

Representative Paul Ray proposes the following substitute bill:

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:



- 26 **63-2-106**, Utah Code Annotated 1953
- 27 **76-10-402**, Utah Code Annotated 1953
- 28 **76-10-403**, Utah Code Annotated 1953
- 29 **76-10-404**, Utah Code Annotated 1953
- 30 **76-10-405**, Utah Code Annotated 1953
- 31 **76-10-2601**, Utah Code Annotated 1953

32 REPEALS AND REENACTS:

33 **76-10-401**, as enacted by Chapter 196, Laws of Utah 1973

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

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

36 **63-2-106. Records of security measures.**

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

39 These records include:

- 40 (1) security plans;
- 41 (2) security codes and combinations, and passwords;
- 42 (3) passes and keys;
- 43 (4) security procedures; and
- 44 (5) building and public works designs, to the extent that the records or information relate
45 to the ongoing security measures of a public entity.

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

47 **76-3-203.3. Penalty for hate crimes -- Civil rights violation.**

48 As used in this section:

- 49 (1) "Primary offense" means those offenses provided in Subsection (5).
- 50 (2) A person who commits any primary offense with the intent to intimidate or terrorize
51 another person or with reason to believe that his action would intimidate or terrorize that person
52 is guilty of a third degree felony.
- 53 (3) "Intimidate or terrorize" means an act which causes the person to fear for his physical
54 safety or damages the property of that person or another. The act must be accompanied with the
55 intent to cause a person to fear to freely exercise or enjoy any right secured by the Constitution or
56 laws of the state or by the Constitution or laws of the United States.

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

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

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

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

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

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

70 (b) any misdemeanor property destruction offense under Sections 76-6-102, 76-6-104, and
71 76-8-714, and Subsection 76-6-106~~(1)(b)~~ (2)(b);

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

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

74 (e) any offense of obstructing government operations under Sections 76-8-301, 76-8-302,
75 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);

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

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

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

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

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

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

84 **76-5-107. Terroristic threat -- Penalty.**

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

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

90 (b) he acts with intent to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

118 **76-5-202. Aggravated murder.**

- 119 (1) Criminal homicide constitutes aggravated murder if the actor intentionally or
120 knowingly causes the death of another under any of the following circumstances:
- 121 (a) the homicide was committed by a person who is confined in a jail or other correctional
122 institution;
- 123 (b) the homicide was committed incident to one act, scheme, course of conduct, or
124 criminal episode during which two or more persons were killed, or during which the actor
125 attempted to kill one or more persons in addition to the victim who was killed;
- 126 (c) the actor knowingly created a great risk of death to a person other than the victim and
127 the actor;
- 128 (d) the homicide was committed while the actor was engaged in the commission of, or an
129 attempt to commit, or flight after committing or attempting to commit, aggravated robbery,
130 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon
131 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child
132 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,
133 arson, aggravated burglary, burglary, aggravated kidnapping, kidnapping, or child kidnapping;
- 134 (e) the homicide was committed for the purpose of avoiding or preventing an arrest of the
135 defendant or another by a peace officer acting under color of legal authority or for the purpose of
136 effecting the defendant's or another's escape from lawful custody;
- 137 (f) the homicide was committed for pecuniary or other personal gain;
- 138 (g) the defendant committed, or engaged or employed another person to commit the
139 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration
140 for commission of the homicide;
- 141 (h) the actor was previously convicted of:
- 142 (i) aggravated murder, Section 76-5-202;
- 143 (ii) murder, Section 76-5-203;
- 144 (iii) aggravated assault, Subsection 76-5-103(2);
- 145 (iv) mayhem, Section 76-5-105;
- 146 (v) attempted murder, Section 76-5-203;
- 147 (vi) kidnapping, Section 76-5-301;
- 148 (vii) child kidnapping, Section 76-5-301.1;
- 149 (viii) aggravated kidnapping, Section 76-5-302;

- 150 (ix) rape, Section 76-5-402;
- 151 (x) rape of a child, Section 76-5-402.1;
- 152 (xi) object rape, Section 76-5-402.2;
- 153 (xii) object rape of a child, Section 76-5-402.3;
- 154 (xiii) forcible sodomy, Section 76-5-403;
- 155 (xiv) sodomy on a child, Section 76-5-403.1;
- 156 (xv) aggravated sexual abuse of a child, Section 76-5-404.1;
- 157 (xvi) aggravated sexual assault, Section 76-5-405;
- 158 (xvii) aggravated arson, Section 76-6-103;
- 159 (xviii) aggravated burglary, Section 76-6-203;
- 160 (xix) aggravated robbery, Section 76-6-302; or
- 161 (xx) an offense committed in another jurisdiction which if committed in this state would
- 162 be a violation of a crime listed in this Subsection (1)(h);
- 163 (i) the homicide was committed for the purpose of:
- 164 (i) preventing a witness from testifying;
- 165 (ii) preventing a person from providing evidence or participating in any legal proceedings
- 166 or official investigation;
- 167 (iii) retaliating against a person for testifying, providing evidence, or participating in any
- 168 legal proceedings or official investigation; or
- 169 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 170 (j) the victim is or has been a local, state, or federal public official, or a candidate for
- 171 public office, and the homicide is based on, is caused by, or is related to that official position, act,
- 172 capacity, or candidacy;
- 173 (k) the victim is or has been a peace officer, law enforcement officer, executive officer,
- 174 prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation
- 175 officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by,
- 176 or is related to that official position, and the actor knew, or reasonably should have known, that
- 177 the victim holds or has held that official position;
- 178 (l) the homicide was committed;
- 179 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar device
- 180 which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was

181 mailed or delivered; or

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

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

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

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

191 or

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

195 (2) Aggravated murder is a capital felony.

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

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

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

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

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

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

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

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

211 (i) aggravated murder to murder; and

212 (ii) attempted aggravated murder to attempted murder.

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

214 **76-6-105. Causing a catastrophe -- Penalties.**

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

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

218 (b) explosion, fire, flood, avalanche, collapse of a building, [release of poison gas,
219 radioactive material,] or other harmful or destructive force or substance[~~, or by any other means,~~

220 causes a widespread injury or damage to persons or property is guilty of causing a catastrophe] that
221 is not a weapon of mass destruction.

222 (2) Causing a catastrophe is:

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

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

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

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

229 **76-6-106. Criminal mischief.**

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

231 (a) information and communication systems;

232 (b) financial and banking systems;

233 (c) transportation systems;

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

235 (e) sewage and water treatment systems;

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

238 (g) public health facilities and systems; and

239 (h) other government operations and services.

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

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

243 (b) intentionally and unlawfully tampers with the property of another and as a result:
 244 (i) recklessly endangers:
 245 (A) human life; or
 246 (B) human health or safety; or
 247 (ii) recklessly causes or threatens a substantial interruption or impairment of~~[:]~~ any critical
 248 infrastructure;
 249 ~~[(A) any public utility service; or]~~
 250 ~~[(B) any service or facility that provides communication with any public, private, or~~
 251 ~~volunteer entity whose purpose is to respond to fire, police, or medical emergencies;]~~
 252 (c) intentionally damages, defaces, or destroys the property of another; or
 253 (d) recklessly or willfully shoots or propels a missile or other object at or against a motor
 254 vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing.
 255 ~~[(2)]~~ (3) (a) (i) A violation of Subsection ~~[(1)]~~ (2)(a) is a third degree felony ~~[of the third~~
 256 ~~degree]~~.
 257 ~~[(b)]~~ (ii) A violation of Subsection ~~[(1)]~~ (2)(b)(i)(A) is a class A misdemeanor~~[-except that~~
 258 ~~a]~~.
 259 (iii) A violation of Subsection ~~[(1)]~~ (2)(b)(i)(B) is a class B misdemeanor.
 260 (iv) A violation of Subsection (2)(b)(ii) is a second degree felony.
 261 ~~[(c)]~~ (b) Any other violation of this section is a:
 262 (i) second degree felony ~~[of the second degree]~~ if the actor's conduct causes or is intended
 263 to cause pecuniary loss equal to or in excess of \$5,000 in value;
 264 (ii) third degree felony ~~[of the third degree]~~ if the actor's conduct causes or is intended to
 265 cause pecuniary loss equal to or in excess of \$1,000 but is less than \$5,000 in value;
 266 (iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary
 267 loss equal to or in excess of \$300 but is less than \$1,000 in value; and
 268 (iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary
 269 loss less than \$300 in value.
 270 ~~[(3)]~~ (4) In determining the value of damages under this section, or for computer crimes
 271 under Section 76-6-703, the value of any item, computer, computer network, computer property,
 272 computer services, software, or data ~~[shall include]~~ includes the measurable value of the loss of
 273 use of the items and the measurable cost to replace or restore the items.

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

275 **76-6-1002. Damage to mail receptacle -- Penalties -- Greater offenses.**

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

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

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

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

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

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

285 **76-8-419. Damaging highways or bridges.**

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

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

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

294 **76-9-105. Making a false alarm -- Penalties.**

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

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

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

303 (3) In addition to any other penalty authorized by law, a court shall order any person
304 convicted of a felony violation of this section to reimburse any federal, state, or local unit of

305 government for all expenses incurred in responding to the violation, unless the court states on the
306 record the reasons why the reimbursement would be inappropriate.

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

308 **76-9-202. Emergency reporting -- Interference -- False report.**

309 (1) As used in this section:

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

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

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

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

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

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

325 [(2)] (3) (a) A violation of Subsection (1)(a) or (b) is a class C misdemeanor.

326 (b) A violation of Subsection (1)(c) is a class B misdemeanor, except as provided under
327 Subsection (3)(c).

328 (c) A violation of Subsection (1)(c) is a second degree felony if the report is regarding a
329 weapon of mass destruction, as defined in Section 76-10-401.

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

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

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

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

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

341 **76-10-204. Damaging bridge, dam, canal or other water-related structure.**

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

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

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

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

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

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

356 **76-10-306. Explosive, chemical, or incendiary device and parts -- Definitions --**
357 **Persons exempted -- Penalties.**

358 (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

411 (5) Any person who, under circumstances not amounting to a violation of Title 76, Chapter
412 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly removes or
413 causes to be removed or carries away any explosive, chemical, or incendiary device from the
414 premises where [~~said~~] the explosive, chemical, or incendiary device is kept by the lawful user,
415 vendor, transporter, or manufacturer without the consent or direction of the lawful possessor is
416 guilty of a second degree felony [~~of the second degree~~].

417 (6) Any person who, under circumstances not amounting to a violation of Title 76, Chapter
418 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly possesses any
419 explosive, chemical, or incendiary parts is guilty of a felony of the third degree.

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

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

422 **76-10-401. Definitions.**

423 As used in this part:

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

428 (a) death, disease, or other biological malfunction in a human, an animal, a plant, or

429 another living organism;

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

431 (c) deleterious alteration of the environment.

432 (2) "Delivery system" means:

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

435 (b) any vector.

436 (3) "Hoax weapon of mass destruction" means any device or object that by its design,

437 construction, content, or characteristics appears to be or to contain, or is represented to be,

438 constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact,

439 an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction

440 which does not:

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

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

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

445 or infectious substances, or a recombinant molecule, whatever its origin or method of production,

446 including:

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

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

451 (5) "Vector" means a living organism, or molecule, including a recombinant molecule, or

452 biological product that may be engineered as a result of biotechnology, capable of carrying a

453 biological agent or toxin to a host.

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

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

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

459 precursors;

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

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

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

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

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

469 **76-10-402. Manufacture, possession, sale, use, or attempted use of a weapon of mass**
470 **destruction prohibited -- Penalties.**

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

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

477 **76-10-403. Manufacture, possession, sale, use, or attempted use of a hoax weapon of**
478 **mass destruction prohibited -- Penalty.**

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

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

485 **76-10-404. Exemptions.**

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

491 law.

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

493 **76-10-405. Reimbursement of government response expenses.**

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

498 Section 18. Section **76-10-1602** is amended to read:

499 **76-10-1602. Definitions.**

500 As used in this part:

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

504 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
505 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
506 have the same or similar purposes, results, participants, victims, or methods of commission, or
507 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
508 demonstrate continuing unlawful conduct and be related either to each other or to the enterprise.
509 At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July
510 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this
511 part shall have occurred within five years of the commission of the next preceding act alleged as
512 part of the pattern.

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

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

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

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

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

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

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

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

533 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled
534 Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, or Title 58, Chapter
535 37c, Utah Controlled Substance Precursor Act;

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

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

540 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

541 (k) a terroristic threat [~~against life or property~~], Section 76-5-107;

542 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

543 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

544 (n) sexual exploitation of a minor, Section 76-5a-3;

545 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

546 (p) causing a catastrophe, Section 76-6-105;

547 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

548 (r) burglary of a vehicle, Section 76-6-204;

549 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

550 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;

551 (u) theft, Section 76-6-404;

552 (v) theft by deception, Section 76-6-405;

- 553 (w) theft by extortion, Section 76-6-406;
- 554 (x) receiving stolen property, Section 76-6-408;
- 555 (y) theft of services, Section 76-6-409;
- 556 (z) forgery, Section 76-6-501;
- 557 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 558 (bb) deceptive business practices, Section 76-6-507;
- 559 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or criticism
560 of goods, Section 76-6-508;
- 561 (dd) bribery of a labor official, Section 76-6-509;
- 562 (ee) defrauding creditors, Section 76-6-511;
- 563 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 564 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 565 (hh) bribery or threat to influence contest, Section 76-6-514;
- 566 (ii) making a false credit report, Section 76-6-517;
- 567 (jj) criminal simulation, Section 76-6-518;
- 568 (kk) criminal usury, Section 76-6-520;
- 569 (ll) false or fraudulent insurance claim, Section 76-6-521;
- 570 (mm) computer crimes, Section 76-6-703;
- 571 (nn) sale of a child, Section 76-7-203;
- 572 (oo) bribery to influence official or political actions, Section 76-8-103;
- 573 (pp) threats to influence official or political action, Section 76-8-104;
- 574 (qq) receiving bribe or bribery by public servant, Section 76-8-105;
- 575 (rr) receiving bribe or bribery for endorsement of person as public servant, Section
576 76-8-106;
- 577 (ss) official misconduct, Sections 76-8-201 and 76-8-202;
- 578 (tt) obstruction of justice, Section 76-8-306;
- 579 (uu) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 580 (vv) false or inconsistent material statements, Section 76-8-502;
- 581 (ww) false or inconsistent statements, Section 76-8-503;
- 582 (xx) written false statements, Section 76-8-504;
- 583 (yy) tampering with a witness, retaliation against a witness or informant, or bribery,

584 Section 76-8-508;
585 (zz) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
586 (aaa) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
587 (bbb) intentionally or knowingly causing one animal to fight with another, Subsection
588 76-9-301(1)(f);
589 (ccc) possession, use, or removal of explosives, chemical, or incendiary devices or parts,
590 Section 76-10-306;
591 (ddd) delivery to common carrier, mailing, or placement on premises of an incendiary
592 device, Section 76-10-307;
593 (eee) possession of a deadly weapon with intent to assault, Section 76-10-507;
594 (fff) unlawful marking of pistol or revolver, Section 76-10-521;
595 (ggg) alteration of number or mark on pistol or revolver, Section 76-10-522;
596 (hhh) forging or counterfeiting trademarks, trade name, or trade device, Section
597 76-10-1002;
598 (iii) selling goods under counterfeited trademark, trade name, or trade devices, Section
599 76-10-1003;
600 (jjj) sales in containers bearing registered trademark of substituted articles, Section
601 76-10-1004;
602 (kkk) selling or dealing with article bearing registered trademark or service mark with
603 intent to defraud, Section 76-10-1006;
604 (lll) gambling, Section 76-10-1102;
605 (mmm) gambling fraud, Section 76-10-1103;
606 (nnn) gambling promotion, Section 76-10-1104;
607 (ooo) possessing a gambling device or record, Section 76-10-1105;
608 (ppp) confidence game, Section 76-10-1109;
609 (qqq) distributing pornographic material, Section 76-10-1204;
610 (rrr) inducing acceptance of pornographic material, Section 76-10-1205;
611 (sss) dealing in harmful material to a minor, Section 76-10-1206;
612 (ttt) distribution of pornographic films, Section 76-10-1222;
613 (uuu) indecent public displays, Section 76-10-1228;
614 (vvv) prostitution, Section 76-10-1302;

615 (www) aiding prostitution, Section 76-10-1304;
 616 (xxx) exploiting prostitution, Section 76-10-1305;
 617 (yyy) aggravated exploitation of prostitution, Section 76-10-1306;
 618 (zzz) communications fraud, Section 76-10-1801;
 619 (aaaa) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19,
 620 Money Laundering and Currency Transaction Reporting Act;
 621 (bbbb) any act prohibited by the criminal provisions of the laws governing taxation in this
 622 state; and
 623 (cccc) any act illegal under the laws of the United States and enumerated in Title 18,
 624 Section 1961 (1)(B), (C), and (D) of the United States Code.

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

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

627 **76-10-2601. Fencing of shafts and wells.**

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

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

631 Section 20. Section **77-23a-8** is amended to read:

632 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

633 (1) The attorney general of the state, any assistant attorney general specially designated
 634 by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy
 635 district attorney specially designated by the county attorney or by the district attorney, may
 636 authorize an application to a judge of competent jurisdiction for an order for an interception of
 637 wire, electronic, or oral communications by any law enforcement agency of the state, the federal
 638 government or of any political subdivision of the state that is responsible for investigating the type
 639 of offense for which the application is made.

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

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

- 646 (b) any act prohibited by the criminal provisions of the Utah Uniform Securities Act and
647 punishable by a term of imprisonment of more than one year, Title 61, Chapter 1;
- 648 (c) attempt, Section 76-4-101; conspiracy, Section 76-4-201; solicitation, Section
649 76-4-203; to commit any of the offenses enumerated above so long as the attempt, conspiracy or
650 solicitation offense is punishable by a term of imprisonment of more than one year;
- 651 (d) terroristic threat [~~against life or property~~] offense punishable by a maximum term of
652 imprisonment of more than one year, Section 76-5-107;
- 653 (e) aggravated murder, Section 76-5-202; murder, Section 76-5-203; manslaughter, Section
654 76-5-205;
- 655 (f) kidnapping, Section 76-5-301; child kidnapping, Section 76-5-301.1; aggravated
656 kidnapping, Section 76-5-302;
- 657 (g) arson, Section 76-6-102; aggravated arson, Section 76-6-103;
- 658 (h) burglary, Section 76-6-202; aggravated burglary, Section 76-6-203;
- 659 (i) robbery, Section 76-6-301; aggravated robbery, Section 76-6-302;
- 660 (j) theft, Section 76-6-404; theft by deception, Section 76-6-405; theft by extortion,
661 Section 76-6-406; when the theft, theft by deception or theft by extortion, is punishable by a
662 maximum term of imprisonment of more than one year;
- 663 (k) receiving stolen property offense punishable by a maximum term of imprisonment of
664 more than one year, Section 76-6-408;
- 665 (l) financial card transaction offenses punishable by a maximum term of imprisonment of
666 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
667 76-6-506.6;
- 668 (m) bribery of a labor official, Section 76-6-509;
- 669 (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- 670 (o) criminal simulation offenses punishable by a maximum term of imprisonment of more
671 than one year, Section 76-6-518;
- 672 (p) criminal usury, Section 76-6-520;
- 673 (q) false or fraudulent insurance claim offenses punishable by a maximum term of
674 imprisonment of more than one year, Section 76-6-521;
- 675 (r) violations of the Computer Crimes Act punishable by a maximum term of
676 imprisonment of more than one year, Section 76-6-703;

- 677 (s) bribery to influence official or political actions, Section 76-8-103;
- 678 (t) misusing public moneys, Section 76-8-402;
- 679 (u) tampering with a witness, retaliation against a witness or informant, or bribery,
680 communicating a threat, Section 76-8-508;
- 681 (v) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
- 682 (w) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 683 (x) obstruction of justice, Section 76-8-306;
- 684 (y) destruction of property to interfere with preparation for defense or war, Section
685 76-8-802;
- 686 (z) attempts to commit crimes of sabotage, Section 76-8-804;
- 687 (aa) conspiracy to commit crimes of sabotage, Section 76-8-805;
- 688 (bb) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 689 (cc) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 690 (dd) riot punishable by a maximum term of imprisonment of more than one year, Section
691 76-9-101;
- 692 (ee) dog fighting, training dogs for fighting, dog fighting exhibitions punishable by a
693 maximum term of imprisonment of more than one year, Section 76-9-301.1;
- 694 (ff) explosive, chemical, or incendiary device and parts, possession, use, or removal,
695 Section 76-10-306;
- 696 (gg) explosive, chemical, or incendiary device, delivery to a common carrier or mailing,
697 Section 76-10-307;
- 698 (hh) exploiting prostitution, Section 76-10-1305;
- 699 (ii) aggravated exploitation of prostitution, Section 76-10-1306;
- 700 (jj) bus hijacking, assault with intent to commit hijacking, dangerous weapon or firearm,
701 Section 76-10-1504;
- 702 (kk) discharging firearms and hurling missiles, Section 76-10-1505;
- 703 (ll) violations of the Pattern of Unlawful Activity Act and the offenses listed under the
704 definition of unlawful activity in the act, including the offenses not punishable by a maximum term
705 of imprisonment of more than one year when those offenses are investigated as predicates for the
706 offenses prohibited by the act, Section 76-10-1602;
- 707 (mm) communications fraud, Section 76-10-1801;

708 (mn) money laundering, Sections 76-10-1903 and 76-10-1904; or
709 (oo) reporting by financial institutions when the offense is punishable by a maximum term
710 of imprisonment of more than one year, Section 76-10-1906.