

1 **DISCHARGE OF A FIREARM AMENDMENTS**

2 2007 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Carl Wimmer**

5 Senate Sponsor: Mark B. Madsen

6

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Utah Criminal Code to provide an enhanced penalty for felony
10 offenses involving discharge of a firearm.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that having the permission of the person in charge of the property when
14 discharging a firearm is only a defense to a misdemeanor offense of discharging a
15 firearm, not a felony offense;

16 ▶ modifies provisions relating to felony discharge of a firearm by describing conduct
17 that constitutes a felony of the first, second, or third degree and describing enhanced
18 penalties for these offenses;

18a ~~It~~ ▶ **describes circumstances under which discharge of a dangerous weapon or a firearm**
18b **from an automobile or vehicle is not a crime;** ~~It~~ and

19 ▶ makes technical changes.

20 **Monies Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **53-3-220**, as last amended by Chapter 168, Laws of Utah 2006

27 **76-5-203**, as last amended by Chapter 348, Laws of Utah 2006



28 76-10-508, as last amended by Chapter 220, Laws of Utah 2005



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

31 Section 1. Section 53-3-220 is amended to read:

32 **53-3-220. Offenses requiring mandatory revocation, denial, suspension, or**
33 **disqualification of license -- Offense requiring an extension of period -- Hearing --**
34 **Limited driving privileges.**

35 (1) (a) The division shall immediately revoke or, when this chapter or Title 41, Chapter
36 6a, Traffic Code, specifically provides for denial, suspension, or disqualification, the division
37 shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's
38 conviction for any of the following offenses:

39 (i) manslaughter or negligent homicide resulting from driving a motor vehicle, or
40 automobile homicide under Section 76-5-207;

41 (ii) driving or being in actual physical control of a motor vehicle while under the
42 influence of alcohol, any drug, or combination of them to a degree that renders the person
43 incapable of safely driving a motor vehicle as prohibited in Section 41-6a-502 or as prohibited
44 in an ordinance that complies with the requirements of Subsection 41-6a-510(1);

45 (iii) driving or being in actual physical control of a motor vehicle while having a blood
46 or breath alcohol content prohibited in Section 41-6a-502 or as prohibited in an ordinance that
47 complies with the requirements of Subsection 41-6a-510(1);

48 (iv) perjury or the making of a false affidavit to the division under this chapter, Title
49 41, Motor Vehicles, or any other law of this state requiring the registration of motor vehicles or
50 regulating driving on highways;

51 (v) any felony under the motor vehicle laws of this state;

52 (vi) any other felony in which a motor vehicle is used to facilitate the offense;

53 (vii) failure to stop and render aid as required under the laws of this state if a motor
54 vehicle accident results in the death or personal injury of another;

55 (viii) two charges of reckless driving committed within a period of 12 months; but if
56 upon a first conviction of reckless driving the judge or justice recommends suspension of the
57 convicted person's license, the division may after a hearing suspend the license for a period of
58 three months;

59 (ix) failure to bring a motor vehicle to a stop at the command of a peace officer as
60 required in Section 41-6a-210;

61 (x) any offense specified in Part 4, Uniform Commercial Driver License Act, that
62 requires disqualification;

63 (xi) a felony violation of Section 76-10-508 involving discharging or allowing the
64 discharge of a firearm from a vehicle [~~in violation of Subsection 76-10-508(2)~~];

65 (xii) using, allowing the use of, or causing to be used any explosive, chemical, or
66 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b);

67 (xiii) operating or being in actual physical control of a motor vehicle while having any
68 measurable controlled substance or metabolite of a controlled substance in the person's body in
69 violation of Section 41-6a-517;

70 (xiv) until July 30, 2015, operating or being in actual physical control of a motor
71 vehicle while having any alcohol in the person's body in violation of Section 53-3-232;

72 (xv) operating or being in actual physical control of a motor vehicle while having any
73 measurable or detectable amount of alcohol in the person's body in violation of Section
74 41-6a-530; and

75 (xvi) engaging in a motor vehicle speed contest or exhibition of speed on a highway in
76 violation of Section 41-6a-606.

