

**Senator Mark B. Madsen** proposes the following substitute bill:

**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.



26 **Monies Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 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 or  
58 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;

90 (B) Subsection 76-5-303(4), which suspension shall be for a period of 90 days; or

91 (C) Subsection 76-5-303(5), which suspension shall be for a period of 180 days.

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

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

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

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

101 (i) any violation of:

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

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

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

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

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

107 (ii) any criminal offense that prohibits:

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

110 (B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or  
111 transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).

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

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

116 (B) a record of the conviction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

166 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,  
167 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,  
168 41-6a-517, a local ordinance which complies with the requirements of Subsection  
169 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person  
170 was charged with violating as a result of a plea bargain after having been originally charged  
171 with violating one or more of these sections or ordinances, unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

206 **76-5-303. Custodial interference.**

207 (1) As used in this section:

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

209 (b) "Custody" means court-ordered physical custody, entered by a court of competent  
210 jurisdiction.

211 (c) "Visitation" means court-ordered parent-time or visitation, entered by a court of

212 competent jurisdiction.

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

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

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

223 (4) Except as provided in Subsection (5), the actor described in Subsection (2) is guilty  
224 of a class A misdemeanor if the actor:

225 (a) commits custodial interference; and

226 (b) has been convicted of custodial interference at least twice in the two-year period  
227 immediately preceding the day on which the commission of custodial interference described in  
228 Subsection (4)(a) occurs.

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

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

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

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

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

241 (7) In addition to the other penalties described in this section, a person who is  
242 convicted of custodial interference is subject to the driver license suspension provisions of



243 Subsection 53-3-220(1)(a)(xviii).

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

245 **76-5-303.5. Notification of conviction of custodial interference.**

246 (1) As used in this section:

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

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

249 (2) If a person is convicted of custodial interference under Section 76-5-303, the court

250 shall notify the Driver License Division, created in Section 53-3-103, of the conviction, and

251 whether the conviction is for:

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

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

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

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**H.B. 197 5th Sub. (Salmon) - Custodial Interference Amendments**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

Enacting this bill will require a \$3,000 one-time General Fund appropriation to the Driver License Division to pay for programming costs in FY 2011. The bill may also affect Courts.

	<u>FY 2010 Approp.</u>	<u>FY 2011 Approp.</u>	<u>FY 2012 Approp.</u>	<u>FY 2010 Revenue</u>	<u>FY 2011 Revenue</u>	<u>FY 2012 Revenue</u>
General Fund, One-Time	\$0	\$3,000	\$0	\$0	\$0	\$0
<b>Total</b>	<b>\$0</b>	<b>\$3,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>

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**Individual, Business and/or Local Impact**

Enacting this bill will not likely result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.