

OBSTRUCTION OF JUSTICE AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott Daniels

This act repeals and reenacts a provision of the Criminal Code regarding the offense of obstruction of justice. This act provides penalties in relation to the level of offense regarding which judicial action is obstructed and in relation to the type of action taken to cause the obstruction. This act also repeals the code section regarding tampering with evidence, as the reenacted statute includes that offense.

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

AMENDS:

76-3-203.3, as enacted by Chapter 102, Laws of Utah 1992

76-10-1602, as last amended by Chapters 97 and 247, Laws of Utah 1999

77-23a-8, as last amended by Chapter 97, Laws of Utah 1999

REPEALS AND REENACTS:

76-8-306, as last amended by Chapter 203, Laws of Utah 2000

REPEALS:

76-8-510, as enacted by Chapter 196, Laws of Utah 1973

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

Section 1. Section **76-3-203.3** is amended to read:

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 (5).
- (2) 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 guilty of a third degree felony.
- (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 a person to 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) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice on the complaint in misdemeanor cases that the defendant is subject to a third degree felony provided under this section. The notice shall be in a clause separate from and in addition to the substantive offense charged.

(b) If the notice is not included initially, the court may subsequently allow the prosecutor to amend the charging document to include the notice if the court finds:

(i) that the amended charging documents, including any statement of probable cause, provide notice that the defendant is subject to a third degree felony provided under this section; and

(ii) that the defendant has not otherwise been substantially prejudiced by the amendment.

(5) Primary offenses referred to in Subsection (2) 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, 76-6-104, and 76-8-714, and Subsection 76-6-106(1)(b);

(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, 76-8-304, 76-8-305, 76-8-306, 76-8-307, 76-8-308, and 76-8-313 and [~~Subsections 76-8-306 (1)(a) through (f) and~~] Subsection 76-8-310(1);

(f) any offense of interfering or intending to interfere with activities of colleges and universities under Title 76, Chapter 8, Part 7;

(g) any misdemeanor offense against public order and decency as defined in Title 76, Chapter 9, Part 1;

(h) any telephone abuse offense under Title 76, Chapter 9, Part 2;

(i) any cruelty to animals offense under Section 76-9-301; and

(j) any weapons offense under Section 76-10-506.

Section 2. Section **76-8-306** is repealed and reenacted to read:

76-8-306. Obstruction of justice -- Elements -- Penalties -- Exceptions.

(1) An actor commits obstruction of justice if the actor, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense:

- (a) provides any person with a weapon;
- (b) prevents by force, intimidation, or deception, any person from performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any person;
- (c) alters, destroys, conceals, or removes any item or other thing;
- (d) makes, presents, or uses any item or thing known by the actor to be false;
- (e) harbors or conceals a person;
- (f) provides a person with transportation, disguise, or other means of avoiding discovery or apprehension;
- (g) warns any person of impending discovery or apprehension;
- (h) conceals information that is not privileged and that concerns the offense, after a judge or magistrate has ordered the actor to provide the information; or
- (i) provides false information regarding a suspect, a witness, the conduct constituting an offense, or any other material aspect of the investigation.

(2) (a) As used in this section, "conduct that constitutes a criminal offense" means conduct that would be punishable as a crime and is separate from a violation of this section, and includes:

- (i) any violation of a criminal statute or ordinance of this state, its political subdivisions, any other state, or any district, possession, or territory of the United States; and
 - (ii) conduct committed by a juvenile which would be a crime if committed by an adult.
- (b) A violation of a criminal statute that is committed in another state, or any district, possession, or territory of the United States, is a:
- (i) capital felony if the penalty provided includes death or life imprisonment without parole;
 - (ii) a first degree felony if the penalty provided includes life imprisonment with parole or a maximum term of imprisonment exceeding 15 years;
 - (iii) a second degree felony if the penalty provided exceeds five years;

(iv) a third degree felony if the penalty provided includes imprisonment for any period exceeding one year; and

(v) a misdemeanor if the penalty provided includes imprisonment for any period of one year or less.

