

**Superseded 5/4/2022**

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

(1) As used in this section:

- (a) "Felony" means any violation of 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 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) "Violent felony" means:
  - (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:
    - (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief, Title 76, Chapter 6, Part 1, Property Destruction;
    - (B) assault by prisoner, Section 76-5-102.5;
    - (C) disarming a police officer, Section 76-5-102.8;
    - (D) aggravated assault, Section 76-5-103;
    - (E) aggravated assault by prisoner, Section 76-5-103.5;
    - (F) mayhem, Section 76-5-105;
    - (G) stalking, Subsection 76-5-106.5(2) or (3);
    - (H) threat of terrorism, Section 76-5-107.3;
    - (I) child abuse, Subsection 76-5-109(2)(a) or (b);
    - (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
    - (K) abuse or neglect of a child with a disability, Section 76-5-110;
    - (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
    - (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
    - (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
    - (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
    - (P) rape, Section 76-5-402;
    - (Q) rape of a child, Section 76-5-402.1;
    - (R) object rape, Section 76-5-402.2;
    - (S) object rape of a child, Section 76-5-402.3;
    - (T) forcible sodomy, Section 76-5-403;
    - (U) sodomy on a child, Section 76-5-403.1;
    - (V) forcible sexual abuse, Section 76-5-404;
    - (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
    - (X) aggravated sexual assault, Section 76-5-405;
    - (Y) sexual exploitation of a minor, Section 76-5b-201;
    - (Z) sexual exploitation of a vulnerable adult, Section 76-5b-202;
    - (AA) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
    - (BB) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
    - (CC) theft by extortion under Subsection 76-6-406(2)(a) or (b);
    - (DD) tampering with a witness under Subsection 76-8-508(1);
    - (EE) retaliation against a witness, victim, or informant under Section 76-8-508.3;
    - (FF) tampering with a juror under Subsection 76-8-508.5(2)(c);

- (GG) 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);
  - (HH) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);
  - (II) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;
  - (JJ) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;
  - (KK) unlawful discharge of a firearm under Section 76-10-508;
  - (LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
  - (MM) bus hijacking under Section 76-10-1504; and
  - (NN) discharging firearms and hurling missiles under Section 76-10-1505; or
  - (ii) any felony violation of 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) If a person is convicted in this state of a violent felony by plea or by verdict and the 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 is as if the conviction were for a first degree felony;
  - (b) second degree felony is as if the conviction were for a first degree felony; or
  - (c) first degree felony 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 in determining the length of incarceration.
- (3)
- (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. 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.
- (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) Before or at the time of sentencing the trier of fact shall determine if this section applies.

- (ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.
  - (iii) Before sentencing under this section, the trier of fact shall determine whether this section is applicable 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 the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.
  - (e) If the trier of fact finds this section applicable, 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 trier of fact to be a habitual violent offender and is sentenced under this section.
- (5)
- (a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.
  - (b) Notwithstanding Subsection (5)(a), 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.
- (6) The sentencing enhancement described in this section does not apply if:
- (a) the offense for which the person is being sentenced is:
    - (i) a grievous sexual offense;
    - (ii) child kidnapping, Section 76-5-301.1;
    - (iii) aggravated kidnapping, Section 76-5-302; or
    - (iv) forcible sexual abuse, Section 76-5-404; and
  - (b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.