Chapter 3
Punishments

Part 1
Classification of Offenses

76-3-101 Sentencing in accordance with chapter.
(1) A person adjudged guilty of an offense under this code shall be sentenced in accordance with the provisions of this chapter.
(2) Penal laws enacted after the effective date of this code shall be classified for sentencing purposes in accordance with this chapter.

Enacted by Chapter 196, 1973 General Session

76-3-102 Designation of offenses.
Offenses are designated as felonies, misdemeanors, or infractions.

Enacted by Chapter 196, 1973 General Session

76-3-103 Felonies classified.
(1) Felonies are classified into four categories:
  (a) Capital felonies;
  (b) Felonies of the first degree;
  (c) Felonies of the second degree;
  (d) Felonies of the third degree.
(2) An offense designated as a felony either in this code or in another law, without specification as to punishment or category, is a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-3-104 Misdemeanors classified.
(1) Misdemeanors are classified into three categories:
  (a) Class A misdemeanors;
  (b) Class B misdemeanors;
  (c) Class C misdemeanors.
(2) An offense designated as a misdemeanor in this code without specification as to punishment or category is an infraction punishable in accordance with Section 76-3-205.
(3) Except as provided in Subsection (4), an offense designated as a misdemeanor in a county or municipal ordinance without specification as to punishment or category is a class B misdemeanor.
(4) After June 30, 2019, an offense designated as a misdemeanor in a county or municipal ordinance without specification as to punishment or category is an infraction punishable in accordance with Section 76-3-205.

Amended by Chapter 148, 2018 General Session

76-3-105 Infractions.

(1) Infractions are not classified.
(2) Any offense which is an infraction within this code is expressly designated and any offense defined outside this code which is not designated as a felony or misdemeanor and for which no penalty is specified is an infraction.

Enacted by Chapter 196, 1973 General Session

Part 2
Sentencing

76-3-201 Sentences or combination of sentences allowed -- Restitution and other costs -- Civil penalties.

(1) As used in this section:
  (a)
    (i) "Convicted" means:
      (A) having entered a plea of guilty, a plea of no contest, or a plea of guilty with a mental condition; or
      (B) having received a judgment of guilty or a judgment of guilty with a mental condition.
    (ii) "Convicted" does not include an adjudication of an offense under Section 80-6-701.
  (b) "Restitution" means the same as that term is defined in Section 77-38b-102.
(2) Within the limits provided by this chapter, a court may sentence an individual convicted of an offense to any one of the following sentences, or combination of the following sentences:
  (a) to pay a fine;
  (b) to removal or disqualification from public or private office;
  (c) except as otherwise provided by law, to probation in accordance with Section 77-18-105;
  (d) to imprisonment;
  (e) on or after April 27, 1992, to life in prison without parole; or
  (f) to death.
(3)
  (a) This chapter does not deprive a court of authority conferred by law:
    (i) to forfeit property;
    (ii) to dissolve a corporation;
    (iii) to suspend or cancel a license;
    (iv) to permit removal of an individual from office;
    (v) to cite for contempt; or
    (vi) to impose any other civil penalty.
  (b) A court may include a civil penalty in a sentence.
(4) In addition to any other sentence that a sentencing court may impose, the court shall order an individual to:
  (a) pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act;
  (b) subject to Section 77-32b-104, pay the cost expended by an appropriate governmental entity under Section 77-30-24 for the extradition of the individual if the individual:
    (i) was extradited to this state, under Title 77, Chapter 30, Extradition, to resolve pending criminal charges; and
    (ii) is convicted of an offense in the county for which the individual is returned;

(c) subject to Subsection (5) and Subsections 77-32b-104(2), (3), and (4), pay the cost of medical care, treatment, hospitalization, and related transportation, as described in Section 17-50-319, that is provided by a county to the individual while the individual is in a county correctional facility before and after sentencing if:
(i) the individual is convicted of an offense that results in incarceration in the county correctional facility; and
(ii)
(A) the individual is not a state prisoner housed in the county correctional facility through a contract with the Department of Corrections; or
(B) the reimbursement does not duplicate the reimbursement under Section 64-13e-104 if the individual is a state probationary inmate or a state parole inmate; and
(d) pay any other cost that the court determines is appropriate under Section 77-32b-104.
(5) The cost of medical care under Subsection (4)(c) does not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the Americans with Disabilities Act, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

Amended by Chapter 184, 2023 General Session
Amended by Chapter 497, 2023 General Session

76-3-202 Paroled individuals -- Termination or discharge from sentence -- Time served on parole -- Discretion of Board of Pardons and Parole.

(1) Every individual committed to the state prison to serve an indeterminate term and, after December 31, 2018, released on parole shall complete a term of parole that extends through the expiration of the individual's maximum sentence unless the parole is earlier terminated by the Board of Pardons and Parole in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, as described in Subsection 77-27-5(7), to the extent the guidelines are consistent with the requirements of the law.
(2)
(a) Except as provided in Subsection (2)(b), every individual committed to the state prison to serve an indeterminate term and released on parole on or after October 1, 2015, but before January 1, 2019, shall, upon completion of three years on parole outside of confinement and without violation, be terminated from the individual's sentence unless the parole is earlier terminated by the Board of Pardons and Parole or is terminated pursuant to Section 64-13-21.
(b) Every individual committed to the state prison to serve an indeterminate term and later released on parole on or after July 1, 2008, but before January 1, 2019, and who was convicted of any felony offense under Chapter 5, Offenses Against the Individual, or any attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a term of parole that extends through the expiration of the individual's maximum sentence, unless the parole is earlier terminated by the Board of Pardons and Parole.
(3) Every individual convicted of a second degree felony for violating Section 76-5-404, forcible sexual abuse; Section 76-5-404.1, sexual abuse of a child; or Section 76-5-404.3, aggravated sexual abuse of a child; or attempting, conspiring, or soliciting the commission of a violation of any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without violation, be terminated from the sentence unless the individual is earlier terminated by the Board of Pardons and Parole.

(4) An individual who violates the terms of parole, while serving parole, for any offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.
(5) An individual paroled following a former parole revocation may not be discharged from the individual's sentence until:
(a) the individual has served the applicable period of parole under this section outside of confinement;
(b) the individual's maximum sentence has expired; or
(c) the Board of Pardons and Parole orders the individual to be discharged from the sentence.
(6)
(a) All time served on parole, outside of confinement and without violation, constitutes service toward the total sentence.
(b) Any time an individual spends outside of confinement after commission of a parole violation does not constitute service toward the total sentence unless the individual is exonerated at a parole revocation hearing.
(c)
(i) Any time an individual spends in confinement awaiting a hearing before the Board of Pardons and Parole or a decision by the board concerning revocation of parole constitutes service toward the total sentence.
(ii) In the case of exoneration by the board, the time spent is included in computing the total parole term.
(7) When a parolee causes the parolee's absence from the state without authority from the Board of Pardons and Parole or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.
(8)
(a) While on parole, time spent in confinement outside the state may not be credited toward the service of any Utah sentence.
(b) Time in confinement outside the state or in the custody of any tribal authority or the United States government for a conviction obtained in another jurisdiction tolls the expiration of the Utah sentence.
(9) This section does not preclude the Board of Pardons and Parole from paroling or discharging an inmate at any time within the discretion of the Board of Pardons and Parole unless otherwise specifically provided by law.
(10) A parolee sentenced to lifetime parole may petition the Board of Pardons and Parole for termination of lifetime parole.

Amended by Chapter 181, 2022 General Session

76-3-203 Felony conviction -- Indeterminate term of imprisonment.

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:
(1) In the case of a felony of the first degree, unless the statute provides otherwise, for a term of not less than five years and which may be for life.
(2) In the case of a felony of the second degree, unless the statute provides otherwise, for a term of not less than one year nor more than 15 years.
(3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years.

Amended by Chapter 148, 2003 General Session

76-3-203.1 Offenses committed in concert with three or more persons or in relation to a criminal street gang -- Notice -- Enhanced penalties.

