

Representative Nelson T. Abbott proposes the following substitute bill:

CRIMINAL INTENT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Heidi Balderree

LONG TITLE

General Description:

This bill concerns mental states for criminal offenses involving threats.

Highlighted Provisions:

This bill:

- ▶ modifies the applicable mental state for a threat in the criminal offense of:
 - stalking;
 - threatened or attempted assault on an elected official; and
 - tampering with or retaliating against a juror; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-203.5, as last amended by Laws of Utah 2023, Chapter 111

76-5-106.5, as last amended by Laws of Utah 2022, Chapters 142, 181 and 418

76-8-313, as last amended by Laws of Utah 1996, Chapter 45



26 [76-8-508.5](#), as last amended by Laws of Utah 1992, Chapter 219

27

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

29 Section 1. Section [76-3-203.5](#) is amended to read:

30 **[76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.](#)**

31 (1) As used in this section:

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

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

39 (c) "Violent felony" means:

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

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

44 (B) assault by prisoner, Section [76-5-102.5](#);

45 (C) disarming a police officer, Section [76-5-102.8](#);

46 (D) aggravated assault, Section [76-5-103](#);

47 (E) aggravated assault by prisoner, Section [76-5-103.5](#);

48 (F) mayhem, Section [76-5-105](#);

49 (G) stalking, Subsection [76-5-106.5\(2\)](#);

50 (H) threat of terrorism, Section [76-5-107.3](#);

51 (I) aggravated child abuse, Subsection [76-5-109.2\(3\)\(a\)](#) or (b);

52 (J) commission of domestic violence in the presence of a child, Section [76-5-114](#);

53 (K) abuse or neglect of a child with a disability, Section [76-5-110](#);

54 (L) abuse or exploitation of a vulnerable adult, Section [76-5-111](#), [76-5-111.2](#),
55 [76-5-111.3](#), or [76-5-111.4](#);

56 (M) endangerment of a child or vulnerable adult, Section [76-5-112.5](#);

- 57 (N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;
- 58 (O) kidnapping, child kidnapping, and aggravated kidnapping under Chapter 5, Part 3,
- 59 Kidnapping, Trafficking, and Smuggling;
- 60 (P) rape, Section [76-5-402](#);
- 61 (Q) rape of a child, Section [76-5-402.1](#);
- 62 (R) object rape, Section [76-5-402.2](#);
- 63 (S) object rape of a child, Section [76-5-402.3](#);
- 64 (T) forcible sodomy, Section [76-5-403](#);
- 65 (U) sodomy on a child, Section [76-5-403.1](#);
- 66 (V) forcible sexual abuse, Section [76-5-404](#);
- 67 (W) sexual abuse of a child, Section [76-5-404.1](#), or aggravated sexual abuse of a child,
- 68 Section [76-5-404.3](#);
- 69 (X) aggravated sexual assault, Section [76-5-405](#);
- 70 (Y) sexual exploitation of a minor, Section [76-5b-201](#);
- 71 (Z) aggravated sexual exploitation of a minor, Section [76-5b-201.1](#);
- 72 (AA) sexual exploitation of a vulnerable adult, Section [76-5b-202](#);
- 73 (BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2, Burglary
- 74 and Criminal Trespass;
- 75 (CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;
- 76 (DD) theft by extortion under Section [76-6-406](#) under the circumstances described in
- 77 Subsection [76-6-406\(1\)\(a\)\(i\)](#) or (ii);
- 78 (EE) tampering with a witness under Subsection [76-8-508\(1\)](#);
- 79 (FF) retaliation against a witness, victim, or informant under Section [76-8-508.3](#);
- 80 (GG) tampering with a juror under Subsection [~~[76-8-508.5\(2\)\(c\)](#)~~] [76-8-508.5\(2\)\(a\)\(iii\)](#);
- 81 (HH) extortion to dismiss a criminal proceeding under Section [76-8-509](#) if by any
- 82 threat or by use of force theft by extortion has been committed under Section [76-6-406](#) under
- 83 the circumstances described in Subsection [76-6-406\(1\)\(a\)\(i\)](#), (ii), or (ix);
- 84 (II) possession, use, or removal of explosive, chemical, or incendiary devices under
- 85 Subsections [76-10-306\(3\)](#) through (6);
- 86 (JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section
- 87 [76-10-307](#);

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

117 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
118 a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge,

119 of the:

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

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

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

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

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

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

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

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

144 (5) (a) The sentencing enhancement provisions of Section [76-3-407](#) supersede the
145 provisions of this section.

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

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

- 150 (a) the offense for which the person is being sentenced is:
- 151 (i) a grievous sexual offense;
- 152 (ii) child kidnapping, Section 76-5-301.1;
- 153 (iii) aggravated kidnapping, Section 76-5-302; or
- 154 (iv) forcible sexual abuse, Section 76-5-404; and
- 155 (b) applying the sentencing enhancement provided for in this section would result in a
- 156 lower maximum penalty than the penalty provided for under the section that describes the
- 157 offense for which the person is being sentenced.

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

159 **76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties -- Duties of law**

160 **enforcement officer.**

161 (1) (a) As used in this section:

162 (i) "Course of conduct" means two or more acts directed at or toward a specific

163 individual, including:

164 (A) acts in which the actor follows, monitors, observes, photographs, surveils,

165 threatens, or communicates to or about an individual, or interferes with an individual's

166 property:

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

168 (II) by any action, method, device, or means; or

169 (B) when the actor engages in any of the following acts or causes someone else to

170 engage in any of these acts:

171 (I) approaches or confronts an individual;

172 (II) appears at the individual's workplace or contacts the individual's employer or

173 coworker;

174 (III) appears at an individual's residence or contacts an individual's neighbor, or enters

175 property owned, leased, or occupied by an individual;

176 (IV) sends material by any means to the individual or for the purpose of obtaining or

177 disseminating information about or communicating with the individual to a member of the

178 individual's family or household, employer, coworker, friend, or associate of the individual;

179 (V) places an object on or delivers an object to property owned, leased, or occupied by

180 an individual, or to the individual's place of employment with the intent that the object be

181 delivered to the individual; or

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

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

186 (B) "Emotional distress" includes significant mental or psychological suffering
187 resulting from harm to an animal.

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

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

192 (v) "Reasonable person" means a reasonable person in the victim's circumstances.

193 (vi) "Stalking" means an offense as described in Subsection (2).

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

197 (b) Terms defined in Section 76-1-101.5 apply to this section.

198 (2) An actor commits stalking if the actor intentionally or knowingly:

199 (a) engages in a course of conduct directed at a specific individual and knows [~~or~~
200 ~~should know that~~] or is reckless as to whether the course of conduct would cause a reasonable
201 person:

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

203 (ii) to suffer other emotional distress; or

204 (b) violates:

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

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

209 (3) (a) A violation of Subsection (2) is a class A misdemeanor:

210 (i) upon the actor's first violation of Subsection (2); or

211 (ii) if the actor violated a stalking injunction issued under Title 78B, Chapter 7, Part 7,

212 Civil Stalking Injunctions.

213 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree
214 felony if the actor:

215 (i) has been previously convicted of an offense of stalking;

216 (ii) has been previously convicted in another jurisdiction of an offense that is
217 substantially similar to the offense of stalking;

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

222 (iv) violated a permanent criminal stalking injunction issued under Title 78B, Chapter
223 7, Part 9, Criminal Stalking Injunctions; or

224 (v) has been or is at the time of the offense a cohabitant, as defined in Section
225 [78B-7-102](#), of the victim.

226 (c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a second
227 degree felony if the actor:

228 (i) used a dangerous weapon or used other means or force likely to produce death or
229 serious bodily injury, in the commission of the crime of stalking;

230 (ii) has been previously convicted two or more times of the offense of stalking;

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

233 (iv) has been convicted two or more times, in any combination, of offenses under
234 Subsection (3)(b)(i), (ii), or (iii);

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

238 (vi) has been previously convicted of an offense under Subsection (3)(b)(iv) or (v).

239 (4) In a prosecution under this section, it is not a defense that the actor:

240 (a) was not given actual notice that the course of conduct was unwanted; or

241 (b) did not intend to cause the victim fear or other emotional distress.

242 (5) An offense of stalking may be prosecuted under this section in any jurisdiction

243 where one or more of the acts that is part of the course of conduct was initiated or caused an
244 effect on the victim.

245 (6) (a) Except as provided in Subsection (6)(b), an actor does not violate this section if
246 the actor is acting:

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

249 (ii) for a legitimate official or business purpose.

250 (b) A private investigator is not exempt from this section if the private investigator
251 engages in conduct that would constitute a ground for disciplinary action under Section
252 [53-9-118](#).

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

255 (b) This section does not preclude the filing of criminal information for stalking based
256 on the same act which is the basis for the violation of the stalking injunction issued under Title
257 78B, Chapter 7, Part 7, Civil Stalking Injunctions, or a permanent criminal stalking injunction
258 issued under Title 78B, Chapter 7, Part 9, Criminal Stalking Injunctions.

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

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

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

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

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

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

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

272 (b) (i) A law enforcement officer shall give written notice to the victim in simple
273 language, describing the rights and remedies available under this section and Title 78B,

274 Chapter 7, Part 7, Civil Stalking Injunctions.

275 (ii) The written notice shall also include:

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

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

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

284 Section 3. Section **76-8-313** is amended to read:

285 **76-8-313. Threatened or attempted assault on an elected official.**

286 [~~A person commits~~] An actor commits threatened or attempted assault on an elected
287 official [~~when he~~]:

288 (1) if the actor attempts or threatens, irrespective of a showing of immediate force or
289 violence, to inflict bodily injury [to the] on an elected official with the intent to impede,
290 intimidate, or interfere with the elected official in the performance of [~~his~~] the elected official's
291 official duties or with the intent to retaliate against the elected official because of the
292 performance of [his] the elected official's official duties[-]; and

293 (2) if the actor's conduct described in Subsection (1) involves a threat, the actor is
294 reckless as to whether the actor's threat would be considered to be threatening by a reasonable
295 person who received the threat.

296 Section 4. Section **76-8-508.5** is amended to read:

297 **76-8-508.5. Tampering with or retaliating against a juror.**

298 (1) (a) As used in this section, "juror" means [~~a person~~] an individual:

299 [~~(a)~~] (i) summoned for jury duty; or

300 [~~(b)~~] (ii) serving as or having served as a juror or alternate juror in any court or as a
301 juror on any grand jury of the state.

302 (b) Terms defined in Sections 76-1-101.5, 76-8-101, and 76-8-501 apply to this
303 section.

304 (2) [~~A person is guilty of tampering with a juror if he~~] An actor commits tampering or

305 retaliating against a juror if the actor:

306 (a) attempts to or actually influences a juror in the discharge of the juror's service by:

307 [(a)] (i) communicating with the juror by any means, directly or indirectly, except for

308 ~~[attorneys]~~ an attorney in the lawful discharge of ~~[their]~~ the attorney's duties in open court;

309 [(b)] (ii) offering, conferring, or agreeing to confer any benefit upon the juror; or

310 [(c)] (iii) (A) communicating to the juror a threat that a reasonable person would

311 believe to be a threat to injure:

312 [(i)] (I) the juror's person or property; or

313 [(ii)] (II) the person or property of ~~[any other person]~~ another individual in whose

314 welfare the juror is interested~~[-];~~ and

315 (B) the actor is reckless as to whether the actor's threat would be considered to be

316 threatening by a reasonable person who received the threat; or

317 [(3)] (b) ~~[A person is guilty of tampering with a juror if he commits any]~~ commits an

318 unlawful act in retaliation for ~~[anything done]~~ an action taken by the juror in the discharge of

319 the juror's service:

320 [(a)] (i) to the juror's person or property; or

321 [(b)] (ii) to the person or property of ~~[any other person]~~ another individual in whose

322 welfare the juror is interested.

323 [(4)] (3) ~~[Tampering with a juror]~~ A violation of Subsection (2) is a third degree

324 felony.

325 Section 5. **Effective date.**

326 This bill takes effect on May 1, 2024.