

HB0350S01 compared with HB0350

~~{deleted text}~~ shows text that was in HB0350 but was deleted in HB0350S01.

inserted text shows text that was not in HB0350 but was inserted into HB0350S01.

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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: _____

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:

~~{~~ • ~~aggravated assault;~~

} • stalking;

~~{~~ • ~~threat of violence;~~

} • 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:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

~~{ **76-5-103**, as last amended by Laws of Utah 2022, Chapter 181~~

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

~~{ **76-5-107**, as last amended by Laws of Utah 2022, Chapter 181~~

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

76-8-508.5, as last amended by Laws of Utah 1992, Chapter 219

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, 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;

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- (E) aggravated assault by prisoner, Section 76-5-103.5;
- (F) mayhem, Section 76-5-105;
- (G) stalking, Subsection 76-5-106.5(2);
- (H) threat of terrorism, Section 76-5-107.3;
- (I) aggravated child abuse, Subsection 76-5-109.2(3)(a) or (b);
- (J) commission of domestic violence in the presence of a child, Section 76-5-114;
- (K) abuse or neglect of a child with a disability, Section 76-5-110;
- (L) abuse or exploitation of a vulnerable adult, Section 76-5-111, 76-5-111.2, 76-5-111.3, or 76-5-111.4;
- (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- (N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;
- (O) kidnapping, child kidnapping, and aggravated kidnapping under 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) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child, Section 76-5-404.3;
- (X) aggravated sexual assault, Section 76-5-405;
- (Y) sexual exploitation of a minor, Section 76-5b-201;
- (Z) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- (AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- (BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2, Burglary and Criminal Trespass;
- (CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;
- (DD) theft by extortion under Section 76-6-406 under the circumstances described in Subsection 76-6-406(1)(a)(i) or (ii);

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(EE) tampering with a witness under Subsection 76-8-508(1);

(FF) retaliation against a witness, victim, or informant under Section 76-8-508.3;

(GG) tampering with a juror under Subsection [~~76-8-508.5(2)(c)~~] 76-8-508.5(2)(a)(iii);

(HH) 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 under Section 76-6-406 under the circumstances described in Subsection 76-6-406(1)(a)(i), (ii), or (ix);

(II) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);

(JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;

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

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

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

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

(OO) 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

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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 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.

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(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 Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

(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 ~~{76-5-103}~~76-5-106.5 is amended to read:

~~{~~ ~~76-5-103. Aggravated assault.~~

~~———— (1) (a) As used in this section, "targeting a law enforcement officer" means the same as that term is defined in Section 76-5-202.~~

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

~~———— (2) An actor commits aggravated assault if the actor:~~

~~———— (a) (i) attempts, with unlawful force or violence, to do bodily injury to another;~~

~~———— (ii) (A) makes a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; and~~

~~———— (B) is reckless as to whether the actor's threat described in Subsection (2)(a)(ii)(A) could be considered to be threatening by another individual; or~~

~~———— (iii) commits an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another; and~~

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~~— (b) includes in the actor's conduct under Subsection (2)(a) the use of:~~

~~— (i) a dangerous weapon;~~

~~— (ii) any act that impedes the breathing or the circulation of blood of another individual by the actor's use of unlawful force or violence that is likely to produce a loss of consciousness by:~~

~~— (A) applying pressure to the neck or throat of an individual; or~~

~~— (B) obstructing the nose, mouth, or airway of an individual; or~~

~~— (iii) other means or force likely to produce death or serious bodily injury.~~

~~— (3) (a) A violation of Subsection (2) is a third degree felony.~~

~~— (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a second degree felony if:~~

~~— (i) the act results in serious bodily injury; or~~

~~— (ii) an act under Subsection (2)(b)(ii) produces a loss of consciousness.~~

~~— (c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a first degree felony if the conduct constitutes targeting a law enforcement officer and results in serious bodily injury.~~

~~— Section 3. Section 76-5-106.5 is amended to read:~~

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

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

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

(A) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about an individual, or interferes with an individual's property:

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

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

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

(I) approaches or confronts an individual;

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

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coworker;

(III) appears at an individual's residence or contacts an individual's neighbor, or enters property owned, leased, or occupied by an individual;

(IV) sends material by any means to the individual or for the purpose of obtaining or disseminating information about or communicating with the individual to a member of the individual's family or household, employer, coworker, friend, or associate of the individual;

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

(VI) 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.

