

## SB0056S01 compared with SB0056

~~deleted text~~ shows text that was in SB0056 but was deleted in SB0056S01.

inserted text shows text that was not in SB0056 but was inserted into SB0056S01.

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Senator Todd D. Weiler proposes the following substitute bill:

### CRIMINAL STALKING EXEMPTION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd D. Weiler**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill creates an exemption in the criminal stalking statute for a law enforcement officer, governmental investigator, or licensed private investigator.

##### Highlighted Provisions:

This bill:

- ▶ creates an exemption in the criminal stalking statute for a law enforcement officer, governmental investigator, or licensed private investigator acting in an official capacity; and
- ▶ makes technical and conforming changes.

##### Money Appropriated in this Bill:

None

##### Other Special Clauses:

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None

### Utah Code Sections Affected:

#### AMENDS:

**76-3-203.5**, as last amended by Laws of Utah 2013, Chapter 278

**76-5-106.5**, as last amended by Laws of Utah 2020, Chapter 142

**78B-7-903**, as enacted by Laws of Utah 2020, Chapter 142

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

Section 1. Section **76-3-203.5** is amended to read:

**76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

(1) As used in this section:

(a) "Felony" means any violation of a criminal statute of the state, any other state, the United States, or any district, possession, or territory of the United States for which the maximum punishment the offender may be subjected to exceeds one year in prison.

(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.

(c) "Violent felony" means:

(i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:

(A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief, Title 76, Chapter 6, Part 1, Property Destruction;

(B) assault by prisoner, Section 76-5-102.5;

(C) disarming a police officer, Section 76-5-102.8;

(D) aggravated assault, Section 76-5-103;

(E) aggravated assault by prisoner, Section 76-5-103.5;

(F) mayhem, Section 76-5-105;

(G) stalking, Subsection 76-5-106.5(2) [~~or(3)~~];

(H) threat of terrorism, Section 76-5-107.3;

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

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- (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
- (K) abuse or neglect of a child with a disability, Section 76-5-110;
- (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
- (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
- (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;
- (P) rape, Section 76-5-402;
- (Q) rape of a child, Section 76-5-402.1;
- (R) object rape, Section 76-5-402.2;
- (S) object rape of a child, Section 76-5-402.3;
- (T) forcible sodomy, Section 76-5-403;
- (U) sodomy on a child, Section 76-5-403.1;
- (V) forcible sexual abuse, Section 76-5-404;
- (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- (X) aggravated sexual assault, Section 76-5-405;
- (Y) sexual exploitation of a minor, Section 76-5b-201;
- (Z) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- (AA) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
- (BB) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- (CC) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- (DD) tampering with a witness under Subsection 76-8-508(1);
- (EE) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- (FF) tampering with a juror under Subsection 76-8-508.5(2)(c);
- (GG) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b), and (i);
- (HH) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);
- (II) unlawful delivery of explosive, chemical, or incendiary devices under Section

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76-10-307;

(JJ) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;

(KK) unlawful discharge of a firearm under Section 76-10-508;

(LL) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

(MM) bus hijacking under Section 76-10-1504; and

(NN) discharging firearms and hurling missiles under Section 76-10-1505; or

(ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

(2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:

(a) third degree felony is as if the conviction were for a first degree felony;

(b) second degree felony is as if the conviction were for a first degree felony; or

(c) first degree felony remains the penalty for a first degree penalty except:

(i) the convicted person is not eligible for probation; and

(ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.

(3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

(b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:

(A) the defendant is the person who was convicted or committed;

(B) the defendant was represented by counsel or had waived counsel; or

(C) the defendant's plea was understandingly or voluntarily entered.

(ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.

(4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to

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a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge, of the:

(i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or

(ii) allegation against the defendant of being a habitual violent offender.

(b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives the jury, in which case the allegation shall be tried immediately to the court.

(c) (i) Before or at the time of sentencing the trier of fact shall determine if this section applies.

(ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.

(iii) Before sentencing under this section, the trier of fact shall determine whether this section is applicable beyond a reasonable doubt.

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

(e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.

(5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.

(b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

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(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

- (i) a grievous sexual offense;
- (ii) child kidnapping, Section 76-5-301.1;
- (iii) aggravated kidnapping, Section 76-5-302; or
- (iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section 2. Section **76-5-106.5** is amended to read:

### **76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties -- Exemption -- Duties of law enforcement officer.**

(1) As used in this section:

(a) "Course of conduct" means two or more acts directed at or toward a specific ~~[person]~~ individual, including:

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about ~~[a person]~~ an individual, or interferes with ~~[a person's]~~ an individual's property:

(A) directly, indirectly, or through any third party; and

(B) by any action, method, device, or means; or

(ii) when the actor engages in any of the following acts or causes someone else to engage in any of these acts:

(A) approaches or confronts ~~[a person]~~ an individual;

(B) appears at the ~~[person's]~~ individual's workplace or contacts the ~~[person's]~~ individual's employer or ~~[coworkers]~~ coworker;

(C) appears at ~~[a person's]~~ an individual's residence or contacts ~~[a person's neighbors]~~ an individual's neighbor, or enters property owned, leased, or occupied by ~~[a person]~~ an individual;

(D) sends material by any means to the ~~[person]~~ individual or for the purpose of obtaining or disseminating information about or communicating with the ~~[person]~~ individual to a member of the ~~[person's]~~ individual's family or household, employer, coworker, friend, or

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associate of the ~~[person]~~ individual;

(E) places an object on or delivers an object to property owned, leased, or occupied by ~~a person~~ an individual, or to the ~~person's~~ individual's place of employment with the intent that the object be delivered to the ~~person~~ individual; or

(F) uses a computer, the Internet, text messaging, or any other electronic means to commit an act that is a part of the course of conduct.

(b) "Emotional distress" means significant mental or psychological suffering, whether or not medical or other professional treatment or counseling is required.

(c) "Immediate family" means a spouse, parent, child, sibling, or any other ~~person~~ individual who regularly resides in the household or who regularly resided in the household within the prior six months.

~~(d)~~ (d) "Private investigator" means the same as that term is defined in Section 76-9-408.

~~(d)~~ (e) "Reasonable person" means a reasonable person in the victim's circumstances.

~~(e)~~ (f) "Stalking" means an offense as described in Subsection (2) [or (3)].

~~(f)~~ (g) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone or computer to another ~~person's~~ individual's telephone or computer by addressing the communication to the recipient's telephone number.

(2) ~~[A person is guilty of stalking who]~~ An actor commits stalking if the actor intentionally or knowingly:

(a) engages in a course of conduct directed at a specific ~~person~~ individual and knows or should know that the course of conduct would cause a reasonable person:

~~(a)~~ (i) to fear for the ~~person's~~ individual's own safety or the safety of a third ~~person~~ individual; or

~~(b)~~ (ii) to suffer other emotional distress[-]; or

~~(3) A person is guilty of stalking who intentionally or knowingly violates:]~~

(b) violates:

~~(a)~~ (i) a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions; or

~~(b)~~ (ii) a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

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~~[(4)]~~ (3) In ~~[any]~~ a prosecution under this section, it is not a defense that the actor:

- (a) was not given actual notice that the course of conduct was unwanted; or
- (b) did not intend to cause the victim fear or other emotional distress.

~~[(5)]~~ (4) An offense of stalking may be prosecuted under this section in any jurisdiction where one or more of the acts that is part of the course of conduct was initiated or caused an effect on the victim.

~~[(6)]~~ (5) (a) ~~[Stalking]~~ A violation of Subsection (2) is a class A misdemeanor:

~~[(a)]~~ (i) upon the ~~[offender's]~~ actor's first violation of Subsection (2); or

~~[(b)]~~ (ii) if the ~~[offender]~~ actor violated a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions.

~~[(7)]~~ (b) ~~[Stalking]~~ Notwithstanding Subsection (5)(a), a violation of Subsection (2) is a third degree felony if the [offender] actor:

~~[(a)]~~ (i) has been previously convicted of an offense of stalking;

~~[(b)]~~ (ii) has been previously convicted in another jurisdiction of an offense that is substantially similar to the offense of stalking;

~~[(c)]~~ (iii) has been previously convicted of any felony offense in Utah or of any crime in another jurisdiction which if committed in Utah would be a felony, in which the victim of the stalking offense or a member of the victim's immediate family was also a victim of the previous felony offense;

~~[(d)]~~ (iv) violated a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions; or

~~[(e)]~~ (v) has been or is at the time of the offense a cohabitant, as defined in Section 78B-7-102, of the victim.

~~[(8)]~~ (c) ~~[Stalking]~~ Notwithstanding Subsections (5)(a) and (b), a violation of Subsection (2) is a second degree felony if the [offender] actor:

~~[(a)]~~ (i) used a dangerous weapon ~~[as defined in Section 76-1-601]~~ or used other means or force likely to produce death or serious bodily injury, in the commission of the crime of stalking;

~~[(b)]~~ (ii) has been previously convicted two or more times of the offense of stalking;

~~[(c)]~~ (iii) has been convicted two or more times in another jurisdiction or jurisdictions of offenses that are substantially similar to the offense of stalking;



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~~[(d)]~~ (iv) has been convicted two or more times, in any combination, of offenses under Subsection ~~[(7)(a), (b), or (c)]~~ (5)(b)(i), (ii) or (iii);

~~[(e)]~~ (v) has been previously convicted two or more times of felony offenses in Utah or of crimes in another jurisdiction or jurisdictions which, if committed in Utah, would be felonies, in which the victim of the stalking was also a victim of the previous felony offenses; or

~~[(f)]~~ (vi) has been previously convicted of an offense under Subsection ~~[(7)(d) or (e)]~~ (5)(b)(iv) or (v).

(6) An actor does not violate this section if the actor is acting:

(a) in the actor's official capacity as a law enforcement officer, governmental investigator, or private investigator; and

(b) for a legitimate official or business purpose.

~~[(9)]~~ (7) (a) A permanent criminal stalking injunction limiting the contact between the ~~[defendant]~~ actor and victim may be filed in accordance with Section 78B-7-902.

(b) This section does not preclude the filing of criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions, or a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

~~[(10)]~~ (8) (a) A law enforcement officer who responds to an allegation of stalking shall use all reasonable means to protect the victim and prevent further violence, including:

(i) taking action that, in the officer's discretion, is reasonably necessary to provide for the safety of the victim and any family or household member;

(ii) confiscating the weapon or weapons involved in the alleged stalking;

(iii) making arrangements for the victim and any child to obtain emergency housing or shelter;

(iv) providing protection while the victim removes essential personal effects;

(v) arranging, facilitating, or providing for the victim and any child to obtain medical treatment; and

(vi) arranging, facilitating, or providing the victim with immediate and adequate notice of the rights of victims and of the remedies and services available to victims of stalking, in accordance with Subsection ~~[(10)]~~ (8)(b).

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(b) (i) A law enforcement officer shall give written notice to the victim in simple language, describing the rights and remedies available under this section and Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions.

(ii) The written notice shall also include:

(A) a statement that the forms needed in order to obtain a stalking injunction are available from the court clerk's office in the judicial district where the victim resides or is temporarily domiciled; and

(B) a list of shelters, services, and resources available in the appropriate community, together with telephone numbers, to assist the victim in accessing any needed assistance.

(c) If a weapon is confiscated under this Subsection [~~(10)~~] (8), the law enforcement agency shall return the weapon to the individual from whom the weapon is confiscated if a stalking injunction is not issued or once the stalking injunction is terminated.

Section 3. Section **78B-7-903** is amended to read:

### **78B-7-903. Penalties.**

(1) A violation of a permanent criminal stalking injunction issued under this part is a third degree felony in accordance with Subsection 76-5-106.5[~~(7)~~](5)(b).

(2) A violation of a permanent criminal stalking injunction issued under this part may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.