

ANTITERRORISM AMENDMENTS

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Paul Ray

This act modifies the Criminal Code by creating a part prohibiting terrorism by the use of weapons of mass destruction, including prohibiting a hoax that refers to weapons of mass destruction. The enacted part provides definitions, criminal offenses, and penalties. The act amends other affected sections of the code. The act also exempts records of governmental security measures and practices from the Government Records Access and Management Act.

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

AMENDS:

76-3-203.3, as last amended by Chapter 307, Laws of Utah 2001

76-5-107, as last amended by Chapter 38, Laws of Utah 1988

76-5-202, as last amended by Chapter 209, Laws of Utah 2001

76-6-105, as enacted by Chapter 196, Laws of Utah 1973

76-6-106, as last amended by Chapter 31, Laws of Utah 1999

76-6-1002, as enacted by Chapter 87, Laws of Utah 1998

76-8-419, as enacted by Chapter 196, Laws of Utah 1973

76-9-105, as enacted by Chapter 196, Laws of Utah 1973

76-9-202, as last amended by Chapter 25, Laws of Utah 1998

76-10-204, as enacted by Chapter 196, Laws of Utah 1973

76-10-306, as last amended by Chapter 97, Laws of Utah 1999

76-10-1602, as last amended by Chapter 307, Laws of Utah 2001

77-23a-8, as last amended by Chapter 307, Laws of Utah 2001

ENACTS:

63-2-106, Utah Code Annotated 1953

76-10-402, Utah Code Annotated 1953

76-10-403, Utah Code Annotated 1953

76-10-404, Utah Code Annotated 1953

76-10-405, Utah Code Annotated 1953

76-10-2601, Utah Code Annotated 1953

REPEALS AND REENACTS:

76-10-401, as enacted by Chapter 196, Laws of Utah 1973

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

Section 1. Section **63-2-106** is enacted to read:

63-2-106. Records of security measures.

The records of a governmental entity or political subdivision regarding security measures designed for the protection of persons or property, public or private, are not subject to this chapter.

These records include:

(1) security plans;

(2) security codes and combinations, and passwords;

(3) passes and keys;

(4) security procedures; and

(5) building and public works designs, to the extent that the records or information relate to the ongoing security measures of a public entity.

Section 2. 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)~~ (2)(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 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 3. Section **76-5-107** is amended to read:

76-5-107. Terroristic threat -- Penalty.

(1) A person commits a ~~[threat against life or property]~~ terroristic threat if he threatens to commit any offense involving ~~[violence with intent to]~~ bodily injury, death, or substantial property

damage, and:

(a) he threatens the use of a weapon of mass destruction, as defined in Section 76-10-401, or threatens by the use of a hoax weapon of mass destruction, as defined in Section 76-10-401; or

(b) he acts with intent to:

(i) intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government;

~~[(a)]~~ (ii) cause action of any nature by an official or volunteer agency organized to deal with emergencies;

~~[(b)]~~ (iii) place a person in fear of imminent serious bodily injury, ~~substantial bodily injury,~~ or death; or

~~[(c) prevent or interrupt the occupation of a building or room; place of assembly; place to which the public has access; or aircraft, automobile, or other form of transportation.]~~

~~[(2) A threat against life or property is a class B misdemeanor, except if the actor's intent is to]~~

(iv) prevent or interrupt the occupation of a building or a portion of the building, a place to which the public has access, or a facility or vehicle of public transportation operated by a common carrier[, the offense is a third degree felony].

(2) (a) A violation of Subsection (1)(a) or (1)(b)(i) is a second degree felony.

(b) A violation of Subsection (1)(b)(iv) is a third degree felony.

(c) Any other violation of this section is a class B misdemeanor.

(3) It is not a defense under this section that the person did not attempt to or was incapable of carrying out the threat.

(4) A threat under this section may be express or implied.

(5) A person who commits an offense under this section is subject to punishment for that offense, in addition to any other offense committed, including the carrying out of the threatened act.

(6) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in

responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

Section 4. Section **76-5-202** is amended to read:

76-5-202. Aggravated murder.

(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

(a) the homicide was committed by a person who is confined in a jail or other correctional institution;

(b) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;

(c) the actor knowingly created a great risk of death to a person other than the victim and the actor;

(d) the homicide was committed while the actor was engaged in the commission of, or an attempt to commit, or flight after committing or attempting to commit, aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, kidnapping, or child kidnapping;

(e) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;

(f) the homicide was committed for pecuniary or other personal gain;

(g) the defendant committed, or engaged or employed another person to commit the homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;

(h) the actor was previously convicted of:

(i) aggravated murder, Section 76-5-202;

- (ii) murder, Section 76-5-203;
- (iii) aggravated assault, Subsection 76-5-103(2);
- (iv) mayhem, Section 76-5-105;
- (v) attempted murder, Section 76-5-203;
- (vi) kidnapping, Section 76-5-301;
- (vii) child kidnapping, Section 76-5-301.1;
- (viii) aggravated kidnapping, Section 76-5-302;
- (ix) rape, Section 76-5-402;
- (x) rape of a child, Section 76-5-402.1;
- (xi) object rape, Section 76-5-402.2;
- (xii) object rape of a child, Section 76-5-402.3;
- (xiii) forcible sodomy, Section 76-5-403;
- (xiv) sodomy on a child, Section 76-5-403.1;
- (xv) aggravated sexual abuse of a child, Section 76-5-404.1;
- (xvi) aggravated sexual assault, Section 76-5-405;
- (xvii) aggravated arson, Section 76-6-103;
- (xviii) aggravated burglary, Section 76-6-203;
- (xix) aggravated robbery, Section 76-6-302; or
- (xx) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(h);
 - (i) the homicide was committed for the purpose of:
 - (i) preventing a witness from testifying;
 - (ii) preventing a person from providing evidence or participating in any legal proceedings or official investigation;
 - (iii) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or
 - (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
 - (j) the victim is or has been a local, state, or federal public official, or a candidate for public

office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;

(k) the victim is or has been a peace officer, law enforcement officer, executive officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position;

(l) the homicide was committed;

(i) by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered; or

(ii) by means of any weapon of mass destruction as defined in Section 76-10-401;

(m) the homicide was committed during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force with intent to obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard, or to direct the route or movement of the public conveyance or otherwise exert control over the public conveyance;

(n) the homicide was committed by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

(o) the victim was a person held or otherwise detained as a shield, hostage, or for ransom;
or

(p) the homicide was committed in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death.

(2) Aggravated murder is a capital felony.

(3) (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the defendant caused the death of another or attempted to cause the death of another:

(i) under the influence of extreme emotional distress for which there is a reasonable

explanation or excuse; or

(ii) under a reasonable belief that the circumstances provided a legal justification or excuse for his conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) Under Subsection (3)(a)(i), emotional distress does not include:

(i) a condition resulting from mental illness as defined in Section 76-2-305; or

(ii) distress that is substantially caused by the defendant's own conduct.

(c) The reasonableness of an explanation or excuse under Subsection (3)(a)(i) or the reasonable belief of the actor under Subsection (3)(a)(ii) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(d) This affirmative defense reduces charges only as follows:

(i) aggravated murder to murder; and

(ii) attempted aggravated murder to attempted murder.

Section 5. Section **76-6-105** is amended to read:

76-6-105. Causing a catastrophe -- Penalties.

(1) Any person ~~[who]~~ is guilty of causing a catastrophe if the person causes widespread injury or damage to persons or property by:

(a) use of a weapon of mass destruction as defined in Section 76-10-401; or

(b) explosion, fire, flood, avalanche, collapse of a building, ~~[release of poison gas, radioactive material,]~~ or other harmful or destructive force or substance~~[-, or by any other means, causes a widespread injury or damage to persons or property is guilty of causing a catastrophe]~~ that is not a weapon of mass destruction.

(2) Causing a catastrophe is:

(a) a first degree felony if the person causes the catastrophe knowingly and by the use of a weapon of mass destruction;

(b) a second degree felony ~~[of the second degree]~~ if the person causes ~~[it]~~ the catastrophe knowingly and by a means other than a weapon of mass destruction; and

(c) a class A misdemeanor if ~~[caused]~~ the person causes the catastrophe recklessly.