(1) As used in this section:
(a) "Criminal street gang" means the same as that term is defined in Section 76-9-802.
(b) "In concert with three or more persons" means:
(i) the defendant was aided or encouraged by at least three other persons in committing the offense and was aware of this aid or encouragement; and
(ii) each of the other persons:
(A) was physically present; and
(B) participated as a party to any offense listed in Subsection (4), (5), or (6).
(c) "In concert with three or more persons" means, regarding intent:
(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and
(ii) a minor is a party if the minor's actions would cause the minor to be a party if the minor were an adult.
(2) A person who commits any offense in accordance with this section is subject to an enhanced penalty as provided in Subsection (4), (5), or (6) if the trier of fact finds beyond a reasonable doubt that the person acted:
(a) in concert with three or more persons;
(b) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or
(c) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802.
(3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.
(4)
(a) For an offense listed in Subsection (4)(b), a person may be charged as follows:
(i) for a class B misdemeanor, as a class A misdemeanor; and
(ii) for a class A misdemeanor, as a third degree felony.
(b) The following offenses are subject to Subsection (4)(a):
(i) criminal mischief as described in Section 76-6-106;
(ii) property damage or destruction as described in Section 76-6-106.1; and
(iii) defacement by graffiti as described in Section 76-6-107.
(5)
(a) For an offense listed in Subsection (5)(b), a person may be charged as follows:
(i) for a class B misdemeanor, as a class A misdemeanor;
(ii) for a class A misdemeanor, as a third degree felony; and
(iii) for a third degree felony, as a second degree felony.
(b) The following offenses are subject to Subsection (5)(a):
(i) burglary, if committed in a dwelling as defined in Subsection 76-6-202(3)(b);
(ii) any offense of obstructing government operations under Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307, 76-8-308, and 76-8-312;
(iii) tampering with a witness or other violation of Section 76-8-508;

(iv) retaliation against a witness, victim, informant, or other violation of Section 76-8-508.3;
(v) extortion or bribery to dismiss a criminal proceeding as defined in Section 76-8-509;
(vi) any weapons offense under Chapter 10, Part 5, Weapons; and
(vii) any violation of Chapter 10, Part 16, Pattern of Unlawful Activity Act.

(6)
(a) For an offense listed in Subsection (6)(b), a person may be charged as follows:
(i) for a class B misdemeanor, as a class A misdemeanor;
(ii) for a class A misdemeanor, as a third degree felony;
(iii) for a third degree felony, as a second degree felony; and
(iv) for a second degree felony, as a first degree felony.
(b) The following offenses are subject to Subsection (6)(a):
(i) assault and related offenses under Chapter 5, Part 1, Assault and Related Offenses;
(ii) any criminal homicide offense under Chapter 5, Part 2, Criminal Homicide;
(iii) kidnapping and related offenses under Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
(iv) any felony sexual offense under Chapter 5, Part 4, Sexual Offenses;
(v) sexual exploitation of a minor as defined in Section 76-5b-201;
(vi) aggravated sexual exploitation of a minor as defined in Section 76-5b-201.1;
(vii) robbery and aggravated robbery under Chapter 6, Part 3, Robbery; and
(viii) aggravated exploitation of prostitution under Section 76-10-1306.

(7) The sentence imposed under Subsection (4), (5), or (6) may be suspended and the individual placed on probation for the higher level of offense.

(8) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.

Amended by Chapter 111, 2023 General Session

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

(1)
(a) As used in this section "on or about school premises" means:
(i)
(A) in a public or private elementary or secondary school; or
(B) on the grounds of any of those schools;
(ii)
(A) in a public or private institution of higher education; or
(B) on the grounds of a public or private institution of higher education;
(iii) within 1,000 feet of any school, institution, or grounds included in Subsections (1)(a)(i) and (ii); and
(iv) in or on the grounds of a preschool or child care facility.
(b) As used in this section:
(i) "Dangerous weapon" has the same definition as in Section 76-1-101.5.
(ii) "Educator" means a person who is:
(A) employed by a public school district; and
(B) required to hold a certificate issued by the State Board of Education in order to perform duties of employment.

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

(2) A person who, on or about school premises, commits an offense and uses or threatens to use a dangerous weapon, as defined in Section 76-1-101.5, in the commission of the offense is subject to an enhanced degree of offense as provided in Subsection (4).

(3)

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

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

(i) an offense under Chapter 5, Offenses Against the Individual; and

(ii) an offense under Chapter 6, Part 3, Robbery.

(4) If the trier of fact finds beyond a reasonable doubt that the defendant, while on or about school premises, commits an offense and in the commission of the offense uses or threatens to use a dangerous weapon, or that the defendant committed an offense against an educator when the educator was acting within the course of the educator's employment, the enhanced penalty for a:

(a) class B misdemeanor is a class A misdemeanor;

(b) class A misdemeanor is a third degree felony;

(c) third degree felony is a second degree felony; or

(d) second degree felony is a first degree felony.

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

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

(b) is subject also to the dangerous weapon enhancement provided in Section 76-3-203.8, except for an offense committed under Subsection (3) that does not involve a firearm.

(6) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice upon the information or indictment that the defendant is subject to the enhanced degree of offense or penalty under Subsection (4) or (5).

(7) In cases where an offense is enhanced under Subsection (4), or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve a firearm, the convicted person is not subject to the dangerous weapon enhancement in Section 76-3-203.8.

(8) 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 under Section 76-5-301.1;

(iii) aggravated kidnapping under Section 76-5-302; or

(iv) forcible sexual abuse under 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.

Amended by Chapter 181, 2022 General Session

76-3-203.3 Penalty for hate crimes -- Civil rights violation.

As used in this section:
(1) "Primary offense" means those offenses provided in Subsection (4).
(2)
(a) A person who commits any primary offense with the intent to intimidate or terrorize another person or with reason to believe that his action would intimidate or terrorize that person is subject to Subsection (2)(b).
(b)
(i) A class C misdemeanor primary offense is a class B misdemeanor; and
(ii) a class B misdemeanor primary offense is a class A misdemeanor.
(3) "Intimidate or terrorize" means an act which causes the person to fear for his physical safety or damages the property of that person or another. The act must be accompanied with the intent to cause or has the effect of causing a person to reasonably fear to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.
(4) Primary offenses referred to in Subsection (1) are the misdemeanor offenses for:
(a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106, 76-5-107, and 76-5-108;
(b) any misdemeanor property destruction offense under Sections 76-6-102 and 76-6-104, and Subsection 76-6-106(2)(a);
(c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;
(d) any misdemeanor theft offense under Section 76-6-412;
(e) any offense of obstructing government operations under Sections 76-8-301, 76-8-302, 76-8-305, 76-8-306, 76-8-307, 76-8-308, and 76-8-313;
(f) any offense of interfering or intending to interfere with activities of colleges and universities under Title 76, Chapter 8, Part 7, Colleges and Universities;
(g) any misdemeanor offense against public order and decency as defined in Title 76, Chapter 9, Part 1, Breaches of the Peace and Related Offenses;
(h) any telephone abuse offense under Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;
(i) any cruelty to animals offense under Section 76-9-301;
(j) any weapons offense under Section 76-10-506; or
(k) a violation of Section 76-9-102, if the violation occurs at an official meeting.
(5) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

Amended by Chapter 111, 2023 General Session

76-3-203.4 Hate crimes -- Aggravating factors.
(1) The sentencing judge or the Board of Pardons and Parole shall consider in their deliberations as an aggravating factor the public harm resulting from the commission of the offense, including the degree to which the offense is likely to incite community unrest or cause members of the community to reasonably fear for their physical safety or to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.
(2) The sentencing judge or the Board of Pardons and Parole shall also consider whether the penalty for the offense is already increased by other existing provisions of law.

(3) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

Enacted by Chapter 184, 2006 General Session

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, 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);

(H) threat of terrorism, Section 76-5-107.3;

(I) aggravated child abuse, Subsection 76-5-109.2(3)(a) or (b);

(J) commission of domestic violence in the presence of a child, Section 76-5-114;

(K) abuse or neglect of a child with a disability, Section 76-5-110;

(L) abuse or exploitation of a vulnerable adult, Section 76-5-111, 76-5-111.2, 76-5-111.3, or 76-5-111.4;

(M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

(N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;

(O) kidnapping, child kidnapping, and aggravated kidnapping under 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) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child, Section 76-5-404.3;

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

(Y) sexual exploitation of a minor, Section 76-5b-201;

(Z) aggravated sexual exploitation of a minor, Section 76-5b-201.1;

(AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;
(BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2, Burglary and Criminal Trespass;
(CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;
(DD) theft by extortion under Section 76-6-406 under the circumstances described in Subsection 76-6-406(1)(a)(i) or (ii);
(EE) tampering with a witness under Subsection 76-8-508(1);
(FF) retaliation against a witness, victim, or informant under Section 76-8-508.3;
(GG) tampering with a juror under Subsection 76-8-508.5(2)(c);
(HH) 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 under Section 76-6-406 under the circumstances described in Subsection 76-6-406(1)(a)(i), (ii), or (ix);
(II) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);
(JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;
(KK) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;
(LL) unlawful discharge of a firearm under Section 76-10-508;
(MM) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
(NN) bus hijacking under Section 76-10-1504; and
(OO) 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 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.

Amended by Chapter 111, 2023 General Session

76-3-203.6 Enhanced penalty for certain offenses committed by prisoner.
(1) As used in this section, "serving a sentence" means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:
(a) has not been paroled; or

(b) is in custody after arrest for a parole violation.

