

HB0103S01 compared with HB0103

~~deleted text~~ shows text that was in HB0103 but was deleted in HB0103S01.

inserted text shows text that was not in HB0103 but was inserted into HB0103S01.

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Representative Craig Hall proposes the following substitute bill:

RETALIATION AND OBSTRUCTION OF JUSTICE

AMENDMENTS

2021 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 communications to the list of crimes constituting obstruction of justice; and

HB0103S01 compared with HB0103

- ▶ makes technical and conforming 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 2020, Chapters 142, 214, and 415

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

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

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

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

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

(1) Sections 53-10-403.6, 53-10-404, 53-10-404.5, 53-10-405, and 53-10-406 apply to any person who:

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

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

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

(d) has been booked:

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

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

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

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

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

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

HB0103S01 compared with HB0103

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

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

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

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

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

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

(v) a felony violation of enticing a minor over the Internet, Section 76-4-401;

(vi) a felony violation of propelling a substance or object at a correctional officer, a peace officer, or an employee or a volunteer, including health care providers, Section 76-5-102.6;

(vii) aggravated human trafficking and aggravated human smuggling, Section 76-5-310;

(viii) a felony violation of unlawful sexual activity with a minor, Section 76-5-401;

(ix) a felony violation of sexual abuse of a minor, Section 76-5-401.1;

(x) unlawful sexual contact with a 16 or 17-year old, Section 76-5-401.2;

(xi) sale of a child, Section 76-7-203;

(xii) aggravated escape, Subsection 76-8-309(2);

(xiii) a felony violation of assault on an elected official, Section 76-8-315;

(xiv) influencing, impeding, or retaliating against a judge, prosecuting attorney, or member of the Board of Pardons and Parole, Section 76-8-316;

(xv) advocating criminal syndicalism or sabotage, Section 76-8-902;

(xvi) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;

(xvii) a felony violation of sexual battery, Section 76-9-702.1;

(xviii) a felony violation of lewdness involving a child, Section 76-9-702.5;

(xix) a felony violation of abuse or desecration of a dead human body, Section 76-9-704;

(xx) manufacture, possession, sale, or use of a weapon of mass destruction, Section 76-10-402;

HB0103S01 compared with HB0103

(xxi) manufacture, possession, sale, or use of a hoax weapon of mass destruction, Section 76-10-403;

(xxii) possession of a concealed firearm in the commission of a violent felony, Subsection 76-10-504(4);

(xxiii) assault with the intent to commit bus hijacking with a dangerous weapon, Subsection 76-10-1504(3);

(xxiv) commercial obstruction, Subsection 76-10-2402(2);

(xxv) a felony violation of failure to register as a sex or kidnap offender, Section 77-41-107;

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

(xxvii) violation of condition for release after arrest under Section 78B-7-802.

(3) A minor under Subsection (1) is a minor 14 years old or older who is adjudicated by the juvenile court due to the commission of any offense described in Subsection (2), and who:

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

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

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

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

Elements -- Penalties -- Exceptions.

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

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

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

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

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

(b) prevents by force, intimidation, or deception, [any person] an individual from

HB0103S01 compared with HB0103

performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of ~~[any]~~ a person;

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

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

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

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

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

(h) warns ~~[any person]~~ an individual of an order authorizing the interception of wire communications or of a pending application for an order authorizing the interception of wire communications;

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

(j) provides false information regarding a suspect, a witness, the conduct constituting an offense, or any other material aspect of the investigation.

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

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

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

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

~~[(i)]~~ (a) capital felony if the penalty provided includes death or life imprisonment without parole;

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

~~[(iii)]~~ (c) a second degree felony if the penalty provided exceeds five years;

~~[(iv)]~~ (d) a third degree felony if the penalty provided includes imprisonment for any period exceeding one year; and

HB0103S01 compared with HB0103

~~[(v)]~~ (e) a misdemeanor if the penalty provided includes imprisonment for any period of one year or less.

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

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

(b) a third degree felony if:

(i) the conduct that constitutes an offense would be a second or third degree felony and the actor violates Subsection ~~[(1)]~~ (2)(b), (c), (d), (e), or (f);

(ii) the conduct that constitutes an offense would be any offense other than a capital or first degree felony and the actor violates Subsection ~~[(1)]~~ (2)(a);

(iii) the obstruction of justice is presented or committed before a court of law; or

(iv) a violation of Subsection ~~[(1)]~~ (2)(h); or

(c) a class A misdemeanor for any violation of this section that is not enumerated under Subsection ~~[(3)]~~ (4)(a) or (b).

~~[(4)]~~ (5) It is not a defense that the actor was unaware of the level of penalty for the conduct constituting an offense.

~~[(5)]~~ (6) Subsection ~~[(1)]~~ (2)(e) does not apply to harboring a youth offender, which is governed by Section 62A-7-402.

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

(a) tampering with a juror, which is governed by Section 76-8-508.5;

(b) influencing, impeding, or retaliating against a judge, prosecuting attorney, or member of the Board of Pardons and Parole, which is governed by Section 76-8-316;

(c) tampering with a witness or soliciting or receiving a bribe, which is governed by Section 76-8-508;

(d) retaliation against a witness, victim, or informant, which is governed by Section 76-8-508.3; or

(e) extortion or bribery to dismiss a criminal proceeding, which is governed by Section 76-8-509.

~~[(7)]~~ (8) Notwithstanding Subsection ~~[(1), (2), or (3)]~~ (2), (3), or (4), an actor commits a third degree felony if the actor harbors or conceals an offender who has escaped from official custody as defined in Section 76-8-309.

HB0103S01 compared with HB0103

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

76-8-316. Influencing, impeding, or retaliating against a judge or member of the Board of Pardons and Parole or acting against a family member of a judge or a member of the Board of Pardons and Parole.

(1) As used in this section:

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

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

~~{ (c) "Family member" means [parents] an individual's parent, spouse, surviving spouse, [children, and siblings of a judge or board member] child, or sibling.~~

~~{ (d) "Judge" means judges of all courts of record and courts not of record and court commissioners.~~

(d) "Official" means a judge, prosecuting attorney, or board member.

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

(2) ~~[A person]~~ An individual is guilty of a third degree felony if ~~[the person threatens]:~~

(a) the individual makes a credible threat to assault, kidnap, or murder [a { } judge, a family member of a judge, a board member, or a family member of a board member] {court} an official or a family member of {a court} an official with the intent to:

(i) impede, intimidate, or interfere with the [judge or board member] {court} official while engaged in the performance of the [judge's or board member's] {court} official's official duties; or [with the intent to]

(ii) retaliate against the [judge or board member] {court} official on account of the performance of those official duties[-]; and

(b) the {court} official or family member of {a court} an official who is the subject of the threat reasonably believes the individual will perform the threatened act.

(3) ~~[A person]~~ An individual is guilty of a second degree felony if the ~~[person]~~ individual commits an assault on ~~[a { } judge, a family member of a judge, a board member, or a family member of a board member]~~ {court} an official or a family member of {a court} an official with the intent to:

(a) impede, intimidate, or interfere with the [judge or board member] {court} official while engaged in the performance of the [judge's or board member's] {court} official's official

HB0103S01 compared with HB0103

duties~~[, or with the intent to]~~; or

(b) retaliate against the ~~[judge or board member]~~ {court} official on account of the performance of those official duties.

(4) ~~[A person]~~ An individual is guilty of a first degree felony if the ~~[person]~~ individual commits aggravated assault on ~~[a {} judge, a family member of a judge, a board member, or a family member of a board member]~~ {court} an official or a family member of {a court} an official with the intent to:

(a) impede, intimidate, or interfere with the ~~[judge or board member]~~ {court} official while engaged in the performance of the ~~[judge's or board member's]~~ {court} official's official duties; or ~~[with the intent to]~~

(b) retaliate against the ~~[judge or board member]~~ {court} official on account of the performance of those official duties.

(5) ~~[A person]~~ An individual is guilty of a first degree felony if the ~~[person]~~ individual commits attempted murder on a family member of ~~[a {} judge or a family member of a board member]~~ {court} an official with the intent to:

(a) impede, intimidate, or interfere with the ~~[judge or board member]~~ {court} official while engaged in the performance of the ~~[judge's or board member's]~~ {court} official's official duties; or ~~[with the intent to]~~

(b) retaliate against the ~~[judge or board member]~~ {court} official on account of the performance of those official duties.

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