76-1-101. Short title.

This title shall be known and may be cited as the "Utah Criminal Code."

Enacted by Chapter 196, 1973 General Session

76-1-102. Effective date.

This code shall become effective on July 1, 1973.

Enacted by Chapter 196, 1973 General Session

76-1-103. Application of code -- Offense prior to effective date.

(1) The provisions of this code shall govern the construction of, the punishment for, and defenses against any offense defined in this code or, except where otherwise specifically provided or the context otherwise requires, any offense defined outside this code; provided such offense was committed after the effective date of this code.

(2) Any offense committed prior to the effective date of this code shall be governed by the law, statutory and non-statutory, existing at the time of commission thereof, except that a defense or limitation on punishment available under this code shall be available to any defendant tried or retried after the effective date. An offense under the laws of this state shall be deemed to have been committed prior to the effective date of this act if any of the elements of the offense occurred prior thereto.

Enacted by Chapter 196, 1973 General Session

76-1-104. Purposes and principles of construction.

The provisions of this code shall be construed in accordance with these general purposes.

(1) Forbid and prevent the commission of offenses.

(2) Define adequately the conduct and mental state which constitute each offense and safeguard conduct that is without fault from condemnation as criminal.

(3) Prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition or differences in rehabilitation possibilities among individual offenders.

(4) Prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.

Enacted by Chapter 196, 1973 General Session

76-1-105. Common law crimes abolished.

Common law crimes are abolished and no conduct is a crime unless made so by this code, other applicable statute or ordinance.

Amended by Chapter 32, 1974 General Session

76-1-106. Strict construction rule not applicable.

The rule that a penal statute is to be strictly construed shall not apply to this code, any of its provisions, or any offense defined by the laws of this state. All provisions of this code and offenses defined by the laws of this state shall be construed according to the fair import of their terms to promote justice and to effect the objects of the law and general purposes of Section 76-1-104.

Enacted by Chapter 196, 1973 General Session

76-1-107. Procedure -- Applicable provisions -- Military codes, enforcement of court orders, and liability for civil damages not affected.

(1) Except as otherwise provided, the procedure governing the accusation, prosecution, conviction, and punishment of offenders and offenses is not regulated by this act but by the code of criminal procedure.

(2) This code does not affect any power conferred by law upon any court-martial or other military authority or officer to impose and inflict punishment upon offenders violating military codes or laws; nor does it affect any power of a court to punish for contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(3) This act does not bar, suspend, or otherwise affect any right or liability to damages, penalty, forfeiture, impeachment, or other remedy authorized by law to be recovered or enforced in a civil action, administrative proceeding, or otherwise, regardless of whether the conduct involved in the proceeding constitutes an offense defined in this code.

Enacted by Chapter 196, 1973 General Session

76-1-108. Separability clause.

If any provision of this act, or the application of any provision to any person or circumstance, is held invalid, the remainder of this act shall not be affected thereby.

Enacted by Chapter 196, 1973 General Session

76-1-201. Jurisdiction of offenses.

(1) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state;

(c) the conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or

(d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and the other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is

any element of the offense, or the result which is an element, occurs within this state.

(3) In homicide offenses, the "result" is either the physical contact which causes death or the death itself.

(a) If the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state.

(b) If jurisdiction is based on this presumption, this state retains jurisdiction unless the defendant proves by clear and convincing evidence that:

(i) the result of the homicide did not occur in this state; and

(ii) the defendant did not engage in any conduct in this state which is any element of the offense.

(4) (a) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.

(b) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender registration, the offense is considered to be committed:

(i) at the most recent registered primary residence of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(5) (a) If no jurisdictional issue is raised, the pleadings are sufficient to establish jurisdiction.

(b) The defendant may challenge jurisdiction by filing a motion before trial stating which facts exist that deprive the state of jurisdiction.

(c) The burden is upon the state to initially establish jurisdiction over the offense by a preponderance of the evidence by showing under the provisions of Subsections (1) through (4) that the offense was committed either wholly or partly within the borders of the state.

(d) If after the prosecution has met its burden of proof under Subsection (5)(c) the defendant claims that the state is deprived of jurisdiction or may not exercise jurisdiction, the burden is upon the defendant to prove by a preponderance of the evidence:

(i) any facts claimed; and

(ii) why those facts deprive the state of jurisdiction.

(6) Facts that deprive the state of jurisdiction or prohibit the state from exercising jurisdiction include the fact that the:

(a) defendant is serving in a position that is entitled to diplomatic immunity from prosecution and that the defendant's country has not waived that diplomatic immunity;

(b) defendant is a member of the armed forces of another country and that the crime that he is alleged to have committed is one that due to an international agreement, such as a status of forces agreement between his country and the United States, cedes the exercise of jurisdiction over him for that offense to his country;

(c) defendant is an enrolled member of an Indian tribe, as defined in Section 9-9-101, and that the Indian tribe has a legal status with the United States or the state that vests jurisdiction in either tribal or federal courts for certain offenses committed within the exterior boundaries of a tribal reservation, and that the facts establish that

the crime is one that vests jurisdiction in tribal or federal court; or

(d) offense occurred on land that is exclusively within federal jurisdiction.

(7) (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud Act, involves the use of personal identifying information which is uniquely personal to the consumer or business victim of that identity fraud and which information is considered to be in lawful possession of the consumer or business victim wherever the consumer or business victim currently resides or is found.

(b) For purposes of Subsection (1)(a), an offense which is based on a violation of Chapter 6, Part 11, Identity Fraud Act, is committed partly within this state, regardless of the location of the offender at the time of the offense, if the victim of the identity fraud resides or is found in this state.

(8) The judge shall determine jurisdiction.

Amended by Chapter 105, 2014 General Session

76-1-202. Venue of actions.

