

**CHILD AND VULNERABLE ADULT
ENDANGERMENT PROVISIONS**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael T. Morley

Senate Sponsor: Dan R. Eastman

LONG TITLE

General Description:

This bill amends Utah Criminal Code provisions relating to endangerment of a child or a vulnerable adult.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a person who knowingly or intentionally causes or permits a child or a vulnerable adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia is:
 - guilty of a third degree felony;
 - guilty of a second degree felony, if, as a result of the conduct described above, a child or vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or
 - guilty of a first degree felony, if, as a result of the conduct described above, a child or vulnerable adult dies;
- ▶ provides an affirmative defense to the crime described above, if the controlled substance is obtained by lawful prescription and is used or possessed in accordance with the prescription instructions;
- ▶ provides that the penalties described in this bill are separate from, and in addition



28 to, the penalties and enhancements described in Title 58, Occupations and Professions; and
29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **76-3-203.5**, as last amended by Laws of Utah 2007, Chapters 229 and 339

37 REPEALS AND REENACTS:

38 **76-5-112.5**, as last amended by Laws of Utah 2002, Chapter 32



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

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

42 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

43 (1) As used in this section:

44 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
45 United States, or any district, possession, or territory of the United States for which the
46 maximum punishment the offender may be subjected to exceeds one year in prison.

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

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

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

55 (B) assault by prisoner, Section 76-5-102.5;

56 (C) disarming a police officer, Section 76-5-102.8;

57 (D) aggravated assault, Section 76-5-103;

58 (E) aggravated assault by prisoner, Section 76-5-103.5;

- 59 (F) mayhem, Section 76-5-105;
- 60 (G) stalking, Subsection 76-5-106.5(6);
- 61 (H) terroristic threat, Section 76-5-107;
- 62 (I) child abuse, Subsections 76-5-109(2)(a) and (b);
- 63 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- 64 (K) abuse or neglect of disabled child, Section 76-5-110;
- 65 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- 66 (M) endangerment of a child or [~~elder~~] vulnerable adult, Section 76-5-112.5;
- 67 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- 68 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
- 69 5, Part 3, Kidnapping;
- 70 (P) rape, Section 76-5-402;
- 71 (Q) rape of a child, Section 76-5-402.1;
- 72 (R) object rape, Section 76-5-402.2;
- 73 (S) object rape of a child, Section 76-5-402.3;
- 74 (T) forcible sodomy, Section 76-5-403;
- 75 (U) sodomy on a child, Section 76-5-403.1;
- 76 (V) forcible sexual abuse, Section 76-5-404;
- 77 (W) aggravated sexual abuse of a child and sexual abuse of a child, Section
- 78 76-5-404.1;
- 79 (X) aggravated sexual assault, Section 76-5-405;
- 80 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 81 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 82 Burglary and Criminal Trespass;
- 83 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 84 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 85 (CC) tampering with a witness under Subsection 76-8-508(1);
- 86 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 87 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 88 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat
- 89 or by use of force theft by extortion has been committed pursuant to Subsections

90 76-6-406(2)(a), (b), and (i);
91 (GG) possession, use, or removal of explosive, chemical, or incendiary devices under
92 Subsections 76-10-306(3) through (6);

93 (HH) unlawful delivery of explosive, chemical, or incendiary devices under Section
94 76-10-307;

95 (II) purchase or possession of a dangerous weapon or handgun by a restricted person
96 under Section 76-10-503;

97 (JJ) unlawful discharge of a firearm under Section 76-10-508;

98 (KK) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

99 (LL) bus hijacking under Section 76-10-1504; and

100 (MM) discharging firearms and hurling missiles under Section 76-10-1505; or

101 (ii) any felony violation of a criminal statute of any other state, the United States, or
102 any district, possession, or territory of the United States which would constitute a violent
103 felony as defined in this Subsection (1) if committed in this state.

104 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
105 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
106 under this section, the penalty for a:

107 (a) third degree felony is as if the conviction were for a first degree felony;

108 (b) second degree felony is as if the conviction were for a first degree felony; or

109 (c) first degree felony remains the penalty for a first degree penalty except:

110 (i) the convicted person is not eligible for probation; and

111 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
112 habitual violent offender as an aggravating factor in determining the length of incarceration.