(3) The penalties for obstruction of justice are:

(a) a second degree felony if the conduct which constitutes an offense would be a capital felony or first degree felony;

(b) a third degree felony if:

(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection (1)(b), (c), (d), (e), or (f); or

(ii) the conduct that constitutes an offense would be any offense other than a capital or first degree felony and the actor violates Subsection (1)(a);

(c) a class A misdemeanor if:

(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection (1)(g), (h), or (i); or

(ii) the conduct that constitutes an offense would be a misdemeanor and the actor violates Subsection (1)(b); or

(d) a class B misdemeanor if the conduct that constitutes the offense is a misdemeanor and the actor violates Subsection (1)(c), (d), (e), (f), (g), (h), or (i).

(4) It is not a defense that the actor was unaware of the level of penalty for the conduct constituting an offense.

(5) Subsection (1)(e) does not apply to harboring a youth offender, which is governed by Section 62A-7-106.

(6) Subsection (1)(b) does not apply to:

(a) tampering with a juror, which is governed by Section 76-8-508.5;

(b) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, which is governed by Section 76-8-508;

(c) tampering with a witness, which is governed by Section 76-8-508; or

(d) extortion or bribery to dismiss a criminal proceeding, which is governed by Section 76-8-509.

(7) Notwithstanding Subsection (1), (2), or (3), an actor commits a third degree felony if the actor harbors or conceals an offender who has:

(a) absconded from a facility or from supervision as those offenses are defined in Section 76-8-309.5; or

(b) escaped from official custody as defined in Section 76-8-309.

Section 3. Section **76-10-1602** is amended to read:

76-10-1602. Definitions.

As used in this part:

(1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.

(2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

(4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:

- (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized Recording Practices Act;
- (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;
- (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, Wildlife Resources Code of Utah, or Section 23-20-4;
- (d) false claims for medical benefits, kickbacks, and any other act prohibited by False Claims Act, Sections 26-20-1 through 26-20-12;
- (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal Offenses;
- (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
- (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, or Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;
- (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act;
- (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah Procurement Code;
- (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- (k) a threat against life or property, Section 76-5-107;
- (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- (n) sexual exploitation of a minor, Section 76-5a-3;
- (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- (p) causing a catastrophe, Section 76-6-105;
- (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

- (r) burglary of a vehicle, Section 76-6-204;
- (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- (u) theft, Section 76-6-404;
- (v) theft by deception, Section 76-6-405;
- (w) theft by extortion, Section 76-6-406;
- (x) receiving stolen property, Section 76-6-408;
- (y) theft of services, Section 76-6-409;
- (z) forgery, Section 76-6-501;
- (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- (bb) deceptive business practices, Section 76-6-507;
- (cc) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;
- (dd) bribery of a labor official, Section 76-6-509;
- (ee) defrauding creditors, Section 76-6-511;
- (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- (hh) bribery or threat to influence contest, Section 76-6-514;
- (ii) making a false credit report, Section 76-6-517;
- (jj) criminal simulation, Section 76-6-518;
- (kk) criminal usury, Section 76-6-520;
- (ll) false or fraudulent insurance claim, Section 76-6-521;
- (mm) computer crimes, Section 76-6-703;
- (nn) sale of a child, Section 76-7-203;
- (oo) bribery to influence official or political actions, Section 76-8-103;
- (pp) threats to influence official or political action, Section 76-8-104;
- (qq) receiving bribe or bribery by public servant, Section 76-8-105;
- (rr) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;

