

**CUSTODIAL INTERFERENCE AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Gage Froerer**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill makes changes in sanctions for custodial interference.

**Highlighted Provisions:**

This bill:

▶ allows a person to be charged with a third degree felony after two instances of being held in contempt for custodial interference;

▶ redefines custodial interference to require that 24 hours have to have passed before it can be charged; and

▶ deletes the provision for a class B misdemeanor.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-3-220**, as last amended by Laws of Utah 2010, Chapters 276 and 374

**76-5-303**, as repealed and reenacted by Laws of Utah 2010, Chapter 374

**76-5-303.5**, as enacted by Laws of Utah 2010, Chapter 374

ENACTS:

**76-5-303.1**, Utah Code Annotated 1953



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

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

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

(1) (a) The division shall immediately revoke or, when this chapter, Title 41, Chapter 6a, Traffic Code, or Section 76-5-303, specifically provides for denial, suspension, or disqualification, the division shall deny, suspend, or disqualify the license of a person upon receiving a record of the person's conviction for:

(i) manslaughter or negligent homicide resulting from driving a motor vehicle, or automobile homicide under Section 76-5-207 or 76-5-207.5;

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

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

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

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

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

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

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

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

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

63 (xi) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or  
64 allowing the discharge of a firearm from a vehicle;

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

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

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

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

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

77 (xvii) operating or being in actual physical control of a motor vehicle in this state  
78 without an ignition interlock system in violation of Section 41-6a-518.2; or

79 (xviii) custodial interference, under:

80 (A) Subsection 76-5-303(3), which suspension shall be for a period of [30] 90 days,  
81 unless the court provides the division with an order of suspension for a shorter period of time;

82 or

83 (B) Subsection 76-5-303(4), which suspension shall be for a period of [90] 180 days,  
84 unless the court provides the division with an order of suspension for a shorter period of time[;

85 ~~or~~].

86 [~~(C) Subsection 76-5-303(5), which suspension shall be for a period of 180 days,~~  
87 ~~unless the court provides the division with an order of suspension for a shorter period of time.]~~

88 (b) The division shall immediately revoke the license of a person upon receiving a  
89 record of an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for:

90 (i) a felony violation of Section 76-10-508 or 76-10-508.1 involving discharging or  
91 allowing the discharge of a firearm from a vehicle; or

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

94 (c) Except when action is taken under Section 53-3-219 for the same offense, the  
95 division shall immediately suspend for six months the license of a person upon receiving a  
96 record of conviction for:

97 (i) any violation of:

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

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

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

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

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

103 (ii) any criminal offense that prohibits:

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

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

108 (d) (i) The division shall immediately suspend a person's driver license for conviction  
109 of the offense of theft of motor vehicle fuel under Section 76-6-404.7 if the division receives:

110 (A) an order from the sentencing court requiring that the person's driver license be  
111 suspended; and

112 (B) a record of the conviction.

113 (ii) An order of suspension under this section is at the discretion of the sentencing  
114 court, and may not be for more than 90 days for each offense.

115 (e) (i) The division shall immediately suspend for one year the license of a person upon  
116 receiving a record of:

117 (A) conviction for the first time for a violation under Section 32B-4-411; or

118 (B) an adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a  
119 violation under Section 32B-4-411.

120 (ii) The division shall immediately suspend for a period of two years the license of a

121 person upon receiving a record of:

122 (A) (I) conviction for a second or subsequent violation under Section 32B-4-411; and

123 (II) the violation described in Subsection (1)(e)(ii)(A)(I) is within 10 years of a prior  
124 conviction for a violation under Section 32B-4-411; or

125 (B) (I) a second or subsequent adjudication under Title 78A, Chapter 6, Juvenile Court  
126 Act of 1996, for a violation under Section 32B-4-411; and

127 (II) the adjudication described in Subsection (1)(e)(ii)(B)(I) is within 10 years of a prior  
128 adjudication under Title 78A, Chapter 6, Juvenile Court Act of 1996, for a violation under  
129 Section 32B-4-411.

130 (iii) Upon receipt of a record under Subsection (1)(e)(i) or (ii), the division shall:

131 (A) for a conviction or adjudication described in Subsection (1)(e)(i):

132 (I) impose a suspension for one year beginning on the date of conviction; or

133 (II) if the person is under the age of eligibility for a driver license, impose a suspension  
134 that begins on the date of conviction and continues for one year beginning on the date of  
135 eligibility for a driver license; or

136 (B) for a conviction or adjudication described in Subsection (1)(e)(ii):

137 (I) impose a suspension for a period of two years; or

138 (II) if the person is under the age of eligibility for a driver license, impose a suspension  
139 that begins on the date of conviction and continues for two years beginning on the date of  
140 eligibility for a driver license.

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

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

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

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

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

151 (3) When the division receives a report under Subsection (2)(c) or (d) that a person is

152 driving while the person's license is denied, suspended, disqualified, or revoked, the person is  
153 entitled to a hearing regarding the extension of the time of denial, suspension, disqualification,  
154 or revocation originally imposed under Section 53-3-221.

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

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

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

162 (iii) those offenses referred to in Subsection (2) when the original denial, suspension,  
163 revocation, or disqualification was imposed because of a violation of Section 41-6a-502,  
164 41-6a-517, a local ordinance which complies with the requirements of Subsection  
165 41-6a-510(1), Section 41-6a-520, or Section 76-5-207, or a criminal prohibition that the person  
166 was charged with violating as a result of a plea bargain after having been originally charged  
167 with violating one or more of these sections or ordinances, unless:

168 (A) the person has had the period of the first denial, suspension, revocation, or  
169 disqualification extended for a period of at least three years;

170 (B) the division receives written verification from the person's primary care physician  
171 that:

172 (I) to the physician's knowledge the person has not used any narcotic drug or other  
173 controlled substance except as prescribed by a licensed medical practitioner within the last  
174 three years; and

175 (II) the physician is not aware of any physical, emotional, or mental impairment that  
176 would affect the person's ability to operate a motor vehicle safely; and

177 (C) for a period of one year prior to the date of the request for a limited driving  
178 privilege:

179 (I) the person has not been convicted of a violation of any motor vehicle law in which  
180 the person was involved as the operator of the vehicle;

181 (II) the division has not received a report of an arrest for a violation of any motor  
182 vehicle law in which the person was involved as the operator of the vehicle; and

183 (III) the division has not received a report of an accident in which the person was  
184 involved as an operator of a vehicle.

185 (b) (i) Except as provided in Subsection (4)(b)(ii), the discretionary privilege  
186 authorized in this Subsection (4):

187 (A) is limited to when undue hardship would result from a failure to grant the  
188 privilege; and

189 (B) may be granted only once to any person during any single period of denial,  
190 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,  
191 or disqualification.

192 (ii) The discretionary privilege authorized in Subsection (4)(a)(iii):

193 (A) is limited to when the limited privilege is necessary for the person to commute to  
194 school or work; and

195 (B) may be granted only once to any person during any single period of denial,  
196 suspension, revocation, or disqualification, or extension of that denial, suspension, revocation,  
197 or disqualification.

198 (c) A limited CDL may not be granted to a person disqualified under Part 4, Uniform  
199 Commercial Driver License Act, or whose license has been revoked, suspended, cancelled, or  
200 denied under this chapter.

201 Section 2. Section **76-5-303** is amended to read:

202 **76-5-303. Custodial interference.**

203 (1) As used in this section:

204 (a) "Child" means a person under the age of 18.

205 (b) "Custody" means court-ordered physical custody entered by a court of competent  
206 jurisdiction.

207 (c) "Visitation" means court-ordered parent-time or visitation entered by a court of  
208 competent jurisdiction.

209 (2) (a) A person who is entitled to custody of a child is guilty of custodial interference  
210 if, during a period of time when another person is entitled to visitation of the child, the person  
211 takes, entices, conceals, detains, or withholds the child from the person entitled to visitation of  
212 the child ~~for~~ **for at least 24 hours** ~~for~~, with the intent to interfere with the visitation of the child.

213 (b) A person who is entitled to visitation of a child is guilty of custodial interference if,

214 during a period of time when the person is not entitled to visitation of the child, the person  
 215 takes, entices, conceals, detains, or withholds the child from a person who is entitled to custody  
 216 of the child ~~H→~~ **[for at least 24 hours]** ~~←H~~, with the intent to interfere with the custody of  
 216a the child.

217 ~~[(3) Except as provided in Subsection (4) or (5), custodial interference is a class B~~  
 218 ~~misdemeanor.]~~

219 ~~[(4)]~~ (3) Except as provided in Subsection ~~[(5)]~~ (4), the actor described in Subsection  
 220 (2) is guilty of a class A misdemeanor ~~H→~~ **upon the second documented commission of**  
 220a **custodial interference** ~~←H~~ [if the actor:]

221 ~~[(a) commits custodial interference; and]~~

222 ~~[(b) has been convicted of custodial interference at least twice in the two-year period~~  
 223 ~~immediately preceding the day on which the commission of custodial interference described in~~  
 224 ~~Subsection (4)(a) occurs.]~~

225 ~~[(5)]~~ (4) Custodial interference is a felony of the third degree if ~~H→~~ [f] , [f] [; or  
 226 ~~(a)]~~ ~~←H~~ during the course of the custodial interference, the actor described in Subsection (2)  
 227 removes, causes the removal, or directs the removal of the child from the state ~~H→~~ [f] . [f] [~~or~~  
 228 ~~(b) the actor described in Subsection (2) has been convicted of or held in contempt for~~  
 229 ~~custodial interference at least twice in the two-year period immediately preceding the day on~~  
 230 ~~which the most recent commission of custodial interference described in Subsection (2) occurs.]~~ ~~←H~~

231 ~~[(6)]~~ (5) In addition to the affirmative defenses described in Section 76-5-305, it is an  
 232 affirmative defense to the crime of custodial interference that:

233 (a) the action is consented to by the person whose custody or visitation of the child was  
 234 interfered with; or

235 (b) (i) the action is based on a reasonable belief that the action is necessary to protect a  
 236 child from abuse, including sexual abuse; and

237 (ii) before engaging in the action, the person reports the person's intention to engage in  
 238 the action, and the basis for the belief described in Subsection ~~[(6)]~~ (5)(b)(i), to the Division of  
 239 Child and Family Services or law enforcement.

240 ~~[(7)]~~ (6) In addition to the other penalties described in this section, a person who is  
 241 convicted of custodial interference is subject to the driver license suspension provisions of  
 242 Subsection 53-3-220(1)(a)(xviii).

243 Section 3. Section **76-5-303.1** is enacted to read:

244 **76-5-303.1. Custodial interference -- Civil contempt action.**

245 (1) A person who is entitled to visitation with or custody of a minor child may, upon a  
 246 violation of the person's visitation or custody, file an affidavit and statement of facts for a  
 247 notice and order to show cause with the court having jurisdiction in the custody proceedings.  
 248 The statement shall include specifics detailing the violation of the court's custody or visitation  
 249 order, including:

- 250 (a) the name of the person to be held in contempt;
- 251 (b) the person's relationship to the minor child; and
- 252 (c) the date or inclusive dates of the violation.

253 (2) The court shall proceed in accordance with Title 78B, Chapter 6, Part 3, Contempt.  
 254 Upon a finding of contempt, the order of the court shall include a statement to the person that if  
 255 subsequently found in contempt for a violation of the court's custody or visitation order, the  
 256 person may be subject to additional criminal penalties in accordance with Section 76-5-303.

257 Section 4. Section **76-5-303.5** is amended to read:

258 **76-5-303.5. Notification of conviction of custodial interference.**

259 (1) As used in this section:

- 260 (a) "Convicted" means that a person has received a conviction.
- 261 (b) "Conviction" is as defined in Section 53-3-102.

262 (2) If a person is convicted of custodial interference under Section 76-5-303, the court  
 263 shall notify the Driver License Division, created in Section 53-3-103, of the conviction, and  
 264 whether the conviction is for:

- 265 (a) a class ~~[B]~~ A misdemeanor, under Subsection 76-5-303(3); or
- 266 ~~[(b) a class A misdemeanor, under Subsection 76-5-303(4); or]~~
- 267 ~~[(c)]~~ (b) a felony, under Subsection 76-5-303~~[(5)]~~(4).

**Legislative Review Note**  
 as of 1-10-12 11:41 AM

**Office of Legislative Research and General Counsel**