

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

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

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

76-9-105, 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



28 REPEALS AND REENACTS:

29 **76-10-401**, as enacted by Chapter 196, Laws of Utah 1973

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

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

32 **63-2-106. Records of security measures.**

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

35 These records include:

36 (1) security plans;

37 (2) security codes and combinations, and passwords;

38 (3) passes and keys;

39 (4) security procedures; and

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

42 Section 2. Section **76-3-203.3** is amended to read:

43 **76-3-203.3. Penalty for hate crimes -- Civil rights violation.**

44 As used in this section:

45 (1) "Primary offense" means those offenses provided in Subsection (5).

46 (2) A person who commits any primary offense with the intent to intimidate or terrorize
47 another person or with reason to believe that his action would intimidate or terrorize that person
48 is guilty of a third degree felony.

49 (3) "Intimidate or terrorize" means an act which causes the person to fear for his physical
50 safety or damages the property of that person or another. The act must be accompanied with the
51 intent to cause a person to fear to freely exercise or enjoy any right secured by the Constitution or
52 laws of the state or by the Constitution or laws of the United States.

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

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

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

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

63 (5) Primary offenses referred to in Subsection (2) are the misdemeanor offenses for:

64 (a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106, 76-5-107,
 65 and 76-5-108;

66 (b) any misdemeanor property destruction offense under Sections 76-6-102, 76-6-104, and
 67 76-8-714, and Subsection 76-6-106~~(1)(b)~~ (2)(b);

68 (c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;

69 (d) any misdemeanor theft offense under Section 76-6-412;

70 (e) any offense of obstructing government operations under Sections 76-8-301, 76-8-302,
 71 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);

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

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

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

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

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

79 Section 3. Section **76-5-107** is amended to read:

80 **76-5-107. Terroristic threat -- Penalty.**

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

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

86 (b) he acts with intent to:

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

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

90 with emergencies;

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

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

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

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

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

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

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

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

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

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

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

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

114 **76-5-202. Aggravated murder.**

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

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

119 (b) the homicide was committed incident to one act, scheme, course of conduct, or
120 criminal episode during which two or more persons were killed, or during which the actor

121 attempted to kill one or more persons in addition to the victim who was killed;

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

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

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

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

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

137 (h) the actor was previously convicted of:

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

139 (ii) murder, Section 76-5-203;

140 (iii) aggravated assault, Subsection 76-5-103(2);

141 (iv) mayhem, Section 76-5-105;

142 (v) attempted murder, Section 76-5-203;

143 (vi) kidnapping, Section 76-5-301;

144 (vii) child kidnapping, Section 76-5-301.1;

145 (viii) aggravated kidnapping, Section 76-5-302;

146 (ix) rape, Section 76-5-402;

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

148 (xi) object rape, Section 76-5-402.2;

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

150 (xiii) forcible sodomy, Section 76-5-403;

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

- 152 (xv) aggravated sexual abuse of a child, Section 76-5-404.1;
- 153 (xvi) aggravated sexual assault, Section 76-5-405;
- 154 (xvii) aggravated arson, Section 76-6-103;
- 155 (xviii) aggravated burglary, Section 76-6-203;
- 156 (xix) aggravated robbery, Section 76-6-302; or
- 157 (xx) an offense committed in another jurisdiction which if committed in this state would
- 158 be a violation of a crime listed in this Subsection (1)(h);
- 159 (i) the homicide was committed for the purpose of:
- 160 (i) preventing a witness from testifying;
- 161 (ii) preventing a person from providing evidence or participating in any legal proceedings
- 162 or official investigation;
- 163 (iii) retaliating against a person for testifying, providing evidence, or participating in any
- 164 legal proceedings or official investigation; or
- 165 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 166 (j) the victim is or has been a local, state, or federal public official, or a candidate for
- 167 public office, and the homicide is based on, is caused by, or is related to that official position, act,
- 168 capacity, or candidacy;
- 169 (k) the victim is or has been a peace officer, law enforcement officer, executive officer,
- 170 prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation
- 171 officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by,
- 172 or is related to that official position, and the actor knew, or reasonably should have known, that
- 173 the victim holds or has held that official position;
- 174 (l) the homicide was committed;
- 175 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar device
- 176 which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was
- 177 mailed or delivered; or
- 178 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;
- 179 (m) the homicide was committed during the act of unlawfully assuming control of any
- 180 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any
- 181 valuable consideration for the release of the public conveyance or any passenger, crew member,
- 182 or any other person aboard, or to direct the route or movement of the public conveyance or