(3) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

Section 6. Section **76-6-106** is amended to read:

76-6-106. Criminal mischief.

(1) As used in this section, "critical infrastructure" includes:

(a) information and communication systems;

(b) financial and banking systems;

(c) transportation systems;

(d) any public utility service, including the power, energy, and water supply systems;

(e) sewage and water treatment systems;

(f) health care facilities as listed in Section 26-21-2, and emergency fire, medical, and law enforcement response systems;

(g) public health facilities and systems;

(h) food distribution systems; and

(i) other government operations and services.

~~[(1)]~~ (2) A person commits criminal mischief if the person:

(a) under circumstances not amounting to arson, damages or destroys property with the intention of defrauding an insurer;

(b) intentionally and unlawfully tampers with the property of another and as a result:

(i) recklessly endangers:

(A) human life; or

(B) human health or safety; or

(ii) recklessly causes or threatens a substantial interruption or impairment of[?] any critical infrastructure;

~~[(A) any public utility service; or]~~

~~[(B) any service or facility that provides communication with any public, private, or volunteer entity whose purpose is to respond to fire, police, or medical emergencies;]~~

(c) intentionally damages, defaces, or destroys the property of another; or

(d) recklessly or willfully shoots or propels a missile or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing.

~~[(2)]~~ (3) (a) (i) A violation of Subsection ~~[(1)]~~ (2)(a) is a third degree felony ~~[of the third degree]~~.

~~[(b)]~~ (ii) A violation of Subsection ~~[(1)]~~ (2)(b)(i)(A) is a class A misdemeanor~~[-except that a]~~.

(iii) A violation of Subsection ~~[(1)]~~ (2)(b)(i)(B) is a class B misdemeanor.

(iv) A violation of Subsection (2)(b)(ii) is a second degree felony.

~~[(c)]~~ (b) Any other violation of this section is a:

(i) second degree felony ~~[of the second degree]~~ if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$5,000 in value;

(ii) third degree felony ~~[of the third degree]~~ if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$1,000 but is less than \$5,000 in value;

(iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$300 but is less than \$1,000 in value; and

(iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss less than \$300 in value.

~~[(3)]~~ (4) In determining the value of damages under this section, or for computer crimes under Section 76-6-703, the value of any item, computer, computer network, computer property, computer services, software, or data ~~[shall include]~~ includes the measurable value of the loss of use of the items and the measurable cost to replace or restore the items.

(5) In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses incurred in responding to a violation of Subsection (2)(b)(ii), unless the court states on the record the reasons why the

reimbursement would be inappropriate.

Section 7. Section **76-6-1002** is amended to read:

76-6-1002. Damage to mail receptacle -- Penalties -- Greater offenses.

(1) A person commits the crime of damage to a mail receptacle if the person knowingly damages the condition of a mail receptacle, including:

(a) taking, concealing, damaging, or destroying a key; or

(b) breaking open, tearing down, taking, damaging, or destroying a mail receptacle.

(2) (a) In determining the degree of an offense committed under Subsection (1), the penalty levels in Subsection 76-6-106[~~(2)~~(c)] (3)(b) apply.

(b) If the act committed amounts to an offense subject to a greater penalty, this subsection does not prohibit prosecution and sentencing for the more serious offense.

Section 8. Section **76-8-419** is amended to read:

76-8-419. Damaging highways or bridges.

(1) Every person who [~~maliciously~~] intentionally, knowingly, or recklessly digs up, removes, displaces, breaks, or otherwise [~~injures~~] damages or destroys any public highway, or any private way laid out by authority of law, or any bridge upon [~~such~~] the highway or private way is guilty of a class A misdemeanor.

(2) If the violation of this section constitutes an offense subject to a greater penalty under another provision of Title 76, Utah Criminal Code, than is provided under this section, this section does not prohibit the prosecution and sentencing for the offense subject to a greater penalty.

Section 9. Section **76-9-105** is amended to read:

76-9-105. Making a false alarm -- Penalties.

