

**CHILD AND VULNERABLE ADULT  
ENDANGERMENT PROVISIONS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Michael T. Morley**

Senate Sponsor: Mark B. Madsen

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**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;
- ▶ provides that the penalties described in this bill are separate from, and in addition to, the penalties and enhancements described in Title 58, Occupations and Professions; and
- ▶ 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 2008, Chapter 356

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  
48 violent felony and who on at least two previous occasions has been convicted of a violent  
49 felony and committed to either prison in Utah or an equivalent correctional institution of  
50 another state or of the United States either at initial sentencing or after revocation of  
51 probation.

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

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

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

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

- 58 (D) aggravated assault, Section 76-5-103;
- 59 (E) aggravated assault by prisoner, Section 76-5-103.5;
- 60 (F) mayhem, Section 76-5-105;
- 61 (G) stalking, Subsection 76-5-106.5(2) or (3);
- 62 (H) terroristic threat, Section 76-5-107;
- 63 (I) child abuse, [~~Subsections~~] Subsection 76-5-109(2)(a) [~~and~~] or (b);
- 64 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- 65 (K) abuse or neglect of disabled child, Section 76-5-110;
- 66 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- 67 (M) endangerment of a child or [~~elder~~] vulnerable adult, Section 76-5-112.5;
- 68 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- 69 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
- 70 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- 71 (P) rape, Section 76-5-402;
- 72 (Q) rape of a child, Section 76-5-402.1;
- 73 (R) object rape, Section 76-5-402.2;
- 74 (S) object rape of a child, Section 76-5-402.3;
- 75 (T) forcible sodomy, Section 76-5-403;
- 76 (U) sodomy on a child, Section 76-5-403.1;
- 77 (V) forcible sexual abuse, Section 76-5-404;
- 78 (W) aggravated sexual abuse of a child [~~and~~] or sexual abuse of a child, Section
- 79 76-5-404.1;
- 80 (X) aggravated sexual assault, Section 76-5-405;
- 81 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 82 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 83 Burglary and Criminal Trespass;
- 84 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 85 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);

- 86 (CC) tampering with a witness under Subsection 76-8-508(1);
- 87 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 88 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 89 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any  
90 threat or by use of force theft by extortion has been committed pursuant to Subsections  
91 76-6-406(2)(a), (b), and (i);
- 92 (GG) possession, use, or removal of explosive, chemical, or incendiary devices under  
93 Subsections 76-10-306(3) through (6);
- 94 (HH) unlawful delivery of explosive, chemical, or incendiary devices under Section  
95 76-10-307;
- 96 (II) purchase or possession of a dangerous weapon or handgun by a restricted person  
97 under Section 76-10-503;
- 98 (JJ) unlawful discharge of a firearm under Section 76-10-508;
- 99 (KK) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
- 100 (LL) bus hijacking under Section 76-10-1504; and
- 101 (MM) discharging firearms and hurling missiles under Section 76-10-1505; or
- 102 (ii) any felony violation of a criminal statute of any other state, the United States, or  
103 any district, possession, or territory of the United States which would constitute a violent  
104 felony as defined in this Subsection (1) if committed in this state.
- 105 (2) If a person is convicted in this state of a violent felony by plea or by verdict and  
106 the trier of fact determines beyond a reasonable doubt that the person is a habitual violent  
107 offender under this section, the penalty for a:
  - 108 (a) third degree felony is as if the conviction were for a first degree felony;
  - 109 (b) second degree felony is as if the conviction were for a first degree felony; or
  - 110 (c) first degree felony remains the penalty for a first degree penalty except:
    - 111 (i) the convicted person is not eligible for probation; and
    - 112 (ii) the Board of Pardons and Parole shall consider that the convicted person is a  
113 habitual violent offender as an aggravating factor in determining the length of incarceration.

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

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

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

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

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

- 128 (i) defendant's previous convictions for violent felonies, except as otherwise provided  
129 in the Utah Rules of Evidence; or
- 130 (ii) allegation against the defendant of being a habitual violent offender.

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

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

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

139 (iii) Prior to sentencing under this section, the trier of fact shall determine whether this  
140 section is applicable beyond a reasonable doubt.

141 (d) If any previous conviction and commitment is based upon a plea of guilty or no

142 contest, there is a rebuttable presumption that the conviction and commitment were regular  
143 and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If  
144 the conviction and commitment occurred prior to January 1, 1970, the burden is on the  
145 prosecution to establish by a preponderance of the evidence that the defendant was then  
146 represented by counsel or had lawfully waived the right to have counsel present, and that the  
147 defendant's plea was understandingly and voluntarily entered.

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

152 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the  
153 provisions of this section.

154 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in  
155 Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part  
156 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

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

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

159 (i) a grievous sexual offense;

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

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

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

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

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

167 **76-5-112.5. Endangerment of a child or vulnerable adult.**

168 (1) As used in this section:

169 (a) (i) "Chemical substance" means:

170 (A) a substance intended to be used as a precursor in the manufacture of a controlled  
171 substance;

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

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

174 (ii) Intent under this Subsection (1)(a) may be demonstrated by:

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

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

177 (b) "Child" means a human being who is under 18 years of age.

178 (c) "Controlled substance" is as defined in Section 58-37-2.

179 (d) "Drug paraphernalia" is as defined in Section 58-37a-3.

180 (e) "Exposed to" means that the child or vulnerable adult:

181 (i) is able to access or view an unlawfully possessed:

182 (A) controlled substance; or

183 (B) chemical substance;

184 (ii) has the reasonable capacity to access drug paraphernalia; or

185 (iii) is able to smell an odor produced during, or as a result of, the manufacture or  
186 production of a controlled substance.

187 (f) "Prescription" is as defined in Section 58-37-2.

188 (g) "Vulnerable adult" is as defined in Subsection 76-5-111(1)(t).

189 (2) Unless a greater penalty is otherwise provided by law:

190 (a) except as provided in Subsection (2)(b) or (c), a person is guilty of a felony of the  
191 third degree if the person knowingly or intentionally causes or permits a child or a vulnerable  
192 adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical  
193 substance, or drug paraphernalia;

194 (b) except as provided in Subsection (2)(c), a person is guilty of a felony of the second  
195 degree, if:

196 (i) the person engages in the conduct described in Subsection (2)(a); and

197 (ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable

198 adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or  
199 (c) a person is guilty of a felony of the first degree, if:  
200 (i) the person engages in the conduct described in Subsection (2)(a); and  
201 (ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable  
202 adult dies.  
203 (3) It is an affirmative defense to a violation of this section that the controlled  
204 substance:  
205 (a) was obtained by lawful prescription; and  
206 (b) is used or possessed by the person to whom it was lawfully prescribed.  
207 (4) The penalties described in this section are separate from, and in addition to, the  
208 penalties and enhancements described in Title 58, Occupations and Professions.