(2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence for a capital felony or a first degree felony commits any offense listed in Subsection (5), the offense is a first degree felony and the court shall sentence the defendant to life in prison without parole.

(3) Notwithstanding Subsection (2), the court may sentence the defendant to an indeterminate prison term of not less than 20 years and that may be for life if the court finds that the interests of justice would best be served and states the specific circumstances justifying the disposition on the record.

(4) Subsection (2) does not apply if the prisoner is younger than 18 years old at the time the offense listed in Subsection (5) is committed and is sentenced on or after May 10, 2016.

(5) Offenses referred to in Subsection (2) are:

(a) aggravated assault by a prisoner, Section 76-5-103.5;

(b) mayhem, Section 76-5-105;

(c) attempted murder, Section 76-5-203;

(d) kidnapping, Section 76-5-301;

(e) child kidnapping, Section 76-5-301.1;

(f) aggravated kidnapping, Section 76-5-302;

(g) rape, Section 76-5-402;

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

(i) object rape, Section 76-5-402.2;

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

(k) forcible sodomy, Section 76-5-403;

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

(m) aggravated sexual abuse of a child, Section 76-5-404.3;

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

(o) aggravated arson, Section 76-6-103;

(p) aggravated burglary, Section 76-6-203; and

(q) aggravated robbery, Section 76-6-302.

(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; or

(iii) aggravated kidnapping, Section 76-5-302; 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.

Amended by Chapter 181, 2022 General Session

76-3-203.7 Increase of sentence for violent felony if body armor used.

(1) As used in this section:

(a) "Body armor" means any material designed or intended to provide bullet penetration resistance or protection from bodily injury caused by a dangerous weapon.

(b) "Dangerous weapon" means the same as that term is defined in Section 76-1-101.5.

(c) "Violent felony" means the same as that term is defined in Section 76-3-203.5.

(2) A person convicted of a violent felony may be sentenced to imprisonment for an indeterminate term, as provided in Section 76-3-203, but if the trier of fact finds beyond a reasonable doubt

that the defendant used, carried, or possessed a dangerous weapon and also used or wore body armor, with the intent to facilitate the commission of the violent felony, and the violent felony is:

(a) a first degree felony, the court shall sentence the person convicted for a term of not less than six years, and which may be for life;

(b) a second degree felony, the court shall sentence the person convicted for a term of not less than two years nor more than 15 years, and the court may sentence the person convicted for a term of not less than two years nor more than 20 years; and

(c) a third degree felony, the court shall sentence the person convicted for a term of not less than one year nor more than five years, and the court may sentence the person convicted for a term of not less than one year nor more than 10 years.

(3) 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.

Amended by Chapter 181, 2022 General Session

76-3-203.8 Increase of sentence if dangerous weapon used.

(1) As used in this section, "dangerous weapon" means the same as that term is defined in Section 76-1-101.5.

(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.

(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 10 years to run consecutively and not concurrently.

Amended by Chapter 181, 2022 General Session

76-3-203.9 Violent offense committed in presence of a child -- Aggravating factor.

(1) As used in this section:
(a) "In the presence of a child" means:
(i) in the physical presence of a child younger than 14 years of age; or
(ii) having knowledge that a child younger than 14 years of age is present and may see or hear a violent criminal offense.
(b) "Violent criminal offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt to commit a criminal offense involving violence or physical harm.
(2) The sentencing judge or the Board of Pardons and Parole shall consider as an aggravating factor in their deliberations that the defendant committed the violent criminal offense in the presence of a child.
(3) The sentencing judge or the Board of Pardons and Parole shall also consider whether the penalty for the offense is already increased by other existing provisions of law.
(4) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.
(5) This section does not affect or restrict the exercise of judicial discretion under any other provision of Utah law.

Enacted by Chapter 347, 2007 General Session

76-3-203.10 Violent offense committed in presence of a child -- Penalties.
(1) As used in this section:
(a) "In the presence of a child" means:
(i) in the physical presence of a child younger than 14 years old; and
(ii) having knowledge that the child is present and may see or hear the commission of a violent criminal offense.
(b) "Violent criminal offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt to commit a criminal offense involving violence or physical harm that is not a domestic violence offense as defined in Section 77-36-1.
(2) A person commits a violent criminal offense in the presence of a child if the person:
(a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a third party in the presence of a child;
(b) intentionally causes or attempts to cause serious bodily injury to a third party or uses a dangerous weapon, as defined in Section 76-1-101.5, or other means or force likely to produce death or serious bodily injury, against a third party in the presence of a child; or
(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits a violent criminal offense in the presence of a child.
(3) A person who violates Subsection (2) is guilty of a class B misdemeanor.

Amended by Chapter 181, 2022 General Session

Superseded 7/1/2024
76-3-203.11 Reporting an overdose -- Mitigating factor.
It is a mitigating factor in sentencing for an offense under Title 58, Chapter 37, Utah Controlled Substances Act, that the person or bystander:

(1) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;
(2) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26B-4-101, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this section;
(3) provides in the report under Subsection (2) a functional description of the location of the actual overdose event that facilitates responding to the person experiencing the overdose event;
(4) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;
(5) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and
(6) committed the offense in the same course of events from which the reported overdose arose.

Amended by Chapter 330, 2023 General Session

Effective 7/1/2024

76-3-203.11 Reporting an overdose -- Mitigating factor.

It is a mitigating factor in sentencing for an offense under Title 58, Chapter 37, Utah Controlled Substances Act, that the person or bystander:
(1) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;
(2) reports, or assists a person who reports, in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 53-2d-101, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this section;
(3) provides in the report under Subsection (2) a functional description of the location of the actual overdose event that facilitates responding to the person experiencing the overdose event;
(4) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;
(5) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and
(6) committed the offense in the same course of events from which the reported overdose arose.

Amended by Chapter 310, 2023 General Session
Amended by Chapter 330, 2023 General Session

76-3-203.12 Enhanced penalty for sexual offenses committed by a person with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C.

(1) A person convicted of a sexual offense described in Chapter 5, Part 4, Sexual Offenses, is subject to an enhanced penalty if at the time of the sexual offense the person was infected with Human Immunodeficiency Virus, Acquired Immunodeficiency Virus, hepatitis B, or hepatitis C and the person knew of the infection.

(2)

(a) Except as provided in Subsection (2)(b), the enhancement of a penalty described in Subsection (1) shall be an enhancement of one classification higher than the root offense for which the person was convicted.

(b) A felony of the first degree is not enhanced under this section.

Enacted by Chapter 449, 2017 General Session

76-3-203.13 Enhanced penalty for unlawful sexual contact with a student.

(1) A person convicted of a sexual offense described in Section 76-5-401.1 or 76-5-401.2 may be subject to an enhanced penalty if, at the time of the commission of the sexual offense, the actor:

(a) was 18 years old or older;

(b) held a position of special trust as a teacher, employee, or volunteer at a school, as that position is defined in Subsection 76-5-404.1(1)(a)(iv)(S); and

(c) committed the offense against an individual who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.

(2) The enhancement of a penalty described in Subsection (1) shall be an enhancement of one classification higher than the offense of which the person was convicted.

Amended by Chapter 181, 2022 General Session

76-3-203.14 Victim targeting penalty enhancement -- Penalties.

(1) As used in this section "personal attribute" means:

(a) age;

(b) ancestry;

(c) disability;

(d) ethnicity;

(e) familial status;

(f) gender identity;

(g) homelessness;

(h) marital status;

(i) matriculation;

(j) national origin;

(k) political expression;

(l) race;

(m) religion;

(n) sex;

(o) sexual orientation;

(p) service in the U.S. Armed Forces;

(q) status as an emergency responder, as defined in Section 53-2b-102; or

(r) status as a law enforcement officer, correctional officer, special function officer, or any other peace officer, as defined in Title 53, Chapter 13, Peace Officer Classifications.

(2) A defendant is subject to enhanced penalties under Subsection (3) if the defendant intentionally selects:

(a) the victim of the criminal offense because of the defendant's belief or perception regarding the victim's personal attribute or a personal attribute of another individual or group of individuals with whom the victim has a relationship; or

(b) the property damaged or otherwise affected by the criminal offense because of the defendant's belief or perception regarding the property owner's, possessor's, or occupant's personal attribute or a personal attribute of another individual or group of individuals with whom the property owner, possessor, or occupant has a relationship.

(3)

(a) If the trier of fact finds beyond a reasonable doubt that a defendant committed a criminal offense and selected the victim or property damaged or otherwise affected by the criminal offense in the manner described in Subsection (2), the defendant is subject to an enhanced penalty for the criminal offense as follows:

(i) a class C misdemeanor is a class B misdemeanor;

(ii) a class B misdemeanor is a class A misdemeanor;

(iii) a class A misdemeanor is a third degree felony;

(iv) a third degree felony is a third degree felony punishable by an indeterminate term of imprisonment for not less than one year nor more than five years; and

(v) a second degree felony is a second degree felony punishable by an indeterminate term of imprisonment for not less than two years nor more than 15 years.