183 otherwise exert control over the public conveyance;

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

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

187 or

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

191 (2) Aggravated murder is a capital felony.

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

195 (i) under the influence of extreme emotional distress for which there is a reasonable
196 explanation or excuse; or

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

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

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

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

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

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

207 (i) aggravated murder to murder; and

208 (ii) attempted aggravated murder to attempted murder.

209 Section 5. Section **76-6-106** is amended to read:

210 **76-6-106. Criminal mischief.**

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

212 (a) information and communication systems;

213 (b) financial and banking systems;

214 (c) transportation systems;

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

216 (e) sewage and water treatment systems;

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

218 enforcement response systems;

219 (g) public health systems; and

220 (h) other government operations and services.

221 [(+) (2) A person commits criminal mischief if the person:

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

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

225 (i) recklessly endangers:

226 (A) human life; or

227 (B) human health or safety; or

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

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

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

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

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

236 [(2) (3) (a) (i) A violation of Subsection [(+) (2)(a) is a third degree felony [~~of the third~~
237 ~~degree~~].

238 [(b) (ii) A violation of Subsection [(+) (2)(b)(i)(A) is a class A misdemeanor[~~, except that~~
239 ~~a~~].

240 [(iii) A violation of Subsection [(+) (2)(b)(i)(B) is a class B misdemeanor.

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

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

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

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

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

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

251 [~~(3)~~] (4) In determining the value of damages under this section, or for computer crimes
 252 under Section 76-6-703, the value of any item, computer, computer network, computer property,
 253 computer services, software, or data [~~shall include~~] includes the measurable value of the loss of
 254 use of the items and the measurable cost to replace or restore the items.

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

256 **76-6-1002. Damage to mail receptacle -- Penalties -- Greater offenses.**

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

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

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

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

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

265 Section 7. Section **76-9-105** is amended to read:

266 **76-9-105. Making a false alarm -- Penalties.**

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

272 (2) (a) [~~Giving~~] Making a false alarm relating to a weapon of mass destruction as defined
 273 in Section 76-10-401 is a second degree felony.

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

275 (3) In addition to any other penalty authorized by law, a court shall order any person

276 convicted of a felony violation of this section to reimburse any federal, state, or local unit of
277 government for all expenses incurred in responding to the violation, unless the court states on the
278 record the reasons why the reimbursement would be inappropriate.

279 Section 8. Section **76-10-306** is amended to read:

280 **76-10-306. Explosive, chemical, or incendiary device and parts -- Definitions --**
281 **Persons exempted -- Penalties.**

282 (1) As used in this section:

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

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

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

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

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

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

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

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

305 (iii) mechanical timers, mechanical triggers, chemical time delays, electronic time delays,
306 or commercially made or improvised items which, when used singly or in combination, may be

307 used in the construction of a timing delay mechanism, booby trap, or activating mechanism for any
308 explosive, chemical, or incendiary device.

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

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

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

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

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

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

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

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

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

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

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

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

335 (5) Any person who, under circumstances not amounting to a violation of Title 76, Chapter
336 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly removes or
337 causes to be removed or carries away any explosive, chemical, or incendiary device from the

338 premises where ~~said~~ the explosive, chemical, or incendiary device is kept by the lawful user,
339 vendor, transporter, or manufacturer without the consent or direction of the lawful possessor is
340 guilty of a second degree felony ~~[of the second degree]~~.