- (ss) official misconduct, Sections 76-8-201 and 76-8-202;
- (tt) [~~obstructing~~] obstruction of justice, Section 76-8-306;
- (uu) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- (vv) false or inconsistent material statements, Section 76-8-502;
- (ww) false or inconsistent statements, Section 76-8-503;
- (xx) written false statements, Section 76-8-504;
- (yy) tampering with a witness, retaliation against a witness or informant, or bribery, Section 76-8-508;
- (zz) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- [~~(aaa) tampering with evidence, Section 76-8-510;~~]
- [~~(bbb)~~] (aaa) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
- [~~(ccc)~~] (bbb) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(1)(f);
- [~~(ddd)~~] (ccc) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;
- [~~(eee)~~] (ddd) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;
- [~~(fff)~~] (eee) possession of a deadly weapon with intent to assault, Section 76-10-507;
- [~~(ggg)~~] (fff) unlawful marking of pistol or revolver, Section 76-10-521;
- [~~(hhh)~~] (ggg) alteration of number or mark on pistol or revolver, Section 76-10-522;
- [~~(iii)~~] (hhh) forging or counterfeiting trademarks, trade name, or trade device, Section 76-10-1002;
- [~~(jjj)~~] (iii) selling goods under counterfeited trademark, trade name, or trade devices, Section 76-10-1003;
- [~~(kkk)~~] (jjj) sales in containers bearing registered trademark of substituted articles, Section 76-10-1004;
- [~~(HH)~~] (kkk) selling or dealing with article bearing registered trademark or service mark with

intent to defraud, Section 76-10-1006;

~~[(mmm)]~~ (lll) gambling, Section 76-10-1102;

~~[(nmn)]~~ (mmm) gambling fraud, Section 76-10-1103;

~~[(ooo)]~~ (nnn) gambling promotion, Section 76-10-1104;

~~[(ppp)]~~ (ooo) possessing a gambling device or record, Section 76-10-1105;

~~[(qqq)]~~ (ppp) confidence game, Section 76-10-1109;

~~[(rrr)]~~ (qqq) distributing pornographic material, Section 76-10-1204;

~~[(sss)]~~ (rrr) inducing acceptance of pornographic material, Section 76-10-1205;

~~[(ttt)]~~ (sss) dealing in harmful material to a minor, Section 76-10-1206;

~~[(uuu)]~~ (ttt) distribution of pornographic films, Section 76-10-1222;

~~[(vvv)]~~ (uuu) indecent public displays, Section 76-10-1228;

~~[(www)]~~ (vvv) prostitution, Section 76-10-1302;

~~[(xxx)]~~ (www) aiding prostitution, Section 76-10-1304;

~~[(yyy)]~~ (xxx) exploiting prostitution, Section 76-10-1305;

~~[(zzz)]~~ (yyy) aggravated exploitation of prostitution, Section 76-10-1306;

~~[(aaaa)]~~ (zzz) communications fraud, Section 76-10-1801;

~~[(bbbb)]~~ (aaaa) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act;

~~[(cccc)]~~ (bbbb) any act prohibited by the criminal provisions of the laws governing taxation in this state; and

~~[(dddd)]~~ (cccc) any act illegal under the laws of the United States and enumerated in Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.

Section 4. Section **77-23a-8** is amended to read:

77-23a-8. Court order to authorize or approve interception -- Procedure.

(1) The attorney general of the state, any assistant attorney general specially designated by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy district attorney specially designated by the county attorney or by the district attorney, may authorize an application to a judge of competent jurisdiction for an order for an interception of wire, electronic,

or oral communications by any law enforcement agency of the state, the federal government or of any political subdivision of the state that is responsible for investigating the type of offense for which the application is made.

