

PARTY TO FELONY OFFENSE ENHANCEMENT

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill modifies the criminal penalty enhancement provision for certain felonies in the Utah Criminal Code.

Highlighted Provisions:

This bill:

- ▶ provides for enhanced criminal penalties for a defendant who is a party to a felony offense in which a dangerous weapon was used in the commission or furtherance of the felony;
- ▶ provides that the trier of fact must find beyond a reasonable doubt that the defendant knew that the dangerous weapon was present; and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

23-20-4, as last amended by Chapters 125, 148 and 228, Laws of Utah 2003

76-3-203.8, as enacted by Chapter 148, Laws of Utah 2003

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

Section 1. Section **23-20-4** is amended to read:

23-20-4. Wanton destruction of protected wildlife -- Penalties.

S.B. 84

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- (1) A person is guilty of wanton destruction of protected wildlife if that person:
- (a) commits an act in violation of Section 23-13-4, 23-13-5, 23-13-13, 23-15-6 through 23-15-9, 23-16-5, or Subsection 23-20-3(1);
 - (b) captures, injures, or destroys protected wildlife; and
 - (c) (i) does so with intentional, knowing, or reckless conduct as defined in Section 76-2-103;
 - (ii) intentionally abandons protected wildlife or a carcass;
 - (iii) commits the offense at night with the use of a weapon;
 - (iv) is under a court or division revocation of a license, tag, permit, or certificate of registration; or
 - (v) acts for pecuniary gain.
- (2) Subsection (1) does not apply to actions taken which are in accordance with the following:
- (a) Title 4, Chapter 14, Utah Pesticide Control Act;
 - (b) Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act; or
 - (c) Section 23-16-3.1.
- (3) Wanton destruction of wildlife is punishable:
- (a) as a third degree felony if:
 - (i) the aggregate value of the protected wildlife determined by the values in Subsection (4) is more than \$500; or
 - (ii) a trophy animal was captured, injured, or destroyed;
 - (b) as a class A misdemeanor if the aggregate value of the protected wildlife, other than any trophy animal, determined by the values established in Subsection (4) is more than \$250, but does not exceed \$500; and
 - (c) as a class B misdemeanor if the aggregate value of the protected wildlife determined by the values established in Subsection (4) is \$250 or less.
- (4) Regardless of the restitution amounts imposed under Subsection 23-20-4.5(2), the following values [~~shall be~~] are assigned to protected wildlife for the purpose of determining the

offense for wanton destruction of wildlife:

- (a) \$1,000 per animal for:
 - (i) bison;
 - (ii) bighorn sheep;
 - (iii) rocky mountain goat;
 - (iv) moose;
 - (v) bear;
 - (vi) peregrine falcon; or
 - (vii) endangered species;
- (b) \$750 per animal for:
 - (i) elk; or
 - (ii) threatened species;
- (c) \$500 per animal for:
 - (i) cougar;
 - (ii) golden eagle;
 - (iii) river otter; or
 - (iv) gila monster;
- (d) \$400 per animal for:
 - (i) pronghorn antelope; or
 - (ii) deer;
- (e) \$350 per animal for bobcat;
- (f) \$100 per animal for:
 - (i) swan;
 - (ii) sandhill crane;
 - (iii) turkey;
 - (iv) pelican;
 - (v) loon;
 - (vi) egrets;

- (vii) herons;
- (viii) raptors, except those that are threatened or endangered;
- (ix) Utah milk snake; or
- (x) Utah mountain king snake;
- (g) \$35 per animal for furbearers, except:
 - (i) bobcat;
 - (ii) river otter; and
 - (iii) threatened or endangered species;
- (h) \$25 per animal for trout, char, salmon, grayling, tiger muskellunge, walleye, largemouth bass, smallmouth bass, and wiper;
 - (i) \$15 per animal for game birds, except:
 - (i) turkey;
 - (ii) swan; and
 - (iii) sandhill crane;
 - (j) \$10 per animal for game fish not listed in Subsection (4)(h);
 - (k) \$8 per pound dry weight of processed brine shrimp including eggs; and
 - (l) \$5 per animal for protected wildlife not listed.
- (5) For purposes of sentencing for a wildlife violation, a person who has been convicted of a third degree felony under Subsection (3)(a) is not subject to the mandatory sentencing requirements prescribed in Subsection 76-3-203.8~~(3)~~(4).
- (6) As part of any sentence imposed, the court shall impose a sentence of incarceration of not less than 20 consecutive days for any person convicted of a third degree felony under Subsection (3)(a)(ii) who captured, injured, or destroyed a trophy animal for pecuniary gain.
- (7) If a person has already been convicted of a third degree felony under Subsection (3)(a)(ii) once, each separate further offense under Subsection (3)(a)(ii) is punishable by, as part of any sentence imposed, a sentence of incarceration of not less than 20 consecutive days.
- (8) The court may not sentence a person subject to Subsection (6) or (7) to less than 20 consecutive days of incarceration or suspend the imposition of the sentence unless the court finds

mitigating circumstances justifying lesser punishment and makes that finding a part of the court record.

Section 2. Section **76-3-203.8** is amended to read:

76-3-203.8. 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) If the trier of fact finds beyond a reasonable doubt that a dangerous weapon was used in the commission or furtherance of a felony, the court:

- (a) (i) shall increase by one year the minimum term of the sentence applicable by law; and
- (ii) if the minimum term applicable by law is zero, shall set the minimum term as one year;

and

(b) may increase by five years the maximum sentence applicable by law in the case of a felony of the second or third degree.

(3) A defendant who is a party to a felony offense shall be sentenced to the increases in punishment provided in Subsection (2) if the trier of fact finds beyond a reasonable doubt that:

- (a) a dangerous weapon was used in the commission or furtherance of the felony; and
- (b) the defendant knew that the dangerous weapon was present.

~~(3)~~ (4) If the trier of fact finds beyond a reasonable doubt that a person has been sentenced to a term of imprisonment for a felony in which a dangerous weapon was used in the commission of or furtherance of the felony and that person is subsequently convicted of another felony in which a dangerous weapon was used in the commission of or furtherance of the felony, the court shall, in addition to any other sentence imposed including those in Subsection (2), impose an indeterminate prison term to be not less than five nor more than ten years to run consecutively and not concurrently.