(b) If the trier of fact finds beyond a reasonable doubt that a defendant committed a criminal offense that is a first degree felony and selected the victim or property damaged or otherwise affected by the criminal offense in the manner described in Subsection (2), the sentencing judge or the Board of Pardons and Parole shall consider the defendant's selection of the victim or property as an aggravating factor.

(4) This section does not:

(a) apply if:

(i) the penalty for the criminal offense is increased or enhanced under another provision of state law; or

(ii) the personal attribute of the victim or property owner, possessor, or occupant is an element of a criminal offense under another provision of state law;

(b) prevent the court from imposing alternative sanctions as the court finds appropriate;

(c) affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Utah Constitution or the laws of the state, or by the United States Constitution or the laws of the United States; or

(d) create a special or protected class for any purpose other than a criminal penalty enhancement under this section.

(5)

(a) If a final decision of a court of competent jurisdiction holds invalid any provision of this section or the application of any provision of this section to any person or circumstance, the remaining provisions of this section remain effective without the invalidated provision or application.

(b) The provisions of this section are severable.

Enacted by Chapter 504, 2019 General Session

76-3-203.15 Offenses committed against timber, mining, or agricultural industries -- Enhanced penalties.

(1) An actor who commits any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful management, cultivation, or harvesting of trees or timber, or the management or operations of agricultural or mining industries is subject to an enhanced penalty for the offense as provided below.

(2) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the complaint in misdemeanor cases or the information or indictment in felony cases notice that the defendant is subject to the enhanced penalties provided under this section.

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

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

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

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

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

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

(4) This section does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.

Renumbered and Amended by Chapter 111, 2023 General Session

76-3-203.16 Offenses committed against animal enterprises -- Definitions -- Enhanced penalties.

(1) As used in this section:

(a) "Animal enterprise" means a commercial or academic enterprise that:

(i) uses animals for food or fiber production;

(ii) is an agricultural operation, including a facility for the production of crops or livestock, or livestock products;

(iii) operates a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or

(iv) any fair or similar event intended to advance agricultural arts and sciences.

(b) "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, domesticated elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.

(c) "Property" includes any buildings, vehicles, animals, data, records, stables, livestock handling facilities, livestock watering troughs or other watering facilities, and fencing or other forms of enclosure.

(2) A person who commits any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any

property owned by, used by, or in the possession of a lawful animal enterprise, is subject to an enhanced penalty under Subsection (4).

(3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

(4) If the trier of fact finds beyond a reasonable doubt that the defendant committed any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any property owned by, used by, or in the possession of a lawful animal enterprise, the penalties are enhanced as provided in this Subsection (4):

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

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

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

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

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

(5) This section does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.

Renumbered and Amended by Chapter 111, 2023 General Session

76-3-204 Misdemeanor conviction -- Term of imprisonment.

A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

(1) In the case of a class A misdemeanor, for a term not exceeding 364 days.

(2) In the case of a class B misdemeanor, for a term not exceeding six months.

(3) In the case of a class C misdemeanor, for a term not exceeding 90 days.

Amended by Chapter 222, 2019 General Session

76-3-205 Infraction conviction -- Fine, forfeiture, and disqualification.

(1) A person convicted of an infraction may not be imprisoned but may be subject to:

(a) a fine, which may include compensatory service as a method to satisfy the fine;

(b) forfeiture;

(c) disqualification; or

(d) any combination of the above.

(2) Compensatory service shall be considered in accordance with Section 76-3-301.7.

(3) Whenever a person is convicted of an infraction and no punishment is specified, the person may be fined as for a class C misdemeanor.

Amended by Chapter 214, 2018 General Session

76-3-206 Capital felony -- Penalties.

(1) A person who has pled guilty to or been convicted of a capital felony shall be sentenced in accordance with this section and Section 76-3-207.
(2)
(a) If the person described in Subsection (1) was 18 years of age or older at the time the offense was committed, the sentence shall be:
(i) death;
(ii) an indeterminate prison term of not less than 25 years and that may be for life; or
(iii) on or after April 27, 1992, life in prison without parole.
(b) Subsections (2)(a)(i) and (2)(a)(iii) do not apply if the person was younger than 18 years of age at the time the offense was committed and was sentenced on or after May 10, 2016.
(3)
(a) The judgment of conviction and sentence of death is subject to automatic review by the Utah State Supreme Court within 60 days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed 30 days by the Utah State Supreme Court for good cause shown.
(b) The review by the Utah State Supreme Court has priority over all other cases and shall be heard in accordance with rules promulgated by the Utah State Supreme Court.

Amended by Chapter 277, 2016 General Session

76-3-207 Capital felony -- Sentencing proceeding.
(1)
(a) When a defendant has pled guilty to or been found guilty of a capital felony, there shall be further proceedings before the court or jury on the issue of sentence.
(b) In the case of a plea of guilty to a capital felony, the sentencing proceedings shall be conducted before a jury or, upon request of the defendant and with the approval of the court and the consent of the prosecution, by the court which accepted the plea.
(c)
(i) When a defendant has been found guilty of a capital felony, the proceedings shall be conducted before the court or jury which found the defendant guilty, provided the defendant may waive hearing before the jury with the approval of the court and the consent of the prosecution, in which event the hearing shall be before the court.
(ii) If circumstances make it impossible or impractical to reconvene the same jury for the sentencing proceedings, the court may dismiss that jury and convene a new jury for the proceedings.
(d) If a retrial of the sentencing proceedings is necessary as a consequence of a remand from an appellate court, the sentencing authority shall be determined as provided in Subsection (6).
(2)
(a) In capital sentencing proceedings, evidence may be presented on:
(i) the nature and circumstances of the crime;
(ii) the defendant's character, background, history, and mental and physical condition;
(iii) the victim and the impact of the crime on the victim's family and community without comparison to other persons or victims; and
(iv) any other facts in aggravation or mitigation of the penalty that the court considers relevant to the sentence.
(b) Any evidence the court considers to have probative force may be received regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and the defendant shall be permitted to present argument for or against the sentence of death.

(3) Aggravating circumstances include those outlined in Section 76-5-202.
(4) Mitigating circumstances include:
(a) the defendant has no significant history of prior criminal activity;
(b) the homicide was committed while the defendant was under the influence of mental or emotional disturbance;
(c) the defendant acted under duress or under the domination of another person;
(d) at the time of the homicide, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired as a result of a mental condition, intoxication, or influence of drugs, except that "mental condition" under this Subsection (4)(d) does not mean an abnormality manifested primarily by repeated criminal conduct;
(e) the youth of the defendant at the time of the crime;
(f) the defendant was an accomplice in the homicide committed by another person and the defendant's participation was relatively minor; and
(g) any other fact in mitigation of the penalty.
(5)
(a) The court or jury, as the case may be, shall retire to consider the penalty. Except as provided in Subsections 76-3-207.5(2) and 76-3-206(2)(b), in all proceedings before a jury, under this section, it shall be instructed as to the punishment to be imposed upon a unanimous decision for death and that the penalty of either an indeterminate prison term of not less than 25 years and which may be for life or life in prison without parole, shall be imposed if a unanimous decision for death is not found.
(b) The death penalty shall only be imposed if, after considering the totality of the aggravating and mitigating circumstances, the jury is persuaded beyond a reasonable doubt that total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable doubt, that the imposition of the death penalty is justified and appropriate in the circumstances. If the jury reports unanimous agreement to impose the sentence of death, the court shall discharge the jury and shall impose the sentence of death.
(c) If the jury is unable to reach a unanimous decision imposing the sentence of death, the jury shall then determine whether the penalty of life in prison without parole shall be imposed, except as provided in Subsection 76-3-207.5(2). The penalty of life in prison without parole shall only be imposed if the jury determines that the sentence of life in prison without parole is appropriate. If the jury reports agreement by 10 jurors or more to impose the sentence of life in prison without parole, the court shall discharge the jury and shall impose the sentence of life in prison without parole. If 10 jurors or more do not agree upon a sentence of life in prison without parole, the court shall discharge the jury and impose an indeterminate prison term of not less than 25 years and which may be for life.
(d) If the defendant waives hearing before the jury as to sentencing, with the approval of the court and the consent of the prosecution, the court shall determine the appropriate penalty according to the standards of Subsections (5)(b) and (c).
(e) If the defendant is sentenced to more than one term of life in prison with or without the possibility of parole, or in addition to a sentence of life in prison with or without the possibility of parole the defendant is sentenced for other offenses which result in terms of imprisonment, the judge shall determine whether the terms of imprisonment shall be imposed as concurrent or consecutive sentences in accordance with Section 76-3-401.
(6) Upon any appeal by the defendant where the sentence is of death, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death and remand the case to the trial court for new sentencing proceedings to the extent necessary to

correct the error or errors. An error in the sentencing proceedings may not result in the reversal of the conviction of a capital felony. In cases of remand for new sentencing proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing proceedings are admissible in the new sentencing proceedings, and if the sentencing proceeding was before a:

(a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution, in which case the proceeding shall be held according to Subsection (6)(b) or (c), as applicable;

(b) judge, the original trial judge shall conduct the new sentencing proceeding; or

(c) judge, and the original trial judge is unable or unavailable to conduct a new sentencing proceeding, then another judge shall be designated to conduct the new sentencing proceeding, and the new proceeding will be before a jury unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution.

