

**CUSTODIAL INTERFERENCE AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Carl Wimmer**

Senate Sponsor: Mark B. Madsen

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**LONG TITLE**

**General Description:**

This bill amends the Utah Criminal Code and the Uniform Driver License Act in relation to the crime of custodial interference.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ enacts a modified version of the crime of custodial interference;
- ▶ provides that custodial interference is:
  - except as otherwise provided in this bill, a class B misdemeanor;
  - a class A misdemeanor if the actor was previously convicted of custodial interference at least twice in the two-year period preceding the latest commission; or
    - a felony of the third degree if, during the course of the custodial interference, the actor removes, causes the removal, or directs the removal of the child from the state;
- ▶ creates affirmative defenses to the crime of custodial interference; and
- ▶ imposes a driver license suspension upon a person convicted of custodial interference.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **53-3-220**, as last amended by Laws of Utah 2009, Chapters 105, 291, 328, and 353

33 ENACTS:

34 **76-5-303.5**, Utah Code Annotated 1953

35 REPEALS AND REENACTS:

36 **76-5-303**, as last amended by Laws of Utah 2001, Chapter 255



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

39 Section 1. Section **53-3-220** is amended to read:

40 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**  
41 **disqualification of license -- Offense requiring an extension of period -- Hearing --**  
42 **Limited driving privileges.**

43 (1) (a) The division shall immediately revoke or, when this chapter [or], Title 41,  
44 Chapter 6a, Traffic Code, or Section 76-5-303, specifically provides for denial, suspension, or  
45 disqualification, the division shall deny, suspend, or disqualify the license of a person upon  
46 receiving a record of the person's conviction for:

47 (i) manslaughter or negligent homicide resulting from driving a motor vehicle, or  
48 automobile homicide under Section 76-5-207 or 76-5-207.5;

49 (ii) driving or being in actual physical control of a motor vehicle while under the  
50 influence of alcohol, any drug, or combination of them to a degree that renders the person  
51 incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as prohibited  
52 in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

53 (iii) driving or being in actual physical control of a motor vehicle while having a blood  
54 or breath alcohol content as prohibited in Section 41-6a-502 or as prohibited in an ordinance  
55 that complies with the requirements of Subsection 41-6a-510(1);

56 (iv) perjury or the making of a false affidavit to the division under this chapter, Title  
57 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles

58 or regulating driving on highways;

59 (v) any felony under the motor vehicle laws of this state;

60 (vi) any other felony in which a motor vehicle is used to facilitate the offense;

61 (vii) failure to stop and render aid as required under the laws of this state if a motor  
62 vehicle accident results in the death or personal injury of another;

63 (viii) two charges of reckless driving, impaired driving, or any combination of reckless  
64 driving and impaired driving committed within a period of 12 months; but if upon a first  
65 conviction of reckless driving or impaired driving the judge or justice recommends suspension  
66 of the convicted person's license, the division may after a hearing suspend the license for a  
67 period of three months;

68 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as  
69 required in Section 41-6a-210;

70 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that  
71 requires disqualification;

72 (xi) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or  
73 allowing the discharge of a firearm from a vehicle;

74 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or  
75 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);

76 (xiii) operating or being in actual physical control of a motor vehicle while having any  
77 measurable controlled substance or metabolite of a controlled substance in the person's body in  
78 violation of Section 41-6a-517;

79 (xiv) until July 30, 2015, operating or being in actual physical control of a motor  
80 vehicle while having any alcohol in the person's body in violation of Section 53-3-232;

81 (xv) operating or being in actual physical control of a motor vehicle while having any  
82 measurable or detectable amount of alcohol in the person's body in violation of Section  
83 41-6a-530;

84 (xvi) engaging in a motor vehicle speed contest or exhibition of speed on a highway in  
85 violation of Section 41-6a-606; [or]

86 (xvii) operating or being in actual physical control of a motor vehicle in this state  
87 without an ignition interlock system in violation of Section 41-6a-518.2[-]; or

88 (xviii) custodial interference, under:

89 (A) Subsection 76-5-303(3), which suspension shall be for a period of 30 days, unless  
90 the court provides the division with an order of suspension for a shorter period of time;

91 (B) Subsection 76-5-303(4), which suspension shall be for a period of 90 days, unless  
92 the court provides the division with an order of suspension for a shorter period of time; or

93 (C) Subsection 76-5-303(5), which suspension shall be for a period of 180 days,  
94 unless the court provides the division with an order of suspension for a shorter period of time.

95 (b) The division shall immediately revoke the license of a person upon receiving a  
96 record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for:

97 (i) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or  
98 allowing the discharge of a firearm from a vehicle; or

99 (ii) using, allowing the use of, or causing to be used any explosive, chemical, or  
100 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b).

101 (c) Except when action is taken under Section 53-3-219 for the same offense, the  
102 division shall immediately suspend for six months the license of a person upon receiving a  
103 record of conviction for:

104 (i) any violation of:

105 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

106 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

107 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

108 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

109 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or

110 (ii) any criminal offense that prohibits:

111 (A) possession, distribution, manufacture, cultivation, sale, or transfer of any  
112 substance that is prohibited under the acts described in Subsection (1)(c)(i); or

113 (B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or

114 transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).

115 (d) (i) The division shall immediately suspend a person's driver license for conviction  
116 of the offense of theft of motor vehicle fuel under Section 76-6-404.7 if the division receives:

117 (A) an order from the sentencing court requiring that the person's driver license be  
118 suspended; and

119 (B) a record of the conviction.

120 (ii) An order of suspension under this section is at the discretion of the sentencing  
121 court, and may not be for more than 90 days for each offense.

122 (e) (i) The division shall immediately suspend for one year the license of a person  
123 upon receiving a record of:

124 (A) conviction for the first time for a violation under Section 32A-12-223; or

125 (B) an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a  
126 violation under Section 32A-12-223.

127 (ii) The division shall immediately suspend for a period of two years the license of a  
128 person upon receiving a record of:

129 (A) (I) conviction for a second or subsequent violation under Section 32A-12-223; and

130 (II) the violation described in Subsection (1)(e)(ii)(A)(I) is within 10 years of a prior  
131 conviction for a violation under Section 32A-12-223; or

132 (B) (I) a second or subsequent adjudication under Title 78A, Chapter 6, Juvenile Court  
133 Act of 1996, for a violation under Section 32A-12-223; and

134 (II) the adjudication described in Subsection (1)(e)(ii)(B)(I) is within 10 years of a  
135 prior adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation  
136 under Section 32A-12-223.

137 (iii) Upon receipt of a record under Subsection (1)(e)(i) or (ii), the division shall:

138 (A) for a conviction or adjudication described in Subsection (1)(e)(i):

139 (I) impose a suspension for one year beginning on the date of conviction; or

140 (II) if the person is under the age of eligibility for a driver license, impose a suspension  
141 that begins on the date of conviction and continues for one year beginning on the date of

142 eligibility for a driver license; or

143 (B) for a conviction or adjudication described in Subsection (1)(e)(ii):

144 (I) impose a suspension for a period of two years; or

145 (II) if the person is under the age of eligibility for a driver license, impose a suspension  
146 that begins on the date of conviction and continues for two years beginning on the date of  
147 eligibility for a driver license.

148 (2) The division shall extend the period of the first denial, suspension, revocation, or  
149 disqualification for an additional like period, to a maximum of one year for each subsequent  
150 occurrence, upon receiving:

151 (a) a record of the conviction of any person on a charge of driving a motor vehicle  
152 while the person's license is denied, suspended, revoked, or disqualified;

153 (b) a record of a conviction of the person for any violation of the motor vehicle law in  
154 which the person was involved as a driver;

155 (c) a report of an arrest of the person for any violation of the motor vehicle law in  
156 which the person was involved as a driver; or

157 (d) a report of an accident in which the person was involved as a driver.

158 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is  
159 driving while the person's license is denied, suspended, disqualified, or revoked, the person is  
160 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,  
161 or revocation originally imposed under Section 53-3-221.

162 (4) (a) The division may extend to a person the limited privilege of driving a motor  
163 vehicle to and from the person's place of employment or within other specified limits on  
164 recommendation of the judge in any case where a person is convicted of any of the offenses  
165 referred to in Subsections (1) and (2) except:

166 (i) automobile homicide under Subsection (1)(a)(i);

167 (ii) those offenses referred to in Subsections (1)(a)(ii), ~~(1)(a)(iii)~~, ~~(1)(a)(xi)~~, ~~(1)(a)(xii)~~,  
168 ~~(1)(a)(xiii)~~, (1)(b), and (1)(c); and

169 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,

170 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,  
171 41-6a-517, a local ordinance which complies with the requirements of Subsection  
172 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the  
173 person was charged with violating as a result of a plea bargain after having been originally  
174 charged with violating one or more of these sections or ordinances, unless:

175 (A) the person has had the period of the first denial, suspension, revocation, or  
176 disqualification extended for a period of at least three years;

177 (B) the division receives written verification from the person's primary care physician  
178 that:

179 (I) to the physician's knowledge the person has not used any narcotic drug or other  
180 controlled substance except as prescribed by a licensed medical practitioner within the last  
181 three years; and

182 (II) the physician is not aware of any physical, emotional, or mental impairment that  
183 would affect the person's ability to operate a motor vehicle safely; and

184 (C) for a period of one year prior to the date of the request for a limited driving  
185 privilege:

186 (I) the person has not been convicted of a violation of any motor vehicle law in which  
187 the person was involved as the operator of the vehicle;

188 (II) the division has not received a report of an arrest for a violation of any motor  
189 vehicle law in which the person was involved as the operator of the vehicle; and

190 (III) the division has not received a report of an accident in which the person was  
191 involved as an operator of a vehicle.

192 (b) (i) Except as provided in Subsection (4)(b)(ii), the discretionary privilege  
193 authorized in this Subsection (4):

194 (A) is limited to when undue hardship would result from a failure to grant the  
195 privilege; and

196 (B) may be granted only once to any person during any single period of denial,  
197 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,

198 or disqualification.

199 (ii) The discretionary privilege authorized in Subsection (4)(a)(iii):

200 (A) is limited to when the limited privilege is necessary for the person to commute to  
201 school or work; and

202 (B) may be granted only once to any person during any single period of denial,  
203 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,  
204 or disqualification.

205 (c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform  
206 Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or  
207 denied under this chapter.

208 Section 2. Section **76-5-303** is repealed and reenacted to read:

209 **76-5-303. Custodial interference.**

210 (1) As used in this section:

211 (a) "Child" means a person under the age of 18.

212 (b) "Custody" means court-ordered physical custody entered by a court of competent  
213 jurisdiction.

214 (c) "Visitation" means court-ordered parent-time or visitation entered by a court of  
215 competent jurisdiction.

216 (2) (a) A person who is entitled to custody of a child is guilty of custodial interference  
217 if, during a period of time when another person is entitled to visitation of the child, the person  
218 takes, entices, conceals, detains, or withholds the child from the person entitled to visitation of  
219 the child, with the intent to interfere with the visitation of the child.

220 (b) A person who is entitled to visitation of a child is guilty of custodial interference  
221 if, during a period of time when the person is not entitled to visitation of the child, the person  
222 takes, entices, conceals, detains, or withholds the child from a person who is entitled to  
223 custody of the child, with the intent to interfere with the custody of the child.

224 (3) Except as provided in Subsection (4) or (5), custodial interference is a class B  
225 misdemeanor.

226 (4) Except as provided in Subsection (5), the actor described in Subsection (2) is  
 227 guilty of a class A misdemeanor if the actor:  
 228 (a) commits custodial interference; and  
 229 (b) has been convicted of custodial interference at least twice in the two-year period  
 230 immediately preceding the day on which the commission of custodial interference described in  
 231 Subsection (4)(a) occurs.

232 (5) Custodial interference is a felony of the third degree if, during the course of the  
 233 custodial interference, the actor described in Subsection (2) removes, causes the removal, or  
 234 directs the removal of the child from the state.

235 (6) In addition to the affirmative defenses described in Section 76-5-305, it is an  
 236 affirmative defense to the crime of custodial interference that:

237 (a) the action is consented to by the person whose custody or visitation of the child  
 238 was interfered with; or

239 (b) (i) the action is based on a reasonable belief that the action is necessary to protect a  
 240 child from abuse, including sexual abuse; and

241 (ii) before engaging in the action, the person reports the person's intention to engage in  
 242 the action, and the basis for the belief described in Subsection (6)(b)(i), to the Division of  
 243 Child and Family Services or law enforcement.

244 (7) In addition to the other penalties described in this section, a person who is  
 245 convicted of custodial interference is subject to the driver license suspension provisions of  
 246 Subsection 53-3-220(1)(a)(xviii).

247 Section 3. Section **76-5-303.5** is enacted to read:

248 **76-5-303.5. Notification of conviction of custodial interference.**

249 (1) As used in this section:

250 (a) "Convicted" means that a person has received a conviction.

251 (b) "Conviction" is as defined in Section 53-3-102.

252 (2) If a person is convicted of custodial interference under Section 76-5-303, the court  
 253 shall notify the Driver License Division, created in Section 53-3-103, of the conviction, and

254 whether the conviction is for:

255 (a) a class B misdemeanor, under Subsection 76-5-303(3);

256 (b) a class A misdemeanor, under Subsection 76-5-303(4); or

257 (c) a felony, under Subsection 76-5-303(5).