

RETALIATION AND OBSTRUCTION OF JUSTICE

AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Craig Hall

Senate Sponsor: _____

LONG TITLE

General Description:

This bill makes changes to certain criminal statutes regarding interfering with an investigation or legal proceeding.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ makes threatening or harming a prosecutor in relation to a criminal proceeding a felony;
- ▶ adds certain threatening or interfering communications to the list of crimes constituting obstruction of justice; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-403, as last amended by Laws of Utah 2017, Chapter 289

76-8-306, as last amended by Laws of Utah 2009, Chapter 213



28 **76-8-316**, as last amended by Laws of Utah 2013, Chapter 432

29

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

31 Section 1. Section **53-10-403** is amended to read:

32 **53-10-403. DNA specimen analysis -- Application to offenders, including minors.**

33 (1) Sections **53-10-404**, **53-10-404.5**, **53-10-405**, and **53-10-406** apply to any person
34 who:

35 (a) has pled guilty to or has been convicted of any of the offenses under Subsection
36 (2)(a) or (b) on or after July 1, 2002;

37 (b) has pled guilty to or has been convicted by any other state or by the United States
38 government of an offense which if committed in this state would be punishable as one or more
39 of the offenses listed in Subsection (2)(a) or (b) on or after July 1, 2003;

40 (c) has been booked on or after January 1, 2011, through December 31, 2014, for any
41 offense under Subsection (2)(c);

42 (d) has been booked:

43 (i) by a law enforcement agency that is obtaining a DNA specimen on or after May 13,
44 2014, through December 31, 2014, under Subsection **53-10-404(4)(b)** for any felony offense; or

45 (ii) on or after January 1, 2015, for any felony offense; or

46 (e) is a minor under Subsection (3).

47 (2) Offenses referred to in Subsection (1) are:

48 (a) any felony or class A misdemeanor under the Utah Code;

49 (b) any offense under Subsection (2)(a):

50 (i) for which the court enters a judgment for conviction to a lower degree of offense
51 under Section **76-3-402**; or

52 (ii) regarding which the court allows the defendant to enter a plea in abeyance as
53 defined in Section **77-2a-1**; or

54 (c) (i) any violent felony as defined in Section **53-10-403.5**;

55 (ii) sale or use of body parts, Section **26-28-116**;

56 (iii) failure to stop at an accident that resulted in death, Section **41-6a-401.5**;

57 (iv) driving with any amount of a controlled substance in a person's body and causing
58 serious bodily injury or death, Subsection **58-37-8(2)(g)**;

- 59 (v) a felony violation of enticing a minor over the Internet, Section 76-4-401;
- 60 (vi) a felony violation of propelling a substance or object at a correctional officer, a
- 61 peace officer, or an employee or a volunteer, including health care providers, Section
- 62 76-5-102.6;
- 63 (vii) aggravated human trafficking and aggravated human smuggling, Section
- 64 76-5-310;
- 65 (viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;
- 66 (ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;
- 67 (x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;
- 68 (xi) sale of a child, Section 76-7-203;
- 69 (xii) aggravated escape, Subsection 76-8-309(2);
- 70 (xiii) a felony violation of assault on an elected official, Section 76-8-315;
- 71 (xiv) influencing, impeding, or retaliating against a judge, prosecuting attorney, or
- 72 member of the Board of Pardons and Parole, Section 76-8-316;
- 73 (xv) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 74 (xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 75 (xvii) a felony violation of sexual battery, Section 76-9-702.1;
- 76 (xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;
- 77 (xix) a felony violation of abuse or desecration of a dead human body, Section
- 78 76-9-704;
- 79 (xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section
- 80 76-10-402;
- 81 (xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction,
- 82 Section 76-10-403;
- 83 (xxii) possession of a concealed firearm in the commission of a violent felony,
- 84 Subsection 76-10-504(4);
- 85 (xxiii) assault with the intent to commit bus hijacking with a dangerous weapon,
- 86 Subsection 76-10-1504(3);
- 87 (xxiv) commercial obstruction, Subsection 76-10-2402(2);
- 88 (xxv) a felony violation of failure to register as a sex or kidnap offender, Section
- 89 77-41-107;

90 (xxvi) repeat violation of a protective order, Subsection 77-36-1.1(2)(c); or

91 (xxvii) violation of condition for release after arrest under Section 77-20-3.5.