(2) The judge may grant the order in conformity with the required procedures when the interception sought may provide or has provided evidence of the commission of:

(a) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act; Title 58, Chapter 37c, Utah Controlled Substances Precursor Act; Title 58, Chapter 37d, Clandestine Drug Lab Act; punishable by a term of imprisonment of more than one year;

(b) any act prohibited by the criminal provisions of the Utah Uniform Securities Act and punishable by a term of imprisonment of more than one year, Title 61, Chapter 1;

(c) attempt, Section 76-4-101; conspiracy, Section 76-4-201; solicitation, Section 76-4-203; to commit any of the offenses enumerated above so long as the attempt, conspiracy or solicitation offense is punishable by a term of imprisonment of more than one year;

(d) threat against life or property offense punishable by a maximum term of imprisonment of more than one year, Section 76-5-107;

(e) aggravated murder, Section 76-5-202; murder, Section 76-5-203; manslaughter, Section 76-5-205;

(f) [~~kidnaping~~] kidnapping, Section 76-5-301; child [~~kidnaping~~] kidnapping, Section 76-5-301.1; aggravated kidnapping, Section 76-5-302;

(g) arson, Section 76-6-102; aggravated arson, Section 76-6-103;

(h) burglary, Section 76-6-202; aggravated burglary, Section 76-6-203;

(i) robbery, Section 76-6-301; aggravated robbery, Section 76-6-302;

(j) theft, Section 76-6-404; theft by deception, Section 76-6-405; theft by extortion, Section 76-6-406; when the theft, theft by deception or theft by extortion, is punishable by a maximum term of imprisonment of more than one year;

(k) receiving stolen property offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-408;

(l) financial card transaction offenses punishable by a maximum term of imprisonment of

more than one year, Section 76-6-506.1, 76-6-506.2, 76-6-506.3, 76-6-506.4, 76-6-506.5, or 76-6-506.6;

(m) bribery of a labor official, Section 76-6-509;

(n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;

(o) criminal simulation offenses punishable by a maximum term of imprisonment of more than one year, Section 76-6-518;

(p) criminal usury, Section 76-6-520;

(q) false or fraudulent insurance claim offenses punishable by a maximum term of imprisonment of more than one year, Section 76-6-521;

(r) violations of the Computer Crimes Act punishable by a maximum term of imprisonment of more than one year, Section 76-6-703;

(s) bribery to influence official or political actions, Section 76-8-103;

(t) misusing public moneys, Section 76-8-402;

(u) tampering with a witness, retaliation against a witness or informant, or bribery, communicating a threat, Section 76-8-508;

(v) tampering with a juror, retaliation against a juror, Section 76-8-508.5;

(w) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;

~~[(x) tampering with evidence, Section 76-8-510;]~~

(x) obstruction of justice, Section 76-8-306;

(y) destruction of property to interfere with preparation for defense or war, Section 76-8-802;

(z) attempts to commit crimes of sabotage, Section 76-8-804;

(aa) conspiracy to commit crimes of sabotage, Section 76-8-805;

(bb) advocating criminal syndicalism or sabotage, Section 76-8-902;

(cc) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;

(dd) riot punishable by a maximum term of imprisonment of more than one year, Section 76-9-101;

(ee) dog fighting, training dogs for fighting, dog fighting exhibitions punishable by a maximum term of imprisonment of more than one year, Section 76-9-301.1;

(ff) explosive, chemical, or incendiary device and parts, possession, use, or removal, Section 76-10-306;

(gg) explosive, chemical, or incendiary device, delivery to a common carrier or mailing, Section 76-10-307;

(hh) exploiting prostitution, Section 76-10-1305;

(ii) aggravated exploitation of prostitution, Section 76-10-1306;

(jj) bus hijacking, assault with intent to commit hijacking, dangerous weapon or firearm, Section 76-10-1504;

(kk) discharging firearms and hurling missiles, Section 76-10-1505;

(ll) violations of the Pattern of Unlawful Activity Act and the offenses listed under the definition of unlawful activity in the act, including the offenses not punishable by a maximum term of imprisonment of more than one year when those offenses are investigated as predicates for the offenses prohibited by the act, Section 76-10-1602;

(mm) communications fraud, Section 76-10-1801;

(nn) money laundering, Sections 76-10-1903 and 76-10-1904; or

(oo) reporting by financial institutions when the offense is punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.

Section 5. Repealer.

This act repeals:

Section 76-8-510, Tampering with evidence.