341 (6) Any person who, under circumstances not amounting to a violation of Title 76, Chapter
342 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly possesses any
343 explosive, chemical, or incendiary parts is guilty of a felony of the third degree.

344 Section 9. Section **76-10-401** is repealed and reenacted to read:

345 **Part 4. Weapons of Mass Destruction**

346 **76-10-401. Definitions.**

347 As used in this part:

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

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

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

355 (c) deleterious alteration of the environment.

356 (2) "Delivery system" means:

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

359 (b) any vector.

360 (3) "Hoax weapon of mass destruction" means any device or object that by its design,
361 construction, content, or characteristics appears to be or to contain, or is represented to be,

362 constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact,
363 an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction
364 which does not:

365 (a) meet the definition of a weapon of mass destruction; or

366 (b) actually contain or constitute a weapon, biological agent, toxin, vector, or delivery
367 system prohibited by this section.

368 (4) "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi,

369 or infectious substances, or a recombinant molecule, whatever its origin or method of production,
370 including:

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

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

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

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

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

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

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

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

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

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

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

393 **76-10-402. Manufacture, possession, sale, use, or attempted use of a weapon of mass**
394 **destruction prohibited -- Penalties.**

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

399 Section 11. Section **76-10-403** is enacted to read:

400 **76-10-403. Manufacture, possession, sale, use, or attempted use of a hoax weapon of**
401 **mass destruction prohibited -- Penalty.**

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

406 Section 12. Section **76-10-404** is enacted to read:

407 **76-10-404. Exemptions.**

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

414 Section 13. Section **76-10-405** is enacted to read:

415 **76-10-405. Reimbursement of government response expenses.**

416 In addition to any other penalty authorized by law, a court shall order any person convicted
417 of any violation of this part to reimburse any federal, state, or local unit of government for all
418 expenses incurred in responding to the violation, unless the court states on the record the reasons
419 why the reimbursement would be inappropriate.

420 Section 14. Section **76-10-1602** is amended to read:

421 **76-10-1602. Definitions.**

422 As used in this part:

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

426 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
427 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
428 have the same or similar purposes, results, participants, victims, or methods of commission, or
429 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
430 demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.

431 At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July
432 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this
433 part shall have occurred within five years of the commission of the next preceding act alleged as
434 part of the pattern.

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

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

442 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
443 Recording Practices Act;

444 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality Code,
445 Sections 19-1-101 through 19-7-109;

446 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose
447 of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, Wildlife Resources
448 Code of Utah, or Section 23-20-4;

449 (d) false claims for medical benefits, kickbacks, and any other act prohibited by False
450 Claims Act, Sections 26-20-1 through 26-20-12;

451 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal
452 Offenses;

453 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
454 Land Sales Practices Act;

455 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled
456 Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, or Title 58, Chapter
457 37c, Utah Controlled Substance Precursor Act;

458 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
459 Securities Act;

460 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah Procurement
461 Code;

- 462 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 463 (k) a terroristic threat [~~against life or property~~], Section 76-5-107;
- 464 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 465 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 466 (n) sexual exploitation of a minor, Section 76-5a-3;
- 467 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 468 (p) causing a catastrophe, Section 76-6-105;
- 469 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 470 (r) burglary of a vehicle, Section 76-6-204;
- 471 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 472 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 473 (u) theft, Section 76-6-404;
- 474 (v) theft by deception, Section 76-6-405;
- 475 (w) theft by extortion, Section 76-6-406;
- 476 (x) receiving stolen property, Section 76-6-408;
- 477 (y) theft of services, Section 76-6-409;
- 478 (z) forgery, Section 76-6-501;
- 479 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 480 (bb) deceptive business practices, Section 76-6-507;
- 481 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or criticism
- 482 of goods, Section 76-6-508;
- 483 (dd) bribery of a labor official, Section 76-6-509;
- 484 (ee) defrauding creditors, Section 76-6-511;
- 485 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 486 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 487 (hh) bribery or threat to influence contest, Section 76-6-514;
- 488 (ii) making a false credit report, Section 76-6-517;
- 489 (jj) criminal simulation, Section 76-6-518;
- 490 (kk) criminal usury, Section 76-6-520;
- 491 (ll) false or fraudulent insurance claim, Section 76-6-521;
- 492 (mm) computer crimes, Section 76-6-703;

- 493 (nn) sale of a child, Section 76-7-203;
- 494 (oo) bribery to influence official or political actions, Section 76-8-103;
- 495 (pp) threats to influence official or political action, Section 76-8-104;
- 496 (qq) receiving bribe or bribery by public servant, Section 76-8-105;
- 497 (rr) receiving bribe or bribery for endorsement of person as public servant, Section
- 498 76-8-106;
- 499 (ss) official misconduct, Sections 76-8-201 and 76-8-202;
- 500 (tt) obstruction of justice, Section 76-8-306;
- 501 (uu) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 502 (vv) false or inconsistent material statements, Section 76-8-502;
- 503 (ww) false or inconsistent statements, Section 76-8-503;
- 504 (xx) written false statements, Section 76-8-504;
- 505 (yy) tampering with a witness, retaliation against a witness or informant, or bribery,
- 506 Section 76-8-508;
- 507 (zz) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 508 (aaa) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
- 509 (bbb) intentionally or knowingly causing one animal to fight with another, Subsection
- 510 76-9-301(1)(f);
- 511 (ccc) possession, use, or removal of explosives, chemical, or incendiary devices or parts,
- 512 Section 76-10-306;
- 513 (ddd) delivery to common carrier, mailing, or placement on premises of an incendiary
- 514 device, Section 76-10-307;
- 515 (eee) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 516 (fff) unlawful marking of pistol or revolver, Section 76-10-521;
- 517 (ggg) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 518 (hhh) forging or counterfeiting trademarks, trade name, or trade device, Section
- 519 76-10-1002;
- 520 (iii) selling goods under counterfeited trademark, trade name, or trade devices, Section
- 521 76-10-1003;
- 522 (jjj) sales in containers bearing registered trademark of substituted articles, Section
- 523 76-10-1004;

524 (kkk) selling or dealing with article bearing registered trademark or service mark with
525 intent to defraud, Section 76-10-1006;
526 (lll) gambling, Section 76-10-1102;
527 (mmm) gambling fraud, Section 76-10-1103;
528 (nnn) gambling promotion, Section 76-10-1104;
529 (ooo) possessing a gambling device or record, Section 76-10-1105;
530 (ppp) confidence game, Section 76-10-1109;
531 (qqq) distributing pornographic material, Section 76-10-1204;
532 (rrr) inducing acceptance of pornographic material, Section 76-10-1205;
533 (sss) dealing in harmful material to a minor, Section 76-10-1206;
534 (ttt) distribution of pornographic films, Section 76-10-1222;
535 (uuu) indecent public displays, Section 76-10-1228;
536 (vvv) prostitution, Section 76-10-1302;
537 (www) aiding prostitution, Section 76-10-1304;
538 (xxx) exploiting prostitution, Section 76-10-1305;
539 (yyy) aggravated exploitation of prostitution, Section 76-10-1306;
540 (zzz) communications fraud, Section 76-10-1801;
541 (aaaa) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19,
542 Money Laundering and Currency Transaction Reporting Act;
543 (bbbb) any act prohibited by the criminal provisions of the laws governing taxation in this
544 state; and
545 (cccc) any act illegal under the laws of the United States and enumerated in Title 18,
546 Section 1961 (1)(B), (C), and (D) of the United States Code.

