

**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 registration; or

(v) acts for pecuniary gain.

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

- (a) Title 4, Chapter 14, Utah Pesticide Control Act;
- (b) Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act; or
- (c) Section 23-16-3.

(3) Wanton destruction of wildlife is punishable:

- (a) as a third degree felony if:
  - (i) the aggregate value of the protected wildlife determined by the values in Subsection ~~[23-20-4]~~(4) is more than \$500; or
  - (ii) a trophy animal was captured, injured, or destroyed;
- (b) as a class A misdemeanor if the aggregate value of the protected wildlife, other than any trophy animal, determined by the values established in Subsection ~~[23-20-4]~~(4) is more than \$250, but does not exceed \$500; and
- (c) as a class B misdemeanor if the aggregate value of the protected wildlife determined by the values established in Subsection ~~[23-20-4]~~(4) is \$250 or less.

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

- (a) \$1,000 per animal for:
  - (i) bison;
  - (ii) bighorn sheep;
  - (iii) rocky mountain goat;
  - (iv) moose;
  - (v) bear; or
  - (vi) endangered species;
- (b) \$750 per animal for:
  - (i) elk; or
  - (ii) threatened species;

- (c) \$500 per animal for:
  - (i) cougar;
  - (ii) golden eagle;
  - (iii) river otter; or
  - (iv) gila monster;
- (d) \$400 per animal for:
  - (i) pronghorn antelope; or
  - (ii) deer;
- (e) \$350 per animal for bobcat;
- (f) \$100 per animal for:
  - (i) swan;
  - (ii) sandhill crane;
  - (iii) turkey;
  - (iv) pelican;
  - (v) loon;
  - (vi) egrets;
  - (vii) herons;
  - (viii) raptors, except those that are threatened or endangered;
  - (ix) Utah milk snake; or
  - (x) Utah mountain king snake;
- (g) \$35 per animal for furbearers, except:
  - (i) bobcat;
  - (ii) river otter; and
  - (iii) threatened or endangered species;
- (h) \$15 per animal for game birds, except:
  - (i) turkey;
  - (ii) swan; and
  - (iii) sandhill crane;

- (i) \$10 per animal for game fish;
- (j) \$8 per pound dry weight of processed brine shrimp including eggs; and
- (k) \$5 per animal for protected wildlife not listed.

(5) For purposes of sentencing for a wildlife violation, a person who has been convicted of a third degree felony under Subsection (3)(a) is not subject to the mandatory sentencing requirements prescribed in Subsection ~~[76-3-203(4)]~~ 76-3-203.8(3).

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

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

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

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

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

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

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

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

~~[(b)]~~ (2) In the case of a felony of the second degree, unless the statute provides

~~otherwise, for a term of not less than one year nor more than 15 years[, but if the trier of fact finds beyond a reasonable doubt that a dangerous weapon was used in the commission or furtherance of the felony, the court shall sentence the person convicted for a term of not less than two years nor more than 15 years; and the court may sentence the person convicted for a term of not less than two years nor more than 20 years].~~

~~[(c)] (3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years[, but if the trier of fact finds beyond a reasonable doubt that a dangerous weapon was used in the commission or furtherance of the felony, the court shall sentence the person convicted for a term of not less than one year nor more than five years; and the court may sentence the person convicted for a term of not less than one year nor more than ten years].~~

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

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

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

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

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

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

(iii) in those portions of any building, park, stadium, or other structure or grounds which are, at the time of the act, being used for an activity sponsored by or through a school or

institution under Subsections (1)(a)(i) and (ii);

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

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

(b) As used in this section:

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

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

(iii) "Within the course of employment" means that an educator is providing services or engaging in conduct required by the educator's employer to perform the duties of employment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) In cases where an offense is enhanced pursuant to Subsection (4)(a), (b), (c), or (d), or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve a firearm, the convicted person is not subject to the dangerous weapon enhancement in Section ~~[76-3-203]~~ 76-3-203.8.

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

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

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

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

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

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

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

(3) If the trier of fact finds beyond a reasonable doubt that a person has been sentenced to

a term of imprisonment for a felony in which a dangerous weapon was used in the commission of or furtherance of the felony and that person is subsequently convicted of another felony in which a dangerous weapon was used in the commission of or furtherance of the felony, the court shall, in addition to any other sentence imposed including those in Subsection (2), impose an indeterminate prison term to be not less than five nor more than ten years to run consecutively and not concurrently.