(7) If the penalty of death is held to be unconstitutional by the Utah Supreme Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause the person to be brought before the court, and the court shall sentence the person to life in prison without parole.

(8)

(a) If the appellate court's final decision regarding any appeal of a sentence of death precludes the imposition of the death penalty due to mental retardation or subaverage general intellectual functioning under Section 77-15a-101, the court having jurisdiction over a defendant previously sentenced to death for a capital felony shall cause the defendant to be brought before the sentencing court, and the court shall sentence the defendant to life in prison without parole.

(b) If the appellate court precludes the imposition of the death penalty under Subsection (8)(a), but the appellate court finds that sentencing the defendant to life in prison without parole is likely to result in a manifest injustice, it may remand the case to the sentencing court for further sentencing proceedings to determine if the defendant should serve a sentence of life in prison without parole or an indeterminate prison term of not less than 25 years and which may be for life.

Amended by Chapter 277, 2016 General Session

76-3-207.5 Applicability -- Effect on sentencing -- Options of offenders.

(1)

(a) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 applies only to those capital felonies for which the offender is sentenced on or after April 27, 1992.

(b) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 has no effect on sentences imposed in capital cases prior to April 27, 1992.

(2) An offender, who commits a capital felony prior to April 27, 1992, but is sentenced on or after April 27, 1992, shall be given the option, prior to a sentencing hearing pursuant to Section 76-3-207, to proceed either under the law which was in effect at the time the offense was committed or under the additional sentencing option of life in prison without parole provided in Sections 76-3-201 and 76-3-207.

(3) The sentencing option of life without parole has no effect on sentences imposed on an offender who was younger than 18 years of age at the time the offense was committed and was sentenced on or after May 10, 2016.

Amended by Chapter 277, 2016 General Session

76-3-207.7 First degree felony aggravated murder -- Noncapital felony -- Penalties -- Sentenced by court.

(1) A person who has pled guilty to or been convicted of first degree felony aggravated murder under Section 76-5-202 shall be sentenced by the court.

(2)

(a) The sentence under this section shall be:

(i) life in prison without parole; or

(ii) an indeterminate prison term of not less than 25 years and that may be for life.

(b) Subsection (2)(a)(i) does not apply if the person was younger than 18 years of age at the time the offense was committed and was sentenced on or after May 10, 2016.

Amended by Chapter 277, 2016 General Session

76-3-208 Imprisonment -- Custodial authorities.

(1) Persons sentenced to imprisonment shall be committed to the following custodial authorities:

(a) felony commitments shall be to the Utah State Prison;

(b)

(i) notwithstanding Section 76-3-204, class A misdemeanor commitments shall be to the jail, or other facility designated by the town, city, or county where the defendant was convicted, unless the defendant is also serving a felony commitment at the Utah State Prison at the commencement of the class A misdemeanor conviction, in which case, the class A misdemeanor commitment shall be to the Utah State Prison for an indeterminate term not to exceed one year with a credit for one day; and

(ii) the court may not order the imprisonment of a defendant to the Utah State Prison for a fixed term or other term that is inconsistent with this section and Section 77-18-111; and

(c) all other misdemeanor commitments shall be to the jail or other facility designated by the town, city or county where the defendant was convicted.

(2) A custodial authority may place a prisoner in a facility other than the one to which the prisoner was committed when:

(a) the custodial authority does not have space to accommodate the prisoner; or

(b) the security of the institution or prisoner requires the prisoner to be placed in a facility other than the one to which the prisoner was committed.

Amended by Chapter 260, 2021 General Session

76-3-209 Limitation on sentencing for crimes committed by juveniles.

(1) As used in this section, "qualifying sexual offense" means:

(a) an offense described in Chapter 5, Part 4, Sexual Offenses;

(b) Section 76-9-702, lewdness;

(c) Section 76-9-702.1, sexual battery; or

(d) Section 76-9-702.5, lewdness involving a child.

(2)

(a) This Subsection (2) only applies prospectively to an individual sentenced on or after May 10, 2016.
(b) Notwithstanding any provision of law, an individual may not be sentenced to life without parole if:
(i) the individual is convicted of a crime punishable by life without parole; and
(ii) at the time the individual committed the crime, the individual was under 18 years old.
(c) The maximum punishment that may be imposed on an individual described in Subsection (2)(b) is an indeterminate prison term of not less than 25 years and that may be for life.
(3) Except as provided in Subsection (4), if an individual is convicted in district court of a qualifying sexual offense and, at the time of the offense, the individual was at least 14 years old, but under 18 years old:
(a) the district court shall impose a sentence consistent with the disposition that would have been made in juvenile court; and
(b) the district court may not impose incarceration unless the court enters specific written findings that incarceration is warranted based on a totality of the circumstances, taking into account:
(i) the time that elapsed after the individual committed the offense;
(ii) the age of the individual at the time of the offense;
(iii) the age of the victim at the time of the offense;
(iv) the criminal history of the individual after the individual committed the offense;
(v) any treatment assessments or validated risk tools; and
(vi) public safety concerns.
(4) Subsection (3) does not apply if:
(a) before the individual described in Subsection (3) is convicted of the qualifying sexual offense, the individual is convicted of a qualifying sexual offense that the individual committed when the individual was 18 years old or older;
(b) the individual is convicted in district court, before the victim is 18 years old, of a violation of Section 76-5-405, aggravated sexual assault; or
(c) the conviction occurred in district court after the individual was:
(i) charged by criminal information in the juvenile court for the qualifying sexual offense in accordance with Section 80-6-503; and
(ii) bound over to the district court for the qualifying sexual offense in accordance with Section 80-6-504.
(5) If the district court imposes incarceration under Subsection (3)(b), the term of incarceration may not exceed:
(a) seven years for a violation of Section 76-5-405, aggravated sexual assault;
(b) except as provided in Subsection (5)(a), four years for a felony violation of Chapter 5, Part 4, Sexual Offenses; or
(c) the maximum sentence described in Section 76-3-204 for:
(i) a misdemeanor violation of Chapter 5, Part 4, Sexual Offenses;
(ii) a violation of Section 76-9-702, lewdness;
(iii) a violation of Section 76-9-702.1, sexual battery; or
(iv) a violation of Section 76-9-702.5, lewdness involving a child.

Amended by Chapter 123, 2023 General Session
Amended by Chapter 214, 2023 General Session

Part 3
Fines and Special Sanctions

76-3-301 Fines of individuals.

(1) An individual convicted of an offense may be sentenced to pay a fine, not exceeding:
  (a) $10,000 for a felony conviction of the first degree or second degree;
  (b) $5,000 for a felony conviction of the third degree;
  (c) $2,500 for a class A misdemeanor conviction;
  (d) $1,000 for a class B misdemeanor conviction;
  (e) $750 for a class C misdemeanor conviction or infraction conviction; and
  (f) any greater amounts specifically authorized by statute.

(2)
  (a) An individual convicted of a misdemeanor or infraction and sentenced to pay a fine may not be charged by a court:
    (i) notwithstanding Section 15-1-4, interest on the judgment that in the aggregate is more than 25% of the initial fine; or
    (ii) that issues an order to show cause under Section 78B-6-317 for failure to pay the fine, interest that is more than 25% of the initial fine.
  (b) An individual convicted only of an infraction and sentenced to pay a fine may not be charged:
    (i) by the Office of State Debt Collection, late fees and interest that in the aggregate are more than 25% of the initial fine; or
    (ii) by a third-party debt contractor of the Office of State Debt Collection, additional fees.

(3) Subsection (2) does not apply to a case that includes:
  (a) victim restitution; or
  (b) a felony conviction, even if that felony conviction is later reduced.

(4) This section does not apply to a corporation, association, partnership, government, or governmental instrumentality.

Amended by Chapter 113, 2023 General Session

76-3-301.5 Uniform fine schedule -- Judicial Council.