77 (b) The division shall immediately revoke the license of a person upon receiving a
78 record of an adjudication under Title 78, Chapter 3a, Juvenile Court Act of 1996, for any of the
79 following offenses:

80 (i) a felony violation of Section 76-10-508 involving discharging or allowing the
81 discharge of a firearm from a vehicle [~~in violation of Subsection 76-10-508(2)~~]; and

82 (ii) using, allowing the use of, or causing to be used any explosive, chemical, or
83 incendiary device from a vehicle in violation of Subsection 76-10-306(4)(b).

84 (c) Except when action is taken under Section 53-3-219 for the same offense, the
85 division shall immediately suspend for six months the license of a person upon receiving a
86 record of conviction for any of the following offenses:

87 (i) any violation of:

88 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

89 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

90 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

91 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

92 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act; or

93 (ii) any criminal offense that prohibits:

94 (A) possession, distribution, manufacture, cultivation, sale, or transfer of any substance
95 that is prohibited under the acts described in Subsection (1)(c)(i); or

96 (B) the attempt or conspiracy to possess, distribute, manufacture, cultivate, sell, or
97 transfer any substance that is prohibited under the acts described in Subsection (1)(c)(i).

98 (2) The division shall extend the period of the first denial, suspension, revocation, or
99 disqualification for an additional like period, to a maximum of one year for each subsequent
100 occurrence, upon receiving:

101 (a) a record of the conviction of any person on a charge of driving a motor vehicle
102 while the person's license is denied, suspended, revoked, or disqualified;

103 (b) a record of a conviction of the person for any violation of the motor vehicle law in
104 which the person was involved as a driver;

105 (c) a report of an arrest of the person for any violation of the motor vehicle law in
106 which the person was involved as a driver; or

107 (d) a report of an accident in which the person was involved as a driver.

108 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is
109 driving while the person's license is denied, suspended, disqualified, or revoked, the person is
110 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,
111 or revocation originally imposed under Section 53-3-221.

112 (4) (a) The division may extend to a person the limited privilege of driving a motor
113 vehicle to and from the person's place of employment or within other specified limits on
114 recommendation of the trial judge in any case where a person is convicted of any of the
115 offenses referred to in Subsections (1) and (2) except:

116 (i) automobile homicide under Subsection (1)(a)(i);

117 (ii) those offenses referred to in Subsections (1)(a)(ii), (a)(iii), (a)(xi), (a)(xii), (a)(xiii),
118 (1)(b), and (1)(c); and

119 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,
120 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,

121 41-6a-517, a local ordinance which complies with the requirements of Subsection
122 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person
123 was charged with violating as a result of a plea bargain after having been originally charged
124 with violating one or more of these sections or ordinances.

125 (b) This discretionary privilege is limited to when undue hardship would result from a
126 failure to grant the privilege and may be granted only once to any individual during any single
127 period of denial, suspension, revocation, or disqualification, or extension of that denial,
128 suspension, revocation, or disqualification.

129 (c) A limited CDL may not be granted to an individual disqualified under Part 4,
130 Uniform Commercial Driver License Act, or whose license has been revoked, suspended,
131 cancelled, or denied under this chapter.

132 Section 2. Section **76-5-203** is amended to read:

133 **76-5-203. Murder.**

134 (1) As used in this section, "predicate offense" means:

135 (a) a violation of Section 58-37d-4 or 58-37d-5[~~Clandestine Drug Lab Act~~];

136 (b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18
137 years of age;

138 (c) kidnapping under Section 76-5-301;

139 (d) child kidnapping under Section 76-5-301.1;

140 (e) aggravated kidnapping under Section 76-5-302;

141 (f) rape of a child under Section 76-5-402.1;

142 (g) object rape of a child under Section 76-5-402.3;

143 (h) sodomy upon a child under Section 76-5-403.1;

144 (i) forcible sexual abuse under Section 76-5-404;

145 (j) sexual abuse of a child or aggravated sexual abuse of a child under Section
146 76-5-404.1;

147 (k) rape under Section 76-5-402;

148 (l) object rape under Section 76-5-402.2;

149 (m) forcible sodomy under Section 76-5-403;

150 (n) aggravated sexual assault under Section 76-5-405;

151 (o) arson under Section 76-6-102;

- 152 (p) aggravated arson under Section 76-6-103;
- 153 (q) burglary under Section 76-6-202;
- 154 (r) aggravated burglary under Section 76-6-203;
- 155 (s) robbery under Section 76-6-301;
- 156 (t) aggravated robbery under Section 76-6-302;
- 157 (u) escape or aggravated escape under Section 76-8-309; or
- 158 (v) a felony violation of [~~Subsection~~ Section 76-10-508~~(2)~~] regarding discharge of a
159 firearm or dangerous weapon.
- 160 (2) Criminal homicide constitutes murder if:
 - 161 (a) the actor intentionally or knowingly causes the death of another;
 - 162 (b) intending to cause serious bodily injury to another, the actor commits an act clearly
163 dangerous to human life that causes the death of another;
 - 164 (c) acting under circumstances evidencing a depraved indifference to human life, the
165 actor engages in conduct which creates a grave risk of death to another and thereby causes the
166 death of another;
 - 167 (d) (i) the actor is engaged in the commission, attempted commission, or immediate
168 flight from the commission or attempted commission of any predicate offense, or is a party to
169 the predicate offense;
 - 170 (ii) a person other than a party as defined in Section 76-2-202 is killed in the course of
171 the commission, attempted commission, or immediate flight from the commission or attempted
172 commission of any predicate offense; and
 - 173 (iii) the actor acted with the intent required as an element of the predicate offense;
 - 174 (e) the actor recklessly causes the death of a peace officer while in the commission or
175 attempted commission of:
 - 176 (i) an assault against a peace officer under Section 76-5-102.4; or
 - 177 (ii) interference with a peace officer while making a lawful arrest under Section
178 76-8-305 if the actor uses force against a peace officer;
 - 179 (f) commits a homicide which would be aggravated murder, but the offense is reduced
180 pursuant to Subsection 76-5-202(3); or
 - 181 (g) the actor commits aggravated murder, but special mitigation is established under
182 Section 76-5-205.5.

183 (3) (a) Murder is a first degree felony.

184 (b) A person who is convicted of murder shall be sentenced to imprisonment for an
185 indeterminate term of not less than 15 years and which may be for life.

186 (4) (a) It is an affirmative defense to a charge of murder or attempted murder that the
187 defendant caused the death of another or attempted to cause the death of another:

188 (i) under the influence of extreme emotional distress for which there is a reasonable
189 explanation or excuse; or

190 (ii) under a reasonable belief that the circumstances provided a legal justification or
191 excuse for his conduct although the conduct was not legally justifiable or excusable under the
192 existing circumstances.

193 (b) Under Subsection (4)(a)(i) emotional distress does not include:

194 (i) a condition resulting from mental illness as defined in Section 76-2-305; or

195 (ii) distress that is substantially caused by the defendant's own conduct.

196 (c) The reasonableness of an explanation or excuse under Subsection (4)(a)(i) or the
197 reasonable belief of the actor under Subsection (4)(a)(ii) shall be determined from the
198 viewpoint of a reasonable person under the then existing circumstances.

199 (d) This affirmative defense reduces charges only as follows:

200 (i) murder to manslaughter; and

201 (ii) attempted murder to attempted manslaughter.

202 Section 3. Section **76-10-508** is amended to read:

203 **76-10-508. Discharge of firearm from a vehicle, near a highway, or in direction of**
204 **any person, building, or vehicle -- Penalties.**

205 (1) (a) A person may not discharge any kind of dangerous weapon or firearm:

206 (i) from an automobile or other vehicle;

207 (ii) from, upon, or across any highway;

208 (iii) at any road signs placed upon any highways of the state;

209 (iv) at any communications equipment or property of public utilities including
210 facilities, lines, poles, or devices of transmission or distribution;

211 (v) at railroad equipment or facilities including any sign or signal;

212 (vi) within Utah State Park buildings, designated camp or picnic sites, overlooks, golf
213 courses, boat ramps, and developed beaches; or

214 (vii) without written permission to discharge the dangerous weapon from the owner or
215 person in charge of the property within 600 feet of:

216 (A) a house, dwelling, or any other building; or

217 (B) any structure in which a domestic animal is kept or fed, including a barn, poultry
218 yard, corral, feeding pen, or stockyard.

219 (b) It shall be a defense to any ~~charge for violating~~ misdemeanor violation of this
220 section that the person being accused had actual permission of the owner or person in charge of
221 the property at the time in question.

222 (2) ~~[A]~~ Except as provided in Subsection (3), a violation of any provision of [this
223 section] Subsection (1) is a class B misdemeanor [unless the actor discharges].

224 (3) A person shall be punished as provided in Subsection (4) if the person violates any
225 provision of Subsection (1) by discharging a firearm under any of the following circumstances
226 not amounting to criminal homicide or attempted criminal homicide~~[, in which case it is a third~~
227 ~~degree felony and the convicted person shall be sentenced to an enhanced minimum term of~~
228 ~~three years in prison]:~~

229 (a) the actor discharges a firearm in the direction of any person or persons, knowing or
230 having reason to believe that any person may be endangered;

231 (b) the actor, with intent to intimidate or harass another or with intent to damage a
232 habitable structure as defined in Subsection 76-6-101(2), discharges a firearm in the direction
233 of any building; or

234 (c) the actor, with intent to intimidate or harass another, discharges a firearm in the
235 direction of any vehicle.

236 (4) A violation described in Subsection (3) shall be punished as follows:

237 (a) except as provided in Subsection (4)(b) or (c), a violation of Subsection (3) is a
238 felony of the third degree, punishable by imprisonment for a term of not less than three years
239 nor more than five years;

240 (b) except as provided in Subsection (4)(c), a violation of Subsection (3) that results in
241 bodily injury to another is a felony of the second degree, punishable by imprisonment for a
242 term of not less than three years nor more than 15 years; or

243 (c) a violation of Subsection (3) that results in serious bodily injury to another is a
244 felony of the first degree, punishable by imprisonment for a term of not less than three years

245 and which may be for life;

246 [~~3~~] (5) The court shall:

247 (a) notify the Driver License Division of the conviction for purposes of any revocation,
248 denial, suspension, or disqualification of a driver license under Section 53-3-220(1)(a)(xi); and

249 (b) specify in court at the time of sentencing the length of the revocation under
250 Subsection 53-3-225(1)(c).

251 [~~4~~] (6) This section does not apply to a person:

252 (a) who discharges any kind of firearm when that person is in lawful defense of self or
253 others; ~~H~~→ [or] ←~~H~~

254 (b) who is performing official duties as provided in Sections 23-20-1.5 and 76-10-523
255 and as otherwise provided by law ~~H~~→ [-] ; or

255a (c) who discharges a dangerous weapon or firearm from an automobile or other
255b vehicle, if

255c (i) the discharge occurs at a firing range or training ground;

255d (ii) at no time after the discharge does the projectile that is discharged cross over, or
255e stop at, a location other than the firing range or training ground described in Subsection
255f (6)(c)(i);

255g (iii) the discharge is made for the purpose of practice or training for a lawful purpose;

255h (iv) prior to the discharge, the discharge, and the location, time, and manner of the
255i discharge, is approved by the owner or operator of the firing range or training ground; and

255j (v) the discharge is not made in a manner described in Subsection (3). ←~~H~~

Legislative Review Note
as of 1-12-07 8:11 AM

Office of Legislative Research and General Counsel

H.B. 113 - Discharge of a Firearm Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

1/19/2007, 1:33:24 PM, Lead Analyst: Byrne, D.

Office of the Legislative Fiscal Analyst