

1                   **WITNESS TAMPERING AMENDMENTS**

2                   2004 GENERAL SESSION

3                   STATE OF UTAH

4                   **Sponsor: D. Chris Buttars**

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5                   **LONG TITLE**

6                   **General Description:**

7                 This bill amends witness tampering provisions by creating the offense of retaliation  
8                 against a witness, victim, or informant.

9                   **Highlighted Provisions:**

10                 This bill:

- 11                 ► moves retaliation provisions from the witness tampering offense into a new section  
12                 and provides elements of the offense of retaliation against a witness, victim, or  
13                 informant;
- 14                 ► provides that the retaliation offense is a third degree felony; and  
15                 ► provides that the retaliation offense does not merge with other offenses.

16                   **Monies Appropriated in this Bill:**

17                 None

18                   **Other Special Clauses:**

19                 None

20                   **Utah Code Sections Affected:**

21                   **AMENDS:**

- 22                 **76-3-203.5**, as last amended by Chapter 214, Laws of Utah 2000  
23                 **76-8-306**, as last amended by Chapter 179, Laws of Utah 2003  
24                 **76-8-508**, as last amended by Chapter 1, Laws of Utah 2000  
25                 **76-10-1602**, as last amended by Chapters 26 and 79, Laws of Utah 2003  
26                 **77-23a-8**, as last amended by Chapter 166, Laws of Utah 2002



28 ENACTS:

29 **76-8-508.3**, Utah Code Annotated 1953

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

32       Section 1. Section **76-3-203.5** is amended to read:

33       **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

34       (1) As used in this section:

35           (a) "Felony" means any offense against a criminal statute of the state, any other state,  
36 the United States, or any district, possession, or territory of the United States for which the  
37 maximum punishment the offender may be subjected to exceeds one year in prison.

38           (b) "Habitual violent offender" means a person convicted within the state of any violent  
39 felony and who, on at least two previous occasions has been convicted of a violent felony and  
40 committed to either prison in Utah or an equivalent correctional institution of another state or  
41 of the United States either at initial sentencing or after revocation of probation.

42           (c) (i) "Violent felony" means any of the following offenses, or any attempt,  
43 solicitation, or conspiracy to commit any of these offenses punishable as a felony:

44           (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief  
45 under Title 76, Chapter 6, Part 1, Property Destruction;

46           (B) aggravated assault under Title 76, Chapter 5, Part 1, Assault and Related Offenses;

47           (C) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

48           (D) aggravated kidnapping and kidnapping under Title 76, Chapter 5, Part 3,  
49 Kidnaping;

50           (E) rape, Section 76-5-402;

51           (F) rape of a child, Section 76-5-402.1;

52           (G) object rape, Section 76-5-402.2;

53           (H) object rape of a child, Section 76-5-402.3;

54           (I) forcible sodomy, Section 76-5-403;

55           (J) sodomy on a child, Section 76-5-403.1;

56           (K) forcible sexual abuse, Section 76-5-404;

57           (L) aggravated sexual abuse of a child and sexual abuse of a child, Section 76-5-404.1;

58           (M) aggravated sexual assault, Section 76-5-405;

59                   (N) sexual exploitation of a minor, Section 76-5a-3;  
60                   (O) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,  
61 Burglary and Criminal Trespass;  
62                   (P) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;  
63                   (Q) theft by extortion under Subsection 76-6-406(2)(a) or (b);  
64                   (R) tampering with a witness under Subsection 76-8-508[~~(2)(c)~~] (1);  
65                   (S) retaliation against a witness, victim, or informant under Section 76-8-508.3;  
66                   [~~(S)~~] (T) tampering with a juror under Subsection 76-8-508.5(2)(c);  
67                   [~~(T)~~] (U) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any  
68 threat or by use of force theft by extortion has been committed pursuant to Subsections  
69 76-6-406(2)(a), (b), and (i);  
70                   [~~(U)~~] (V) damage or destruction of school or institution of higher education property by  
71 explosives or flammable materials under Section 76-8-715;  
72                   [~~(V)~~] (W) possession, use, or removal of explosive, chemical, or incendiary devices  
73 under Subsections 76-10-306(3) through (6);  
74                   [~~(W)~~] (X) unlawful delivery of explosive, chemical, or incendiary devices under  
75 Section 76-10-307;  
76                   [~~(X)~~] (Y) purchase or possession of a dangerous weapon or handgun by a restricted  
77 person under Section 76-10-503;  
78                   [~~(Y)~~] (Z) unlawful discharge of a firearm under Section 76-10-508;  
79                   [~~(Z)~~] (AA) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);  
80                   [~~(AA)~~] (BB) bus hijacking under Section 76-10-1504; and  
81                   [~~(BB)~~] (CC) discharging firearms and hurling missiles under Section 76-10-1505; or  
82                   (ii) any felony offense against a criminal statute of any other state, the United States,  
83 or any district, possession, or territory of the United States which would constitute a violent  
84 felony as defined in this Subsection (1) if committed in this state.  
85                   (2) If a person is convicted in this state of a violent felony by plea or by verdict and the  
86 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender  
87 under this section, the penalty for a:  
88                   (a) third degree felony is as if the conviction were for a first degree felony;  
89                   (b) second degree felony is as if the conviction were for a first degree felony; or