(1) The Judicial Council shall establish a uniform recommended fine schedule for each offense under Subsection 76-3-301(1).
  (a) The fine for each offense shall proportionally reflect the seriousness of the offense and other factors as determined in writing by the Judicial Council.
  (b) The schedule shall be reviewed annually by the Judicial Council.
  (c) The fines shall be collected as part of a criminal accounts receivable, as defined in Section 77-32b-102, that is established under Section 77-32b-103.

(2) The schedule shall incorporate:
  (a) criteria for determining aggravating and mitigating circumstances; and
  (b) guidelines for enhancement or reduction of the fine, based on aggravating or mitigating circumstances.

(3) Presentence investigation reports shall include documentation of aggravating and mitigating circumstances as determined under the criteria, and a recommended fine under the schedule.

(4) The Judicial Council shall also establish a separate uniform recommended fine schedule for the juvenile court and by rule provide for its implementation.

(5) This section does not prohibit the court from in its discretion imposing no fine, or a fine in any amount up to and including the maximum fine, for the offense.

Amended by Chapter 260, 2021 General Session

76-3-301.7 Compensatory service.

(1) As used in this section, "compensatory service" means service or unpaid work performed by a person, in lieu of the payment of a criminal fine, for:
  (a) a state or local government agency;
  (b) an entity that is approved as a nonprofit organization under Section 501(c) of the Internal Revenue Code; or
  (c) any other entity or organization if prior approval is obtained from the court.
(2) When a defendant is sentenced to pay a fine for an infraction, class C or class B misdemeanor, the court shall consider allowing the defendant to complete compensatory service in lieu of the payment of the fine or account receivable, exclusive of any victim restitution imposed.
(3) A defendant who intends to forfeit bail or who is ordered to pay a fine by the court for an infraction, class C or class B misdemeanor, shall be informed by the court of the opportunity to perform compensatory service in lieu of the fine or bail amount.
(4) The court shall credit timely completed compensatory service reported in accordance with Subsection (5) against the fine or bail amount at the rate of $10 per hour and shall allow the defendant a reasonable amount of time to complete the service.
(5)
  (a) The court shall provide the defendant with instructions that inform the organization:
    (i) about the requirements in Subsection (5)(b); and
    (ii) that making a written false statement to the court about the defendant's compensatory service is punishable as a class B misdemeanor pursuant to Section 76-8-504.
  (b) The defendant shall report compensatory service hours to the court in a letter that:
    (i) is on the organization's official letterhead and includes contact information for the organization's representative;
    (ii) specifies the number of hours for which the defendant provided service;
    (iii) contains a brief description of what the service involved; and
    (iv) is signed by an authorized representative of the organization; or
    (v) is in a form otherwise acceptable to the court.
(6) The court may refuse to accept compensatory service:
  (a) completed prior to the date of sentencing;
  (b) that has been submitted to another court for credit; or
  (c) completed at an agency or organization or is a type of service that is specifically prohibited by the court.

Enacted by Chapter 214, 2018 General Session

76-3-302 Fines of corporations, associations, partnerships, or government instrumentalities.

A corporation, association, partnership, or governmental instrumentality shall pay a fine for an offense defined in this code for which no special corporate fine is specified. The fine shall not exceed:
(1) $20,000 for a felony conviction;
(2) $10,000 for a class A misdemeanor conviction;

(3) $5,000 for a class B misdemeanor conviction; and
(4) $1,000 for a class C misdemeanor conviction or for an infraction conviction.

Amended by Chapter 291, 1995 General Session

76-3-303 Additional sanctions against corporation or association -- Advertising of conviction -- Disqualification of officer.

(1) When a corporation or association is convicted of an offense, the court may, in addition to or in lieu of imposing other authorized sanctions, require the corporation or association to give appropriate publicity of the conviction by notice to the class or classes of persons or section of the public interested in or affected by the conviction, by advertising in designated areas, or by designated media or otherwise.
(2) When an executive or high managerial officer of a corporation or association is convicted of an offense committed in furtherance of the affairs of the corporation or association, the court may include in the sentence an order disqualifying him from exercising similar functions in the same or other corporations or associations for a period of not exceeding five years if it finds the scope or willfulness of his illegal actions make it dangerous or inadvisable for such functions to be entrusted to him.

Enacted by Chapter 196, 1973 General Session

Part 4
Limitations and Special Provisions on Sentences

76-3-401 Concurrent or consecutive sentences -- Limitations -- Definition.

(1) A court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. The court shall state on the record and shall indicate in the order of judgment and commitment:
  (a) if the sentences imposed are to run concurrently or consecutively to each other; and
  (b) if the sentences before the court are to run concurrently or consecutively with any other sentences the defendant is already serving.
(2) In determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.
(3) The court shall order that sentences for state offenses run consecutively if the later offense is committed while the defendant is imprisoned or on parole, unless the court finds and states on the record that consecutive sentencing would be inappropriate.
(4) If a written order of commitment does not clearly state whether the sentences are to run consecutively or concurrently, the Board of Pardons and Parole shall request clarification from the court. Upon receipt of the request, the court shall enter a clarified order of commitment stating whether the sentences are to run consecutively or concurrently.
(5) A court may impose consecutive sentences for offenses arising out of a single criminal episode as defined in Section 76-1-401.
(6)
  (a) If a court imposes consecutive sentences, the aggregate maximum of all sentences imposed may not exceed 30 years imprisonment, except as provided under Subsection (6)(b).

(b) The limitation under Subsection (6)(a) does not apply if:
(i) an offense for which the defendant is sentenced authorizes the death penalty or a maximum sentence of life imprisonment; or
(ii) the defendant is convicted of an additional offense based on conduct which occurs after his initial sentence or sentences are imposed.
(7) The limitation in Subsection (6)(a) applies if a defendant:
(a) is sentenced at the same time for more than one offense;
(b) is sentenced at different times for one or more offenses, all of which were committed prior to imposition of the defendant's initial sentence; or
(c) has already been sentenced by a court of this state other than the present sentencing court or by a court of another state or federal jurisdiction, and the conduct giving rise to the present offense did not occur after his initial sentencing by any other court.
(8) When the limitation of Subsection (6)(a) applies, determining the effect of consecutive sentences and the manner in which they shall be served, the Board of Pardons and Parole shall treat the defendant as though he has been committed for a single term that consists of the aggregate of the validly imposed prison terms as follows:
(a) if the aggregate maximum term exceeds the 30-year limitation, the maximum sentence is considered to be 30 years; and
(b) when indeterminate sentences run consecutively, the minimum term, if any, constitutes the aggregate of the validly imposed minimum terms.
(9) When a sentence is imposed or sentences are imposed to run concurrently with the other or with a sentence presently being served, the term that provides the longer remaining imprisonment constitutes the time to be served.
(10) This section may not be construed to restrict the number or length of individual consecutive sentences that may be imposed or to affect the validity of any sentence so imposed, but only to limit the length of sentences actually served under the commitments.
(11) This section may not be construed to limit the authority of a court to impose consecutive sentences in misdemeanor cases.
(12) As used in this section, "imprisoned" means sentenced and committed to a secure correctional facility as defined in Section 64-13-1, the sentence has not been terminated or voided, and the person is not on parole, regardless of where the person is located.

Amended by Chapter 129, 2002 General Session

76-3-401.5 Concurrent or consecutive sentence with a juvenile disposition.
(1) As used in this section:
(a) "Authority" means the Youth Parole Authority created in Section 80-5-701.
(b) "Board" means the Board of Pardons and Parole created in Section 77-27-2.
(c) "Division" means the Division of Juvenile Justice Services created in Section 80-5-103.
(d)
(i) "Juvenile disposition" means an order for commitment to the custody of the division under Subsection 80-6-703(2).
(ii) "Juvenile disposition" includes an order for secure care under Subsection 80-6-705(1).
(e) "Secure correctional facility" means the same as that term is defined in Section 64-13-1.
(f) "Secure care" means the same as that term is defined in Section 80-1-102.
(2) If a defendant who is 18 years old or older is serving a juvenile disposition, a court may not terminate the juvenile disposition for the defendant when:
(a) the defendant is convicted of an offense; and

(b) the court imposes a sentence under Section 76-3-201 for the offense.

(3)

(a) If a defendant who is 18 years old or older is convicted and sentenced for an offense and the defendant is serving a juvenile disposition at the time of sentencing, the court shall determine whether the sentence is to run concurrently or consecutively to the juvenile disposition.

(b) The court shall state on the record and in the order of judgment and commitment whether the sentence imposed is to run concurrently or consecutively with the juvenile disposition.

(c) In determining whether a sentence is to run concurrently or consecutively with a juvenile disposition, the court shall consider:

(i) the gravity and circumstances of the offense for which the defendant is convicted;

(ii) the number of victims; and

(iii) the history, character, and rehabilitative needs of the defendant.