547 Section 15. Section **76-10-2601** is enacted to read:

548 **Part 26. Shafts and Wells - Safety**

549 **76-10-2601. Fencing of shafts and wells.**

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

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

553 Section 16. Section **77-23a-8** is amended to read:

554 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

555 (1) The attorney general of the state, any assistant attorney general specially designated
556 by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy
557 district attorney specially designated by the county attorney or by the district attorney, may
558 authorize an application to a judge of competent jurisdiction for an order for an interception of
559 wire, electronic, or oral communications by any law enforcement agency of the state, the federal
560 government or of any political subdivision of the state that is responsible for investigating the type
561 of offense for which the application is made.

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

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

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

570 (c) attempt, Section 76-4-101; conspiracy, Section 76-4-201; solicitation, Section
571 76-4-203; to commit any of the offenses enumerated above so long as the attempt, conspiracy or
572 solicitation offense is punishable by a term of imprisonment of more than one year;

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

575 (e) aggravated murder, Section 76-5-202; murder, Section 76-5-203; manslaughter, Section
576 76-5-205;

577 (f) kidnapping, Section 76-5-301; child kidnapping, Section 76-5-301.1; aggravated
578 kidnapping, Section 76-5-302;

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

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

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

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

585 (k) receiving stolen property offense punishable by a maximum term of imprisonment of

- 586 more than one year, Section 76-6-408;
- 587 (l) financial card transaction offenses punishable by a maximum term of imprisonment of
588 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
589 76-6-506.6;
- 590 (m) bribery of a labor official, Section 76-6-509;
- 591 (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- 592 (o) criminal simulation offenses punishable by a maximum term of imprisonment of more
593 than one year, Section 76-6-518;
- 594 (p) criminal usury, Section 76-6-520;
- 595 (q) false or fraudulent insurance claim offenses punishable by a maximum term of
596 imprisonment of more than one year, Section 76-6-521;
- 597 (r) violations of the Computer Crimes Act punishable by a maximum term of
598 imprisonment of more than one year, Section 76-6-703;
- 599 (s) bribery to influence official or political actions, Section 76-8-103;
- 600 (t) misusing public moneys, Section 76-8-402;
- 601 (u) tampering with a witness, retaliation against a witness or informant, or bribery,
602 communicating a threat, Section 76-8-508;
- 603 (v) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
- 604 (w) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 605 (x) obstruction of justice, Section 76-8-306;
- 606 (y) destruction of property to interfere with preparation for defense or war, Section
607 76-8-802;
- 608 (z) attempts to commit crimes of sabotage, Section 76-8-804;
- 609 (aa) conspiracy to commit crimes of sabotage, Section 76-8-805;
- 610 (bb) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 611 (cc) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 612 (dd) riot punishable by a maximum term of imprisonment of more than one year, Section
613 76-9-101;
- 614 (ee) dog fighting, training dogs for fighting, dog fighting exhibitions punishable by a
615 maximum term of imprisonment of more than one year, Section 76-9-301.1;
- 616 (ff) explosive, chemical, or incendiary device and parts, possession, use, or removal,

617 Section 76-10-306;
618 (gg) explosive, chemical, or incendiary device, delivery to a common carrier or mailing,
619 Section 76-10-307;
620 (hh) exploiting prostitution, Section 76-10-1305;
621 (ii) aggravated exploitation of prostitution, Section 76-10-1306;
622 (jj) bus hijacking, assault with intent to commit hijacking, dangerous weapon or firearm,
623 Section 76-10-1504;
624 (kk) discharging firearms and hurling missiles, Section 76-10-1505;
625 (ll) violations of the Pattern of Unlawful Activity Act and the offenses listed under the
626 definition of unlawful activity in the act, including the offenses not punishable by a maximum term
627 of imprisonment of more than one year when those offenses are investigated as predicates for the
628 offenses prohibited by the act, Section 76-10-1602;
629 (mm) communications fraud, Section 76-10-1801;
630 (nn) money laundering, Sections 76-10-1903 and 76-10-1904; or
631 (oo) reporting by financial institutions when the offense is punishable by a maximum term
632 of imprisonment of more than one year, Section 76-10-1906.

Legislative Review Note
as of 1-23-02 12:40 PM

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

Office of Legislative Research and General Counsel