- (c) first degree felony remains the penalty for a first degree penalty except:
  - (i) the convicted person is not eligible for probation; and
  - (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor to determine the length of incarceration.

(3) (a) In all cases, notice that the prosecution intends to seek punishment as a habitual violent offender under this section shall be provided in writing and shall be served upon the defendant or his attorney not later than ten days prior to trial. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

99                   (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant  
100       intends to deny that:

- (A) the defendant is the person who was convicted or committed;
  - (B) the defendant was represented by counsel or had waived counsel; or
  - (C) the defendant's plea was understandingly or voluntarily entered.

104 (ii) The notice of denial shall be served not later than five days prior to trial and shall  
105 state in detail the defendant's contention regarding the previous conviction and commitment.

106 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to  
107 a jury, the jury may not be told until after it returns its verdict on the underlying felony charge,  
108 of the:

109 (i) defendant's previous convictions for violent felonies, except as otherwise provided  
110 in the Utah Rules of Evidence; or

- (ii) allegation against the defendant of being a habitual violent offender.

112                   (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of  
113                   being an habitual violent offender by the same jury, if practicable, unless the defendant waives  
114                   the jury, in which case the allegation shall be tried immediately to the court.

115 (c) (i) Prior to or at the time of sentencing the trier of fact shall determine if this section  
116 applies.

117                   (ii) The trier of fact shall consider any evidence presented at trial and the prosecution  
118 and the defendant shall be afforded an opportunity to present any necessary additional  
119 evidence.

120 (iii) Prior to sentencing under this section, the trier of fact shall determine whether this

121 section is applicable beyond a reasonable doubt.

122 (d) If any previous conviction and commitment is based upon a plea of guilty or no  
123 contest, there is a rebuttable presumption that the conviction and commitment were regular and  
124 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the  
125 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution  
126 to establish by a preponderance of the evidence that the defendant was then represented by  
127 counsel or had lawfully waived his right to have counsel present, and that his plea was  
128 understandingly and voluntarily entered.

129 (e) If the trier of fact finds this section applicable, the court shall enter that specific  
130 finding on the record and shall indicate in the order of judgment and commitment that the  
131 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced  
132 under this section.

133 (5) The habitual violent offender provisions of this section are an element of the  
134 offense, and proof of a defendant's conduct as a habitual violent offender is necessary at a  
135 preliminary hearing or at trial.

136 (6) (a) The sentencing enhancement provisions of Sections 76-3-407 and 76-3-408  
137 apply to a felony conviction defined in Title 76, Chapter 5, Part 4, Sexual Offenses, and  
138 supersede the provisions of this section.

139 (b) Notwithstanding Subsection (6)(a):

140 (i) the convictions under Sections 76-5-404 and 76-5a-3 are governed by the  
141 enhancement provisions of this section; and

142 (ii) the "violent felony" offense defined in Subsection (1)(c) shall include any felony  
143 sexual offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the  
144 convicted person is a habitual violent offender.

145 Section 2. Section **76-8-306** is amended to read:

146 **76-8-306. Obstruction of justice -- Elements -- Penalties -- Exceptions.**

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

150 (a) provides any person with a weapon;

151 (b) prevents by force, intimidation, or deception, any person from performing any act

152 that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any  
153 person;

- 154 (c) alters, destroys, conceals, or removes any item or other thing;
- 155 (d) makes, presents, or uses any item or thing known by the actor to be false;
- 156 (e) harbors or conceals a person;
- 157 (f) provides a person with transportation, disguise, or other means of avoiding  
158 discovery or apprehension;
- 159 (g) warns any person of impending discovery or apprehension;
- 160 (h) conceals information that is not privileged and that concerns the offense, after a  
161 judge or magistrate has ordered the actor to provide the information; or
- 162 (i) provides false information regarding a suspect, a witness, the conduct constituting  
163 an offense, or any other material aspect of the investigation.