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

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

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

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

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

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

(vii) "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 individual's telephone or computer by addressing the communication to the recipient's telephone number.

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

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

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

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

(ii) to suffer other emotional distress; or

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(b) violates:

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

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

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

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

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

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

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

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

(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;

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

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

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

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

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

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

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

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(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

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

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

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

(ii) for a legitimate official or business purpose.

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

(7) (a) A permanent criminal stalking injunction limiting the contact between the 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.

(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;

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(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 (8)(b).

(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 (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 ~~{4}~~3. Section ~~{76-5-107}~~76-8-313 is amended to read:

~~{~~ ~~76-5-107. Threat of violence.~~

~~_____ (1) Terms defined in Section 76-1-101.5 apply to this section.~~

~~_____ (2) (a) An actor commits a threat of violence if the actor:~~

~~_____ (i) (A) ~~(I)~~ threatens to commit an offense involving bodily injury, death, or substantial property damage; and~~

~~_____ ~~[(B)]~~ ~~(II)~~ acts with intent to place an individual in fear of imminent serious bodily injury, substantial bodily injury, or death; or~~

~~_____ ~~[(ii)]~~ ~~(B)~~ makes a threat, accompanied by a show of immediate force or violence, to do bodily injury to an individual[.]; and~~

~~_____ ~~(ii) is reckless as to whether the actor's threat described in Subsection (2)(a)(i) could be considered to be threatening by another individual.~~~~

~~_____ (b) A threat under this section may be express or implied.~~

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~~———— (3) (a) A violation of Subsection (2) is a class B misdemeanor.~~

~~———— (b) An actor who commits an offense under this section is subject to punishment for that offense, in addition to any other offense committed, including the carrying out of the threatened act.~~

~~———— (c) In addition to any other penalty authorized by law, a court shall order an actor convicted of a violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses and losses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.~~

~~———— (4) It is not a defense under this section that the actor did not attempt to or was incapable of carrying out the threat.~~

~~———— Section 5. Section 76-8-313 is amended to read:~~

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

~~[A person commits]~~ An actor commits threatened or attempted assault on an elected official ~~[when he]~~ ~~{ }~~ if:

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

(2) if the actor's conduct described in Subsection (1) involves a threat, the actor is reckless as to whether the actor's threat ~~{could}~~ would be considered to be threatening by ~~{another individual}~~ a reasonable person who received the threat.

Section ~~{6}~~ 4. Section **76-8-508.5** is amended to read:

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

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

~~{(a)}~~ (i) summoned for jury duty; or

~~{(b)}~~ (ii) serving as or having served as a juror or alternate juror in any court or as a juror on any grand jury of the state.

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

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

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

~~[(a)]~~ (i) communicating with the juror by any means, directly or indirectly, except for
~~[attorneys]~~ an attorney in the lawful discharge of [their] the attorney's duties in open court;

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

~~[(c)]~~ (iii) (A) communicating to the juror a threat that a reasonable person would believe to be a threat to injure:

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

~~[(ii)]~~ (II) the person or property of [any other person] another individual in whose welfare the juror is interested[-]; and

(B) the actor is reckless as to whether the actor's threat ~~{could}~~ would be considered to be threatening by ~~{another individual};~~ a reasonable person who received the threat; or

~~[(3)]~~ (b) [A person is guilty of tampering with a juror if he commits any] commits an unlawful act in retaliation for [anything done] an action taken by the juror in the discharge of the juror's service:

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

~~[(b)]~~ (ii) to the person or property of [any other person] another individual in whose welfare the juror is interested.

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

Section ~~{7}~~5. **Effective date.**

This bill takes effect on May 1, 2024.