

**OBSTRUCTION OF JUSTICE AND
TAMPERING WITH EVIDENCE**

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: David L. Thomas

This act modifies the Criminal Code regarding the administration of government by amending specified penalties for certain offenses involving the obstruction of justice.

This act also creates the offense of tampering with a witness and defines the elements and penalties of this offense.

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

AMENDS:

76-8-306, as repealed and reenacted by Chapter 307, Laws of Utah 2001

ENACTS:

76-8-510.5, Utah Code Annotated 1953

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

Section 1. Section **76-8-306** is amended to read:

76-8-306. Obstruction of justice -- Elements -- Penalties -- Exceptions.

(1) An actor commits obstruction of justice if the actor, with intent to hinder, delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of any person regarding conduct that constitutes a criminal offense:

- (a) provides any person with a weapon;
- (b) prevents by force, intimidation, or deception, any person from performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any person;
- (c) alters, destroys, conceals, or removes any item or other thing;
- (d) makes, presents, or uses any item or thing known by the actor to be false;
- (e) harbors or conceals a person;
- (f) provides a person with transportation, disguise, or other means of avoiding discovery or apprehension;

(g) warns any person of impending discovery or apprehension;

(h) conceals information that is not privileged and that concerns the offense, after a judge or magistrate has ordered the actor to provide the information; or

(i) provides false information regarding a suspect, a witness, the conduct constituting an offense, or any other material aspect of the investigation.

(2) (a) As used in this section, "conduct that constitutes a criminal offense" means conduct that would be punishable as a crime and is separate from a violation of this section, and includes:

(i) any violation of a criminal statute or ordinance of this state, its political subdivisions, any other state, or any district, possession, or territory of the United States; and

(ii) conduct committed by a juvenile which would be a crime if committed by an adult.

(b) A violation of a criminal statute that is committed in another state, or any district, possession, or territory of the United States, is a:

(i) capital felony if the penalty provided includes death or life imprisonment without parole;

(ii) a first degree felony if the penalty provided includes life imprisonment with parole or a maximum term of imprisonment exceeding 15 years;

(iii) a second degree felony if the penalty provided exceeds five years;

(iv) a third degree felony if the penalty provided includes imprisonment for any period exceeding one year; and

(v) a misdemeanor if the penalty provided includes imprisonment for any period of one year or less.

(3) The penalties for obstruction of justice are:

(a) a second degree felony if the conduct which constitutes an offense would be a capital felony or first degree felony;

(b) a third degree felony if:

(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection (1)(b), (c), (d), (e), or (f); [σ]

(ii) the conduct that constitutes an offense would be any offense other than a capital or first degree felony and the actor violates Subsection (1)(a); or

~~[(c) a class A misdemeanor if:]~~

~~[(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection (1)(g), (h), or (i); or]~~

~~[(ii) the conduct that constitutes an offense would be a misdemeanor and the actor violates Subsection (1)(b); or]~~

~~[(d) a class B misdemeanor if the conduct that constitutes the offense is a misdemeanor and the actor violates Subsection (1)(c), (d), (e), (f), (g), (h), or (i).]~~

(iii) the obstruction of justice is presented or committed before a court of law; or

(c) a class A misdemeanor for any violation of this section that is not enumerated under Subsection (3)(a) or (b).

(4) It is not a defense that the actor was unaware of the level of penalty for the conduct constituting an offense.

(5) Subsection (1)(e) does not apply to harboring a youth offender, which is governed by Section 62A-7-106.

(6) Subsection (1)(b) does not apply to:

(a) tampering with a juror, which is governed by Section 76-8-508.5;

(b) influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole, which is governed by Section 76-8-508;

(c) tampering with a witness, which is governed by Section 76-8-508; or

(d) extortion or bribery to dismiss a criminal proceeding, which is governed by Section 76-8-509.

(7) Notwithstanding Subsection (1), (2), or (3), an actor commits a third degree felony if the actor harbors or conceals an offender who has:

(a) absconded from a facility or from supervision as those offenses are defined in Section 76-8-309.5; or

(b) escaped from official custody as defined in Section 76-8-309.

Section 2. Section **76-8-510.5** is enacted to read:

76-8-510.5. Tampering with evidence -- Elements -- Penalties.

(1) A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, the actor knowingly or intentionally:

(a) alters, destroys, conceals, or removes any thing or item with the purpose of impairing the veracity or availability of the thing or item in the proceeding or investigation; or

(b) makes, presents, or uses any thing or item which he knows to be false with the purpose of deceiving a public servant who is or may be engaged in the proceeding or investigation.

(2) Subsection (1) does not apply to any offense that amounts to a violation of Section 76-8-306.

(3) (a) Tampering with evidence is a third degree felony if the offense is committed in an official proceeding.

(b) Any violation of this section except under Subsection (3)(a) is a class A misdemeanor.