

**SENTENCING FOR USE OF DANGEROUS
WEAPON**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Gregory H. Hughes

This act modifies the Criminal Code by removing the dangerous weapon enhancement from the general felony sentencing statute and placing it in a separate section. The language is also amended to facilitate application of the enhancement in felony cases.

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

AMENDS:

23-20-4, as last amended by Chapter 265, Laws of Utah 1996

76-3-203, as last amended by Chapter 214, Laws of Utah 2000

76-3-203.2, as last amended by Chapter 214, Laws of Utah 2000

ENACTS:

76-3-203.8, Utah Code Annotated 1953

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

Section 1. Section **23-20-4** is amended to read:

23-20-4. Wanton destruction of protected wildlife -- Penalties.

(1) A person is guilty of wanton destruction of protected wildlife if he:

(a) commits an act in violation of Section 23-13-4, 23-13-5, 23-13-13, 23-15-6 through 23-15-9, 23-16-5, or Subsection 23-20-3(1);

(b) captures, injures, or destroys protected wildlife; and

(c) (i) does so with intentional, knowing, or reckless conduct as defined in Section 76-2-103;

(ii) intentionally abandons protected wildlife or a carcass;

(iii) commits the offense at night with the use of a weapon;

(iv) is under a court or division revocation of a license, tag, permit, or certificate of



28 registration; or

29 (v) acts for pecuniary gain.

30 (2) Subsection (1) does not apply to actions taken which are in accordance with the
31 following:

32 (a) Title 4, Chapter 14, Utah Pesticide Control Act;

33 (b) Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act; or

34 (c) Section 23-16-3.

35 (3) Wanton destruction of wildlife is punishable:

36 (a) as a third degree felony if:

37 (i) the aggregate value of the protected wildlife determined by the values in Subsection
38 ~~[23-20-4]~~(4) is more than \$500; or

39 (ii) a trophy animal was captured, injured, or destroyed;

40 (b) as a class A misdemeanor if the aggregate value of the protected wildlife, other than
41 any trophy animal, determined by the values established in Subsection ~~h~~ ~~[23-20-4]~~ ~~h~~ (4) is more than
42 \$250, but does not exceed \$500; and

43 (c) as a class B misdemeanor if the aggregate value of the protected wildlife
44 determined by the values established in Subsection ~~[23-20-4]~~(4) is \$250 or less.

45 (4) Regardless of the restitution amounts imposed under Subsection 23-20-4.5(2), the
46 following values shall be assigned to protected wildlife for the purpose of determining the
47 offense for wanton destruction of wildlife:

48 (a) \$1,000 per animal for:

49 (i) bison;

50 (ii) bighorn sheep;

51 (iii) rocky mountain goat;

52 (iv) moose;

53 (v) bear; or

54 (vi) endangered species;

55 (b) \$750 per animal for:

56 (i) elk; or

57 (ii) threatened species;

58 (c) \$500 per animal for:

- 59 (i) cougar;
- 60 (ii) golden eagle;
- 61 (iii) river otter; or
- 62 (iv) gila monster;
- 63 (d) \$400 per animal for:
- 64 (i) pronghorn antelope; or
- 65 (ii) deer;
- 66 (e) \$350 per animal for bobcat;
- 67 (f) \$100 per animal for:
- 68 (i) swan;
- 69 (ii) sandhill crane;
- 70 (iii) turkey;
- 71 (iv) pelican;
- 72 (v) loon;
- 73 (vi) egrets;
- 74 (vii) herons;
- 75 (viii) raptors, except those that are threatened or endangered;
- 76 (ix) Utah milk snake; or
- 77 (x) Utah mountain king snake;
- 78 (g) \$35 per animal for furbearers, except:
- 79 (i) bobcat;
- 80 (ii) river otter; and
- 81 (iii) threatened or endangered species;
- 82 (h) \$15 per animal for game birds, except:
- 83 (i) turkey;
- 84 (ii) swan; and
- 85 (iii) sandhill crane;
- 86 (i) \$10 per animal for game fish;
- 87 (j) \$8 per pound dry weight of processed brine shrimp including eggs; and
- 88 (k) \$5 per animal for protected wildlife not listed.
- 89 (5) For purposes of sentencing for a wildlife violation, a person who has been

90 convicted of a third degree felony under Subsection (3)(a) is not subject to the mandatory
91 sentencing requirements prescribed in Subsection ~~[76-3-203(4)]~~ 76-3-203.8(3).

