

1 **HABITUAL VIOLENT OFFENDER**

2 **DEFINITIONS**

3 1998 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Neal B. Hendrickson**

6 AN ACT RELATING TO THE CRIMINAL CODE; AMENDING THE HABITUAL VIOLENT
7 OFFENDER SECTION BY PROVIDING THAT FELONY ATTEMPTS TO COMMIT
8 SPECIFIED VIOLENT OFFENSES ARE VIOLENT FELONIES UNDER THE HABITUAL
9 VIOLENT OFFENDER STATUTE; CLARIFYING THE DEFINITION OF EXTORTION AS
10 A VIOLENT FELONY; AND ADDING THE POSSESSION OF A DANGEROUS WEAPON
11 OR A HANDGUN BY A RESTRICTED PERSON AS A VIOLENT FELONY.

12 This act affects sections of Utah Code Annotated 1953 as follows:

13 AMENDS:

14 **76-3-203.5**, as enacted by Chapter 284, Laws of Utah 1995

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

16 Section 1. Section **76-3-203.5** is amended to read:

17 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

18 (1) As [provided] used in this section:

19 (a) "Felony" means any offense against a criminal statute of the state, any other state, the
20 United States, or any district, possession, or territory of the United States for which the maximum
21 punishment the offender may be subjected to exceeds one year in prison.

22 (b) "Habitual violent offender" means a person convicted within the state of any violent
23 felony and who, on at least two previous occasions as provided in Subsection (2), has been
24 convicted of a violent felony and committed to either prison in Utah or an equivalent correctional
25 institution of another state or of the United States either at initial sentencing or after revocation of
26 probation.

27 (c) (i) "Violent felony" means any [felony violation] of the following offenses, or any

1 attempt, solicitation, or conspiracy to commit any of these offenses ~~h~~ [~~if the offense is~~] ~~h~~ punishable
2 as a felony:

3 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief under
4 Title 76, Chapter 6, Part 1, Property Destruction;

5 (B) aggravated assault under Title 76, Chapter 5, Part 1, Assault and Related Offenses;

6 (C) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

7 (D) aggravated kidnapping and kidnapping under Title 76, Chapter 5, Part 3, Kidnaping;

8 (E) rape, Section 76-5-402;

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

10 (G) object rape, Section 76-5-402.2;

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

12 (I) forcible sodomy, Section 76-5-403;

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

14 (K) forcible sexual abuse, Section 76-5-404;

15 (L) aggravated sexual abuse of a child and sexual abuse of a child, Section 76-5-404.1;

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

17 (N) sexual exploitation of a minor, Section 76-5a-3;

18 (O) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
19 Burglary and Criminal Trespass;

20 (P) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;

21 (Q) theft by extortion under Subsections 76-6-406(2)(a) or (b);

22 ~~(R)~~ (S) tampering with a witness under Subsection 76-8-508(2)(c);

23 ~~(R)~~ (S) tampering with a juror under Subsection 76-8-508.5(2)(c);

24 ~~(S)~~ (T) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any
25 threat or by use of force theft by extortion has been committed pursuant to Subsections

26 76-6-406(2)(a), (b), and (i);

27 ~~(T)~~ (U) damage or destruction of school or institution of higher education property by
28 explosives or flammable materials under Section 76-8-715;

29 ~~(U)~~ (V) possession, use, or removal of explosive, chemical, or incendiary devices under
30 Subsections 76-10-306(3) through (6);

31 ~~(V)~~ (W) unlawful delivery of explosive, chemical, or incendiary devices under Section

1 76-10-307;

2 (X) purchase or possession of a dangerous weapon or handgun by a restricted person under
3 Section 76-10-503;

4 [~~(W)~~] (Y) unlawful discharge of a firearm under Section 76-10-508;

5 [~~(X)~~] (Z) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

6 [~~(Y)~~] (AA) bus hijacking under Section 76-10-1504; and

7 [~~(Z)~~] (BB) bombing or placing a bomb or explosive in, upon, or near a terminal or bus
8 under Section 76-10-1505;

9 (ii) any felony offense against a criminal statute of any other state, the United States, or
10 any district, possession, or territory of the United States which would constitute a violent felony
11 as defined in this subsection if committed in this state.

12 (2) (a) The penalty enhancement provisions of this section apply, if during the ten years
13 immediately preceding the commission of the violent felony, the person has been:

14 (i) convicted of any felony;

15 (ii) incarcerated, on parole, or on probation for any felony; or

16 (iii) the subject of an unexecuted felony arrest warrant.

17 (b) The provisions of Subsection (2)(a) include any conviction, incarceration, parole,
18 probation, escape, abscontion, and arrest warrant under the laws of this state, any other state, the
19 United States, or any district, possession, or territory of the United States.

20 (3) If a person is convicted in this state of a violent felony by plea or by verdict and the
21 sentencing court determines the person is a habitual violent offender under this section, the penalty
22 for a:

23 (a) third degree felony shall be as if the conviction were for a first degree felony;

24 (b) second degree felony shall be as if the conviction were for a first degree felony; or

25 (c) first degree felony shall remain the penalty for a first degree penalty except:

26 (i) the convicted person is not eligible for probation; and

27 (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual
28 violent offender as an aggravating factor to determine the length of incarceration.

29 (4) (a) In all cases, notice that the prosecution intends to seek punishment as a habitual
30 violent offender under this section shall be provided in writing and shall be served upon the
31 defendant or his attorney not later than ten days prior to trial. Notice shall include the case

1 number, court, and date of conviction or commitment of any case relied upon by the prosecution.

2 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
3 intends to deny that:

4 (A) the defendant is the person who was convicted or committed;

5 (B) the defendant was represented by counsel or had waived counsel; or

6 (C) the defendant's plea was understandingly or voluntarily entered.

7 (ii) The notice of denial shall be served not later than five days prior to trial and shall state
8 in detail the defendant's contention regarding the previous conviction and commitment.

9 (c) The court shall determine if this section applies prior to or at the time of sentencing.

10 The court shall consider any evidence presented at trial and shall afford the prosecution and the
11 defendant an opportunity to present any necessary additional evidence. Prior to sentencing under
12 this section, the court shall determine whether this section is applicable by a preponderance of the
13 evidence.

14 (d) If any previous conviction and commitment is based upon a plea of guilty or no
15 contest, there is a rebuttable presumption that the conviction and commitment were regular and
16 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
17 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
18 to establish by a preponderance of the evidence that the defendant was then represented by counsel
19 or had lawfully waived his right to have counsel present, and that his plea was understandingly and
20 voluntarily entered.

21 (e) If the court finds this section applicable, it shall enter that specific finding on the record
22 and shall indicate in the order of judgment and commitment that the defendant has been found by
23 the court to be a habitual violent offender and is sentenced under this section.

24 (5) The habitual violent offender provisions of this section are not an element of the
25 offense, and proof of a defendant's conduct as a habitual violent offender is not necessary at a
26 preliminary hearing or at trial.

27 (6) (a) The sentencing enhancement provisions of Sections 76-3-407 and 76-3-408 shall
28 apply to a felony conviction defined in Title 76, Chapter 5, Part 4, Sexual Offenses, and shall
29 supersede the provisions of this section.

30 (b) Notwithstanding Subsection (6)(a):

31 (i) the convictions under Sections 76-5-404 and 76-5a-3 shall be governed by the

- 1 enhancement provisions of this section; and
- 2 (ii) the "violent felony" offense defined in Subsection (1)(c) shall include any felony
- 3 sexual offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the
- 4 convicted person is a habitual violent offender.

Legislative Review Note
as of 1-27-98 2:31 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel