

1 **CRIMINAL OFFENSE PENALTIES**

2 **AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jon J. Greiner**

6 House Sponsor: Curtis Oda

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7

8 **LONG TITLE**

9 **Committee Note:**

10 The Judiciary, Law Enforcement, and Criminal Justice Interim Committee  
11 recommended this bill.

12 **General Description:**

13 This bill modifies provisions of the Criminal Code regarding elements of specified  
14 criminal offenses and regarding the dollar value of damage used to determine levels of  
15 criminal offenses.

16 **Highlighted Provisions:**

17 This bill:

- 18 ▶ applies the enhanced penalty that currently applies to persons committing a crime in  
19 concert with two or more persons to persons who commit any of the listed offenses  
20 in association with a criminal street gang;
- 21 ▶ provides that commission of aggravated assault resulting in serious bodily injury is  
22 a second degree felony, regardless of whether the actor intended to cause serious  
23 bodily injury;
- 24 ▶ modifies the penalty for a second offense of theft, or of robbery or burglary with the  
25 intent to commit theft, to require that the second offense be committed or the  
26 conviction obtained within 10 years prior to the current theft offense;
- 27 ▶ modifies the factors considered by the juvenile court in hearings to certify a juvenile



28 to stand trial as an adult to include if the juvenile engaged in criminal activity in association  
29 with a criminal street gang;

30       ▶ modifies the definition of a criminal nuisance to include criminal activity conducted  
31 in association with a criminal street gang; and

32       ▶ modifies the dollar value of damage that determines the levels of offense for  
33 offenses, including arson, criminal mischief, theft, various fraud offenses, unlawful  
34 dealing by a fiduciary, destruction of livestock, reckless burning, computer crimes,  
35 bad checks, mortgage fraud, and theft of utility services.

36 **Monies Appropriated in this Bill:**

37       None

38 **Other Special Clauses:**

39       ~~§~~→ [None] This bill provides an effective date of November 1, 2010. ←~~§~~

40 **Utah Code Sections Affected:**

41 AMENDS:

42       **9-4-612**, as last amended by Laws of Utah 2007, Chapter 322

43       **63M-7-510**, as last amended by Laws of Utah 2008, Chapter 339 and renumbered and  
44 amended by Laws of Utah 2008, Chapter 382

45       **76-3-203.1**, as last amended by Laws of Utah 2009, Chapter 157

46       **76-5-103**, as last amended by Laws of Utah 1995, Chapter 291

47       **76-6-101**, as last amended by Laws of Utah 2009, Chapter 320

48       **76-6-102**, as last amended by Laws of Utah 2004, Chapter 134

49       **76-6-104**, as last amended by Laws of Utah 1998, Chapter 71

50       **76-6-106**, as last amended by Laws of Utah 2002, Chapter 166

51       **76-6-111**, as enacted by Laws of Utah 2009, Chapter 282

52       **76-6-409.3**, as last amended by Laws of Utah 1995, Chapter 291

53       **76-6-412**, as last amended by Laws of Utah 1997, Chapters 119 and 289

54       **76-6-505**, as last amended by Laws of Utah 2007, Chapter 306

55       **76-6-506.5**, as last amended by Laws of Utah 2009, Chapter 166

56       **76-6-513**, as last amended by Laws of Utah 2008, Chapter 382

57       **76-6-518**, as last amended by Laws of Utah 1995, Chapter 291

58       **76-6-608**, as last amended by Laws of Utah 2003, Chapter 173

- 59            **76-6-703**, as last amended by Laws of Utah 2005, Chapter 72
- 60            **76-6-1204**, as last amended by Laws of Utah 2009, Chapter 211
- 61            **76-8-1206**, as last amended by Laws of Utah 1995, Chapter 291
- 62            **76-8-1301**, as last amended by Laws of Utah 2008, Chapter 305
- 63            **76-10-1801**, as last amended by Laws of Utah 2009, Chapter 211
- 64            **78A-6-703**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 65            **78B-6-1101**, as last amended by Laws of Utah 2009, Chapter 21
- 66            **78B-6-1107**, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

69            Section 1. Section **9-4-612** is amended to read:

70            **9-4-612. Penalties for fraudulently obtaining or continuing to receive housing**  
 71 **assistance benefits.**

72            (1) No person may knowingly, by misrepresentation, impersonation, or any other  
 73 fraudulent means, make any false statement to housing authority personnel or, after being  
 74 accepted as a recipient of housing authority benefits, fail to disclose to housing authority  
 75 personnel any:

- 76            (a) change in household composition;
- 77            (b) employment change;
- 78            (c) change in marital status;
- 79            (d) receipt of any other monetary assistance;
- 80            (e) receipt of in-kind gifts; or
- 81            (f) any other material fact or change in circumstances which would affect the

82 determination of that person's eligibility to receive housing assistance benefits, or would affect  
 83 the amount of benefits for which he is eligible.

84            (2) No person may fail to disclose any of the information described in Subsection (1)  
 85 for the purpose of obtaining or continuing to receive funds or other housing assistance benefits  
 86 to which he is not entitled, or in an amount larger than that to which he is entitled.

87            (3) No person who has duties relating to the administration of any housing authority  
 88 program may fraudulently misappropriate any funds or other assistance with which he has been  
 89 entrusted, or of which he has gained possession by virtue of his position.

90 (4) No person may knowingly:

91 (a) file or falsify any claim, report, or document required by state or federal law, or  
92 provider agreement, to obtain or attempt to obtain unauthorized housing assistance benefits  
93 under this chapter; or

94 (b) attempt to commit, or aid or abet the commission of, any act prohibited by this  
95 section.

96 (5) The punishment for violation of any provision of this section by a housing  
97 assistance recipient is determined by the cumulative value of the funds or other benefits he  
98 received from all the frauds he committed, and not by each separate instance of fraud.

99 (6) The punishment for the offenses of this section are:

100 (a) a [~~felony of the~~] second degree felony if the value of the funds or other benefits  
101 received, misappropriated, claimed, or applied for, is equal to or exceeds \$5,000;

102 (b) a [~~felony of the~~] third degree felony if the value of the funds or other benefits  
103 received, misappropriated, claimed, or applied for, is equal to or greater than [~~\$1,000~~] \$1,500  
104 but less than \$5,000;

105 (c) a class A misdemeanor if the value of the funds or other benefits received,  
106 misappropriated, claimed, or applied for, is equal to or greater than [~~\$300~~] \$500 but less than  
107 [~~\$1,000~~] \$1,500; or

108 (d) a class B misdemeanor if the value of the funds or other benefits received,  
109 misappropriated, claimed, or applied for, is less than [~~\$300~~] \$500.

110 Section 2. Section **63M-7-510** is amended to read:

111 **63M-7-510. Ineligible persons -- Fraudulent claims -- Penalties.**

112 (1) The following individuals are not eligible to receive an award of reparations:

113 (a) persons who do not meet all of the provisions set forth in Section 63M-7-509;

114 (b) the offender;

115 (c) an accomplice of the offender;

116 (d) any person whose receipt of an award would unjustly benefit the offender,  
117 accomplice, or other person reasonably suspected of participating in the offense;

118 (e) the victim of a motor vehicle injury who was the owner or operator of the motor  
119 vehicle and was not at the time of the injury in compliance with the state motor vehicle  
120 insurance laws;

121 (f) any convicted offender serving a sentence of imprisonment in any prison or jail or  
122 residing in any other correctional facility;

123 (g) all persons who are on probation or parole if the circumstances surrounding the  
124 offense of which they are victims constitute a violation of their parole or probation; and

125 (h) any person whose injuries are the result of criminally injurious conduct which  
126 occurred in a prison, jail, or any other correctional facility while the person was serving a  
127 sentence of imprisonment.

128 (2) A person who knowingly submits a fraudulent claim for reparations or who  
129 knowingly misrepresents material facts in making a claim, and who receives an award based on  
130 that claim, is guilty of an offense, based on the following award amounts:

131 (a) for value under [~~\$300~~] \$500, a class B misdemeanor;

132 (b) for value equal to or greater than [~~\$300~~] \$500, but less than [~~\$1,000~~] \$1,500, a class  
133 A misdemeanor;

134 (c) for value equal to or greater than [~~\$1,000~~] \$1,500, but less than \$5,000, a third  
135 degree felony; and

136 (d) for value equal to or greater than \$5,000, a second degree felony.

137 (3) A person who submits a claim described in Subsection (2) but receives no award  
138 based on that claim is guilty of a class B misdemeanor.

139 (4) The state attorney general may prosecute violations under this section or may make  
140 arrangements with county attorneys for the prosecution of violations under this section when  
141 the attorney general cannot conveniently prosecute.

142 (5) The state may also bring a civil action against a claimant who receives reparation  
143 payments that are later found to be unjustified and who does not return to the Crime Victim  
144 Reparations Fund the unjustified amount.

145 Section 3. Section **76-3-203.1** is amended to read:

146 **76-3-203.1. Offenses committed in concert with two or more persons -- Notice --**  
147 **Enhanced penalties.**

148 (1) As used in this section:

149 (a) "Criminal street gang" has the same definition as in Section 76-9-802.

150 (b) "In concert with two or more persons" means:

151 (i) the defendant was aided or encouraged by at least two other persons in committing

152 the offense and was aware of this aid or encouragement; and

153 (ii) each of the other persons:

154 (A) was physically present; or

155 (B) participated as a party to any offense listed in Subsection (5).

156 (c) "In concert with two or more persons" means, regarding intent:

157 (i) other persons participating as parties need not have the intent to engage in the same  
158 offense or degree of offense as the defendant; and

159 (ii) a minor is a party if the minor's actions would cause the minor to be a party if the  
160 minor were an adult.

161 ~~[(1)(a)]~~ (2) A person who commits any offense listed in Subsection ~~[(4)]~~ (5) is subject  
162 to an enhanced penalty for the offense as provided in Subsection ~~[(3)]~~ (4) if the trier of fact  
163 finds beyond a reasonable doubt that the person acted;

164 (a) in concert with two or more persons[-];

165 ~~[(b) "In concert with two or more persons" as used in this section means the defendant~~  
166 ~~was aided or encouraged by at least two other persons in committing the offense and was aware~~  
167 ~~that he was so aided or encouraged, and each of the other persons:]~~

168 ~~[(i) was physically present; or]~~

169 ~~[(ii) participated as a party to any offense listed in Subsection (4).]~~

170 ~~[(c) For purposes of Subsection (1)(b)(ii):]~~

171 ~~[(i) other persons participating as parties need not have the intent to engage in the same~~  
172 ~~offense or degree of offense as the defendant; and]~~

173 ~~[(ii) a minor is a party if the minor's actions would cause him to be a party if he were~~  
174 ~~an adult.]~~

175 (b) for the benefit of, at the direction of, or in association with any criminal street gang  
176 as defined in Section 76-9-802; or

177 (c) to gain recognition, acceptance, membership, or increased status with a criminal  
178 street gang as defined in Section 76-9-802.

179 ~~[(2)]~~ (3) The prosecuting attorney, or grand jury if an indictment is returned, shall  
180 cause to be subscribed upon the information or indictment notice that the defendant is subject  
181 to the enhanced penalties provided under this section.

182 ~~[(3)]~~ (4) The enhanced penalty for a:

- 183 (a) class B misdemeanor is a class A misdemeanor;
- 184 (b) class A misdemeanor is a third degree felony;
- 185 (c) third degree felony is a second degree felony;
- 186 (d) second degree felony is a first degree felony; and
- 187 (e) first degree felony is an indeterminate prison term of not less than five years in  
188 addition to the statutory minimum prison term for the offense, and which may be for life.
- 189 ~~[(4)]~~ (5) Offenses referred to in Subsection ~~[(1)]~~ (2) are:
- 190 (a) any criminal violation of ~~[Title 58, Chapter 37, 37a, 37b, or 37c, regarding~~  
191 ~~drug-related offenses;]~~ the following chapters of Title 58:
- 192 (i) Chapter 37, Utah Controlled Substances Act;
- 193 (ii) Chapter 37a, Utah Drug Paraphernalia Act;
- 194 (iii) Chapter 37b, Imitation Controlled Substances Act; or
- 195 (iv) Chapter 37c, Utah Controlled Substance Precursor Act;
- 196 (b) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related  
197 Offenses;
- 198 (c) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal  
199 Homicide;
- 200 (d) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping,  
201 Trafficking, and Smuggling;
- 202 (e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
- 203 (f) sexual exploitation of a minor as defined in Section 76-5a-3;
- 204 (g) any property destruction offense under Title 76, Chapter 6, Part 1, Property  
205 Destruction;
- 206 (h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2,  
207 Burglary and Criminal Trespass;
- 208 (i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery;
- 209 (j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail  
210 Theft;
- 211 (k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-504,  
212 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514,  
213 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

214 (l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3,  
215 except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

216 (m) tampering with a witness or other violation of Section 76-8-508;

217 (n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;

218 (o) any explosives offense under Title 76, Chapter 10, Part 3, Explosives;

219 (p) any weapons offense under Title 76, Chapter 10, Part 5, Weapons;

220 (q) pornographic and harmful materials and performances offenses under Title 76,  
221 Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;

222 (r) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;

223 (s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

224 (t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

225 (u) communications fraud as defined in Section 76-10-1801;

226 (v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency  
227 Transaction Reporting Act; and

228 (w) burglary of a research facility as defined in Section 76-10-2002.

229 ~~[(5)]~~ (6) It is not a bar to imposing the enhanced penalties under this section that the  
230 persons with whom the actor is alleged to have acted in concert are not identified, apprehended,  
231 charged, or convicted, or that any of those persons are charged with or convicted of a different  
232 or lesser offense.

233 Section 4. Section **76-5-103** is amended to read:

234 **76-5-103. Aggravated assault.**

235 (1) A person commits aggravated assault if ~~[he]~~ the person commits assault as defined  
236 in Section 76-5-102 and ~~[he]~~ uses:

237 ~~[(a) intentionally causes serious bodily injury to another; or]~~

238 ~~[(b) under circumstances not amounting to a violation of Subsection (1)(a), uses]~~

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

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

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

243 ~~[(3)]~~ (b) A violation of Subsection (1)~~[(b)]~~ that results in serious bodily injury is a  
244 ~~[third]~~ second degree felony.



245 Section 5. Section **76-6-101** is amended to read:

246 **76-6-101. Definitions.**

247 For purposes of this chapter:

248 (1) "Property" means any form of real property or tangible personal property which is  
249 capable of being damaged or destroyed and includes a habitable structure.

250 (2) "Habitable structure" means any building, vehicle, trailer, railway car, aircraft, or  
251 watercraft used for lodging or assembling persons or conducting business whether a person is  
252 actually present or not.

253 (3) "Property" is that of another, if anyone other than the actor has a possessory or  
254 proprietary interest in any portion thereof.

255 (4) "Value" means:

256 (a) The market value of the property, if totally destroyed, at the time and place of the  
257 offense, or where cost of replacement exceeds the market value; or

258 (b) Where the market value cannot be ascertained, the cost of repairing or replacing the  
259 property within a reasonable time following the offense.

260 (5) If the property damaged has a value that cannot be ascertained by the criteria set  
261 forth in Subsections (4)(a) and (b), the property shall be considered to have a value less than  
262 [~~\$300~~] \$500.

263 (6) "Fire" means a flame, heat source capable of combustion, or material capable of  
264 combustion that is caused, set, or maintained by a person for any purpose.

265 Section 6. Section **76-6-102** is amended to read:

266 **76-6-102. Arson.**

267 (1) A person is guilty of arson if, under circumstances not amounting to aggravated  
268 arson, [~~by means of fire or explosives,~~] the person by means of fire or explosives unlawfully  
269 and intentionally damages:

270 (a) any property with intention of defrauding an insurer; or

271 (b) the property of another.

272 (2) A violation of Subsection (1)(a) is a second degree felony.

273 (3) A violation of Subsection (1)(b) is:

274 (a) a second degree felony if:

275 (i) the damage caused is or exceeds \$5,000 in value; or

276 (ii) as a proximate result of the fire or explosion, any person not a participant in the  
277 offense suffers serious bodily injury as defined in Section 76-1-601;

278 (b) a third degree felony if:

279 (i) the damage caused is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000 in value;

280 (ii) as a proximate result of the fire or explosion, any person not a participant in the  
281 offense suffers substantial bodily injury as defined in Section 76-1-601; or

282 (iii) the fire or explosion endangers human life;

283 (c) a class A misdemeanor if the damage caused is or exceeds [~~\$300~~] \$500 but is less  
284 than [~~\$1,000~~] \$1,500 in value; and

285 (d) a class B misdemeanor if the damage caused is less than [~~\$300~~] \$500.

286 Section 7. Section **76-6-104** is amended to read:

287 **76-6-104. Reckless burning.**

288 (1) A person is guilty of reckless burning if the person:

289 (a) recklessly starts a fire or causes an explosion which endangers human life;

290 (b) having started a fire, whether recklessly or not, and knowing that it is spreading and  
291 will endanger the life or property of another, either fails to take reasonable measures to put out  
292 or control the fire or fails to give a prompt fire alarm;

293 (c) builds or maintains a fire without taking reasonable steps to remove all flammable  
294 materials surrounding the site of the fire as necessary to prevent the fire's spread or escape; or

295 (d) damages the property of another by reckless use of fire or causing an explosion.

296 (2) (a) A violation of Subsection (1)(a) or (b) is a class A misdemeanor.

297 (b) A violation of Subsection (1)(c) is a class B misdemeanor.

298 (c) A violation of Subsection (1)(d) is:

299 (i) a class A misdemeanor if damage to property is or exceeds [~~\$1,000~~] \$1,500 in  
300 value;

301 (ii) a class B misdemeanor if the damage to property is or exceeds [~~\$300~~] \$500 but is  
302 less than [~~\$1,000~~] \$1,500 in value; and

303 (iii) a class C misdemeanor if the damage to property is or exceeds \$150 but is less  
304 than [~~\$300~~] \$500 in value.

305 (d) Any other violation under Subsection (1)(d) is an infraction.

306 Section 8. Section **76-6-106** is amended to read:

- 307           **76-6-106. Criminal mischief.**
- 308           (1) As used in this section, "critical infrastructure" includes:
- 309           (a) information and communication systems;
- 310           (b) financial and banking systems;
- 311           (c) transportation systems;
- 312           (d) any public utility service, including the power, energy, and water supply systems;
- 313           (e) sewage and water treatment systems;
- 314           (f) health care facilities as listed in Section 26-21-2, and emergency fire, medical, and
- 315 law enforcement response systems;
- 316           (g) public health facilities and systems;
- 317           (h) food distribution systems; and
- 318           (i) other government operations and services.
- 319           (2) A person commits criminal mischief if the person:
- 320           (a) under circumstances not amounting to arson, damages or destroys property with the
- 321 intention of defrauding an insurer;
- 322           (b) intentionally and unlawfully tampers with the property of another and as a result:
- 323           (i) recklessly endangers:
- 324           (A) human life; or
- 325           (B) human health or safety; or
- 326           (ii) recklessly causes or threatens a substantial interruption or impairment of any
- 327 critical infrastructure;
- 328           (c) intentionally damages, defaces, or destroys the property of another; or
- 329           (d) recklessly or willfully shoots or propels a missile or other object at or against a
- 330 motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving
- 331 or standing.
- 332           (3) (a) (i) A violation of Subsection (2)(a) is a third degree felony.
- 333           (ii) A violation of Subsection (2)(b)(i)(A) is a class A misdemeanor.
- 334           (iii) A violation of Subsection (2)(b)(i)(B) is a class B misdemeanor.
- 335           (iv) A violation of Subsection (2)(b)(ii) is a second degree felony.
- 336           (b) Any other violation of this section is a:
- 337           (i) second degree felony if the actor's conduct causes or is intended to cause pecuniary

338 loss equal to or in excess of \$5,000 in value;

339 (ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary

340 loss equal to or in excess of [~~\$1,000~~] \$1,500 but is less than \$5,000 in value;

341 (iii) class A misdemeanor if the actor's conduct causes or is intended to cause

342 pecuniary loss equal to or in excess of [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500 in value;

343 and

344 (iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary

345 loss less than [~~\$300~~] \$500 in value.

346 (4) In determining the value of damages under this section, or for computer crimes

347 under Section 76-6-703, the value of any item, computer, computer network, computer

348 property, computer services, software, or data includes the measurable value of the loss of use

349 of the items and the measurable cost to replace or restore the items.

350 (5) In addition to any other penalty authorized by law, a court shall order any person

351 convicted of any violation of this section to reimburse any federal, state, or local unit of

352 government, or any private business, organization, individual, or entity for all expenses

353 incurred in responding to a violation of Subsection (2)(b)(ii), unless the court states on the

354 record the reasons why the reimbursement would be inappropriate.

355 Section 9. Section **76-6-111** is amended to read:

356 **76-6-111. Wanton destruction of livestock -- Penalties -- Seizure and disposition**  
357 **of property.**

358 (1) As used in this section:

359 (a) "Law enforcement officer" is as defined in Section 53-13-103.

360 (b) "Livestock" means a domestic animal or fur bearer raised or kept for profit,

361 including:

362 (i) cattle;

363 (ii) sheep;

364 (iii) goats;

365 (iv) swine;

366 (v) horses;

367 (vi) mules;

368 (vii) poultry; and

- 369 (viii) domesticated elk as defined in Section 4-39-102.
- 370 (2) Unless authorized by Section 4-25-4, 4-25-5, 4-25-14, 4-39-401, or 18-1-3, a  
371 person is guilty of wanton destruction of livestock if that person:
- 372 (a) injures, physically alters, releases, or causes the death of livestock; and  
373 (b) does so:
- 374 (i) intentionally or knowingly; and  
375 (ii) without the permission of the owner of the livestock.
- 376 (3) Wanton destruction of livestock is punishable as a:
- 377 (a) class B misdemeanor if the aggregate value of the livestock is [~~\$300~~] \$500 or less;  
378 (b) class A misdemeanor if the aggregate value of the livestock is more than [~~\$300~~]  
379 \$500, but does not exceed [~~\$1,000~~] \$1,500;  
380 (c) third degree felony if the aggregate value of the livestock is more than [~~\$1,000~~]  
381 \$1,500, but does not exceed \$5,000; and  
382 (d) second degree felony if the aggregate value of the livestock is more than \$5,000.
- 383 (4) A material, device, or vehicle used in violation of Subsection (2) is subject to  
384 forfeiture under the procedures and substantive protections established in Title 24, Chapter 1,  
385 Utah Uniform Forfeiture Procedures Act.
- 386 (5) A peace officer may seize a material, device, or vehicle used in violation of  
387 Subsection (2):
- 388 (a) upon notice and service of process issued by a court having jurisdiction over the  
389 property; or  
390 (b) without notice and service of process if:
- 391 (i) the seizure is incident to an arrest under:  
392 (A) a search warrant; or  
393 (B) an inspection under an administrative inspection warrant;  
394 (ii) the material, device, or vehicle has been the subject of a prior judgment in favor of  
395 the state in a criminal injunction or forfeiture proceeding under this section; or  
396 (iii) the peace officer has probable cause to believe that the property has been used in  
397 violation of Subsection (2).
- 398 (6) (a) A material, device, or vehicle seized under this section is not repleviable but is  
399 in custody of the law enforcement agency making the seizure, subject only to the orders and

400 decrees of a court or official having jurisdiction.

401 (b) A peace officer who seizes a material, device, or vehicle under this section may:

402 (i) place the property under seal;

403 (ii) remove the property to a place designated by the warrant under which it was seized;

404 or

405 (iii) take custody of the property and remove it to an appropriate location for

406 disposition in accordance with law.

407 Section 10. Section ~~76-6-409.3~~ is amended to read:

408 **76-6-409.3. Theft of utility or cable television services -- Restitution -- Civil action**  
409 **for damages.**

410 (1) As used in this section:

411 (a) "Cable television service" means any audio, video, or data service provided by a  
412 cable television company over its cable system facilities for payment, but does not include the  
413 use of a satellite dish or antenna.

414 (b) "Owner" includes any part-owner, joint owner, tenant in common, joint tenant, or  
415 tenant by the entirety of the whole or a part of any building and the property on which it is  
416 located.

417 (c) "Person" means any individual, firm, partnership, corporation, company,  
418 association, or other legal entity.

419 (d) "Tenant or occupant" includes any person, including the owner, who occupies the  
420 whole or part of any building, whether alone or with others.

421 (e) "Utility" means any public utility, municipally-owned utility, or cooperative utility  
422 which provides electricity, gas, water, or sewer, or any combination of them, for sale to  
423 consumers.

424 (2) A person is guilty of theft of a utility or cable television service if the person  
425 commits any prohibited acts which make gas, electricity, water, sewer, or cable television  
426 available to a tenant or occupant, including himself, with intent to avoid due payment to the  
427 utility or cable television company. Any person aiding and abetting in these prohibited acts is a  
428 party to the offense under Section 76-2-202. Prohibited acts include:

429 (a) connecting any tube, pipe, wire, cable, or other instrument with any meter, device,  
430 or other instrument used for conducting gas, electricity, water, sewer, or cable television in a

431 manner as permits the use of the gas, electricity, water, sewer, or cable television without its  
432 passing through a meter or other instrument recording the usage for billing;

433 (b) altering, injuring, or preventing the normal action of a meter, valve, stopcock, or  
434 other instrument used for measuring quantities of gas, electricity, water, or sewer service, or  
435 making or maintaining any modification or alteration to any device installed with the  
436 authorization of a cable television company for the purpose of intercepting or receiving any  
437 program or other service carried by the company which the person is not authorized by the  
438 company to receive;

439 (c) reconnecting gas, electricity, water, sewer, or cable television connections or  
440 otherwise restoring service when one or more of those utilities or cable service have been  
441 lawfully disconnected or turned off by the provider of the utility or cable service;

442 (d) intentionally breaking, defacing, or causing to be broken or defaced any seal,  
443 locking device, or other part of a metering device for recording usage of gas, electricity, water,  
444 or sewer service, or a security system for the recording device, or a cable television control  
445 device;

446 (e) removing a metering device designed to measure quantities of gas, electricity,  
447 water, or sewer service;

448 (f) transferring from one location to another a metering device for measuring quantities  
449 of public utility services of gas, electricity, water, or sewer service;

450 (g) changing the indicated consumption, jamming the measuring device, bypassing the  
451 meter or measuring device with a jumper so that it does not indicate use or registers use  
452 incorrectly, or otherwise obtaining quantities of gas, electricity, water, or sewer service from  
453 the utility without their passing through a metering device for measuring quantities of  
454 consumption for billing purposes;

455 (h) using a metering device belonging to the utility that has not been assigned to the  
456 location and installed by the utility;

457 (i) fabricating or using a device to pick or otherwise tamper with the locks used to deter  
458 utility service diversion, meter tampering, meter thefts, and unauthorized cable television  
459 service;

460 (j) assisting or instructing any person in obtaining or attempting to obtain any cable  
461 television service without payment of all lawful compensation to the company providing the

462 service;

463 (k) making or maintaining a connection or connections, whether physical, electrical,  
464 mechanical, acoustical, or by other means, with any cables, wires, components, or other devices  
465 used for the distribution of cable television services without authority from the cable television  
466 company; or

467 (l) possessing without authority any device or printed circuit board designed in whole  
468 or in part to receive any cable television programming or services offered for sale over a cable  
469 television system with the intent that the device or printed circuit be used for the reception of  
470 the cable television company's services without payment. For purposes of this subsection,  
471 device or printed circuit board does not include the use of a satellite dish or antenna.

472 (3) The presence on property in the possession of a person of any device or alteration  
473 which permits the diversion or use of utility or cable service to avoid the registration of the use  
474 by or on a meter installed by the utility or to otherwise avoid the recording of use of the service  
475 for payment or otherwise avoid payment gives rise to an inference that the person in possession  
476 of the property installed the device or caused the alteration if:

477 (a) the presence of the device or alteration can be attributed only to a deliberate act in  
478 furtherance of an intent to avoid payment for utility or cable television service; and

479 (b) the person charged has received the direct benefit of the reduction of the cost of the  
480 utility or cable television service.

481 (4) A person who violates this section is guilty of the offense of theft of utility or cable  
482 television service.

483 (a) In the case of theft of utility services, if the value of the gas, electricity, water, or  
484 sewer service:

485 (i) is less than [~~\$300~~] \$500, the offense is a class B misdemeanor;

486 (ii) is or exceeds [~~\$300~~] \$500 but is not more than [~~\$1,000~~] \$1,500, the offense is a  
487 class A misdemeanor;

488 (iii) is or exceeds [~~\$1,000~~] \$1,500 but is not more than \$5,000, the offense is a third  
489 degree felony; and

490 (iv) is or exceeds \$5,000 or if the offender has previously been convicted of a violation  
491 of this section, the offense is a second degree felony.

492 (b) In the case of theft of cable television services, the penalties are prescribed in



493 Section 76-6-412.

494 (5) A person who violates this section shall make restitution to the utility or cable  
 495 television company for the value of the gas, electricity, water, sewer, or cable television service  
 496 consumed in violation of this section plus all reasonable expenses and costs incurred on  
 497 account of the violation of this section. Reasonable expenses and costs include expenses and  
 498 costs for investigation, disconnection, reconnection, service calls, employee time, and  
 499 equipment use.

500 (6) Criminal prosecution under this section does not affect the right of a utility or cable  
 501 television company to bring a civil action for redress for damages suffered as a result of the  
 502 commission of any of the acts prohibited by this section.

503 (7) This section does not abridge or alter any other right, action, or remedy otherwise  
 504 available to a utility or cable television company.

505 Section 11. Section **76-6-412** is amended to read:

506 **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**

507 (1) Theft of property and services as provided in this chapter [~~shall be~~] is punishable:

508 (a) as a second degree felony [~~of the second degree~~] if the:

509 (i) value of the property or services is or exceeds \$5,000;

510 (ii) property stolen is a firearm or an operable motor vehicle;

511 (iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the  
 512 time of the theft; or

513 (iv) property is stolen from the person of another;

514 (b) as a third degree felony [~~of the third degree~~] if:

515 (i) the value of the property or services is or exceeds [~~\$1,000~~] \$1,500 but is less than  
 516 \$5,000;

517 (ii) the actor has been twice before convicted of any of the offenses listed in this  
 518 Subsection (1)(b)(ii), if each prior offense was committed within 10 years of the date of the  
 519 current conviction or the date of the offense upon which the current conviction is based:

520 (A) theft, any robbery, or any burglary with intent to commit theft; [~~or~~]

521 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

522 (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B).

523 (iii) in a case not amounting to a second-degree felony, the property taken is a stallion,

524 mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine,  
525 poultry, or a fur-bearing animal raised for commercial purposes;

526 (c) as a class A misdemeanor if the value of the property stolen is or exceeds [~~\$300~~  
527 \$500 but is less than [~~\$1,000~~] \$1,500; or

528 (d) as a class B misdemeanor if the value of the property stolen is less than [~~\$300~~  
529 \$500.

530 (2) Any person who violates Subsection 76-6-408(1) or Section 76-6-413, or commits  
531 theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three times the  
532 amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable  
533 [~~attorneys'~~] attorney fees.

534 Section 12. Section **76-6-505** is amended to read:

535 **76-6-505. Issuing a bad check or draft -- Presumption.**

536 (1) (a) Any person who issues or passes a check or draft for the payment of money, for  
537 the purpose of obtaining from any person, firm, partnership, or corporation, any money,  
538 property, or other thing of value or paying for any services, wages, salary, labor, or rent,  
539 knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of  
540 issuing a bad check or draft.

541 (b) For purposes of this Subsection (1), a person who issues a check or draft for which  
542 payment is refused by the drawee is presumed to know the check or draft would not be paid if  
543 he had no account with the drawee at the time of issue.

544 (2) Any person who issues or passes a check or draft for the payment of money, for the  
545 purpose of obtaining from any person, firm, partnership, or corporation, any money, property,  
546 or other thing of value or paying for any services, wages, salary, labor, or rent, payment of  
547 which check or draft is legally refused by the drawee, is guilty of issuing a bad check or draft if  
548 he fails to make good and actual payment to the payee in the amount of the refused check or  
549 draft within 14 days of his receiving actual notice of the check or draft's nonpayment.

550 (3) An offense of issuing a bad check or draft shall be punished as follows:

551 (a) If the check or draft or series of checks or drafts made or drawn in this state within  
552 a period not exceeding six months amounts to a sum that is less than [~~\$300~~] \$500, the offense  
553 is a class B misdemeanor.

554 (b) If the check or draft or checks or drafts made or drawn in this state within a period

555 not exceeding six months amounts to a sum that is or exceeds [~~\$300~~] \$500 but is less than  
556 [~~\$1,000~~] \$1,500, the offense is a class A misdemeanor.

557 (c) If the check or draft or checks or drafts made or drawn in this state within a period  
558 not exceeding six months amounts to a sum that is or exceeds [~~\$1,000~~] \$1,500 but is less than  
559 \$5,000, the offense is a felony of the third degree.

560 (d) If the check or draft or checks or drafts made or drawn in this state within a period  
561 not exceeding six months amounts to a sum that is or exceeds \$5,000, the offense is a second  
562 degree felony.

563 Section 13. Section **76-6-506.5** is amended to read:

564 **76-6-506.5. Financial transaction card offenses -- Classification -- Multiple**  
565 **violations.**

566 (1) Any person found guilty of unlawful conduct described in Section 76-6-506.2 or  
567 76-6-506.6 is guilty of:

568 (a) a class B misdemeanor when the value of the property, money, or thing obtained or  
569 sought to be obtained is less than [~~\$300~~] \$500;

570 (b) a class A misdemeanor when the value of the property, money, or thing obtained or  
571 sought to be obtained is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500;

572 (c) a third degree felony when the value of the property, money, or thing obtained or  
573 attempted to be obtained is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000; and

574 (d) a second degree felony when the value of the property, money, or thing obtained or  
575 attempted to be obtained is or exceeds \$5,000.

576 (2) Multiple violations of Subsection 76-6-506.2(1), Section 76-6-506.6, and this  
577 section may be aggregated into a single offense, and the degree of the offense is determined by  
578 the total value of all property, money, or things obtained or attempted to be obtained through  
579 the multiple violations.

580 (3) The court shall make appropriate findings in any prosecution under this section that  
581 the card holder did not commit the crime.

582 Section 14. Section **76-6-513** is amended to read:

583 **76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.**

584 (1) As used in this section:

585 (a) "Fiduciary" is as defined in Section 22-1-1.

586 (b) "Financial institution" means "depository institution" and "trust company" as  
587 defined in Section 7-1-103.

588 (c) "Governmental entity" is as defined in Section 63G-7-102.

589 (d) "Person" does not include a financial institution whose fiduciary functions are  
590 supervised by the Department of Financial Institutions or a federal regulatory agency.

591 (e) "Property" is as defined in Section 76-6-401.

592 (f) "Public monies" is as defined in Section 76-8-401.

593 (2) A person is guilty of unlawfully dealing with property by a fiduciary if the person  
594 deals with property that has been entrusted to him as a fiduciary, or property of a governmental  
595 entity, public monies, or of a financial institution, in a manner which the person knows is a  
596 violation of the person's duty and which involves substantial risk of loss or detriment to the  
597 owner or to a person for whose benefit the property was entrusted. A violation of this  
598 Subsection (2) is punishable under Section 76-6-412.

599 (3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if,  
600 without permission of the owner of the property or some other person with authority to give  
601 permission, the person pledges as collateral for a personal loan, or as collateral for the benefit  
602 of some party, other than the owner or the person for whose benefit the property was entrusted,  
603 the property that has been entrusted to the fiduciary.

604 (b) An offense under Subsection (3)(a) is punishable as:

605 (i) a felony of the second degree if the value of the property wrongfully pledged is or  
606 exceeds \$5,000;

607 (ii) a felony of the third degree if the value of the property wrongfully pledged is or  
608 exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000;

609 (iii) a class A misdemeanor if the value of the property is or exceeds [~~\$300~~] \$500, but  
610 is less than [~~\$1,000~~] \$1,500 or the actor has been twice before convicted of theft, robbery,  
611 burglary with intent to commit theft, or unlawful dealing with property by a fiduciary; or

612 (iv) a class B misdemeanor if the value of the property is less than [~~\$300~~] \$500.

613 Section 15. Section **76-6-518** is amended to read:

614 **76-6-518. Criminal simulation.**

615 (1) A person is guilty of criminal simulation if, with intent to defraud another:

616 (a) he makes or alters an object in whole or in part so that it appears to have value

617 because of age, antiquity, rarity, source, or authorship that it does not have;

618 (b) he sells, passes, or otherwise utters an object so made or altered;

619 (c) he possesses an object so made or altered with intent to sell, pass, or otherwise utter  
620 it; or

621 (d) he authenticates or certifies an object so made or altered as genuine or as different  
622 from what it is.

623 (2) Criminal simulation is punishable as follows:

624 (a) If the value defrauded or intended to be defrauded is less than [~~\$300~~] \$500, the  
625 offense is a class B misdemeanor.

626 (b) If the value defrauded or intended to be defrauded is or exceeds [~~\$300~~] \$500 but is  
627 less than [~~\$1,000~~] \$1,500, the offense is a class A misdemeanor.

628 (c) If the value defrauded or intended to be defrauded is or exceeds [~~\$1,000~~] \$1,500 but  
629 is less than \$5,000, the offense is a felony of the third degree.

630 (d) If the value defrauded or intended to be defrauded is or exceeds \$5,000, the offense  
631 is a felony of the second degree.

632 Section 16. Section **76-6-608** is amended to read:

633 **76-6-608. Theft detection shielding devices prohibited -- Penalties.**

634 (1) A person may not knowingly:

635 (a) make or possess any container or device used for, intended for use for, or  
636 represented as having the purpose of shielding merchandise from any electronic or magnetic  
637 theft alarm sensor, with the intent to commit a theft of merchandise;

638 (b) sell, offer to sell, advertise, give, transport, or otherwise transfer to another any  
639 container or device intended for use for or represented as having the purpose of shielding  
640 merchandise from any electronic or magnetic theft alarm sensor;

641 (c) possess any tool or instrument designed to remove any theft detection device from  
642 any merchandise, with the intent to use the tool or instrument to remove any theft detection  
643 device from any merchandise without the permission of the merchant or the person owning or  
644 in possession of the merchandise; or

645 (d) intentionally remove a theft detection device from merchandise prior to purchase  
646 and without the permission of the merchant.

647 (2) (a) A violation of Subsection (1)(a), (b), or (c) is a class A misdemeanor.

- 648 (b) A violation of Subsection (1)(d) is a:  
649 (i) class B misdemeanor if the value of the merchandise from which the theft detection  
650 device is removed is less than [~~\$300~~] \$500; or  
651 (ii) class A misdemeanor if the value of the merchandise from which the theft detection  
652 device is removed is or exceeds [~~\$300~~] \$500.

653 (3) A violation of Subsection (1) is a separate offense from any offense listed in Title  
654 76, Chapter 6, Part 4, Theft, or Part 6, Retail Theft.

655 (4) Criminal prosecutions under this section do not affect any person's right of civil  
656 action for redress for damages suffered as a result of any violation of this section.

657 Section 17. Section **76-6-703** is amended to read:

658 **76-6-703. Computer crimes and penalties.**

659 (1) A person who without authorization gains or attempts to gain access to and alters,  
660 damages, destroys, discloses, or modifies any computer, computer network, computer property,  
661 computer system, computer program, computer data or software, and thereby causes damage to  
662 another, or obtains money, property, information, or a benefit for any person without legal  
663 right, is guilty of:

664 (a) a class B misdemeanor when:  
665 (i) the damage caused or the value of the money, property, or benefit obtained or  
666 sought to be obtained is less than [~~\$300~~] \$500; or

667 (ii) the information obtained is not confidential;

668 (b) a class A misdemeanor when the damage caused or the value of the money,  
669 property, or benefit obtained or sought to be obtained is or exceeds [~~\$300~~] \$500 but is less than  
670 [~~\$1,000~~] \$1,500;

671 (c) a third degree felony when the damage caused or the value of the money, property,  
672 or benefit obtained or sought to be obtained is or exceeds [~~\$1,000~~] \$1,500 but is less than  
673 \$5,000;

674 (d) a second degree felony when the damage caused or the value of the money,  
675 property, or benefit obtained or sought to be obtained is or exceeds \$5,000; or

676 (e) a third degree felony when:

677 (i) the property or benefit obtained or sought to be obtained is a license or entitlement;

678 (ii) the damage is to the license or entitlement of another person; or

679 (iii) the information obtained is confidential; or

680 (iv) in gaining access the person breaches or breaks through a security system.

681 (2) (a) Except as provided in Subsection (2)(b), a person who intentionally or  
682 knowingly and without authorization gains or attempts to gain access to a computer, computer  
683 network, computer property, or computer system under circumstances not otherwise  
684 constituting an offense under this section is guilty of a class B misdemeanor.

685 (b) Notwithstanding Subsection (2)(a), a retailer that uses an electronic product  
686 identification or tracking system, or other technology to identify, track, or price goods is not  
687 guilty of a violation of Subsection (2)(a) if the equipment designed to read the electronic  
688 product identification or tracking system data and used by the retailer to identify, track, or price  
689 goods is located within the retailer's location.

690 (3) A person who uses or knowingly allows another person to use any computer,  
691 computer network, computer property, or computer system, program, or software to devise or  
692 execute any artifice or scheme to defraud or to obtain money, property, services, or other things  
693 of value by false pretenses, promises, or representations, is guilty of an offense based on the  
694 value of the money, property, services, or things of value, in the degree set forth in Subsection  
695 76-10-1801(1).

696 (4) A person who intentionally or knowingly and without authorization, interferes with  
697 or interrupts computer services to another authorized to receive the services is guilty of a class  
698 A misdemeanor.

699 (5) It is an affirmative defense to Subsections (1) and (2) that a person obtained access  
700 or attempted to obtain access in response to, and for the purpose of protecting against or  
701 investigating, a prior attempted or successful breach of security of a computer, computer  
702 network, computer property, computer system whose security the person is authorized or  
703 entitled to protect, and the access attempted or obtained was no greater than reasonably  
704 necessary for that purpose.

705 Section 18. Section **76-6-1204** is amended to read:

706 **76-6-1204. Classification of offense.**

707 (1) Notwithstanding any other administrative, civil, or criminal penalties, a person who  
708 violates Section 76-6-1203 is guilty of a:

709 (a) class A misdemeanor when the value is or exceeds [~~\$300~~] \$500 but is less than

710 [~~\$1,000~~] \$1,500;

711 (b) third degree felony when the value is or exceeds [~~\$1,000~~] \$1,500 but is less than  
712 \$5,000;

713 (c) second degree felony when the value is or exceeds \$5,000; and

714 (d) second degree felony when the object or purpose of the commission of an act of  
715 mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the  
716 value.

717 (2) The determination of the degree of any offense under Subsection (1) is measured by  
718 the total value of all property, money, or things obtained or sought to be obtained by a violation  
719 of Section 76-6-1203, except as provided in Subsection (1)(d).

720 (3) Each residential or commercial property transaction offense under this part  
721 constitutes a separate violation.

722 Section 19. Section **76-8-1206** is amended to read:

723 **76-8-1206. Penalties for public assistance fraud.**

724 (1) The severity of the offense of public assistance fraud is classified in accordance  
725 with the value of payments, assistance, or other benefits received, misappropriated, claimed, or  
726 applied for as follows:

727 (a) second degree felony if the value is or exceeds \$5,000;

728 (b) third degree felony if the value is or exceeds [~~\$1,000~~] \$1,500 but is less than  
729 \$5,000;

730 (c) class A misdemeanor if the value is or exceeds [~~\$300~~] \$500 but is less than  
731 [~~\$1,000~~] \$1,500; and

732 (d) class B misdemeanor if the value is less than [~~\$300~~] \$500.

733 (2) For purposes of Subsection (1), the value of an offense is calculated by aggregating  
734 the values of each instance of public assistance fraud committed by the defendant as part of the  
735 same facts and circumstances or a related series of facts and circumstances.

736 (3) Incidents of trafficking in food stamps that occur within a six-month period,  
737 committed by an individual or coconspirators, are deemed to be a related series of facts and  
738 circumstances regardless of whether the transactions are conducted with a variety of unrelated  
739 parties.

740 Section 20. Section **76-8-1301** is amended to read:



741 **76-8-1301. False statements regarding unemployment compensation -- Penalties.**

742 (1) (a) A person who makes a false statement or representation knowing it to be false  
743 or knowingly fails to disclose a material fact, to obtain or increase a benefit or other payment  
744 under Title 35A, Chapter 4, Employment Security Act, or under the Unemployment  
745 Compensation Law of any state or of the federal government for any person is guilty of  
746 unemployment insurance fraud.

747 (b) A violation of Subsection (1)(a) is:

748 (i) a class B misdemeanor when the value of the money obtained or sought to be  
749 obtained is less than [~~\$300~~] \$500;

750 (ii) a class A misdemeanor when the value of the money obtained or sought to be  
751 obtained is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500;

752 (iii) a third degree felony when the value of the money obtained or sought to be  
753 obtained is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000; or

754 (iv) a second degree felony when the value of the money obtained or sought to be  
755 obtained is or exceeds \$5,000.

756 (c) The determination of the degree of an offense under Subsection (1)(b) shall be  
757 measured by the total value of all money obtained or sought to be obtained by the unlawful  
758 conduct.

759 (2) (a) An officer or agent of an employing unit as defined in Section 35A-4-202 or any  
760 other person who makes a false statement or representation knowing it to be false, or who  
761 knowingly fails to disclose a material fact, to prevent or reduce the payment of unemployment  
762 compensation benefits to an individual entitled to those benefits, or to avoid becoming or  
763 remaining a subject employer or to avoid or reduce any contribution or other payment required  
764 from an employing unit under Title 35A, Chapter 4, Employment Security Act, or under the  
765 Unemployment Compensation Law of any state or of the federal government, or who willfully  
766 fails or refuses to make a contribution or other payment or to furnish any report required in  
767 Title 35A, Chapter 4, Employment Security Act, or to produce or permit the inspection or  
768 copying of records as required under that chapter is guilty of unemployment insurance fraud.

769 (b) A violation of Subsection (2)(a) is:

770 (i) a class B misdemeanor when the value of the money obtained or sought to be  
771 obtained is less than [~~\$300~~] \$500;

772 (ii) a class A misdemeanor when the value of the money obtained or sought to be  
773 obtained is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500;

774 (iii) a third degree felony when the value of the money obtained or sought to be  
775 obtained is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000; or

776 (iv) a second degree felony when the value of the money obtained or sought to be  
777 obtained is or exceeds \$5,000.

778 (3) (a) A person who willfully violates any provision of Title 35A, Chapter 4,  
779 Employment Security Act, or any order made under that chapter, the violation of which is made  
780 unlawful or the observance of which is required under the terms of that chapter, and for which  
781 a penalty is neither prescribed in that chapter nor provided by any other applicable statute is  
782 guilty of a class A misdemeanor.

783 (b) Each day a violation of Subsection (3)(a) continues shall be a separate offense.

784 (4) A person is guilty of a class C misdemeanor if:

785 (a) as an employee of the Department of Workforce Services, in willful violation of  
786 Section 35A-4-312, the employee makes a disclosure of information obtained from an  
787 employing unit or individual in the administration of Title 35A, Chapter 4, Employment  
788 Security Act; or

789 (b) the person has obtained a list of applicants for work or of claimants or recipients of  
790 benefits under Title 35A, Chapter 4, Employment Security Act, and uses or permits the use of  
791 the list for any political purpose.

792 Section 21. Section **76-10-1801** is amended to read:

793 **76-10-1801. Communications fraud -- Elements -- Penalties.**

794 (1) Any person who has devised any scheme or artifice to defraud another or to obtain  
795 from another money, property, or anything of value by means of false or fraudulent pretenses,  
796 representations, promises, or material omissions, and who communicates directly or indirectly  
797 with any person by any means for the purpose of executing or concealing the scheme or artifice  
798 is guilty of:

799 (a) a class B misdemeanor when the value of the property, money, or thing obtained or  
800 sought to be obtained is less than [~~\$300~~] \$500;

801 (b) a class A misdemeanor when the value of the property, money, or thing obtained or  
802 sought to be obtained is or exceeds [~~\$300~~] \$500 but is less than [~~\$1,000~~] \$1,500;

803 (c) a third degree felony when the value of the property, money, or thing obtained or  
804 sought to be obtained is or exceeds [~~\$1,000~~] \$1,500 but is less than \$5,000;

805 (d) a second degree felony when the value of the property, money, or thing obtained or  
806 sought to be obtained is or exceeds \$5,000; and

807 (e) a second degree felony when the object or purpose of the scheme or artifice to  
808 defraud is the obtaining of sensitive personal identifying information, regardless of the value.

809 (2) The determination of the degree of any offense under Subsection (1) shall be  
810 measured by the total value of all property, money, or things obtained or sought to be obtained  
811 by the scheme or artifice described in Subsection (1) except as provided in Subsection (1)(e).

812 (3) Reliance on the part of any person is not a necessary element of the offense  
813 described in Subsection (1).

814 (4) An intent on the part of the perpetrator of any offense described in Subsection (1) to  
815 permanently deprive any person of property, money, or thing of value is not a necessary  
816 element of the offense.

817 (5) Each separate communication made for the purpose of executing or concealing a  
818 scheme or artifice described in Subsection (1) is a separate act and offense of communication  
819 fraud.

820 (6) (a) To communicate as described in Subsection (1) means to:

821 (i) bestow, convey, make known, recount, or impart;

822 (ii) give by way of information;

823 (iii) talk over; or

824 (iv) transmit information.

825 (b) Means of communication include use of the mail, telephone, telegraph, radio,  
826 television, newspaper, computer, and spoken and written communication.

827 (7) A person may not be convicted under this section unless the pretenses,  
828 representations, promises, or material omissions made or omitted were made or omitted  
829 intentionally, knowingly, or with a reckless disregard for the truth.

830 (8) As used in this section, "sensitive personal identifying information" means  
831 information regarding an individual's:

832 (a) Social Security number;

833 (b) driver's license number or other government issued identification number;

- 834 (c) financial account number or credit or debit card number;
- 835 (d) password or personal identification number or other identification required to gain
- 836 access to a financial account or a secure website;
- 837 (e) automated or electronic signature;
- 838 (f) unique biometric data; or
- 839 (g) any other information that can be used to gain access to an individual's financial
- 840 accounts or to obtain goods or services.

841 Section 22. Section **78A-6-703** is amended to read:

842 **78A-6-703. Certification hearings -- Juvenile court to hold preliminary hearing --**  
 843 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

844 (1) If a criminal information filed in accordance with Subsection 78A-6-602(3) alleges  
 845 the commission of an act which would constitute a felony if committed by an adult, the  
 846 juvenile court shall conduct a preliminary hearing.

847 (2) At the preliminary hearing the state shall have the burden of going forward with its  
 848 case and the burden of establishing:

849 (a) probable cause to believe that a crime was committed and that the defendant  
 850 committed it; and

851 (b) by a preponderance of the evidence, that it would be contrary to the best interests of  
 852 the minor or of the public for the juvenile court to retain jurisdiction.

853 (3) In considering whether or not it would be contrary to the best interests of the minor  
 854 or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider,  
 855 and may base its decision on, the finding of one or more of the following factors:

856 (a) the seriousness of the offense and whether the protection of the community requires  
 857 isolation of the minor beyond that afforded by juvenile facilities;

858 (b) whether the alleged offense was committed by the minor under circumstances  
 859 which would subject the minor to enhanced penalties under Section 76-3-203.1 if the minor  
 860 were adult and the offense was committed:

861 (i) in concert with two or more persons [~~under circumstances which would subject the~~  
 862 minor to enhanced penalties under Section 76-3-203.1 were he an adult];

863 (ii) for the benefit of, at the direction of, or in association with any criminal street gang  
 864 as defined in Section 76-9-802; or

865            (iii) to gain recognition, acceptance, membership, or increased status with a criminal  
866 street gang as defined in Section 76-9-802;

867            (c) whether the alleged offense was committed in an aggressive, violent, premeditated,  
868 or willful manner;

869            (d) whether the alleged offense was against persons or property, greater weight being  
870 given to offenses against persons, except as provided in Section 76-8-418;

871            (e) the maturity of the minor as determined by considerations of [~~his~~] the minor's  
872 home, environment, emotional attitude, and pattern of living;

873            (f) the record and previous history of the minor;

874            (g) the likelihood of rehabilitation of the minor by use of facilities available to the  
875 juvenile court;

876            (h) the desirability of trial and disposition of the entire offense in one court when the  
877 minor's associates in the alleged offense are adults who will be charged with a crime in the  
878 district court;

879            (i) whether the minor used a firearm in the commission of an offense; and

880            (j) whether the minor possessed a dangerous weapon on or about school premises as  
881 provided in Section 76-10-505.5.

882            (4) The amount of weight to be given to each of the factors listed in Subsection (3) is  
883 discretionary with the court.

884            (5) (a) Written reports and other materials relating to the minor's mental, physical,  
885 educational, and social history may be considered by the court.

886            (b) If requested by the minor, the minor's parent, guardian, or other interested party, the  
887 court shall require the person or agency preparing the report and other material to appear and  
888 be subject to both direct and cross-examination.

889            (6) At the conclusion of the state's case, the minor may testify under oath, call  
890 witnesses, cross-examine adverse witnesses, and present evidence on the factors required by  
891 Subsection (3).

892            (7) If the court finds the state has met its burden under Subsection (2), the court may  
893 enter an order:

894            (a) certifying that finding; and

895            (b) directing that the minor be held for criminal proceedings in the district court.

896 (8) If an indictment is returned by a grand jury, the preliminary examination held by the  
897 juvenile court need not include a finding of probable cause, but the juvenile court shall proceed  
898 in accordance with this section regarding the additional consideration referred to in Subsection  
899 (2)(b).

900 (9) The provisions of Section 78A-6-115, Section 78A-6-1111, and other provisions  
901 relating to proceedings in juvenile cases are applicable to the hearing held under this section to  
902 the extent they are pertinent.

903 (10) A minor who has been directed to be held for criminal proceedings in the district  
904 court is not entitled to a preliminary examination in the district court.

905 (11) A minor who has been certified for trial in the district court shall have the same  
906 right to bail as any other criminal defendant and shall be advised of that right by the juvenile  
907 court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20,  
908 Bail.

909 (12) When a minor has been certified to the district court under this section or when a  
910 criminal information or indictment is filed in a court of competent jurisdiction before a  
911 committing magistrate charging the minor with an offense described in Section 78A-6-702, the  
912 jurisdiction of the Division of Juvenile Justice Services and the jurisdiction of the juvenile  
913 court over the minor is terminated regarding that offense, any other offenses arising from the  
914 same criminal episode, and any subsequent misdemeanors or felonies charged against ~~him~~ the  
915 minor, except as provided in Subsection (14).

916 (13) If a minor enters a plea to, or is found guilty of any of the charges filed or on any  
917 other offense arising out of the same criminal episode, the district court retains jurisdiction  
918 over the minor for all purposes, including sentencing.

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

922 Section 23. Section **78B-6-1101** is amended to read:

923 **78B-6-1101. Definitions -- Nuisance -- Right of action -- Judgment.**

924 (1) A nuisance is anything which is injurious to health, indecent, offensive to the  
925 senses, or an obstruction to the free use of property, so as to interfere with the comfortable  
926 enjoyment of life or property. A nuisance may be the subject of an action.

- 927 (2) A nuisance may include the following:
- 928 (a) drug houses and drug dealing as provided in Section 78B-6-1107;
- 929 (b) gambling as provided in Title 76, Chapter 10, Part 11;
- 930 (c) criminal activity committed in concert with two or more persons as provided in
- 931 Section 76-3-203.1;
- 932 (d) criminal activity committed for the benefit of, at the direction of, or in association
- 933 with any criminal street gang as defined in Section 76-9-802;
- 934 (e) criminal activity committed to gain recognition, acceptance, membership, or
- 935 increased status with a criminal street gang as defined in Section 76-9-802;
- 936 [~~(f)~~] (f) party houses which frequently create conditions defined in Subsection (1); and
- 937 [~~(g)~~] (g) prostitution as provided in Title 76, Chapter 10, Part 13.
- 938 (3) A nuisance under this part includes tobacco smoke that drifts into any residential
- 939 unit a person rents, leases, or owns, from another residential or commercial unit and the smoke:
- 940 (a) drifts in more than once in each of two or more consecutive seven-day periods; and
- 941 (b) creates any of the conditions under Subsection (1).
- 942 (4) Subsection (3) does not apply to:
- 943 (a) residential rental units available for temporary rental, such as for vacations, or
- 944 available for only 30 or fewer days at a time; or
- 945 (b) hotel or motel rooms.
- 946 (5) Subsection (3) does not apply to any unit that is part of a timeshare development, as
- 947 defined in Section 57-19-2, or subject to a timeshare interest as defined in Section 57-19-2.
- 948 (6) An action may be brought by any person whose property is injuriously affected, or
- 949 whose personal enjoyment is lessened by the nuisance.
- 950 (7) "Agricultural operation" means any activity engaged in the commercial production
- 951 of crops, orchards, aquaculture, livestock, poultry, livestock products, poultry products, and the
- 952 facilities, equipment, and property used to facilitate the activity.
- 953 (8) "Manufacturing facility" means any factory, plant, or other facility including its
- 954 appurtenances, where the form of raw materials, processed materials, commodities, or other
- 955 physical objects is converted or otherwise changed into other materials, commodities, or
- 956 physical objects or where such materials, commodities, or physical objects are combined to
- 957 form a new material, commodity, or physical object.

959           **78B-6-1107. Nuisance -- Right of action to abate nuisances -- Drug houses and**  
 960 **drug dealing -- Gambling -- Criminal activity -- Prostitution -- Weapons.**

961           (1) Every building or place is a nuisance where:

962           (a) the unlawful sale, manufacture, service, storage, distribution, dispensing, or  
 963 acquisition occurs of any controlled substance, precursor, or analog specified in Title 58,  
 964 Chapter 37, Utah Controlled Substances Act;

965           (b) gambling is permitted to be played, conducted, or dealt upon as prohibited in Title  
 966 76, Chapter 10, Part 11, Gambling, which creates the conditions of a nuisance as defined in  
 967 Subsection 78B-6-1101(1);

968           (c) criminal activity is committed in concert with two or more persons as provided in  
 969 Section 76-3-203.1;

970           (d) criminal activity committed for the benefit of, at the direction of, or in association  
 971 with any criminal street gang as defined in Section 76-9-802;

972           (e) criminal activity committed to gain recognition, acceptance, membership, or  
 973 increased status with a criminal street gang as defined in Section 76-9-802;

974           ~~[(d)]~~ (f) parties occur frequently which create the conditions of a nuisance as defined in  
 975 Subsection 78B-6-1101(1);

976           ~~[(e)]~~ (g) prostitution or promotion of prostitution is regularly carried on by one or more  
 977 persons as provided in Title 76, Chapter 10, Part 13, Prostitution; and

978           ~~[(f)]~~ (h) a violation of Title 76, Chapter 10, Part 5, Weapons, occurs on the premises.

979           (2) It is a defense to nuisance under Subsection (1)(a) if the defendant can prove that  
 980 the defendant is lawfully entitled to possession of a controlled substance.

981           (3) Sections 78B-6-1108 through 78B-6-1114 govern only an abatement by eviction of  
 982 the nuisance as defined in Subsection (1).

982a           **§→ Section 25. Effective date.**

982b           **This bill takes effect on November 1, 2010. ←§**

**Legislative Review Note**  
**as of 8-12-09 7:18 AM**

**Office of Legislative Research and General Counsel**



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**S.B. 10 - Criminal Offense Penalties Amendments - As Amended**

**Fiscal Note**

2010 General Session  
State of Utah

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**State Impact**

This bill is General Fund cost and revenue neutral. Courts costs of \$18,000 in FY 2011 and \$31,000 per year beginning in FY 2012 will be off-set by revenue from fines.

	<u>FY 2010</u> <u>Approp.</u>	<u>FY 2011</u> <u>Approp.</u>	<u>FY 2012</u> <u>Approp.</u>	<u>FY 2010</u> <u>Revenue</u>	<u>FY 2011</u> <u>Revenue</u>	<u>FY 2012</u> <u>Revenue</u>
General Fund	\$0	\$31,000	\$31,000	\$0	\$31,000	\$31,000
General Fund, One-Time	\$0	(\$13,000)	\$0	\$0	(\$13,000)	\$0
<b>Total</b>	<b>\$0</b>	<b>\$18,000</b>	<b>\$31,000</b>	<b>\$0</b>	<b>\$18,000</b>	<b>\$31,000</b>

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**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.