(d) If an order of judgment and commitment does not clearly state whether the sentence is to run consecutively or concurrently with the juvenile disposition, the division shall request clarification from the court.

(e) Upon receipt of the request under Subsection (3)(d), the court shall enter a clarified order of judgment and commitment stating whether the sentence is to run concurrently or consecutively to the juvenile disposition.

(4) If a court orders a sentence for imprisonment to run concurrently with a juvenile disposition for secure care, the defendant shall serve the sentence in secure care until the juvenile disposition is terminated by the authority in accordance with Section 80-6-804.

(5) If a court orders a sentence for imprisonment in a county jail to run concurrently with a juvenile disposition for secure care and the disposition is terminated before the defendant's sentence for imprisonment in the county jail is terminated, the division shall:

(a) notify the county jail at least 14 days before the day on which the defendant's disposition is terminated or the defendant is released from secure care; and

(b) facilitate the transfer or release of the defendant in accordance with the order of judgment and commitment imposed by the court.

(6)

(a) If a court orders a sentence for imprisonment in a secure correctional facility to run concurrently with a juvenile disposition for secure care:

(i) the board has authority over the defendant for purposes of ordering parole, pardon, commutation, termination of sentence, remission of fines or forfeitures, restitution, and any other authority granted by law; and

(ii) the court and the division shall immediately notify the board that the defendant will remain in secure care as described in Subsection (4) for the board to schedule a hearing for the defendant in accordance with board procedures.

(b) If a court orders a sentence for imprisonment in a secure correctional facility to run concurrently with a juvenile disposition for secure care and the juvenile disposition is terminated before the defendant's sentence is terminated, the division shall:

(i) notify the board and the Department of Corrections at least 14 days before the day on which the defendant's disposition is terminated or the defendant is released from the secure care; and

(ii) facilitate a release or transfer of the defendant in accordance with the order of judgment and commitment imposed by the court.

Enacted by Chapter 37, 2021 General Session
Amended by Chapter 261, 2021 General Session, (Coordination Clause)

76-3-402 Conviction of lower degree of offense -- Procedure and limitations.

(1) As used in this section:

(a) "Lower degree of offense" includes an offense for which:

(i) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and

(ii) the court removes the statutory enhancement in accordance with this section.

(b) "Minor regulatory offense" means the same as that term is defined in Section 77-40a-101.

(c)

(i) "Rehabilitation program" means a program designed to reduce criminogenic and recidivism risks.

(ii) "Rehabilitation program" includes:

(A) a domestic violence treatment program, as that term is defined in Section 62A-2-101;

(B) a residential, vocational, and life skills program, as that term is defined in Section 13-53-102;

(C) a substance abuse treatment program, as that term is defined in Section 62A-2-101;

(D) a substance use disorder treatment program, as that term is defined in Section 62A-2-101;

(E) a youth program, as that term is defined in Section 62A-2-101;

(F) a program that meets the standards established by the Department of Corrections under Section 64-13-25;

(G) a drug court, a veterans court, or a mental health court certified by the Judicial Council; or

(H) a program that is substantially similar to a program described in Subsections (1)(c)(ii)(A) through (G).

(d) "Serious offense" means a felony or misdemeanor offense that is not a minor regulatory offense or a traffic offense.

(e) "Traffic offense" means the same as that term is defined in Section 77-40a-101.

(f)

(i) Except as provided in Subsection (1)(f)(ii), "violent felony" means the same as that term is defined in Section 76-3-203.5.

(ii) "Violent felony" does not include an offense, or any attempt, solicitation, or conspiracy to commit an offense, for:

(A) the possession, use, or removal of explosive, chemical, or incendiary devices under Subsection 76-10-306(3), (5), or (6); or

(B) the purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503.

(2) The court may enter a judgment of conviction for a lower degree of offense than established by statute and impose a sentence at the time of sentencing for the lower degree of offense if the court:

(a) takes into account:

(i) the nature and circumstances of the offense of which the defendant was found guilty; and

(ii) the history and character of the defendant;

(b) gives any victim present at the sentencing and the prosecuting attorney an opportunity to be heard; and

(c) concludes that the degree of offense established by statute would be unduly harsh to record as a conviction on the record for the defendant.

(3) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute:

(a) after the defendant is successfully discharged from probation or parole for the conviction; and
(b) if the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(4) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute if:
(a) the defendant's probation or parole for the conviction did not result in a successful discharge but the defendant is successfully discharged from probation or parole for a subsequent conviction of an offense;
(b)
(i) at least five years have passed after the day on which the defendant is sentenced for the subsequent conviction; or
(ii) at least three years have passed after the day on which the defendant is sentenced for the subsequent conviction and the prosecuting attorney consents to the reduction;
(c) the defendant is not convicted of a serious offense during the time period described in Subsection (4)(b);
(d) there are no criminal proceedings pending against the defendant;
(e) the defendant is not on probation, on parole, or currently incarcerated for any other offense;
(f) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and
(g) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(5) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute if:
(a) the defendant's probation or parole for the conviction did not result in a successful discharge but the defendant is successfully discharged from a rehabilitation program;
(b) at least three years have passed after the day on which the defendant is successfully discharged from the rehabilitation program;
(c) the defendant is not convicted of a serious offense during the time period described in Subsection (5)(b);
(d) there are no criminal proceedings pending against the defendant;
(e) the defendant is not on probation, on parole, or currently incarcerated for any other offense;
(f) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and
(g) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(6) Upon a motion from the prosecuting attorney or the defendant, the court may enter a judgment of conviction for a lower degree of offense than established by statute if:
(a) at least five years have passed after the day on which the defendant's probation or parole for the conviction did not result in a successful discharge;
(b) the defendant is not convicted of a serious offense during the time period described in Subsection (6)(a);
(c) there are no criminal proceedings pending against the defendant;
(d) the defendant is not on probation, on parole, or currently incarcerated for any other offense;
(e) if the offense for which the reduction is sought is a violent felony, the prosecuting attorney consents to the reduction; and
(f) the court finds that entering a judgment of conviction for a lower degree of offense is in the interest of justice in accordance with Subsection (7).

(7) In determining whether entering a judgment of a conviction for a lower degree of offense is in the interest of justice under Subsection (3), (4), (5), or (6):
(a) the court shall consider:
(i) the nature, circumstances, and severity of the offense for which a reduction is sought;
(ii) the physical, emotional, or other harm that the defendant caused any victim of the offense for which the reduction is sought; and
(iii) any input from a victim of the offense; and
(b) the court may consider:
(i) any special characteristics or circumstances of the defendant, including the defendant's criminogenic risks and needs;
(ii) the defendant's criminal history;
(iii) the defendant's employment and community service history;
(iv) whether the defendant participated in a rehabilitative program and successfully completed the program;
(v) any effect that a reduction would have on the defendant's ability to obtain or reapply for a professional license from the Department of Commerce;
(vi) whether the level of the offense has been reduced by law after the defendant's conviction;
(vii) any potential impact that the reduction would have on public safety; or
(viii) any other circumstances that are reasonably related to the defendant or the offense for which the reduction is sought.
(8)
(a) A court may only enter a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6) after:
(i) notice is provided to the other party;
(ii) reasonable efforts have been made by the prosecuting attorney to provide notice to any victims; and
(iii) a hearing is held if a hearing is requested by either party.
(b) A prosecuting attorney is entitled to a hearing on a motion seeking to reduce a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6).
(c) In a motion under Subsection (3), (4), (5), or (6) and at a requested hearing on the motion, the moving party has the burden to provide evidence sufficient to demonstrate that the requirements under Subsection (3), (4), (5), or (6) are met.
(9) A court has jurisdiction to consider and enter a judgment of conviction for a lower degree of offense under Subsection (3), (4), (5), or (6) regardless of whether the defendant is committed to jail as a condition of probation or is sentenced to prison.
(10)
(a) An offense may be reduced only one degree under this section, unless the prosecuting attorney specifically agrees in writing or on the court record that the offense may be reduced two degrees.
(b) An offense may not be reduced under this section by more than two degrees.
(11) This section does not preclude an individual from obtaining or being granted an expungement of the individual's record in accordance with Title 77, Chapter 40a, Expungement.
(12) The court may not enter a judgment for a conviction for a lower degree of offense under this section if:
(a) the reduction is specifically precluded by law; or
(b) any unpaid balance remains on court-ordered restitution for the offense for which the reduction is sought.

(13) When the court enters a judgment for a lower degree of offense under this section, the actual title of the offense for which the reduction is made may not be altered.
(14)
(a) An individual may not obtain a reduction under this section of a conviction that requires the individual to register as a sex offender until the registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.
(b) An individual required to register as a sex offender for the individual's lifetime under Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the individual to register as a sex offender.
(15)
(a) An individual may not obtain a reduction under this section of a conviction that requires the individual to register as a child abuse offender until the registration requirements under Title 77, Chapter 43, Child Abuse Offender Registry, have expired.
(b) An individual required to register as a child abuse offender for the individual's lifetime under Subsection 77-43-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the individual to register as a child abuse offender.