(1) A person is guilty of [~~giving~~] making a false alarm if he initiates or circulates a report or warning of any fire, impending bombing, or other crime or catastrophe, knowing that the report or warning is false or baseless and is likely to cause evacuation of any building, place of assembly, or facility of public transport, to cause public inconvenience or alarm or action of any sort by any official or volunteer agency organized to deal with emergencies.

(2) (a) [~~Giving~~] Making a false alarm relating to a weapon of mass destruction as defined

in Section 76-10-401 is a second degree felony.

(b) Making a false alarm other than under Subsection (2)(a) is a class B misdemeanor.

(3) In addition to any other penalty authorized by law, a court shall order any person convicted of a felony violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

Section 10. Section **76-9-202** is amended to read:

76-9-202. Emergency reporting -- Interference -- False report.

(1) As used in this section:

(a) "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property.

(b) "Party line" means a subscriber's line or telephone circuit consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

~~[(+)]~~ (2) A person is guilty of emergency reporting abuse if he:

(a) intentionally refuses to yield or surrender the use of a party line or a public pay telephone to another person upon being informed that the telephone is needed to report a fire or summon police, medical, or other aid in case of emergency, unless the telephone is likewise being used for an emergency call;

(b) asks for or requests the use of a party line or a public pay telephone on the pretext that an emergency exists, knowing that no emergency exists; or

(c) reports an emergency or causes an emergency to be reported to any public, private, or volunteer entity whose purpose is to respond to fire, police, or medical emergencies, when the actor knows the reported emergency does not exist.

~~[(2)]~~ (3) (a) A violation of Subsection ~~[(+)]~~ (2)(a) or (b) is a class C misdemeanor.

(b) A violation of Subsection ~~[(+)]~~ (2)(c) is a class B misdemeanor, except as provided under Subsection (3)(c).

(c) A violation of Subsection (2)(c) is a second degree felony if the report is regarding a

weapon of mass destruction, as defined in Section 76-10-401.

~~[(3) For the purposes of this section:]~~

~~[(a) "Emergency" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property.]~~

~~[(b) "Party line" means a subscriber's line or telephone circuit consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.]~~

(4) In addition to any other penalty authorized by law, a court shall order any person convicted of a violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

Section 11. Section **76-10-204** is amended to read:

76-10-204. Damaging bridge, dam, canal or other water-related structure.

~~[Every]~~ (1) A person is guilty of a third degree felony who ~~[willfully and maliciously]~~ intentionally, knowingly, or recklessly commits an offense under Subsection (2) that does not amount to a violation of Subsection 76-6-106(2)(b)(ii).

(2) Offenses referred to in Subsection (1) are when a person:

(a) cuts, breaks, ~~[injures]~~ damages, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, ~~[or]~~ to drain or reclaim any swamp and overflowed or marsh land, ~~[or]~~ to conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town; ~~[or willfully or maliciously]~~

(b) makes or causes to be made any aperture in any ~~[such]~~ dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure with intent to injure or destroy it; or

(c) draws up, cuts, or injures any piles fixed in the ground and used for securing any lake or river bank or walls or any dock, quay, jetty, or lock~~[, is guilty of a felony of the third degree].~~

Section 12. Section **76-10-306** is amended to read:

76-10-306. Explosive, chemical, or incendiary device and parts -- Definitions -- Persons exempted -- Penalties.

(1) As used in this section:

(a) "Explosive, chemical, or incendiary device" means:

(i) dynamite and all other forms of high explosives, including water gel, slurry, military C-4 (plastic explosives), blasting agents to include nitro-carbon-nitrate, ammonium nitrate, fuel oil mixtures, cast primers and boosters, R.D.X., P.E.T.N., electric and nonelectric blasting caps, exploding cords commonly called detonating cord, detcord, or primacord, picric acid explosives, T.N.T. and T.N.T. mixtures, nitroglycerin and nitroglycerin mixtures, or any other chemical mixture intended to explode with fire or force;

(ii) any explosive bomb, grenade, missile, or similar device; and

(iii) any incendiary bomb, grenade, fire bomb, chemical bomb, or similar device, including any device, except kerosene lamps, if criminal intent has not been established, which consists of or includes a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting the flammable liquid or compound or any breakable container which consists of, or includes a chemical mixture that explodes with fire or force and can be carried, thrown, or placed.

