

PARTY TO FELONY OFFENSE ENHANCEMENT

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill modifies the criminal penalty enhancement provision for certain felonies in the Utah Criminal Code.

Highlighted Provisions:

This bill:

- ▶ provides for enhanced criminal penalties for a defendant who is a party to a felony offense in which a dangerous weapon was used in the commission or furtherance of the felony;

- ▶ provides that the trier of fact must find beyond a reasonable doubt that the defendant knew that the dangerous weapon was present; and

- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

23-20-4, as last amended by Chapters 125, 148 and 228, Laws of Utah 2003

76-3-203.8, as enacted by Chapter 148, Laws of Utah 2003

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



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

29 **23-20-4. Wanton destruction of protected wildlife -- Penalties.**

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

31 (a) commits an act in violation of Section 23-13-4, 23-13-5, 23-13-13, 23-15-6 through
32 23-15-9, 23-16-5, or Subsection 23-20-3(1);

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

34 (c) (i) does so with intentional, knowing, or reckless conduct as defined in Section
35 76-2-103;

36 (ii) intentionally abandons protected wildlife or a carcass;

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

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

40 (v) acts for pecuniary gain.

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

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

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

45 (c) Section 23-16-3.1.

46 (3) Wanton destruction of wildlife is punishable:

47 (a) as a third degree felony if:

48 (i) the aggregate value of the protected wildlife determined by the values in Subsection
49 (4) is more than \$500; or

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

51 (b) as a class A misdemeanor if the aggregate value of the protected wildlife, other than
52 any trophy animal, determined by the values established in Subsection (4) is more than \$250,
53 but does not exceed \$500; and

54 (c) as a class B misdemeanor if the aggregate value of the protected wildlife
55 determined by the values established in Subsection (4) is \$250 or less.

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

- 59 (a) \$1,000 per animal for:
- 60 (i) bison;
- 61 (ii) bighorn sheep;
- 62 (iii) rocky mountain goat;
- 63 (iv) moose;
- 64 (v) bear;
- 65 (vi) peregrine falcon; or
- 66 (vii) endangered species;
- 67 (b) \$750 per animal for:
- 68 (i) elk; or
- 69 (ii) threatened species;
- 70 (c) \$500 per animal for:
- 71 (i) cougar;
- 72 (ii) golden eagle;
- 73 (iii) river otter; or
- 74 (iv) gila monster;
- 75 (d) \$400 per animal for:
- 76 (i) pronghorn antelope; or
- 77 (ii) deer;
- 78 (e) \$350 per animal for bobcat;
- 79 (f) \$100 per animal for:
- 80 (i) swan;
- 81 (ii) sandhill crane;
- 82 (iii) turkey;
- 83 (iv) pelican;
- 84 (v) loon;
- 85 (vi) egrets;
- 86 (vii) herons;
- 87 (viii) raptors, except those that are threatened or endangered;
- 88 (ix) Utah milk snake; or
- 89 (x) Utah mountain king snake;

- 90 (g) \$35 per animal for furbearers, except:
- 91 (i) bobcat;
- 92 (ii) river otter; and
- 93 (iii) threatened or endangered species;
- 94 (h) \$25 per animal for trout, char, salmon, grayling, tiger muskellunge, walleye,
- 95 largemouth bass, smallmouth bass, and wiper;
- 96 (i) \$15 per animal for game birds, except:
- 97 (i) turkey;
- 98 (ii) swan; and
- 99 (iii) sandhill crane;
- 100 (j) \$10 per animal for game fish not listed in Subsection (4)(h);
- 101 (k) \$8 per pound dry weight of processed brine shrimp including eggs; and
- 102 (l) \$5 per animal for protected wildlife not listed.

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

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

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

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

116 Section 2. Section **76-3-203.8** is amended to read:

117 **76-3-203.8. Increase of sentence if dangerous weapon used.**

118 (1) As used in this section, "dangerous weapon" has the same definition as in Section
119 76-1-601.

120 (2) If the trier of fact finds beyond a reasonable doubt that a dangerous weapon was

121 used in the commission or furtherance of a felony, the court:

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

123 and

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

125 year; and

126 (b) may increase by five years the maximum sentence applicable by law in the case of a

127 felony of the second or third degree.

128 (3) A defendant who is a party to a felony offense shall be sentenced to the increases in

129 punishment provided in Subsection (2) if the trier of fact finds beyond a reasonable doubt that:

130 (a) a dangerous weapon was used in the commission or furtherance of the felony; and

131 (b) the defendant knew that the dangerous weapon was present.

132 [~~3~~] (4) If the trier of fact finds beyond a reasonable doubt that a person has been

133 sentenced to a term of imprisonment for a felony in which a dangerous weapon was used in the

134 commission of or furtherance of the felony and that person is subsequently convicted of

135 another felony in which a dangerous weapon was used in the commission of or furtherance of

136 the felony, the court shall, in addition to any other sentence imposed including those in

137 Subsection (2), impose an indeterminate prison term to be not less than five nor more than ten

138 years to run consecutively and not concurrently.

Legislative Review Note

as of 12-1-03 7:20 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 SB0084

Party to Felony Offense Enhancement

19-Jan-04

2:44 PM

State Impact

It is estimated that there will be some fiscal impact after FY 2006, but current data is not available and it is therefore not possible to quantify.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst