

**CRIMINAL OFFENSE ELEMENTS AND
PENALTIES**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Carl Wimmer

Senate Sponsor: _____

LONG TITLE

Committee Note:

The Law Enforcement and Criminal Justice Interim Committee recommended this bill.

General Description:

This bill modifies the Criminal Code regarding the elements of the offenses of aggravated assault and failure to stop at the command of a peace officer and modifies the offense and penalties regarding felony discharge of a firearm.

Highlighted Provisions:

This bill:

- ▶ amends the offense of aggravated assault to provide that the infliction of serious bodily injury is a second degree felony, including if the injury is not caused intentionally;
- ▶ amends the penalty for the offense of a driver's failure to stop at the direction of a peace officer to provide that a second or subsequent offense is a second degree felony, and the offense is also subject to a fine of not less than \$5,000;
- ▶ amends the penalties for the offense of felony discharge of a firearm by:
 - increasing the penalty for specified discharge offenses from a third degree felony to a second degree felony; and
 - increasing the possible imprisonment from not more than five years to not more than 15 years;



► increases the possible imprisonment for discharge of a firearm causing injury from not less than three years to not less than five years, but does not amend the current limitation of not more than 15 years; and

► amends the offense of felony discharge of a firearm to include situations that constitute criminal homicide or attempted criminal homicide.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

41-6a-210, as renumbered and amended by Laws of Utah 2005, Chapter 2

76-3-203.6, as last amended by Laws of Utah 2007, Chapter 339

76-5-103, as last amended by Laws of Utah 1995, Chapter 291

76-5-202, as last amended by Laws of Utah 2008, Chapter 12

76-10-508.1, as enacted by Laws of Utah 2008, Chapter 296

78A-6-702, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **41-6a-210** is amended to read:

41-6a-210. Failure to respond to officer's signal to stop -- Fleeing -- Causing property damage or bodily injury -- Suspension of driver license -- Forfeiture of vehicle -- Penalties.

(1) (a) An operator who receives a visual or audible signal from a peace officer to bring the vehicle to a stop may not:

(i) operate the vehicle in willful or wanton disregard of the signal so as to interfere with or endanger the operation of any vehicle or person; or

(ii) attempt to flee or elude a peace officer by vehicle or other means.

(b) (i) A person who violates Subsection (1)(a) is guilty of a third degree felony ~~[of the third degree]~~, except as provided under Subsection (1)(c).

(ii) The court shall, as part of any sentence ~~[under this]~~ for the first violation of

Subsection (1)(a), impose a fine of not less than \$1,000.

(c) (i) A person who is convicted of a violation of Subsection (1)(a), after having been previously convicted of a violation of Subsection (1)(a), is guilty of a second degree felony.

(ii) The court shall, as part of any sentence for a second or subsequent violation of Subsection (1)(a), impose a fine of not less than \$5,000.

(2) (a) An operator who violates Subsection (1) and while so doing causes death or serious bodily injury to another person, under circumstances not amounting to murder or aggravated murder, is guilty of a second degree felony ~~[of the second degree]~~.

(b) The court shall, as part of any sentence under this Subsection (2), impose a fine of not less than \$5,000.

(3) (a) In addition to ~~[the penalty]~~ penalties provided under this section or any other section, the driver license of a person who violates Subsection (1)(a) or (2)(a) shall ~~[have the person's driver license]~~ be revoked under Subsection 53-3-220(1)(a)(ix) for a period of one year.

(b) (i) The court shall forward the report of the conviction to the division.

(ii) If the person is the holder of a driver license from another jurisdiction, the division shall notify the appropriate officials in the licensing state.

Section 2. Section **76-3-203.6** is amended to read:

76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.

(1) As used in this section, "serving a sentence" means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:

(a) has not been paroled; or

(b) is in custody after arrest for a parole violation.

(2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence for a capital felony or a first degree felony commits any offense listed in Subsection (3), the court shall sentence the defendant to life in prison without parole. However, the court may sentence the defendant to an indeterminate prison term of not less than 20 years and which may be for life if the court finds that the interests of justice would best be served and states the specific circumstances justifying the disposition on the record.

(3) Offenses referred to in Subsection (2) are:

- (a) aggravated assault, ~~[Subsection]~~ Section 76-5-103~~(2)~~;
- (b) mayhem, Section 76-5-105;
- (c) attempted murder, Section 76-5-203;
- (d) kidnapping, Section 76-5-301;
- (e) child kidnapping, Section 76-5-301.1;
- (f) aggravated kidnapping, Section 76-5-302;
- (g) rape, Section 76-5-402;
- (h) rape of a child, Section 76-5-402.1;
- (i) object rape, Section 76-5-402.2;
- (j) object rape of a child, Section 76-5-402.3;
- (k) forcible sodomy, Section 76-5-403;
- (l) sodomy on a child, Section 76-5-403.1;
- (m) aggravated sexual abuse of a child, Section 76-5-404.1;
- (n) aggravated sexual assault, Section 76-5-405;
- (o) aggravated arson, Section 76-6-103;
- (p) aggravated burglary, Section 76-6-203; and
- (q) aggravated robbery, Section 76-6-302.
- (4) The sentencing enhancement described in this section does not apply if:
- (a) the offense for which the person is being sentenced is:
- (i) a grievous sexual offense;
- (ii) child kidnapping, Section 76-5-301.1; or
- (iii) aggravated kidnapping, Section 76-5-302; and
- (b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.
- Section 3. Section **76-5-103** is amended to read:
- 76-5-103. Aggravated assault.**
- (1) A person commits aggravated assault if ~~[he]~~ the person commits assault as defined in Section 76-5-102 and ~~[he]~~ uses:
- ~~[(a) intentionally causes serious bodily injury to another; or]~~
- ~~[(b) under circumstances not amounting to a violation of Subsection (1)(a), uses]~~

(a) a dangerous weapon as defined in Section 76-1-601; or

(b) other means or force likely to produce death or serious bodily injury.

(2) (a) A violation of ~~[Subsection (1)(a)]~~ this section is a ~~[second degree felony]~~ third degree felony, except under Subsection (2)(b).

~~[(3) A violation of Subsection (1)(b) is a third degree felony.]~~

(b) A violation of this section that results in serious bodily injury is a second degree felony.

Section 4. Section **76-5-202** is amended to read:

76-5-202. Aggravated murder.

(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

(a) the homicide was committed by a person who is confined in a jail or other correctional institution;

(b) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;

(c) the actor knowingly created a great risk of death to a person other than the victim and the actor;

(d) the homicide was committed incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

(e) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as defined in Subsection 76-9-704(2)(e);

(f) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;

- 152 (g) the homicide was committed for pecuniary gain;
- 153 (h) the defendant committed, or engaged or employed another person to commit the
- 154 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration
- 155 for commission of the homicide;
- 156 (i) the actor previously committed or was convicted of:
- 157 (i) aggravated murder, Section 76-5-202;
- 158 (ii) attempted aggravated murder, Section 76-5-202;
- 159 (iii) murder, Section 76-5-203;
- 160 (iv) attempted murder, Section 76-5-203; or
- 161 (v) an offense committed in another jurisdiction which if committed in this state would
- 162 be a violation of a crime listed in this Subsection (1)(i);
- 163 (j) the actor was previously convicted of:
- 164 (i) aggravated assault, [~~Subsection~~] Section 76-5-103[~~(2)~~];
- 165 (ii) mayhem, Section 76-5-105;
- 166 (iii) kidnapping, Section 76-5-301;
- 167 (iv) child kidnapping, Section 76-5-301.1;
- 168 (v) aggravated kidnapping, Section 76-5-302;
- 169 (vi) rape, Section 76-5-402;
- 170 (vii) rape of a child, Section 76-5-402.1;
- 171 (viii) object rape, Section 76-5-402.2;
- 172 (ix) object rape of a child, Section 76-5-402.3;
- 173 (x) forcible sodomy, Section 76-5-403;
- 174 (xi) sodomy on a child, Section 76-5-403.1;
- 175 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 176 (xiii) aggravated sexual assault, Section 76-5-405;
- 177 (xiv) aggravated arson, Section 76-6-103;
- 178 (xv) aggravated burglary, Section 76-6-203;
- 179 (xvi) aggravated robbery, Section 76-6-302; or
- 180 (xvii) an offense committed in another jurisdiction which if committed in this state
- 181 would be a violation of a crime listed in this Subsection (1)(j);
- 182 (k) the homicide was committed for the purpose of:

- 183 (i) preventing a witness from testifying;
- 184 (ii) preventing a person from providing evidence or participating in any legal
185 proceedings or official investigation;
- 186 (iii) retaliating against a person for testifying, providing evidence, or participating in
187 any legal proceedings or official investigation; or
- 188 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 189 (l) the victim is or has been a local, state, or federal public official, or a candidate for
190 public office, and the homicide is based on, is caused by, or is related to that official position,
191 act, capacity, or candidacy;
- 192 (m) the victim is or has been a peace officer, law enforcement officer, executive
193 officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror,
194 probation officer, or parole officer, and the victim is either on duty or the homicide is based on,
195 is caused by, or is related to that official position, and the actor knew, or reasonably should
196 have known, that the victim holds or has held that official position;
- 197 (n) the homicide was committed:
- 198 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
199 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
200 structure, or was mailed or delivered; or
- 201 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401;
- 202 (o) the homicide was committed during the act of unlawfully assuming control of any
203 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any
204 valuable consideration for the release of the public conveyance or any passenger, crew
205 member, or any other person aboard, or to direct the route or movement of the public
206 conveyance or otherwise exert control over the public conveyance;
- 207 (p) the homicide was committed by means of the administration of a poison or of any
208 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;
- 209 (q) the victim was a person held or otherwise detained as a shield, hostage, or for
210 ransom;
- 211 (r) the homicide was committed in an especially heinous, atrocious, cruel, or
212 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious
213 physical abuse, or serious bodily injury of the victim before death;

(s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or after death, in a manner demonstrating the actor's depravity of mind; or

(t) the victim was younger than 14 years of age.

(2) Criminal homicide constitutes aggravated murder if the actor, with reckless indifference to human life, causes the death of another incident to an act, scheme, course of conduct, or criminal episode during which the actor is a major participant in the commission or attempted commission of:

(a) child abuse, Subsection 76-5-109(2)(a);

(b) child kidnapping, Section 76-5-301.1;

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

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

(e) sodomy on a child, Section 76-5-403.1; or

(f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

(3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder is a capital felony.

(b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital first degree felony punishable by imprisonment for life without parole or by an indeterminate term of not less than 20 years and which may be for life.

(c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty. The notice shall be served on the defendant or defense counsel and filed with the court.

(ii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the arraignment upon written stipulation of the parties or upon a finding by the court of good cause.

(d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first degree felony aggravated murder during the period in which the prosecutor may file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

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

(i) under the influence of extreme emotional distress for which there is a reasonable

245 explanation or excuse; or

246 (ii) under a reasonable belief that the circumstances provided a legal justification or
247 excuse for the defendant's conduct although the conduct was not legally justifiable or excusable
248 under the existing circumstances.

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

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

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

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

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

256 (i) aggravated murder to murder; and

257 (ii) attempted aggravated murder to attempted murder.

258 (5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes
259 a separate offense does not merge with the crime of aggravated murder.

260 (b) A person who is convicted of aggravated murder, based on an aggravating
261 circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be
262 convicted of, and punished for, the separate offense.

263 Section 5. Section **76-10-508.1** is amended to read:

264 **76-10-508.1. Felony discharge of a firearm -- Penalties.**

265 (1) Except as provided under Subsection (2) or (3), a person who discharges a firearm
266 [~~under any of the circumstances not amounting to criminal homicide or attempted criminal~~
267 ~~homicide~~] is guilty of a [~~third~~] second degree felony punishable by imprisonment for a term of
268 not less than three years nor more than [~~five~~] 15 years if:

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

271 (b) the actor, with intent to intimidate or harass another or with intent to damage a
272 habitable structure as defined in Section 76-6-101, discharges a firearm in the direction of any
273 person or habitable structure; or

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

(2) A violation of Subsection (1) which causes bodily injury to any person is a second degree felony punishable by imprisonment for a term of not less than [~~three~~] five years nor more than [~~fifteen~~] 15 years.

(3) A violation of Subsection (1) which causes serious bodily injury to any person is a first degree felony.

(4) In addition to any other penalties for a violation of this section, the court shall:

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

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

(5) This section does not apply to a person:

(a) who discharges any kind of firearm when that person is in lawful defense of self or others;

(b) who is performing official duties as provided in Section 23-20-1.5 or 76-10-523 or as otherwise authorized by law;

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

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

(ii) at no time after the discharge does the projectile that is discharged cross over or stop at a location other than within the boundaries of the firing range or training ground

[~~described in~~] under Subsection (5)(c)(i);

(iii) the discharge is made as practice or training for a lawful purpose;

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

(v) the discharge is not made in violation of Subsection (1).

Section 6. Section **78A-6-702** is amended to read:

78A-6-702. Serious youth offender -- Procedure.

(1) Any action filed by a county attorney, district attorney, or attorney general charging a minor 16 years of age or older with a felony shall be by criminal information and filed in the juvenile court if the information charges any of the following offenses:

(a) any felony violation of:

- 307 (i) Section 76-6-103, aggravated arson;
- 308 (ii) ~~[Subsection]~~ Section 76-5-103~~(1)(a)~~, aggravated assault~~[-involving intentionally]~~
- 309 causing serious bodily injury to another;
- 310 (iii) Section 76-5-302, aggravated kidnapping;
- 311 (iv) Section 76-6-203, aggravated burglary;
- 312 (v) Section 76-6-302, aggravated robbery;
- 313 (vi) Section 76-5-405, aggravated sexual assault;
- 314 (vii) Section 76-10-508, discharge of a firearm from a vehicle;
- 315 (viii) Section 76-5-202, attempted aggravated murder; or
- 316 (ix) Section 76-5-203, attempted murder; or
- 317 (b) an offense other than those listed in Subsection (1)(a) involving the use of a
- 318 dangerous weapon which would be a felony if committed by an adult, and the minor has been
- 319 previously adjudicated or convicted of an offense involving the use of a dangerous weapon
- 320 which also would have been a felony if committed by an adult.
- 321 (2) All proceedings before the juvenile court related to charges filed under Subsection
- 322 (1) shall be conducted in conformity with the rules established by the Utah Supreme Court.
- 323 (3) (a) If the information alleges the violation of a felony listed in Subsection (1), the
- 324 state shall have the burden of going forward with its case and the burden of proof to establish
- 325 probable cause to believe that one of the crimes listed in Subsection (1) has been committed
- 326 and that the defendant committed it. If proceeding under Subsection (1)(b), the state shall have
- 327 the additional burden of proving by a preponderance of the evidence that the defendant has
- 328 previously been adjudicated or convicted of an offense involving the use of a dangerous
- 329 weapon.
- 330 (b) If the juvenile court judge finds the state has met its burden under this Subsection
- 331 (3), the court shall order that the defendant be bound over and held to answer in the district
- 332 court in the same manner as an adult unless the juvenile court judge finds that all of the
- 333 following conditions exist:
- 334 (i) the minor has not been previously adjudicated delinquent for an offense involving
- 335 the use of a dangerous weapon which would be a felony if committed by an adult;
- 336 (ii) that if the offense was committed with one or more other persons, the minor
- 337 appears to have a lesser degree of culpability than the codefendants; and

338 (iii) that the minor's role in the offense was not committed in a violent, aggressive, or
339 premeditated manner.

340 (c) Once the state has met its burden under this Subsection (3) as to a showing of
341 probable cause, the defendant shall have the burden of going forward and presenting evidence
342 as to the existence of the above conditions.

343 (d) If the juvenile court judge finds by clear and convincing evidence that all the above
344 conditions are satisfied, the court shall so state in its findings and order the minor held for trial
345 as a minor and shall proceed upon the information as though it were a juvenile petition.

346 (4) If the juvenile court judge finds that an offense has been committed, but that the
347 state has not met its burden of proving the other criteria needed to bind the defendant over
348 under Subsection (1), the juvenile court judge shall order the defendant held for trial as a minor
349 and shall proceed upon the information as though it were a juvenile petition.

350 (5) At the time of a bind over to district court a criminal warrant of arrest shall issue.
351 The defendant shall have the same right to bail as any other criminal defendant and shall be
352 advised of that right by the juvenile court judge. The juvenile court shall set initial bail in
353 accordance with Title 77, Chapter 20, Bail.

354 (6) If an indictment is returned by a grand jury charging a violation under this section,
355 the preliminary examination held by the juvenile court judge need not include a finding of
356 probable cause that the crime alleged in the indictment was committed and that the defendant
357 committed it, but the juvenile court shall proceed in accordance with this section regarding the
358 additional considerations listed in Subsection (3)(b).

359 (7) When a defendant is charged with multiple criminal offenses in the same
360 information or indictment and is bound over to answer in the district court for one or more
361 charges under this section, other offenses arising from the same criminal episode and any
362 subsequent misdemeanors or felonies charged against him shall be considered together with
363 those charges, and where the court finds probable cause to believe that those crimes have been
364 committed and that the defendant committed them, the defendant shall also be bound over to
365 the district court to answer for those charges.

366 (8) A minor who is bound over to answer as an adult in the district court under this
367 section or on whom an indictment has been returned by a grand jury is not entitled to a
368 preliminary examination in the district court.

369 (9) Allegations contained in the indictment or information that the defendant has
370 previously been adjudicated or convicted of an offense involving the use of a dangerous
371 weapon, or is 16 years of age or older, are not elements of the criminal offense and do not need
372 to be proven at trial in the district court.

373 (10) If a minor enters a plea to, or is found guilty of, any of the charges filed or any
374 other offense arising from the same criminal episode, the district court retains jurisdiction over
375 the minor for all purposes, including sentencing.

376 (11) The juvenile court under Section 78A-6-103 and the Division of Juvenile Justice
377 Services regain jurisdiction and any authority previously exercised over the minor when there
378 is an acquittal, a finding of not guilty, or dismissal of all charges in the district court.

Legislative Review Note
as of 10-3-08 11:36 AM

Office of Legislative Research and General Counsel