(1) Criminal actions shall be tried in the county, district, or precinct where the offense is alleged to have been committed. In determining the proper place of trial, the following provisions shall apply:

(a) If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense is consummated.

(b) When conduct constituting elements of an offense or results that constitute elements, whether the conduct or result constituting elements is in itself unlawful, shall occur in two or more counties, trial of the offense may be held in any of the counties concerned.

(c) If a person committing an offense upon the person of another is located in one county and his victim is located in another county at the time of the commission of the offense, trial may be held in either county.

(d) If a cause of death is inflicted in one county and death ensues in another county, the offender may be tried in either county.

(e) A person who commits an inchoate offense may be tried in any county in which any act that is an element of the offense, including the agreement in conspiracy, is committed.

(f) Where a person in one county solicits, aids, abets, agrees, or attempts to aid another in the planning or commission of an offense in another county, he may be tried for the offense in either county.

(g) When an offense is committed within this state and it cannot be readily determined in which county or district the offense occurred, the following provisions shall be applicable:

(i) When an offense is committed upon any railroad car, vehicle, watercraft, or aircraft passing within this state, the offender may be tried in any county through which such railroad car, vehicle, watercraft, or aircraft has passed.

(ii) When an offense is committed on any body of water bordering on or within this state, the offender may be tried in any county adjacent to such body of water. The

words "body of water" shall include but not be limited to any stream, river, lake, or reservoir, whether natural or man-made.

(iii) A person who commits theft may be tried in any county in which he exerts control over the property affected.

(iv) If an offense is committed on or near the boundary of two or more counties, trial of the offense may be held in any of such counties.

(v) For any other offense, trial may be held in the county in which the defendant resides, or, if he has no fixed residence, in the county in which he is apprehended or to which he is extradited.

(h) A person who commits an offense based on Chapter 6, Part 11, Identity Fraud Act, may be tried in the county:

(i) where the victim's personal identifying information was obtained;

(ii) where the defendant used or attempted to use the personally identifying information;

(iii) where the victim of the identity fraud resides or is found; or

(iv) if multiple offenses of identity fraud occur in multiple jurisdictions, in any county where the victim's identity was used or obtained, or where the victim resides or is found.

(i) For the purpose of establishing venue for a violation of Subsection 77-41-105(3) concerning sex offender registration, the offense is considered to be committed:

(i) at the most recent registered primary residence of the offender, if the actual location of the offender at the time of the violation is not known; or

(ii) at the location of the offender at the time the offender is apprehended.

(2) All objections of improper place of trial are waived by a defendant unless made before trial.

Amended by Chapter 105, 2014 General Session

76-1-301. Offenses for which prosecution may be commenced at any time.

(1) As used in this section:

(a) "Aggravating offense" means any offense incident to which a homicide was committed as described in Subsection 76-5-202(1)(d) or (e) or Subsection 76-5-202(2).

(b) "Predicate offense" means an offense described in Section 76-5-203(1) if a person other than a party as defined in Section 76-2-202 was killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of the offense.

(2) Notwithstanding any other provisions of this code, prosecution for the following offenses may be commenced at any time:

(a) capital felony;

(b) aggravated murder;

(c) murder;

(d) manslaughter;

(e) child abuse homicide;

(f) aggravated kidnapping;

(g) child kidnapping;
(h) rape;
(i) rape of a child;
(j) object rape;
(k) object rape of a child;
(l) forcible sodomy;
(m) sodomy on a child;
(n) sexual abuse of a child;
(o) aggravated sexual abuse of a child;
(p) aggravated sexual assault;
(q) any predicate offense to a murder or aggravating offense to an aggravated murder;
(r) aggravated human trafficking or aggravated human smuggling in violation of Section 76-5-310; or
(s) aggravated exploitation of prostitution involving a child, under Section 76-10-1306.

Amended by Chapter 196, 2013 General Session

76-1-301.5. Time limitations for prosecution of misusing public money, falsification or alteration of government records, and bribery.

(1) A prosecution for misusing public money, falsification or alteration of government records, or for a bribery offense shall be commenced within two years after facts constituting the offense have been reported to a prosecutor having responsibility and jurisdiction to prosecute the offense.
(2) This section does not shorten the limitation of actions under Section 76-1-302 or Subsection 76-1-303(3).

Amended by Chapter 208, 2002 General Session

76-1-302. Time limitations for prosecution of offenses -- Provisions if DNA evidence would identify the defendant -- Commencement of prosecution.

(1) Except as otherwise provided, a prosecution for:
(a) a felony or negligent homicide shall be commenced within four years after it is committed, except that prosecution for:
(i) forcible sexual abuse shall be commenced within eight years after the offense is committed, if within four years after its commission the offense is reported to a law enforcement agency; and
(ii) incest shall be commenced within eight years after the offense is committed, if within four years after its commission the offense is reported to a law enforcement agency;
(b) a misdemeanor other than negligent homicide shall be commenced within two years after it is committed; and
(c) any infraction shall be commenced within one year after it is committed.
(2) (a) Notwithstanding Subsection (1), prosecution for the offenses listed in

Subsections 76-3-203.5(1)(c)(i)(A) through (BB) may be commenced at any time if the identity of the person who committed the crime is unknown but DNA evidence is collected that would identify the person at a later date.

(b) Subsection (2)(a) does not apply if the statute of limitations on a crime has run as of May 5, 2003, and no charges have been filed.

(3) If the statute of limitations would have run but for the provisions of Subsection (2) and identification of a perpetrator is made through DNA, a prosecution shall be commenced within one year of the discovery of the identity of the perpetrator.

(4) A prosecution is commenced upon:

(a) the finding and filing of an indictment by a grand jury;

(b) the filing of a complaint or information; or

(c) the issuance of a citation.

Amended by Chapter 320, 2011 General Session

76-1-303. Time limitations for fraud or breach of fiduciary obligation -- Misconduct of public officer or employee.

(1) If the period prescribed in Section 76-1-302 has expired, a prosecution may be commenced for any offense a material element of which is either fraud or a breach of fiduciary obligation within one year after a report of the offense has been filed with a law enforcement agency.

(2) Subsection (1) may not extend the period of limitation as provided in Section 76-1-302 by more than three years.

(3) If the period prescribed in Section 76-1-301.5 or 76-1-302 has expired, a prosecution may be commenced for:

(a) any offense based upon misconduct in office by a public officer or public employee:

(i) at any time during which the defendant holds a public office or during the period of his public employment; or

(ii) within two years after termination of defendant's public office or public employment.

(b) Except as provided in Section 76-1-301.5, Subsection (3) shall not extend the period of limitation otherwise applicable by more than three years.

Amended by Chapter 145, 2009 General Session

76-1-304. Defendant out of state -- Plea held invalid -- New prosecutions.

(1) The period of limitation does not run against any defendant during any period of time in which the defendant is out of the state following the commission of an offense.

(2) If the defendant has entered into a plea agreement with the prosecution and later successfully moves to invalidate his conviction, the period of limitation is suspended from the time of the entry of the plea pursuant to the plea agreement until the time at which the conviction is determined to be invalid, and that determination becomes final.

(3) For purposes of this section, "final" means:
(a) all appeals have been exhausted;
(b) no judicial review is pending; and
(c) no application for judicial review is pending.
(4) When the period of limitation is suspended pursuant to Subsection (2), the suspension includes any charges to which the defendant pleaded guilty pursuant to a plea agreement, charges which were dismissed as a result of a plea agreement, as well as any known charges which were not barred at the time of entry of the plea.
(5) Notwithstanding any other limitation, a prosecution may be commenced for charges described in Subsection (4) within one year after a plea entered pursuant to a plea agreement has been determined to be invalid, and that determination becomes final.

Amended by Chapter 121, 1998 General Session

76-1-305. Lesser included offense for which period of limitations has run.
Whenever a defendant is charged with an offense for which the period of limitations has not run and the defendant should be found guilty of a lesser offense for which the period of limitations has run, the finding of the lesser and included offense against which the statute of limitations has run shall not be a bar to punishment for the lesser offense.

Enacted by Chapter 196, 1973 General Session

76-1-306. Judge to determine.
When an issue concerning the statute of limitations is raised, the judge shall determine by a preponderance of the evidence whether the prosecution is barred by the limitations in this part.

Enacted by Chapter 121, 1998 General Session

76-1-401. "Single criminal episode" defined -- Joinder of offenses and defendants.
In this part unless the context requires a different definition, "single criminal episode" means all conduct which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective.
Nothing in this part shall be construed to limit or modify the effect of Section 77-8a-1 in controlling the joinder of offenses and defendants in criminal proceedings.

Amended by Chapter 20, 1995 General Session

76-1-402. Separate offenses arising out of single criminal episode -- Included offenses.
(1) A defendant may be prosecuted in a single criminal action for all separate offenses arising out of a single criminal episode; however, when the same act of a

defendant under a single criminal episode shall establish offenses which may be punished in different ways under different provisions of this code, the act shall be punishable under only one such provision; an acquittal or conviction and sentence under any such provision bars a prosecution under any other such provision.

(2) Whenever conduct may establish separate offenses under a single criminal episode, unless the court otherwise orders to promote justice, a defendant shall not be subject to separate trials for multiple offenses when:

(a) The offenses are within the jurisdiction of a single court; and

(b) The offenses are known to the prosecuting attorney at the time the defendant is arraigned on the first information or indictment.

(3) A defendant may be convicted of an offense included in the offense charged but may not be convicted of both the offense charged and the included offense. An offense is so included when:

(a) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or

(b) It constitutes an attempt, solicitation, conspiracy, or form of preparation to commit the offense charged or an offense otherwise included therein; or

(c) It is specifically designated by a statute as a lesser included offense.

(4) The court shall not be obligated to charge the jury with respect to an included offense unless there is a rational basis for a verdict acquitting the defendant of the offense charged and convicting him of the included offense.

(5) If the district court on motion after verdict or judgment, or an appellate court on appeal or certiorari, shall determine that there is insufficient evidence to support a conviction for the offense charged but that there is sufficient evidence to support a conviction for an included offense and the trier of fact necessarily found every fact required for conviction of that included offense, the verdict or judgment of conviction may be set aside or reversed and a judgment of conviction entered for the included offense, without necessity of a new trial, if such relief is sought by the defendant.

Amended by Chapter 32, 1974 General Session

76-1-403. Former prosecution barring subsequent prosecution for offense out of same episode.

(1) If a defendant has been prosecuted for one or more offenses arising out of a single criminal episode, a subsequent prosecution for the same or a different offense arising out of the same criminal episode is barred if:

(a) the subsequent prosecution is for an offense that was or should have been tried under Subsection 76-1-402(2) in the former prosecution; and

(b) the former prosecution:

(i) resulted in acquittal;

(ii) resulted in conviction;

(iii) was improperly terminated; or

(iv) was terminated by a final order or judgment for the defendant that has not been reversed, set aside, or vacated and that necessarily required a determination inconsistent with a fact that must be established to secure conviction in the subsequent

prosecution.

(2) There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of facts or in a determination that there was insufficient evidence to warrant conviction. A finding of guilty of a lesser included offense is an acquittal of the greater offense even though the conviction for the lesser included offense is subsequently reversed, set aside, or vacated.

(3) There is a conviction if the prosecution resulted in a judgment of guilt that has not been reversed, set aside, or vacated; a verdict of guilty that has not been reversed, set aside, or vacated and that is capable of supporting a judgment; or a plea of guilty accepted by the court.

(4) There is an improper termination of prosecution if the termination takes place before the verdict, is for reasons not amounting to an acquittal, and takes place after a jury has been impaneled and sworn to try the defendant, or, if the jury trial is waived, after the first witness is sworn. However, termination of prosecution is not improper if:

(a) the defendant consents to the termination;

(b) the defendant waives his right to object to the termination; or

(c) the court finds and states for the record that the termination is necessary because:

(i) it is physically impossible to proceed with the trial in conformity with the law;

(ii) there is a legal defect in the proceeding not attributable to the state that would make any judgment entered upon a verdict reversible as a matter of law;

(iii) prejudicial conduct in or out of the courtroom not attributable to the state makes it impossible to proceed with the trial without injustice to the defendant or the state;

(iv) the jury is unable to agree upon a verdict; or

(v) false statements of a juror on voir dire prevent a fair trial.

Amended by Chapter 278, 2013 General Session

76-1-404. Concurrent jurisdiction -- Prosecution in other jurisdiction barring prosecution in state.

If a defendant's conduct establishes the commission of one or more offenses within the concurrent jurisdiction of this state and of another jurisdiction, federal or state, the prosecution in the other jurisdiction is a bar to a subsequent prosecution in this state if (1) the former prosecution resulted in an acquittal, conviction, or termination of prosecution, as those terms are defined in Section 76-1-403, and (2) the subsequent prosecution is for the same offense or offenses.

Enacted by Chapter 196, 1973 General Session

76-1-405. Subsequent prosecution not barred -- Circumstances.

A subsequent prosecution for an offense shall not be barred under the following circumstances:

(1) The former prosecution was procured by the defendant without the

knowledge of the prosecuting attorney bringing the subsequent prosecution and with intent to avoid the sentence that might otherwise be imposed; or

(2) The former prosecution resulted in a judgment of guilt held invalid in a subsequent proceeding on writ of habeas corpus, coram nobis, or similar collateral attack.

Enacted by Chapter 196, 1973 General Session

76-1-501. Presumption of innocence -- "Element of the offense" defined.

(1) A defendant in a criminal proceeding is presumed to be innocent until each element of the offense charged against him is proved beyond a reasonable doubt. In the absence of this proof, the defendant shall be acquitted.

(2) As used in this part, "element of the offense" means:

(a) the conduct, attendant circumstances, or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; and

(b) the culpable mental state required.

(3) The existence of jurisdiction and venue are not elements of the offense but shall be established by a preponderance of the evidence.

Amended by Chapter 40, 2014 General Session
Amended by Chapter 189, 2014 General Session

76-1-502. Negating defense by allegation or proof -- When not required.

Section 76-1-501 does not require negating a defense:

(1) By allegation in an information, indictment, or other charge; or

(2) By proof, unless:

(a) The defense is in issue in the case as a result of evidence presented at trial, either by the prosecution or the defense; or

(b) The defense is an affirmative defense, and the defendant has presented evidence of such affirmative defense.

Enacted by Chapter 196, 1973 General Session

76-1-503. Presumption of fact.

An evidentiary presumption established by this code or other penal statute has the following consequences:

(1) When evidence of facts which support the presumption exist, the issue of the existence of the presumed fact must be submitted to the jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact;

(2) In submitting the issue of the existence of a presumed fact to the jury, the court shall charge that while the presumed fact must on all evidence be proved beyond a reasonable doubt, the law regards the facts giving rise to the presumption as evidence of the presumed fact.

Enacted by Chapter 196, 1973 General Session

76-1-504. Affirmative defense presented by defendant.

Evidence of an affirmative defense as defined by this code or other statutes shall be presented by the defendant.

Enacted by Chapter 196, 1973 General Session

76-1-601. Definitions.

Unless otherwise provided, the following terms apply to this title:

(1) "Act" means a voluntary bodily movement and includes speech.

(2) "Actor" means a person whose criminal responsibility is in issue in a criminal action.

(3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

(4) "Conduct" means an act or omission.

(5) "Dangerous weapon" means:

(a) any item capable of causing death or serious bodily injury; or

(b) a facsimile or representation of the item, if:

(i) the actor's use or apparent intended use of the item leads the victim to reasonably believe the item is likely to cause death or serious bodily injury; or

(ii) the actor represents to the victim verbally or in any other manner that he is in control of such an item.

(6) "Grievous sexual offense" means:

(a) rape, Section 76-5-402;

(b) rape of a child, Section 76-5-402.1;

(c) object rape, Section 76-5-402.2;

(d) object rape of a child, Section 76-5-402.3;

(e) forcible sodomy, Subsection 76-5-403(2);

(f) sodomy on a child, Section 76-5-403.1;

(g) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);

(h) aggravated sexual assault, Section 76-5-405;

(i) any felony attempt to commit an offense described in Subsections (6)(a) through (h); or

(j) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (6)(a) through (i).

(7) "Offense" means a violation of any penal statute of this state.

(8) "Omission" means a failure to act when there is a legal duty to act and the actor is capable of acting.

(9) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(10) "Possess" means to have physical possession of or to exercise dominion or control over tangible property.

(11) "Serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.

(12) "Substantial bodily injury" means bodily injury, not amounting to serious bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or temporary loss or impairment of the function of any bodily member or organ.

(13) "Writing" or "written" includes any handwriting, typewriting, printing, electronic storage or transmission, or any other method of recording information or fixing information in a form capable of being preserved.

Amended by Chapter 339, 2007 General Session

76-2-101. Requirements of criminal conduct and criminal responsibility.

(1) (a) A person is not guilty of an offense unless the person's conduct is prohibited by law; and

(b) (i) the person acts intentionally, knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified in the statute defining the offense, as the definition of the offense requires; or

(ii) the person's acts constitute an offense involving strict liability.

(2) These standards of criminal responsibility do not apply to the violations set forth in Title 41, Chapter 6a, Traffic Code, unless specifically provided by law.

Amended by Chapter 2, 2005 General Session

76-2-102. Culpable mental state required -- Strict liability.

Every offense not involving strict liability shall require a culpable mental state, and when the definition of the offense does not specify a culpable mental state and the offense does not involve strict liability, intent, knowledge, or recklessness shall suffice to establish criminal responsibility. An offense shall involve strict liability if the statute defining the offense clearly indicates a legislative purpose to impose criminal responsibility for commission of the conduct prohibited by the statute without requiring proof of any culpable mental state.

Amended by Chapter 90, 1983 General Session

76-2-103. Definitions.

A person engages in conduct:

(1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.

(2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(3) Recklessly with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be

of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.

(4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

Amended by Chapter 229, 2007 General Session

76-2-104. Culpable mental state -- Higher mental states included.

(1) If acting with criminal negligence is sufficient to establish the culpable mental state for an element of an offense, that element is also established if a person acts intentionally, knowingly, or recklessly.

(2) If acting recklessly is sufficient to establish the culpable mental state for an element of an offense, that element is also established if a person acts intentionally or knowingly.

(3) If acting knowingly is sufficient to establish the culpable mental state for an element of an offense, that element is also established if a person acts intentionally.

Amended by Chapter 75, 1998 General Session

76-2-105. Transferred intent.

Where intentionally causing a result is an element of an offense, that element is established even if a different person than the actor intended was killed, injured, or harmed, or different property than the actor intended was damaged or otherwise affected.

Enacted by Chapter 199, 2004 General Session

76-2-201. Definitions.

As used in this part:

(1) "Agent" means any director, officer, employee, or other person authorized to act in behalf of a corporation or association.

(2) "High managerial agent" means:

(a) A partner in a partnership;

(b) An officer of a corporation or association;

(c) An agent of a corporation or association who has duties of such responsibility that his conduct reasonably may be assumed to represent the policy of the corporation or association.

(3) "Corporation" means all organizations required by the laws of this state or any other state to obtain a certificate of authority, a certificate of incorporation, or other form of registration to transact business as a corporation within this state or any other

state and shall include domestic, foreign, profit and nonprofit corporations, but shall not include a corporation sole, as such term is used in Title 16, Chapter 7, Utah Code Annotated 1953. Lack of an appropriate certificate of authority, incorporation, or other form of registration shall be no defense when such organization conducted its business in a manner as to appear to have lawful corporate existence.

Enacted by Chapter 196, 1973 General Session

76-2-202. Criminal responsibility for direct commission of offense or for conduct of another.

Every person, acting with the mental state required for the commission of an offense who directly commits the offense, who solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense shall be criminally liable as a party for such conduct.

Enacted by Chapter 196, 1973 General Session

76-2-203. Defenses unavailable in prosecution based on conduct of another.

In any prosecution in which an actor's criminal responsibility is based on the conduct of another, it is no defense:

(1) That the actor belongs to a class of persons who by definition of the offense is legally incapable of committing the offense in an individual capacity, or

(2) That the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense or is immune from prosecution.

Enacted by Chapter 196, 1973 General Session

76-2-204. Criminal responsibility of corporation or association.

A corporation or association is guilty of an offense when:

(1) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on corporations or associations by law; or

(2) The conduct constituting the offense is authorized, solicited, requested, commanded, or undertaken, performed, or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of his employment and in behalf of the corporation or association.

Enacted by Chapter 196, 1973 General Session

76-2-205. Criminal responsibility of person for conduct in name of corporation or association.

A person is criminally liable for conduct constituting an offense which he performs or causes to be performed in the name of or on behalf of a corporation or

association to the same extent as if such conduct were performed in his own name or behalf.

Enacted by Chapter 196, 1973 General Session

76-2-301. Person under 14 years old not criminally responsible.

A person is not criminally responsible for conduct performed before he reaches the age of 14 years. This section shall in no way limit the jurisdiction of or proceedings before the juvenile courts of this state.

Enacted by Chapter 196, 1973 General Session

76-2-302. Compulsion.

(1) A person is not guilty of an offense when he engaged in the proscribed conduct because he was coerced to do so by the use or threatened imminent use of unlawful physical force upon him or a third person, which force or threatened force a person of reasonable firmness in his situation would not have resisted.

(2) The defense of compulsion provided by this section shall be unavailable to a person who intentionally, knowingly, or recklessly places himself in a situation in which it is probable that he will be subjected to duress.

(3) A married woman is not entitled, by reason of the presence of her husband, to any presumption of compulsion or to any defense of compulsion except as in Subsection (1) provided.

Enacted by Chapter 196, 1973 General Session

76-2-303. Entrapment.

(1) It is a defense that the actor was entrapped into committing the offense. Entrapment occurs when a peace officer or a person directed by or acting in cooperation with the officer induces the commission of an offense in order to obtain evidence of the commission for prosecution by methods creating a substantial risk that the offense would be committed by one not otherwise ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.

(2) The defense of entrapment shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening the injury to a person other than the person perpetrating the entrapment.

(3) The defense provided by this section is available even though the actor denies commission of the conduct charged to constitute the offense.

(4) Upon written motion of the defendant, the court shall hear evidence on the issue and shall determine as a matter of fact and law whether the defendant was entrapped to commit the offense. Defendant's motion shall be made at least 10 days before trial except the court for good cause shown may permit a later filing.

(5) Should the court determine that the defendant was entrapped, it shall

dismiss the case with prejudice, but if the court determines the defendant was not entrapped, such issue may be presented by the defendant to the jury at trial. Any order by the court dismissing a case based on entrapment shall be appealable by the state.

(6) In any hearing before a judge or jury where the defense of entrapment is an issue, past offenses of the defendant shall not be admitted except that in a trial where the defendant testifies he may be asked of his past convictions for felonies and any testimony given by the defendant at a hearing on entrapment may be used to impeach his testimony at trial.

Amended by Chapter 282, 1998 General Session

76-2-304. Ignorance or mistake of fact or law.

(1) Unless otherwise provided, ignorance or mistake of fact which disproves the culpable mental state is a defense to any prosecution for that crime.

(2) Ignorance or mistake concerning the existence or meaning of a penal law is no defense to a crime unless:

(a) Due to his ignorance or mistake, the actor reasonably believed his conduct did not constitute an offense, and

(b) His ignorance or mistake resulted from the actor's reasonable reliance upon:

(i) An official statement of the law contained in a written order or grant of permission by an administrative agency charged by law with responsibility for interpreting the law in question; or

(ii) A written interpretation of the law contained in an opinion of a court of record or made by a public servant charged by law with responsibility for interpreting the law in question.

(3) Although an actor's ignorance or mistake of fact or law may constitute a defense to the offense charged, he may nevertheless be convicted of a lesser included offense of which he would be guilty if the fact or law were as he believed.

Amended by Chapter 32, 1974 General Session

76-2-304.5. Mistake as to victim's age not a defense.

(1) It is not a defense to the crime of child kidnapping, a violation of Section 76-5-301.1; rape of a child, a violation of Section 76-5-402.1; object rape of a child, a violation of Section 76-5-402.3; sodomy on a child, a violation of Section 76-5-403.1; sexual abuse of a child, a violation of Section 76-5-404.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4); or an attempt to commit any of these offenses, that the actor mistakenly believed the victim to be 14 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(2) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Section 76-5-401; sexual abuse of a minor, a violation of Section 76-5-401.1; or an attempt to commit either of these offenses, that the actor mistakenly believed the victim to be 16 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(3) It is not a defense to the crime of aggravated human trafficking or

aggravated human smuggling, a violation of Section 76-5-310, that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(4) It is not a defense to the crime of unlawful sexual activity with a minor, a violation of Subsection 76-5-401.2(2)(a)(ii), that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age.

(5) It is not a defense to any of the following crimes that the actor mistakenly believed the victim to be 18 years of age or older at the time of the alleged offense or was unaware of the victim's true age:

(a) patronizing a prostitute, a violation of Section 76-10-1303;

(b) aggravated exploitation of a prostitute, a violation of Section 76-10-1306; or

(c) sexual solicitation, a violation of Section 76-10-1313.

Amended by Chapter 34, 2013 General Session
Amended by Chapter 196, 2013 General Session

76-2-305. Mental illness -- Use as a defense -- Influence of alcohol or other substance voluntarily consumed -- Definition.

(1) (a) It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged.

(b) Mental illness is not otherwise a defense, but may be evidence in mitigation of the penalty in a capital felony under Section 76-3-207 and may be evidence of special mitigation reducing the level of a criminal homicide or attempted criminal homicide offense under Section 76-5-205.5.

(2) The defense defined in this section includes the defenses known as "insanity" and "diminished mental capacity."

(3) A person who asserts a defense of insanity or diminished mental capacity, and who is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

(4) (a) "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, mental retardation.

(b) "Mental illness" does not mean an abnormality manifested primarily by repeated criminal conduct.

(5) "Mental retardation" means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to age 22.

Amended by Chapter 11, 2003 General Session

76-2-306. Voluntary intoxication.

Voluntary intoxication shall not be a defense to a criminal charge unless such intoxication negates the existence of the mental state which is an element of the offense; however, if recklessness or criminal negligence establishes an element of an offense and the actor is unaware of the risk because of voluntary intoxication, his unawareness is immaterial in a prosecution for that offense.

Enacted by Chapter 196, 1973 General Session

76-2-307. Voluntary termination of efforts prior to offense.

It is an affirmative defense to a prosecution in which an actor's criminal responsibility arises from his own conduct or from being a party to an offense under Section 76-2-202 that prior to the commission of the offense, the actor voluntarily terminated his effort to promote or facilitate its commission and either:

(1) Gave timely warning to the proper law enforcement authorities or the intended victim; or

(2) Wholly deprives his prior efforts of effectiveness in the commission.

Amended by Chapter 20, 1995 General Session

76-2-308. Affirmative defenses.

Defenses enumerated in this part constitute affirmative defenses.

Enacted by Chapter 196, 1973 General Session

76-2-401. Justification as defense -- When allowed.

(1) Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

(a) when the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;

(b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;

(c) when the actor's conduct is reasonable discipline of minors by parents, guardians, teachers, or other persons in loco parentis, as limited by Subsection (2);

(d) when the actor's conduct is reasonable discipline of persons in custody under the laws of the state; or

(e) when the actor's conduct is justified for any other reason under the laws of this state.

(2) The defense of justification under Subsection (1)(c) is not available if the offense charged involves causing serious bodily injury, as defined in Section 76-1-601, serious physical injury, as defined in Section 76-5-109, or the death of the minor.

Amended by Chapter 126, 2000 General Session

76-2-402. Force in defense of person -- Forcible felony defined.

(1) (a) A person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force.

(b) A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2) (a) A person is not justified in using force under the circumstances specified in Subsection (1) if the person:

(i) initially provokes the use of force against the person with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(ii) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(iii) was the aggressor or was engaged in a combat by agreement, unless the person withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force.

(b) For purposes of Subsection (2)(a)(iii) the following do not, by themselves, constitute "combat by agreement":

(i) voluntarily entering into or remaining in an ongoing relationship; or

(ii) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(a)(iii).

(4) (a) For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property.

(b) Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony.

(c) Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

(5) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:

(a) the nature of the danger;

(b) the immediacy of the danger;

(c) the probability that the unlawful force would result in death or serious bodily injury;

(d) the other's prior violent acts or violent propensities; and
(e) any patterns of abuse or violence in the parties' relationship.

Amended by Chapter 324, 2010 General Session
Amended by Chapter 361, 2010 General Session

76-2-403. Force in arrest.

Any person is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

Enacted by Chapter 196, 1973 General Session

76-2-404. Peace officer's use of deadly force.

(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

(a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);

(b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

(i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or

(ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or

(c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.

(2) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1)(b) or (1)(c).

Amended by Chapter 51, 2004 General Session

76-2-405. Force in defense of habitation.

(1) A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

(a) the entry is made or attempted in a violent and tumultuous manner, surreptitiously, or by stealth, and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling, or being in the habitation and he reasonably believes that the force is necessary to prevent the assault or offer of personal violence; or

(b) he reasonably believes that the entry is made or attempted for the purpose of committing a felony in the habitation and that the force is necessary to prevent the

commission of the felony.

(2) The person using force or deadly force in defense of habitation is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the entry or attempted entry is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or surreptitiously or by stealth, or for the purpose of committing a felony.

Amended by Chapter 252, 1985 General Session

76-2-406. Force in defense of property -- Affirmative defense.

(1) A person is justified in using force, other than deadly force, against another when and to the extent that the person reasonably believes that force is necessary to prevent or terminate another person's criminal interference with real property or personal property:

(a) lawfully in the person's possession;

(b) lawfully in the possession of a member of the person's immediate family; or

(c) belonging to a person whose property the person has a legal duty to protect.

(2) In determining reasonableness under Subsection (1), the trier of fact shall, in addition to any other factors, consider the following factors:

(a) the apparent or perceived extent of the damage to the property;

(b) property damage previously caused by the other person;

(c) threats of personal injury or damage to property that have been made previously by the other person; and

(d) any patterns of abuse or violence between the person and the other person.

Amended by Chapter 377, 2010 General Session

76-2-407. Deadly force in defense of persons on real property.

(1) A person is justified in using force intended or likely to cause death or serious bodily injury against another in his defense of persons on real property other than his habitation if:

(a) he is in lawful possession of the real property;

(b) he reasonably believes that the force is necessary to prevent or terminate the other person's trespass onto the real property;

(c) the trespass is made or attempted by use of force or in a violent and tumultuous manner; and

(d) (i) the person reasonably believes that the trespass is attempted or made for the purpose of committing violence against any person on the real property and he reasonably believes that the force is necessary to prevent personal violence; or

(ii) the person reasonably believes that the trespass is made or attempted for the purpose of committing a forcible felony as defined in Section 76-2-402 that poses imminent peril of death or serious bodily injury to a person on the real property and that the force is necessary to prevent the commission of that forcible felony.

(2) The person using deadly force in defense of persons on real property under

Subsection (1) is presumed for the purpose of both civil and criminal cases to have acted reasonably and had a reasonable fear of imminent peril of death or serious bodily injury if the trespass or attempted trespass is unlawful and is made or attempted by use of force, or in a violent and tumultuous manner, or for the purpose of committing a forcible felony.

Enacted by Chapter 273, 2002 General Session

76-3-101. Sentencing in accordance with chapter.

(1) A person adjudged guilty of an offense under this code shall be sentenced in accordance with the provisions of this chapter.

(2) Penal laws enacted after the effective date of this code shall be classified for sentencing purposes in accordance with this chapter.

Enacted by Chapter 196, 1973 General Session

76-3-102. Designation of offenses.

Offenses are designated as felonies, misdemeanors, or infractions.

Enacted by Chapter 196, 1973 General Session

76-3-103. Felonies classified.

(1) Felonies are classified into four categories:

(a) Capital felonies;

(b) Felonies of the first degree;

(c) Felonies of the second degree;

(d) Felonies of the third degree.

(2) An offense designated as a felony either in this code or in another law, without specification as to punishment or category, is a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-3-104. Misdemeanors classified.

(1) Misdemeanors are classified into three categories:

(a) Class A misdemeanors;

(b) Class B misdemeanors;

(c) Class C misdemeanors.

(2) An offense designated a misdemeanor, either in this code or in another law, without specification as to punishment or category, is a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-3-105. Infractions.

(1) Infractions are not classified.

(2) Any offense which is an infraction within this code is expressly designated

and any offense defined outside this code which is not designated as a felony or misdemeanor and for which no penalty is specified is an infraction.

Enacted by Chapter 196, 1973 General Session

76-3-201. Definitions -- Sentences or combination of sentences allowed -- Civil penalties.

(1) As used in this section:

(a) "Conviction" includes a:

(i) judgment of guilt; and

(ii) plea of guilty.

(b) "Criminal activities" means any offense of which the defendant is convicted or any other criminal conduct for which the defendant admits responsibility to the sentencing court with or without an admission of committing the criminal conduct.

(c) "Pecuniary damages" means all special damages, but not general damages, which a person could recover against the defendant in a civil action arising out of the facts or events constituting the defendant's criminal activities and includes the money equivalent of property taken, destroyed, broken, or otherwise harmed, and losses including earnings and medical expenses.

(d) "Restitution" means full, partial, or nominal payment for pecuniary damages to a victim, and payment for expenses to a governmental entity for extradition or transportation and as further defined in Title 77, Chapter 38a, Crime Victims Restitution Act.

(e) (i) "Victim" means any person or entity, including the Utah Office for Victims of Crime, who the court determines has suffered pecuniary damages as a result of the defendant's criminal activities.

(ii) "Victim" does not include any coparticipant in the defendant's criminal activities.