113 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
114 provide notice in the information or indictment that the defendant is subject to punishment as a
115 habitual violent offender under this section. Notice shall include the case number, court, and
116 date of conviction or commitment of any case relied upon by the prosecution.

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

119 (A) the defendant is the person who was convicted or committed;

120 (B) the defendant was represented by counsel or had waived counsel; or

- 121 (C) the defendant's plea was understandingly or voluntarily entered.
- 122 (ii) The notice of denial shall be served not later than five days prior to trial and shall
123 state in detail the defendant's contention regarding the previous conviction and commitment.
- 124 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
125 a jury, the jury may not be told until after it returns its verdict on the underlying felony charge,
126 of the:
- 127 (i) defendant's previous convictions for violent felonies, except as otherwise provided
128 in the Utah Rules of Evidence; or
- 129 (ii) allegation against the defendant of being a habitual violent offender.
- 130 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
131 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
132 the jury, in which case the allegation shall be tried immediately to the court.
- 133 (c) (i) Prior to or at the time of sentencing the trier of fact shall determine if this section
134 applies.
- 135 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
136 and the defendant shall be afforded an opportunity to present any necessary additional
137 evidence.
- 138 (iii) Prior to sentencing under this section, the trier of fact shall determine whether this
139 section is applicable beyond a reasonable doubt.
- 140 (d) If any previous conviction and commitment is based upon a plea of guilty or no
141 contest, there is a rebuttable presumption that the conviction and commitment were regular and
142 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
143 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
144 to establish by a preponderance of the evidence that the defendant was then represented by
145 counsel or had lawfully waived [~~his~~] the defendant's right to have counsel present, and that
146 [~~his~~] the defendant's plea was understandingly and voluntarily entered.
- 147 (e) If the trier of fact finds this section applicable, the court shall enter that specific
148 finding on the record and shall indicate in the order of judgment and commitment that the
149 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced
150 under this section.
- 151 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the

152 provisions of this section.

153 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
154 Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part
155 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

156 (6) The sentencing enhancement described in this section does not apply if:

157 (a) the offense for which the person is being sentenced is:

158 (i) a grievous sexual offense;

159 (ii) child kidnapping, Section 76-5-301.1;

160 (iii) aggravated kidnapping, Section 76-5-302; or

161 (iv) forcible sexual abuse, Section 76-5-404; and

162 (b) applying the sentencing enhancement provided for in this section would result in a
163 lower maximum penalty than the penalty provided for under the section that describes the
164 offense for which the person is being sentenced.

165 Section 2. Section **76-5-112.5** is repealed and reenacted to read:

166 **76-5-112.5. Endangerment of a child or vulnerable adult.**

167 (1) As used in this section:

168 ~~Ĥ→ [(a) "Building" means any structure, other than a habitation or vehicle, that is:~~

169 ~~—— (i) intended to be used, capable of being used, or adapted for use, on a permanent or~~
170 ~~temporary basis, for business or storage; or~~

171 ~~—— (ii) appurtenant to, or connected with, a structure described in Subsection (1)(a)(i);~~

172 ~~—— (b)] (a) ←Ĥ (i) "Chemical substance" means:~~

173 ~~(A) a substance intended to be used as a precursor in the manufacture of a controlled~~
174 ~~substance;~~

175 ~~(B) a substance intended to be used in the manufacture of a controlled substance; or~~

176 ~~(C) any fumes or by-product resulting from the manufacture of a controlled substance.~~

177 ~~(ii) Intent under this Subsection (1) ←Ĥ [(b)] (a) ←Ĥ may be demonstrated by:~~

178 ~~(A) the use, quantity, or manner of storage of the substance; or~~

179 ~~(B) the proximity of the substance to other precursors or to manufacturing equipment.~~

180 ~~←Ĥ [(c)] (b) ←Ĥ "Child" means a human being who is under 18 years of age.~~

181 ~~←Ĥ [(d)] (c) ←Ĥ "Controlled substance" is as defined in Section 58-37-2.~~

182 ~~←Ĥ [(e)] (d) ←Ĥ "Drug paraphernalia" is as defined in Section 58-37a-3.~~

183 ~~H→ [(f)] (e) ←H~~ "Exposed to" means ~~H→ [to be present in:~~
 184 ~~(i) a habitation or vehicle where a controlled substance, chemical substance, or drug~~
 185 ~~paraphernalia is unlawfully present; or~~
 186 ~~(ii) a building, habitation, or vehicle where a controlled substance, chemical substance,~~
 187 ~~or drug paraphernalia is unlawfully used, manufactured, produced, or distributed] that the child or~~
 187a ~~vulnerable adult is able to:~~
 187b ~~(i) access or view a controlled substance, chemical substance, or drug paraphernalia; or~~
 187c ~~(ii) smell an odor produced during, or as a result of, the manufacture or production of~~
 187d ~~a controlled substance ←H~~ .
 188 ~~H→ [(g) "Habitation" means:~~
 189 ~~(i) a residence or dwelling, including a shed, garage, or other appurtenant structure;~~
 190 ~~(ii) a hotel room or suite;~~
 191 ~~(iii) a motel room or suite;~~
 192 ~~(iv) an apartment unit;~~
 193 ~~(v) a condominium unit; or~~
 194 ~~(vi) any shelter, structure, watercraft, aircraft, trailer, sleeping car, or conveyance used,~~
 195 ~~intended to be used, or adapted for use, for overnight accommodation of a person.~~
 196 ~~(h) (f) ←H~~ "Prescription" is as defined in Section 58-37-2.
 197 ~~H→ [(i)] (g) ←H~~ "Vulnerable adult" is as defined in Subsection 76-5-111(1)(t).
 198 ~~H→ [(j) "Vehicle" means a device in, on, or by which a person or property is or may be~~
 199 ~~transported, conveyed, or drawn.] ←H~~
 200 ~~(2) Unless a greater penalty is otherwise provided by law:~~
 201 ~~(a) except as provided in Subsection (2)(b) or (c), a person is guilty of a felony of the~~
 202 ~~third degree if the person knowingly or intentionally causes or permits a child or a vulnerable~~
 203 ~~adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical~~
 204 ~~substance, or drug paraphernalia;~~
 205 ~~(b) except as provided in Subsection (2)(c), a person is guilty of a felony of the second~~
 206 ~~degree, if:~~
 207 ~~(i) the person engages in the conduct described in Subsection (2)(a); and~~
 208 ~~(ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable~~
 209 ~~adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or~~
 210 ~~(c) a person is guilty of a felony of the first degree, if:~~
 211 ~~(i) the person engages in the conduct described in Subsection (2)(a); and~~
 212 ~~(ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable~~
 213 ~~adult dies.~~

214 (3) It is an affirmative defense to a violation of this section that the controlled
215 substance:
216 (a) was obtained by lawful prescription; and
217 (b) is used or possessed by the person to whom it was lawfully prescribed in
218 accordance with the prescription instructions provided with the controlled substance.
219 (4) The penalties described in this section are separate from, and in addition to, the
220 penalties and enhancements described in Title 58, Occupations and Professions.

Legislative Review Note
as of 1-16-08 5:00 PM

Office of Legislative Research and General Counsel

H.B. 315 - Child and Vulnerable Adult Endangerment Provisions

Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will require appropriations from the General Fund in FY 2009 and FY 2010 to the Department of Corrections of \$25,700 and to the Board of Pardons of \$500 for increased incarceration and workload costs each year. Beginning in FY 2011, this bill will require ongoing General Funds of \$51,400 to the Department of Corrections and \$1,000 to the Board of Pardons.

	<u>FY 2008</u> <u>Approp.</u>	<u>FY 2009</u> <u>Approp.</u>	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2008</u> <u>Revenue</u>	<u>FY 2009</u> <u>Revenue</u>	<u>FY 2010</u> <u>Revenue</u>
General Fund	\$0	\$52,400	\$52,400	\$0	\$0	\$0
General Fund, One-Time	\$0	(\$26,200)	(\$26,200)	\$0	\$0	\$0
Total	\$0	\$26,200	\$26,200	\$0	\$0	\$0

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.