(b) "Explosive, chemical, or incendiary device" [~~shall~~] does not include rifle, pistol, or shotgun ammunition, reloading components, or muzzleloading equipment.

(c) "Explosive, chemical, or incendiary parts" means any substances or materials or combinations which have been prepared or altered for use in the creation of an explosive, chemical, or incendiary device. These substances or materials include:

(i) timing device, clock, or watch which has been altered in such a manner as to be used as the arming device in an explosive;

(ii) pipe, end caps, or metal tubing which has been prepared for a pipe bomb; and

(iii) mechanical timers, mechanical triggers, chemical time delays, electronic time delays, or commercially made or improvised items which, when used singly or in combination, may be used in the construction of a timing delay mechanism, booby trap, or activating mechanism for any

explosive, chemical, or incendiary device.

(d) "Explosive, chemical, or incendiary parts" [~~shall~~ does] not include rifle, pistol, or shotgun ammunition, or any signaling device customarily used in operation of railroad equipment.

(2) The provisions in Subsections (3) and (6) [~~shall~~ do] not apply to:

(a) any public safety officer while acting in his official capacity transporting or otherwise handling explosives, chemical, or incendiary devices;

(b) any member of the armed forces of the United States or Utah National Guard while acting in his official capacity;

(c) any person possessing a valid permit issued under the provisions of Uniform Fire Code, Article 77, or any employee of [~~such~~ the] permittee acting within the scope of his employment;

(d) any person possessing a valid license as an importer, wholesaler, or display operator under the provisions of Sections 11-3-3.5 and 53-7-223; and

(e) any person or entity possessing or controlling an explosive, chemical, or incendiary device as part of its lawful business operations.

(3) Any person is guilty of a second degree felony who, under circumstances not amounting to a violation of Title 76, Chapter 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly possesses or controls an explosive, chemical, or incendiary device [~~is guilty of a felony of the second degree~~].

(4) Any person is guilty of a first degree felony who, under circumstances not amounting to a violation of Title 76, Chapter 10, Part 4, Weapons of Mass Destruction, knowingly or intentionally:

(a) uses or causes to be used an explosive, chemical, or incendiary device in the commission of or an attempt to commit a felony;

(b) injures another or attempts to injure another in his person or property through the use of an explosive, chemical, or incendiary device; or

(c) transports, possesses, distributes, or sells any explosive, chemical, or incendiary device in a secure area established pursuant to Section 76-8-311.1, 76-8-311.3, 76-10-529, or 78-7-6.

(5) Any person who, under circumstances not amounting to a violation of Title 76, Chapter 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly removes or causes

to be removed or carries away any explosive, chemical, or incendiary device from the premises where ~~[said]~~ the explosive, chemical, or incendiary device is kept by the lawful user, vendor, transporter, or manufacturer without the consent or direction of the lawful possessor is guilty of a second degree felony ~~[of the second degree]~~.

(6) Any person who, under circumstances not amounting to a violation of Title 76, Chapter 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly possesses any explosive, chemical, or incendiary parts is guilty of a felony of the third degree.

Section 13. Section **76-10-401** is repealed and reenacted to read:

Part 4. Weapons of Mass Destruction

76-10-401. Definitions.

As used in this part:

(1) "Biological agent" means any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product, that is capable of causing:

(a) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(b) deterioration of food, water, equipment, supplies, or material of any kind; or

(c) deleterious alteration of the environment.

(2) "Delivery system" means:

(a) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

(b) any vector.

(3) "Hoax weapon of mass destruction" means any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not:

(a) meet the definition of a weapon of mass destruction; or
(b) actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system
prohibited by this section.

(4) "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(a) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(b) any poisonous isomer or biological product, homolog, or derivative of the substance under Subsection (4)(a).

(5) "Vector" means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

(6) (a) "Weapon of mass destruction" means:

(i) any item or instrumentality that is designed or intended to cause widespread death or serious bodily injury to multiple victims;

(ii) any item or instrumentality that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(iii) any disease organism, including any biological agent, toxin, or vector which is used or intended to be used as a weapon;

(iv) any item or instrumentality that is designed to release radiation or radioactivity at a level dangerous to human life and that is used or intended to be used as a weapon; or

(v) any substance or material or combination which has been prepared or altered for use in the creation of a weapon described in Subsections (6)(a)(i) through (iv).

(b) "Weapon of mass destruction" does not include firearms or rifle, pistol, or shotgun ammunition, reloading components, or muzzleloading equipment.

Section 14. Section **76-10-402** is enacted to read:

76-10-402. Manufacture, possession, sale, use, or attempted use of a weapon of mass destruction prohibited -- Penalties.

A person who without lawful authority intentionally or knowingly manufactures, possesses, sells, delivers, displays, uses, attempts to use, solicits the use of, or conspires to use a weapon of mass destruction or a delivery system for a weapon of mass destruction, including any biological agent, toxin, vector, or delivery system as those terms are defined in this section, is guilty of a first degree felony.

Section 15. Section **76-10-403** is enacted to read:

76-10-403. Manufacture, possession, sale, use, or attempted use of a hoax weapon of mass destruction prohibited -- Penalty.

Any person who without lawful authority intentionally or knowingly manufactures, possesses, sells, delivers, displays, uses, attempts to use, solicits the use of, or conspires to use a hoax weapon of mass destruction with the intent to deceive or otherwise mislead another person into believing that the hoax weapon of mass destruction is a weapon of mass destruction is guilty of a second degree felony.

Section 16. Section **76-10-404** is enacted to read:

76-10-404. Exemptions.

This part does not apply to any member or employee of the Armed Forces of the United States, allied armed forces personnel, a federal or state governmental agency, or a private entity, who is engaged in lawful activity within the scope of his or her employment, if the person is authorized or licensed to manufacture, possess, sell, deliver, display, or otherwise engage in activity relative to this section and if the person is in compliance with applicable federal and state law.

Section 17. Section **76-10-405** is enacted to read:

76-10-405. Reimbursement of government response expenses.

In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this part to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be

inappropriate.

Section 18. 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 terroristic 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) 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) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
- (bbb) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(1)(f);
- (ccc) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;
- (ddd) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;
- (eee) possession of a deadly weapon with intent to assault, Section 76-10-507;
- (fff) unlawful marking of pistol or revolver, Section 76-10-521;
- (ggg) alteration of number or mark on pistol or revolver, Section 76-10-522;
- (hhh) forging or counterfeiting trademarks, trade name, or trade device, Section 76-10-1002;
- (iii) selling goods under counterfeited trademark, trade name, or trade devices, Section 76-10-1003;
- (jjj) sales in containers bearing registered trademark of substituted articles, Section 76-10-1004;
- (kkk) selling or dealing with article bearing registered trademark or service mark with intent to defraud, Section 76-10-1006;
- (lll) gambling, Section 76-10-1102;
- (mmm) gambling fraud, Section 76-10-1103;
- (nnn) gambling promotion, Section 76-10-1104;
- (ooo) possessing a gambling device or record, Section 76-10-1105;
- (ppp) confidence game, Section 76-10-1109;
- (qqq) distributing pornographic material, Section 76-10-1204;
- (rrr) inducing acceptance of pornographic material, Section 76-10-1205;
- (sss) dealing in harmful material to a minor, Section 76-10-1206;

(ttt) distribution of pornographic films, Section 76-10-1222;

(uuu) indecent public displays, Section 76-10-1228;

(vvv) prostitution, Section 76-10-1302;

(www) aiding prostitution, Section 76-10-1304;

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

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

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

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

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

(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 19. Section **76-10-2601** is enacted to read:

Part 26. Shafts and Wells - Safety

76-10-2601. Fencing of shafts and wells.

(1) Any person who has sunk or sinks a shaft or well on the public domain for any purpose shall enclose it with a substantial curb or fence, which shall be at least 4-1/2 feet high.

(2) Any person violating this section is guilty of a class B misdemeanor.

Section 20. 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) terroristic 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) kidnapping, Section 76-5-301; child 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) 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.