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

- 167 (i) any violation of a criminal statute or ordinance of this state, its political  
168 subdivisions, any other state, or any district, possession, or territory of the United States; and
- 169 (ii) conduct committed by a juvenile which would be a crime if committed by an adult.
- 170 (b) A violation of a criminal statute that is committed in another state, or any district,  
171 possession, or territory of the United States, is a:
  - 172 (i) capital felony if the penalty provided includes death or life imprisonment without  
173 parole;
  - 174 (ii) a first degree felony if the penalty provided includes life imprisonment with parole  
175 or a maximum term of imprisonment exceeding 15 years;
  - 176 (iii) a second degree felony if the penalty provided exceeds five years;
  - 177 (iv) a third degree felony if the penalty provided includes imprisonment for any period  
178 exceeding one year; and
  - 179 (v) a misdemeanor if the penalty provided includes imprisonment for any period of one  
180 year or less.
- 181 (3) The penalties for obstruction of justice are:
  - 182 (a) a second degree felony if the conduct which constitutes an offense would be a

183 capital felony or first degree felony;

184 (b) a third degree felony if:

185 (i) the conduct that constitutes an offense would be a second or third degree felony and

186 the actor violates Subsection (1)(b), (c), (d), (e), or (f);

187 (ii) the conduct that constitutes an offense would be any offense other than a capital or

188 first degree felony and the actor violates Subsection (1)(a); or

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

190 (c) a class A misdemeanor for any violation of this section that is not enumerated under

191 Subsection (3)(a) or (b).

192 (4) It is not a defense that the actor was unaware of the level of penalty for the conduct

193 constituting an offense.

194 (5) Subsection (1)(e) does not apply to harboring a youth offender, which is governed

195 by Section 62A-7-106.

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

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

198 (b) influencing, impeding, or retaliating against a judge or member of the Board of

199 Pardons and Parole, which is governed by Section [76-8-508] 76-8-316;

200 (c) tampering with a witness or soliciting or receiving a bribe, which is governed by

201 Section 76-8-508; [or]

202 (d) retaliation against a witness, victim, or informant, which is governed by Section

203 76-8-508.3; or

204 [(d)] (e) extortion or bribery to dismiss a criminal proceeding, which is governed by

205 Section 76-8-509.

206 (7) Notwithstanding Subsection (1), (2), or (3), an actor commits a third degree felony

207 if the actor harbors or conceals an offender who has:

208 (a) absconded from a facility or from supervision as those offenses are defined in

209 Section 76-8-309.5; or

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

211 Section 3. Section **76-8-508** is amended to read:

212 **76-8-508. Tampering with witness -- Receiving or soliciting a bribe.**

213 (1) A person is guilty of [a] the third degree felony of tampering with a witness if,

214 believing that an official proceeding or investigation is pending or about to be instituted, or  
215 with the intent to prevent an official proceeding or investigation, he attempts to induce or  
216 otherwise cause [a] another person to:

- 217 (a) testify or inform falsely;  
218 (b) withhold any testimony, information, document, or item;  
219 (c) elude legal process summoning him to provide evidence; or  
220 (d) absent himself from any proceeding or investigation to which he has been  
221 summoned.

222 (2) A person is guilty of [a] the third degree felony of soliciting or receiving a bribe as  
223 a witness if he[:(a) commits any unlawful act in retaliation for anything done by another as a  
224 witness or informant;(b)] solicits, accepts, or agrees to accept any benefit in consideration of  
225 his doing any of the acts specified under Subsection (1)[; or].

226 [~~(c) communicates to a person a threat that a reasonable person would believe to be a~~  
227 ~~threat to do bodily injury to the person, because of any act performed or to be performed by the~~  
228 ~~person in his capacity as a witness or informant in an official proceeding or investigation.]~~

229 (3) The offense of tampering with a witness or soliciting or receiving a bribe under this  
230 section does not merge with any other substantive offense committed in the course of  
231 committing any offense under this section.