Amended by Chapter 132, 2023 General Session

76-3-403 Credit for good behavior against jail sentence for misdemeanors and certain felonies.

In any commitment for incarceration in a county jail or detention facility, other than the Utah State Prison, the custodial authority may in its discretion and upon good behavior of the inmate allow up to 10 days credit against the sentence to be served for every 30 days served or up to two days credit for every 10 days served when the period to be served is less than 30 days if:
(1) the incarceration is for a misdemeanor offense, and the sentencing judge has not entered an order to the contrary; or
(2) the incarceration is part of a probation agreement for a felony offense, and the sentencing district judge has not entered an order to the contrary.

Amended by Chapter 91, 1998 General Session

76-3-403.5 Work or school release from county jail or facility -- Conditions.

When an inmate is incarcerated in a county jail or in a detention facility, the custodial authority may, in accordance with the release policy of the facility, allow the inmate to work outside of the jail or facility as part of a jail or facility supervised work detail, to seek or work at employment, or to attend an educational institution, if the inmate's incarceration:
(1) is not for an offense for which release is prohibited under state law; and
(2)
(a) is for a misdemeanor offense, and the sentencing judge has not entered an order prohibiting release under this section; or
(b) is part of a probation agreement for a felony offense, and the sentencing district judge has not entered an order prohibiting release under this section.

Amended by Chapter 148, 2007 General Session

76-3-405 Limitation on sentence where conviction or prior sentence set aside.

(1) Where a conviction or sentence has been set aside on direct review or on collateral attack, the court shall not impose a new sentence for the same offense or for a different offense based on the same conduct which is more severe than the prior sentence less the portion of the prior sentence previously satisfied.
(2) This section does not apply when:
  (a) the increased sentence is based on facts which were not known to the court at the time of the original sentence, and the court affirmatively places on the record the facts which provide the basis for the increased sentence; or
  (b) a defendant enters into a plea agreement with the prosecution and later successfully moves to invalidate his conviction, in which case the defendant and the prosecution stand in the same position as though the plea bargain, conviction, and sentence had never occurred.

Amended by Chapter 291, 1997 General Session

76-3-406 Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.
(1) Notwithstanding Sections 76-3-201 and 77-18-105 and Title 77, Chapter 16a, Commitment and Treatment of Individuals with a Mental Condition, except as provided in Section 76-5-406.5 or Subsection 77-16a-103(6) or (7), probation may not be granted, the execution or imposition of sentence may not be suspended, the court may not enter a judgment for a lower category of offense, and hospitalization may not be ordered, the effect of which would in any way shorten the prison sentence for an individual who commits a capital felony or a first degree felony involving:
  (a) Section 76-5-202, aggravated murder;
  (b) Section 76-5-203, murder;
  (c) Section 76-5-301.1, child kidnaping;
  (d) Section 76-5-302, aggravated kidnaping;
  (e) Section 76-5-402, rape, if the individual is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);
  (f) Section 76-5-402.1, rape of a child;
  (g) Section 76-5-402.2, object rape, if the individual is sentenced under Subsection 76-5-402.2(3)(b), (3)(c), or (4);
  (h) Section 76-5-402.3, object rape of a child;
  (i) Section 76-5-403, forcible sodomy, if the individual is sentenced under Subsection 76-5-403(3)(b), (3)(c), or (4);
  (j) Section 76-5-403.1, sodomy on a child;
  (k) Section 76-5-404, forcible sexual abuse, if the individual is sentenced under Subsection 76-5-404(3)(b)(i) or (ii);
  (l) Section 76-5-404.3, aggravated sexual abuse of a child;
  (m) Section 76-5-405, aggravated sexual assault; or
  (n) any attempt to commit a felony listed in Subsection (1)(f), (h), or (j).
(2) Except for an offense before the district court in accordance with Section 80-6-502 or 80-6-504, the provisions of this section do not apply if the sentencing court finds that the defendant:
  (a) was under 18 years old at the time of the offense; and
  (b) could have been adjudicated in the juvenile court but for the delayed reporting or delayed filing of the information.

Amended by Chapter 184, 2023 General Session

76-3-406.5 Aggravating factors in imprisonment for certain criminal homicide cases.

(1) As used in this section:
(a) "Cohabitant" has the same definition as in Section 78B-7-102.
(b) "Position of trust" includes the position of a spouse, parent, or cohabitant.
(2) It is an aggravating factor that the person occupied a position of trust in relation to the victim.
(3) The Board of Pardons and Parole shall consider the aggravating factor in Subsection (2) in determining the length of imprisonment for a person convicted of:
(a) aggravated murder under Section 76-5-202;
(b) murder under Section 76-5-203; or
(c) manslaughter under Section 76-5-205.
(4) The sentencing court shall consider the aggravating factor in Subsection (2) in sentencing a person convicted of manslaughter under Section 76-5-205.

Amended by Chapter 3, 2008 General Session

76-3-407 Repeat and habitual sex offenders -- Additional prison term for prior felony convictions.

(1) As used in this section:
(a) "Prior sexual offense" means:
(i) a felony offense described in Chapter 5, Part 4, Sexual Offenses;
(ii) sexual exploitation of a minor, Section 76-5b-201;
(iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
(iv) a felony offense of enticing a minor, Section 76-4-401;
(v) a felony attempt to commit an offense described in Subsections (1)(a)(i) through (iv); or
(vi) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through (v).
(b) "Sexual offense" means:
(i) an offense that is a felony of the second or third degree, or an attempted offense, which attempt is a felony of the second or third degree, described in Chapter 5, Part 4, Sexual Offenses;
(ii) sexual exploitation of a minor, Section 76-5b-201;
(iii) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
(iv) a felony offense of enticing a minor, Section 76-4-401;
(v) a felony attempt to commit an offense described in Subsections (1)(b)(ii) through (iv); or
(vi) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through (v).
(2) Notwithstanding any other provision of law, the maximum penalty for a sexual offense is increased by five years for each conviction of the defendant for a prior sexual offense that arose from a separate criminal episode, if the trier of fact finds that:
(a) the defendant was convicted of a prior sexual offense; and
(b) the defendant was convicted of the prior sexual offense described in Subsection (2)(a) before the defendant was convicted of the sexual offense for which the defendant is being sentenced.
(3) The increased maximum term described in Subsection (2) shall be in addition to, and consecutive to, any other prison term served by the defendant.

Amended by Chapter 457, 2023 General Session

76-3-409 Child abuse or sex offense against child -- Treatment of offender or victim -- Payment of costs.

(1) Any person convicted in the district court of child abuse, or a sexual offense if the victim is under 18 years of age, may be ordered to participate in treatment or therapy under the supervision of the adult probation and parole section of the Department of Corrections, in cooperation with the division of children, youth, and families until the court is satisfied that such treatment or therapy has been successful or that no further benefit to the convicted offender would result if such treatment or therapy were continued. The court may also order treatment of the victim if it believes the same would be beneficial under the circumstances. Nothing in this section shall preclude the court from imposing any additional sentence as provided by law.

(2) The convicted offender shall be ordered to pay, to the extent that he or she is able, the costs of his or her treatment, together with treatment costs incurred by the victim and any administrative costs incurred by the appropriate state agency in the supervision of such treatment. If the convicted offender is unable to pay all or part of the costs of treatment, the court may order the appropriate state agency to pay such costs to the extent funding is provided by the Legislature for such purpose and shall order the convicted offender to perform public service work as compensation for the cost of treatment.

Amended by Chapter 212, 1985 General Session

76-3-410 Compensatory service -- Graffiti penalties.

(1) If an actor uses graffiti and is convicted under Section 76-6-106, 76-6-106.1, 76-6-107, or 76-6-206 for the use of graffiti, the court may, as a condition of probation under Subsection 77-18-105(6), order the actor to clean up graffiti of the actor and any other at a time and place within the jurisdiction of the court.

(a) For a first conviction or adjudication, the court may require the actor to clean up graffiti for not less than eight hours.

(b) For a second conviction or adjudication, the court may require the actor to clean up graffiti for not less than 16 hours.

(c) For a third conviction or adjudication, the court may require the actor to clean up graffiti for not less than 24 hours.

(2) The actor convicted under Section 76-6-106, 76-6-106.1, 76-6-206, or 76-6-107 shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause.

(3) The court may also require the actor to perform other alternative forms of restitution or repair to the damaged property in accordance with Subsection 77-18-105(6).

Renumbered and Amended by Chapter 111, 2023 General Session