

ESCAPE AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Thomas V. Hatch

LONG TITLE

General Description:

This bill amends the criminal responsibility imposed upon specified persons who assist a person in escaping and makes technical amendments.

Highlighted Provisions:

This bill:

- ▶ provides that a person is guilty of the second degree felony of escape if the person aids in the escape and is an employee or volunteer of specified government entities;
- ▶ defines the scope of activity considered to be an escape or attempted escape;
- ▶ repeals the current provision regarding aiding an escape, which specified elements of second and third degree offenses; and
- ▶ clarifies the spelling of trusty, as it refers to inmates placed on trusty status.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill provides an immediate effective date.

Utah Code Sections Affected:

AMENDS:

31A-35-701, as last amended by Chapter 298, Laws of Utah 2003

64-13-14.6, as enacted by Chapter 185, Laws of Utah 1999

76-3-203.3, as last amended by Chapter 166, Laws of Utah 2002

76-8-309, as last amended by Chapter 17, Laws of Utah 2002

REPEALS:

76-8-310, as last amended by Chapter 289, Laws of Utah 1997

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

Section 1. Section **31A-35-701** is amended to read:

31A-35-701. Prohibited acts.

- (1) A bail bond producer or bail bond surety may not:
- (a) solicit business in or about:
 - (i) any place where persons in the custody of the state or any local law enforcement or correctional agency are confined; or
 - (ii) any court;
 - (b) pay a fee or rebate or give or promise anything of value to any person in order to secure a settlement, compromise, remission, or reduction of the amount of any undertaking or bail bond;
 - (c) pay a fee or rebate or give anything of value to an attorney in regard to any bail bond matter, except payment for legal services actually rendered for the bail bond producer or bail bond surety;
 - (d) pay a fee or rebate or give or promise anything of value to the principal or anyone in the principal's behalf; or
 - (e) engage in any other act prohibited by the commissioner by rule.
 - (2) The following persons may not act as bail bond producers and may not, directly or indirectly, receive any benefits from the execution of any bail bond:
 - (a) a person employed at any jail, correctional facility, or other facility used for the incarceration of persons;
 - (b) a peace officer;
 - (c) a judge; and
 - (d) a ~~[trustee]~~ trustee or prisoner incarcerated in any jail, correctional facility, or other facility used for the incarceration of persons.
 - (3) A bail bond producer may not:
 - (a) sign or countersign in blank any bail bond; or

(b) give the power of attorney to, or otherwise authorize anyone to, countersign in the bail bond producer's name to a bail bond.

(4) A bail bond producer may not advertise or hold himself out to be a bail bond surety.

(5) The following persons or members of their immediate families may not solicit business on behalf of a bail bond surety or bail bond producer:

(a) a person employed at any jail, correctional facility, or other facility used for the incarceration of persons;

(b) a peace officer;

(c) a judge; and

(d) a [~~trustee~~] trusty or prisoner incarcerated in any jail, correctional facility, or other facility used for the incarceration of persons.

Section 2. Section **64-13-14.6** is amended to read:

64-13-14.6. Inmate trusty status.

(1) The department may grant an offender [~~trustee~~] trusty status.

(2) [~~Trustee~~] Trusty status may be granted to an inmate who has:

(a) been granted a release date by the Board of Pardons and Parole; and

(b) agreed to the terms and conditions established by the department to participate in compensatory service or work projects prior to his parole date.

(3) The department shall develop rules governing inmates granted [~~trustee~~] trusty status.

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

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

As used in this section:

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

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

(3) "Intimidate or terrorize" means an act which causes the person to fear for his physical safety or damages the property of that person or another. The act must be accompanied with the

intent to cause a person to fear to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Section **76-8-309** is amended to read:

76-8-309. Escape and aggravated escape -- Consecutive sentences -- Definitions.

(1) (a) (i) A prisoner is guilty of escape if he leaves official custody without lawful authorization.

~~[(b)]~~ (ii) If a prisoner obtains authorization to leave official custody by means of deceit, fraud, or other artifice, the prisoner has not received lawful authorization.

(b) Escape under this Subsection (1) is a third degree felony except as provided under Subsection (1)(c).

(c) Escape under this Subsection (1) is a second degree felony if:

(i) the actor escapes from a state prison; or

(ii) (A) the actor is convicted as a party to the offense, as defined in Section 76-2-202;

and

(B) the actor is an employee at or a volunteer of a law enforcement agency, the Department of Corrections, a county or district attorney's office, the office of the state attorney general, the Board of Pardons and Parole, or the courts, the Judicial Council, the Office of the Court Administrator, or similar administrative units in the judicial branch of government.

(2) (a) A prisoner is guilty of aggravated escape if in the commission of an escape he uses a dangerous weapon, as defined in Section 76-1-601, or causes serious bodily injury to another.

~~[(3)]~~ (b) Aggravated escape is a first degree felony.

~~[(4) Escape from a state prison is a second degree felony.]~~

~~[(5) Any other escape is a third degree felony.]~~

~~[(6)]~~ (3) Any prison term imposed upon a prisoner for escape under this section shall run consecutively with any other sentence.

~~[(7)]~~ (4) For the purposes of this ~~[part]~~ section:

(a) "Confinement" means the prisoner is:

(i) housed in a state prison or any other facility pursuant to a contract with the Utah Department of Corrections after being sentenced and committed and the sentence has not been terminated or voided or the prisoner is not on parole;

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(ii) lawfully detained in a county jail prior to trial or sentencing or housed in a county jail after sentencing and commitment and the sentence has not been terminated or voided or the prisoner is not on parole; or

(iii) lawfully detained following arrest.

(b) "Escape" is considered to be a continuing activity commencing with the conception of the design to escape and continuing until the escaping prisoner is returned to official custody or the prisoner's attempt to escape is thwarted or abandoned.

~~(b)~~ (c) "Official custody" means arrest, whether with or without warrant, or confinement in a state prison, jail, institution for secure confinement of juvenile offenders, or any confinement pursuant to an order of the court or sentenced and committed and the sentence has not been terminated or voided or the prisoner is not on parole. A person is considered confined in the state prison if he:

(i) without authority fails to return to his place of confinement from work release or home visit by the time designated for return;

(ii) is in prehearing custody after arrest for parole violation;

(iii) is being housed in a county jail, after felony commitment, pursuant to a contract with the Department of Corrections; or

(iv) is being transported as a prisoner in the state prison by correctional officers.

~~(c)~~ (d) "Prisoner" means any person who is in official custody and includes persons under ~~trustee~~ trustee status.

(e) "Volunteer" means any person who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency.

Section 5. Repealer.

This bill repeals:

Section 76-8-310, Aiding escape -- Penalties.

Section 6. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect

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upon approval by the governor, or the day following the constitutional time limit of Utah Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.