92 (6) As part of any sentence imposed, the court shall impose a sentence of incarceration
93 of not less than 20 consecutive days for any person convicted of a third degree felony under
94 Subsection (3)(a)(ii) who captured, injured, or destroyed a trophy animal for pecuniary gain.

95 (7) If a person has already been convicted of a third degree felony under Subsection
96 (3)(a)(ii) once, each separate further offense under Subsection (3)(a)(ii) is punishable by, as
97 part of any sentence imposed, a sentence of incarceration of not less than 20 consecutive days.

98 (8) The court may not sentence a person subject to Subsection (6) or (7) to less than 20
99 consecutive days of incarceration or suspend the imposition of the sentence unless the court
100 finds mitigating circumstances justifying lesser punishment and makes that finding a part of the
101 court record.

102 Section 2. Section **76-3-203** is amended to read:

103 **76-3-203. Felony conviction -- Indeterminate term of imprisonment.**

104 ~~[(1) As used in this section, "dangerous weapon" has the same definition as in Section~~
105 ~~76-1-601.]~~

106 ~~[(2)]~~ A person who has been convicted of a felony may be sentenced to imprisonment
107 for an indeterminate term as follows:

108 ~~[(a)]~~ (1) In the case of a felony of the first degree, unless the statute provides otherwise,
109 for a term of not less than five years~~[-, unless otherwise specifically provided by law,]~~ and
110 which may be for life~~[-, but if the trier of fact finds beyond a reasonable doubt that a dangerous~~
111 ~~weapon was used in the commission or furtherance of the felony, the court shall sentence the~~
112 ~~person convicted for a term of not less than six years, and which may be for life].~~

113 ~~[(b)]~~ (2) In the case of a felony of the second degree, unless the statute provides
114 otherwise, for a term of not less than one year nor more than 15 years~~[-, but if the trier of fact~~
115 ~~finds beyond a reasonable doubt that a dangerous weapon was used in the commission or~~
116 ~~furtherance of the felony, the court shall sentence the person convicted for a term of not less~~
117 ~~than two years nor more than 15 years; and the court may sentence the person convicted for a~~
118 ~~term of not less than two years nor more than 20 years].~~

119 ~~[(c)]~~ (3) In the case of a felony of the third degree, unless the statute provides
120 otherwise, for a term not to exceed five years~~[-, but if the trier of fact finds beyond a reasonable~~

121 ~~doubt that a dangerous weapon was used in the commission or furtherance of the felony, the~~
122 ~~court shall sentence the person convicted for a term of not less than one year nor more than five~~
123 ~~years; and the court may sentence the person convicted for a term of not less than one year nor~~
124 ~~more than ten years].~~

125 ~~[(d) If the trier of fact finds beyond a reasonable doubt that any person who has been~~
126 ~~sentenced to a term of imprisonment for a felony in which a dangerous weapon was used in the~~
127 ~~commission of or furtherance of the felony and is subsequently convicted of another felony~~
128 ~~when a dangerous weapon was used in the commission of or furtherance of the felony shall, in~~
129 ~~addition to any other sentence imposed, be sentenced for an indeterminate term to be not less~~
130 ~~than five nor more than ten years to run consecutively and not concurrently.]~~

131 Section 3. Section **76-3-203.2** is amended to read:

132 **76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or**
133 **about school premises -- Enhanced penalties.**

134 (1) (a) As used in this section and Section 76-10-505.5, "on or about school premises"
135 means any of the following:

136 (i) in a public or private elementary, secondary, or on the grounds of any of those
137 schools;

138 (ii) in a public or private vocational school or postsecondary institution or on the
139 grounds of any of those schools or institutions;

140 (iii) in those portions of any building, park, stadium, or other structure or grounds
141 which are, at the time of the act, being used for an activity sponsored by or through a school or
142 institution under Subsections (1)(a)(i) and (ii);

143 (iv) in or on the grounds of a preschool or child-care facility; and

144 (v) within 1,000 feet of any structure, facility, or grounds included in Subsections
145 (1)(a)(i), (ii), (iii), and (iv).