232 Section 4. Section **76-8-508.3** is enacted to read:

233 **76-8-508.3. Retaliation against a witness, victim, or informant.**

234 (1) As used in this section:

235 (a) A person is "closely associated" with a witness, victim, or informant if the person is  
236 a member of the witness', victim's, or informant's family, has a close personal or business  
237 relationship with the witness or victim, or resides in the same household with the witness,  
238 victim, or informant.

239 (b) "Harm" means physical, emotional, or economic injury or damage to a person or to  
240 his property, reputation, or business interests.

241 (2) A person is guilty of the third degree felony of retaliation against a witness, victim,  
242 or informant if, believing that an official proceeding or investigation is pending, is about to be  
243 instituted, or has been concluded, he:

244 (a) (i) makes a threat of harm; or

245           (ii) causes harm; and  
246           (b) directs the threat or action:  
247           (i) against a witness or an informant regarding any official proceeding, a victim of any  
248 crime, or any person closely associated with a witness, victim, or informant; and  
249           (ii) as retaliation or retribution against the witness, victim, or informant.  
250           (3) This section does not prohibit any person from seeking any legal redress to which  
251 the person is otherwise entitled.  
252           (4) The offense of retaliation against a witness, victim, or informant under this section  
253 does not merge with any other substantive offense committed in the course of committing any  
254 offense under this section.

255           Section 5. Section **76-10-1602** is amended to read:

256           **76-10-1602. Definitions.**

257           As used in this part:

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

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

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

272           (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,  
273 command, encourage, or intentionally aid another person to engage in conduct which would  
274 constitute any offense described by the following crimes or categories of crimes, or to attempt  
275 or conspire to engage in an act which would constitute any of those offenses, regardless of

276 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor  
277 or a felony:

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

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

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

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

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

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

291 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah  
292 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,  
293 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,  
294 Clandestine Drug Lab Act;

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

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

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

300 (k) a terroristic threat, Section 76-5-107;

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

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

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

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

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

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

- 307                         (r) burglary of a vehicle, Section 76-6-204;  
308                         (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;  
309                         (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;  
310                         (u) theft, Section 76-6-404;  
311                         (v) theft by deception, Section 76-6-405;  
312                         (w) theft by extortion, Section 76-6-406;  
313                         (x) receiving stolen property, Section 76-6-408;  
314                         (y) theft of services, Section 76-6-409;  
315                         (z) forgery, Section 76-6-501;  
316                         (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;  
317                         (bb) deceptive business practices, Section 76-6-507;  
318                         (cc) bribery or receiving bribe by person in the business of selection, appraisal, or  
319 criticism of goods, Section 76-6-508;  
320                         (dd) bribery of a labor official, Section 76-6-509;  
321                         (ee) defrauding creditors, Section 76-6-511;  
322                         (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;  
323                         (gg) unlawful dealing with property by fiduciary, Section 76-6-513;  
324                         (hh) bribery or threat to influence contest, Section 76-6-514;  
325                         (ii) making a false credit report, Section 76-6-517;  
326                         (jj) criminal simulation, Section 76-6-518;  
327                         (kk) criminal usury, Section 76-6-520;  
328                         (ll) false or fraudulent insurance claim, Section 76-6-521;  
329                         (mm) computer crimes, Section 76-6-703;  
330                         (nn) identity fraud, Section 76-6-1102;  
331                         (o) sale of a child, Section 76-7-203;  
332                         (pp) bribery to influence official or political actions, Section 76-8-103;  
333                         (qq) threats to influence official or political action, Section 76-8-104;  
334                         (rr) receiving bribe or bribery by public servant, Section 76-8-105;  
335                         (ss) receiving bribe or bribery for endorsement of person as public servant, Section  
336                         76-8-106;  
337                         (tt) official misconduct, Sections 76-8-201 and 76-8-202;

338                         (uu) obstruction of justice, Section 76-8-306;  
339                         (vv) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;  
340                         (ww) false or inconsistent material statements, Section 76-8-502;  
341                         (xx) false or inconsistent statements, Section 76-8-503;  
342                         (yy) written false statements, Section 76-8-504;  
343                          zz) tampering with a witness[; or soliciting or receiving a bribe, Section 76-8-508;  
344                         aaa) retaliation against a witness, victim, or informant, [or bribery,] Section  
345 [76-8-508] 76-8-508.3;  
346                         [(aaa)] (bbb) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;  
347                         [(bbb)] (ccc) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or  
348 76-8-1205;  
349                         [(eee)] (ddd) intentionally or knowingly causing one animal to fight with another,  
350 Subsection 76-9-301(1)(f);  
351                         [(ddd)] (eee) possession, use, or removal of explosives, chemical, or incendiary devices  
352 or parts, Section 76-10-306;  
353                         [(eee)] (fff) delivery to common carrier, mailing, or placement on premises of an  
354 incendiary device, Section 76-10-307;  
355                         [(fff)] (ggg) possession of a deadly weapon with intent to assault, Section 76-10-507;  
356                         [(ggg)] (hhh) unlawful marking of pistol or revolver, Section 76-10-521;  
357                         [(hhh)] (iii) alteration of number or mark on pistol or revolver, Section 76-10-522;  
358                         [(iii)] (jjj) forging or counterfeiting trademarks, trade name, or trade device, Section  
359 76-10-1002;  
360                         [(jjj)] (kkk) selling goods under counterfeited trademark, trade name, or trade devices,  
361 Section 76-10-1003;  
362                         [(kkk)] (lll) sales in containers bearing registered trademark of substituted articles,  
363 Section 76-10-1004;  
364                         [(lll)] (mmm) selling or dealing with article bearing registered trademark or service  
365 mark with intent to defraud, Section 76-10-1006;  
366                         [(mmm)] (nnn) gambling, Section 76-10-1102;  
367                         [(nnn)] (ooo) gambling fraud, Section 76-10-1103;  
368                         [(ooo)] (ppp) gambling promotion, Section 76-10-1104;

369 [~~ppp~~] (qqq) possessing a gambling device or record, Section 76-10-1105;  
370 [~~qqq~~] (rrr) confidence game, Section 76-10-1109;  
371 [~~rrr~~] (sss) distributing pornographic material, Section 76-10-1204;  
372 [~~sss~~] (ttt) inducing acceptance of pornographic material, Section 76-10-1205;  
373 [~~ttt~~] (uuu) dealing in harmful material to a minor, Section 76-10-1206;  
374 [~~uuu~~] (vvv) distribution of pornographic films, Section 76-10-1222;  
375 [~~vvv~~] (www) indecent public displays, Section 76-10-1228;  
376 [~~www~~] (xxx) prostitution, Section 76-10-1302;  
377 [~~xxx~~] (yyy) aiding prostitution, Section 76-10-1304;  
378 [~~yyy~~] (zzz) exploiting prostitution, Section 76-10-1305;  
379 [~~zzz~~] (aaaa) aggravated exploitation of prostitution, Section 76-10-1306;  
380 [~~aaaa~~] (bbbb) communications fraud, Section 76-10-1801;  
381 [~~bbbb~~] (cccc) any act prohibited by the criminal provisions of Title 76, Chapter 10,  
382 Part 19, Money Laundering and Currency Transaction Reporting Act;  
383 [~~cccc~~] (dddd) any act prohibited by the criminal provisions of the laws governing  
384 taxation in this state; and  
385 [~~dddd~~] (eeee) any act illegal under the laws of the United States and enumerated in  
386 Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.

387 Section 6. Section **77-23a-8** is amended to read:

388 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

389 (1) The attorney general of the state, any assistant attorney general specially designated  
390 by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy  
391 district attorney specially designated by the county attorney or by the district attorney, may  
392 authorize an application to a judge of competent jurisdiction for an order for an interception of  
393 wire, electronic, or oral communications by any law enforcement agency of the state, the  
394 federal government or of any political subdivision of the state that is responsible for  
395 investigating the type of offense for which the application is made.

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

398 (a) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah  
399 Controlled Substances Act; Title 58, Chapter 37c, Utah Controlled Substances Precursor Act;

400 Title 58, Chapter 37d, Clandestine Drug Lab Act; punishable by a term of imprisonment of  
401 more than one year;

402 (b) any act prohibited by the criminal provisions of the Utah Uniform Securities Act  
403 and punishable by a term of imprisonment of more than one year, Title 61, Chapter 1;

404 (c) attempt, Section 76-4-101; conspiracy, Section 76-4-201; solicitation, Section  
405 76-4-203; to commit any of the offenses enumerated above so long as the attempt, conspiracy  
406 or solicitation offense is punishable by a term of imprisonment of more than one year;

407 (d) terroristic threat offense punishable by a maximum term of imprisonment of more  
408 than one year, Section 76-5-107;

409 (e) aggravated murder, Section 76-5-202; murder, Section 76-5-203; manslaughter,  
410 Section 76-5-205;

411 (f) kidnapping, Section 76-5-301; child kidnapping, Section 76-5-301.1; aggravated  
412 kidnapping, Section 76-5-302;

413 (g) arson, Section 76-6-102; aggravated arson, Section 76-6-103;

414 (h) burglary, Section 76-6-202; aggravated burglary, Section 76-6-203;

415 (i) robbery, Section 76-6-301; aggravated robbery, Section 76-6-302;

416 (j) theft, Section 76-6-404; theft by deception, Section 76-6-405; theft by extortion,  
417 Section 76-6-406; when the theft, theft by deception or theft by extortion, is punishable by a  
418 maximum term of imprisonment of more than one year;

419 (k) receiving stolen property offense punishable by a maximum term of imprisonment  
420 of more than one year, Section 76-6-408;

421 (l) financial card transaction offenses punishable by a maximum term of imprisonment  
422 of 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  
423 76-6-506.6;

424 (m) bribery of a labor official, Section 76-6-509;

425 (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;

426 (o) criminal simulation offenses punishable by a maximum term of imprisonment of  
427 more than one year, Section 76-6-518;

428 (p) criminal usury, Section 76-6-520;

429 (q) false or fraudulent insurance claim offenses punishable by a maximum term of  
430 imprisonment of more than one year, Section 76-6-521;

431                   (r) violations of the Computer Crimes Act punishable by a maximum term of  
432 imprisonment of more than one year, Section 76-6-703;  
433                   (s) bribery to influence official or political actions, Section 76-8-103;  
434                   (t) misusing public moneys, Section 76-8-402;  
435                   (u) tampering with a witness[;] or soliciting or receiving a bribe, Section 76-8-508;  
436                   (v) retaliation against a witness, victim, or informant, [or bribery, communicating a  
437 threat,] Section [76-8-508] 76-8-508.3;  
438                   [(v)] (w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;  
439                   [(w)] (x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;  
440                   [(x)] (y) obstruction of justice, Section 76-8-306;  
441                   [(y)] (z) destruction of property to interfere with preparation for defense or war,  
442 Section 76-8-802;  
443                   [(z)] (aa) attempts to commit crimes of sabotage, Section 76-8-804;  
444                   [(aa)] (bb) conspiracy to commit crimes of sabotage, Section 76-8-805;  
445                   [(bb)] (cc) advocating criminal syndicalism or sabotage, Section 76-8-902;  
446                   [(ee)] (dd) assembly for advocating criminal syndicalism or sabotage, Section  
447 76-8-903;  
448                   [(dd)] (ee) riot punishable by a maximum term of imprisonment of more than one year,  
449 Section 76-9-101;  
450                   [(ee)] (ff) dog fighting, training dogs for fighting, dog fighting exhibitions punishable  
451 by a maximum term of imprisonment of more than one year, Section 76-9-301.1;  
452                   [(ff)] (gg) explosive, chemical, or incendiary device and parts, possession, use, or  
453 removal, Section 76-10-306;  
454                   [(gg)] (hh) explosive, chemical, or incendiary device, delivery to a common carrier or  
455 mailing, Section 76-10-307;  
456                   [(hh)] (ii) exploiting prostitution, Section 76-10-1305;  
457                   [(ii)] (jj) aggravated exploitation of prostitution, Section 76-10-1306;  
458                   [(jj)] (kk) bus hijacking, assault with intent to commit hijacking, dangerous weapon or  
459 firearm, Section 76-10-1504;  
460                   [(kk)] (ll) discharging firearms and hurling missiles, Section 76-10-1505;  
461                   [(ll)] (mm) violations of the Pattern of Unlawful Activity Act and the offenses listed

462 under the definition of unlawful activity in the act, including the offenses not punishable by a  
463 maximum term of imprisonment of more than one year when those offenses are investigated as  
464 predicates for the offenses prohibited by the act, Section 76-10-1602;  
465 [ (mm) ] (nn) communications fraud, Section 76-10-1801;  
466 [ (nn) ] (oo) money laundering, Sections 76-10-1903 and 76-10-1904; or  
467 [ (oo) ] (pp) reporting by financial institutions when the offense is punishable by a  
468 maximum term of imprisonment of more than one year, Section 76-10-1906.

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**Legislative Review Note****as of 1-29-04 11:23 AM**

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

**Office of Legislative Research and General Counsel**

**State Impact**

It is estimated that provisions of this bill can be handled within existing budgets.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**