92 (3) A minor under Subsection (1) is a minor 14 years of age or older whom a Utah
93 court has adjudicated to be within the jurisdiction of the juvenile court due to the commission
94 of any offense described in Subsection (2), and who is:

95 (a) within the jurisdiction of the juvenile court on or after July 1, 2002 for an offense
96 under Subsection (2); or

97 (b) in the legal custody of the Division of Juvenile Justice Services on or after July 1,
98 2002 for an offense under Subsection (2).

99 Section 2. Section 76-8-306 is amended to read:

100 **76-8-306. Obstruction of justice in criminal investigations or proceedings --**

101 **Elements -- Penalties -- Exceptions.**

102 (1) As used in this section, "conduct that constitutes a criminal offense" means conduct
103 that would be punishable as a crime and is separate from a violation of this section, including:

104 (a) any violation of a criminal statute or ordinance of the state, a political subdivision
105 of the state, another state, or a district, possession, or territory of the United States; and

106 (b) conduct committed by a juvenile that would be a crime if committed by an adult.

107 [(+)] (2) An actor commits obstruction of justice if the actor, with intent to hinder,
108 delay, or prevent the investigation, apprehension, prosecution, conviction, or punishment of
109 [~~any person~~] an individual regarding conduct that constitutes a criminal offense:

110 (a) provides [~~any person~~] an individual with a weapon;

111 (b) prevents by force, intimidation, or deception, [~~any person~~] an individual from
112 performing any act that might aid in the discovery, apprehension, prosecution, conviction, or
113 punishment of [~~any person~~] an individual;

114 (c) alters, destroys, conceals, or removes [~~any item or other thing~~] an item;

115 (d) makes, presents, or uses [~~any item or thing~~] an item known by the actor to be false;

116 (e) harbors or conceals [~~a person~~] an individual;

117 (f) provides [~~a person~~] an individual with transportation, disguise, or other means of
118 avoiding discovery or apprehension;

119 (g) warns [~~any person~~] an individual of impending discovery or apprehension;

120 (h) warns [~~any person~~] an individual of an order authorizing the interception of wire

121 communications or of a pending application for an order authorizing the interception of wire
122 communications;

123 (i) conceals information that is not privileged and that concerns the offense, after a
124 judge or magistrate has ordered the actor to provide the information; ~~[or]~~

125 (j) provides false information regarding a suspect, a witness, the conduct constituting
126 an offense, or any other material aspect of the investigation~~[-]; or~~

127 (k) sends or causes to be sent any form of communication to a judge, law enforcement
128 officer, investigator, public servant, or prosecuting attorney that is threatening or designed to
129 interfere with or impede the investigation, prosecution, conviction, or punishment of an
130 individual.

131 ~~[(2) (a) As used in this section, "conduct that constitutes a criminal offense" means~~
132 ~~conduct that would be punishable as a crime and is separate from a violation of this section,~~
133 ~~and includes:]~~

134 ~~[(i) any violation of a criminal statute or ordinance of this state, its political~~
135 ~~subdivisions, any other state, or any district, possession, or territory of the United States; and]~~

136 ~~[(ii) conduct committed by a juvenile which would be a crime if committed by an~~
137 ~~adult.]~~

138 ~~[(b)]~~ (3) ~~[A]~~ For purposes of this section, a violation of a criminal statute that is
139 committed in another state, or ~~[any]~~ a district, possession, or territory of the United States, is a:

140 (i) capital felony if the penalty provided includes death or life imprisonment without
141 parole;

142 (ii) a first degree felony if the penalty provided includes life imprisonment with parole
143 or a maximum term of imprisonment exceeding 15 years;

144 (iii) a second degree felony if the penalty provided exceeds five years;

145 (iv) a third degree felony if the penalty provided includes imprisonment for any period
146 exceeding one year; and

147 (v) a misdemeanor if the penalty provided includes imprisonment for any period of one
148 year or less.

149 ~~[(3)]~~ (4) Obstruction of justice is:

150 (a) a second degree felony if the conduct which constitutes an offense would be a
151 capital felony or first degree felony;

- 152 (b) a third degree felony if:
- 153 (i) the conduct that constitutes an offense would be a second or third degree felony and
- 154 the actor violates Subsection ~~[(1)]~~ (2)(b), (c), (d), (e), or (f);
- 155 (ii) the conduct that constitutes an offense would be any offense other than a capital or
- 156 first degree felony and the actor violates Subsection ~~[(1)]~~ (2)(a);
- 157 (iii) the obstruction of justice is presented or committed before a court of law; or
- 158 (iv) a violation of Subsection ~~[(1)]~~ (2)(h); or
- 159 (c) a class A misdemeanor for any violation of this section that is not enumerated under
- 160 Subsection ~~[(3)]~~ (4)(a) or (b).

161 ~~[(4)]~~ (5) It is not a defense that the actor was unaware of the level of penalty for the

162 conduct constituting an offense.

163 ~~[(5)]~~ (6) Subsection ~~[(1)]~~ (2)(e) does not apply to harboring a youth offender, which is

164 governed by Section [62A-7-402](#).

165 ~~[(6)]~~ (7) Subsection ~~[(1)]~~ (2)(b) does not apply to:

- 166 (a) tampering with a juror, which is governed by Section [76-8-508.5](#);
- 167 (b) influencing, impeding, or retaliating against a judge, prosecuting attorney, or
- 168 member of the Board of Pardons and Parole, which is governed by Section [76-8-316](#);
- 169 (c) tampering with a witness or soliciting or receiving a bribe, which is governed by
- 170 Section [76-8-508](#);
- 171 (d) retaliation against a witness, victim, or informant, which is governed by Section
- 172 [76-8-508.3](#); or
- 173 (e) extortion or bribery to dismiss a criminal proceeding, which is governed by Section
- 174 [76-8-509](#).

175 ~~[(7)]~~ (8) Notwithstanding Subsection ~~[(1), (2), or (3)]~~ (2), (3), or (4), an actor commits

176 a third degree felony if the actor harbors or conceals an offender who has escaped from official

177 custody as defined in Section [76-8-309](#).

178 Section 3. Section **76-8-316** is amended to read:

179 **76-8-316. Influencing, impeding, or retaliating against a judge, prosecuting**

180 **attorney, or member of the Board of Pardons and Parole or acting against a family**

181 **member of a judge, prosecuting attorney, or a member of the Board of Pardons and**

182 **Parole.**

183 (1) As used in this section:

184 (a) "Board member" means an appointed member of the Board of Pardons and Parole.

185 (b) "Court official" means a judge, prosecuting attorney, or board member.

186 ~~[(b)]~~ (c) "Family member" means an individual's parents, spouse, surviving spouse,
187 children, and siblings ~~[of a judge or board member]~~.

188 ~~[(c)]~~ (d) "Judge" means judges of all courts of record and courts not of record and court
189 commissioners.

190 (e) "Prosecuting attorney" means an attorney involved in the prosecution of a
191 defendant.

192 (2) ~~[A person]~~ An individual is guilty of a third degree felony if the ~~[person]~~ individual
193 threatens to assault, kidnap, or murder a ~~[judge, a family member of a judge, a board member,~~
194 ~~or a family member of a board member]~~ court official or a family member of a court official
195 with the intent to impede, intimidate, or interfere with the ~~[judge or board member]~~ court
196 official while engaged in the performance of the ~~[judge's or board member's]~~ court official's
197 official duties or with the intent to retaliate against the ~~[judge or board member]~~ court official
198 on account of the performance of those official duties.

199 (3) ~~[A person]~~ An individual is guilty of a second degree felony if the ~~[person]~~
200 individual commits an assault on a ~~[judge, a family member of a judge, a board member, or a~~
201 ~~family member of a board member]~~ court official or a family member of a court official with
202 the intent to impede, intimidate, or interfere with the ~~[judge or board member]~~ court official
203 while engaged in the performance of the ~~[judge's or board member's]~~ court official's official
204 duties, or with the intent to retaliate against the ~~[judge or board member]~~ court official on
205 account of the performance of those official duties.

206 (4) ~~[A person]~~ An individual is guilty of a first degree felony if the ~~[person]~~ individual
207 commits aggravated assault on a ~~[judge, a family member of a judge, a board member, or a~~
208 ~~family member of a board member]~~ court official or a family member of a court official with
209 the intent to impede, intimidate, or interfere with the ~~[judge or board member]~~ court official
210 while engaged in the performance of the ~~[judge's or board member's]~~ court official's official
211 duties, or with the intent to retaliate against the ~~[judge or board member]~~ court official on
212 account of the performance of those official duties.

213 (5) ~~[A person]~~ An individual is guilty of a first degree felony if the ~~[person]~~ individual

214 commits attempted murder on a family member of a [~~judge or a family member of a board~~
215 ~~member~~] court official with the intent to impede, intimidate, or interfere with the [~~judge or~~
216 ~~board member~~] court official while engaged in the performance of the [~~judge's or board~~
217 ~~member's~~] court official's official duties, or with the intent to retaliate against the [~~judge or~~
218 ~~board member~~] court official on account of the performance of those official duties.

219 (6) A member of the Board of Pardons and Parole is an executive officer for purposes
220 of Subsection [76-5-202\(1\)\(m\)](#).