146 (b) As used in this section:

147 (i) "Dangerous weapon" has the same definition as in Section 76-1-601.

148 (ii) "Educator" means any person who is employed by a public school district and who
149 is required to hold a certificate issued by the State Board of Education in order to perform
150 duties of employment.

151 (iii) "Within the course of employment" means that an educator is providing services or

152 engaging in conduct required by the educator's employer to perform the duties of employment.

153 (2) Any person who, on or about school premises, commits any offense and uses or
154 threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the
155 offense is subject to an enhanced degree of offense as provided in Subsection (4).

156 (3) (a) Any person who commits an offense against an educator when the educator is
157 acting within the course of employment is subject to an enhanced degree of offense as provided
158 in Subsection (4).

159 (b) As used in Subsection (3)(a), "offense" means:

160 (i) an offense under Title 76, Chapter 5, Offenses Against The Person; and

161 (ii) an offense under Title 76, Chapter 6, Part 3, Robbery.

162 (4) If the trier of fact finds beyond a reasonable doubt that the defendant, while on or
163 about school premises, commits any offense and in the commission of the offense uses or
164 threatens to use a dangerous weapon, or that the defendant committed an offense against an
165 educator when the educator was acting within the course of his employment, the enhanced
166 penalty for a:

167 (a) class B misdemeanor is a class A misdemeanor;

168 (b) class A misdemeanor is a third degree felony;

169 (c) third degree felony is a second degree felony; or

170 (d) second degree felony is a first degree felony.

171 (5) The enhanced penalty for a first degree felony offense of a convicted person:

172 (a) is imprisonment for a term of not less than five years and which may be for life, and
173 imposition or execution of the sentence may not be suspended unless the court finds that the
174 interests of justice would be best served and states the specific circumstances justifying the
175 disposition on the record; and

176 (b) is subject also to the dangerous weapon enhancement provided in Section
177 ~~[76-3-203]~~ 76-3-203.8 except for an offense committed under Subsection (3) that does not
178 involve a firearm.

179 (6) The prosecuting attorney, or grand jury if an indictment is returned, shall provide
180 notice upon the information or indictment that the defendant is subject to the enhanced degree
181 of offense or penalty under Subsection (4) or (5).

182 (7) In cases where an offense is enhanced pursuant to Subsection (4)(a), (b), (c), or (d),

183 or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve
184 a firearm, the convicted person is not subject to the dangerous weapon enhancement in Section
185 ~~[76-3-203]~~ 76-3-203.8.

186 Section 4. Section **76-3-203.8** is enacted to read:

187 **76-3-203.8. Increase of sentence if dangerous weapon used.**

188 (1) As used in this section, "dangerous weapon" has the same definition as in Section
189 76-1-601.

190 (2) If the trier of fact finds beyond a reasonable doubt that a dangerous weapon was
191 used in the commission or furtherance of a felony, the court:

192 (a) (i) shall increase by one year the minimum term of the sentence applicable by law;

193 and

194 (ii) if the minimum term applicable by law is zero, shall set the minimum term as one
195 year; and

196 (b) may increase by five years the maximum sentence applicable by law in the case of a
197 felony of the second or third degree.

198 (3) If the trier of fact finds beyond a reasonable doubt that a person has been sentenced
199 to a term of imprisonment for a felony in which a dangerous weapon was used in the
200 commission of or furtherance of the felony and that person is subsequently convicted of
201 another felony in which a dangerous weapon was used in the commission of or furtherance of
202 the felony, the court shall, in addition to any other sentence imposed including those in
203 Subsection (2), impose an indeterminate prison term to be not less than five nor more than ten
204 years to run consecutively and not concurrently.

Legislative Review Note
as of 1-21-03 10:02 AM

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

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0209

Sentencing for Use of Dangerous Weapon

29-Jan-03

11:14 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst