234 (P) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;

235 (Q) theft by extortion under Subsection 76-6-406(2)(a) or (b);

236 (R) tampering with a witness under Subsection 76-8-508(2)(c);

237 (S) tampering with a juror under Subsection 76-8-508.5(2)(c);

238 (T) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or  
239 by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b),  
240 and (i);

241 (U) damage or destruction of school or institution of higher education property by  
242 explosives or flammable materials under Section 76-8-715;

243 (V) possession, use, or removal of explosive, chemical, or incendiary devices under  
244 Subsections 76-10-306(3) through (6);



245 (W) unlawful delivery of explosive, chemical, or incendiary devices under Section  
246 76-10-307;

247 (X) purchase or possession of a dangerous weapon or handgun by a restricted person under  
248 Section 76-10-503;

249 (Y) unlawful discharge of a firearm under Section 76-10-508;

250 (Z) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

251 (AA) bus hijacking under Section 76-10-1504; and

252 (BB) discharging firearms and hurling missiles under Section 76-10-1505; or

253 (ii) any felony offense against a criminal statute of any other state, the United States, or  
254 any district, possession, or territory of the United States which would constitute a violent felony  
255 as defined in this Subsection (1) if committed in this state.

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

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

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

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

261 ~~[(b) The provisions of Subsection (2)(a) include any conviction, incarceration, parole,  
262 probation, escape, abscontion, and arrest warrant under the laws of this state, any other state, the  
263 United States, or any district, possession, or territory of the United States.]~~

264 ~~[(3)]~~ (2) If a person is convicted in this state of a violent felony by plea or by verdict and  
265 the ~~[sentencing court]~~ trier of fact determines beyond a reasonable doubt that the person is a  
266 habitual violent offender under this section, the penalty for a:

267 (a) third degree felony ~~[shall be]~~ is as if the conviction were for a first degree felony;

268 (b) second degree felony ~~[shall be]~~ is as if the conviction were for a first degree felony;

269 or

270 (c) first degree felony ~~[shall remain]~~ remains the penalty for a first degree penalty except:

271 (i) the convicted person is not eligible for probation; and

272 (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual  
273 violent offender as an aggravating factor to determine the length of incarceration.

274 ~~[(4)]~~ (3) (a) In all cases, notice that the prosecution intends to seek punishment as a  
275 habitual violent offender under this section shall be provided in writing and shall be served upon

276 the defendant or his attorney not later than ten days prior to trial. Notice shall include the case  
277 number, court, and date of conviction or commitment of any case relied upon by the prosecution.

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

280 (A) the defendant is the person who was convicted or committed;

281 (B) the defendant was represented by counsel or had waived counsel; or

282 (C) the defendant's plea was understandingly or voluntarily entered.

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

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

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

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

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

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

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

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

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

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

307 waived his right to have counsel present, and that his plea was understandingly and voluntarily  
308 entered.

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

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

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

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

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

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

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

326 **76-6-109. Offenses committed against timber, mining, or agricultural industries --**  
327 **Enhanced penalties.**

328 (1) A person who commits any criminal offense with the intent to halt, impede, obstruct,  
329 or interfere with the lawful management, cultivation, or harvesting of trees or timber, or the  
330 management or operations of agricultural or mining industries is subject to an enhanced penalty  
331 for the offense as provided below. However, this section does not apply to action protected by the  
332 National Labor Relations Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act,  
333 45 U.S.C. Section 151 et seq.

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

338 charged.]

339 ~~[(b) If the subscription is not included initially, the court may subsequently allow the~~  
340 ~~prosecutor to amend the charging document to include the subscription if the court finds the~~  
341 ~~charging documents, including any statement of probable cause, provide notice to the defendant~~  
342 ~~of the allegation he committed the offense as described in Subsection (1), or if the court finds the~~  
343 ~~defendant has not otherwise been substantially prejudiced by the omission.]~~

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

348 (a) a class C misdemeanor is a class B misdemeanor, with a mandatory fine of not less than  
349 \$1,000, which is in addition to any term of imprisonment the court may impose;

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

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

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

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

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

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

361 **76-10-508. Discharge of firearm from a vehicle, near a highway, or in direction of**  
362 **any person, building, or vehicle -- Penalties.**

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

364 (i) from an automobile or other vehicle;

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

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

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

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

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

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

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

375 (B) any structure in which a domestic animal is kept or fed, including a barn, poultry yard,  
376 corral, feeding pen, or stockyard.

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

380 (2) A violation of any provision of this section is a class B misdemeanor unless the actor  
381 discharges a firearm under any of the following circumstances not amounting to criminal homicide  
382 or attempted criminal homicide, in which case it is a third degree felony and the convicted person  
383 shall be sentenced to an enhanced minimum term of three years in prison:

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

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

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

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

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

397 [~~(c) If the subscription is not included initially, the court may subsequently allow the~~  
398 ~~prosecutor to amend the charging document to include the subscription if the court finds the~~  
399 ~~charging documents, including any statement of probable cause, provide notice to the defendant~~

400 of the allegation he committed a violation of Subsection (2), or if the court finds the defendant has  
401 not otherwise been substantially prejudiced by the omission.]

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

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

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

409 [~~(ii) states the specific circumstances justifying the disposition on the record.]~~

410 [~~(4)~~] (3) This section does not apply to a person:

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

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

415 Section 7. **Effective date.**

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

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**Legislative Review Note**  
**as of 1-25-00 4:29 PM**

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

**Office of Legislative Research and General Counsel**