(2) Within the limits prescribed by this chapter, a court may sentence a person convicted of an offense to any one of the following sentences or combination of them:

(a) to pay a fine;

(b) to removal or disqualification from public or private office;

(c) to probation unless otherwise specifically provided by law;

(d) to imprisonment;

(e) on or after April 27, 1992, to life in prison without parole; or

(f) to death.

(3) (a) This chapter does not deprive a court of authority conferred by law to:

(i) forfeit property;

(ii) dissolve a corporation;

(iii) suspend or cancel a license;

(iv) permit removal of a person from office;

(v) cite for contempt; or

(vi) impose any other civil penalty.

(b) A civil penalty may be included in a sentence.

(4) (a) When a person is convicted of criminal activity that has resulted in

pecuniary damages, in addition to any other sentence it may impose, the court shall order that the defendant make restitution to the victims, or for conduct for which the defendant has agreed to make restitution as part of a plea agreement.

(b) In determining whether restitution is appropriate, the court shall follow the criteria and procedures as provided in Title 77, Chapter 38a, Crime Victims Restitution Act.

(c) In addition to any other sentence the court may impose, the court, pursuant to the provisions of Sections 63M-7-503 and 77-38a-401, shall enter:

(i) a civil judgment for complete restitution for the full amount of expenses paid on behalf of the victim by the Utah Office for Victims of Crime; and

(ii) an order of restitution for restitution payable to the Utah Office for Victims of Crime in the same amount unless otherwise ordered by the court pursuant to Subsection (4)(d).

(d) In determining whether to order that the restitution required under Subsection (4)(c) be reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and provide findings of its decision on the record.

(5) (a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court, the defendant shall pay restitution of governmental transportation expenses if the defendant was:

(i) transported pursuant to court order from one county to another within the state at governmental expense to resolve pending criminal charges;

(ii) charged with a felony or a class A, B, or C misdemeanor; and

(iii) convicted of a crime.

(b) The court may not order the defendant to pay restitution of governmental transportation expenses if any of the following apply:

(i) the defendant is charged with an infraction or on a subsequent failure to appear a warrant is issued for an infraction; or

(ii) the defendant was not transported pursuant to a court order.

(c) (i) Restitution of governmental transportation expenses under Subsection (5)(a)(i) shall be calculated according to the following schedule:

(A) $100 for up to 100 miles a defendant is transported;

(B) $200 for 100 up to 200 miles a defendant is transported; and

(C) $350 for 200 miles or more a defendant is transported.

(ii) The schedule of restitution under Subsection (5)(c)(i) applies to each defendant transported regardless of the number of defendants actually transported in a single trip.

(d) If a defendant has been extradited to this state under Title 77, Chapter 30, Extradition, to resolve pending criminal charges and is convicted of criminal activity in the county to which he has been returned, the court may, in addition to any other sentence it may impose, order that the defendant make restitution for costs expended by any governmental entity for the extradition.

(6) (a) In addition to any other sentence the court may impose, and unless otherwise ordered by the court pursuant to Subsection (6)(c), the defendant shall pay restitution to the county for the cost of incarceration and costs of medical care provided

to the defendant while in the county correctional facility before and after sentencing if:

(i) the defendant is convicted of criminal activity that results in incarceration in the county correctional facility; and

(ii) (A) the defendant is not a state prisoner housed in a county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement provided under Section 64-13e-104 if the defendant is a state probationary inmate, as defined in Section 64-13e-102, or a state parole inmate, as defined in Section 64-13e-102.

(b) (i) The costs of incarceration under Subsection (6)(a) are the amount determined by the county correctional facility, but may not exceed the daily inmate incarceration costs and medical and transportation costs for the county correctional facility.

(ii) The costs of incarceration under Subsection (6)(a) do not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the federal Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

(c) In determining whether to order that the restitution required under this Subsection (6) be reduced or that the defendant be exempted from the restitution, the court shall consider the criteria under Subsections 77-38a-302(5)(c)(i) through (vi) and shall enter the reason for its order on the record.

(d) If on appeal the defendant is found not guilty of the criminal activity under Subsection (6)(a)(i) and that finding is final as defined in Section 76-1-304, the county shall reimburse the defendant for restitution the defendant paid for costs of incarceration under Subsection (6)(a).

Amended by Chapter 74, 2013 General Session

76-3-201.1. Collection of criminal judgment accounts receivable.

(1) As used in this section:

(a) "Criminal judgment accounts receivable" means any amount due the state arising from a criminal judgment for which payment has not been received by the state agency that is servicing the debt.

(b) "Accounts receivable" includes unpaid fees, overpayments, fines, forfeitures, surcharges, costs, interest, penalties, restitution to victims, third party claims, claims, reimbursement of a reward, and damages.

(2) (a) A criminal judgment account receivable ordered by the court as a result of prosecution for a criminal offense may be collected by any means authorized by law for the collection of a civil judgment.

(b) (i) The court may permit a defendant to pay a criminal judgment account receivable in installments.

(ii) In the district court, if the criminal judgment account receivable is paid in installments, the total amount due shall include all fines, surcharges, postjudgment interest, and fees.

(c) Upon default in the payment of a criminal judgment account receivable or

upon default in the payment of any installment of that receivable, the criminal judgment account receivable may be collected as provided in this section or Subsection 77-18-1(9) or (10), and by any means authorized by law for the collection of a civil judgment.

(3) When a defendant defaults in the payment of a criminal judgment account receivable or any installment of that receivable, the court, on motion of the prosecution, victim, or upon its own motion may:

(a) order the defendant to appear and show cause why the default should not be treated as contempt of court; or

(b) issue a warrant of arrest.

(4) (a) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure to make a good faith effort to make the payment, the court may find that the default constitutes contempt.

(b) Upon a finding of contempt, the court may order the defendant committed until the criminal judgment account receivable, or a specified part of it, is paid.

(5) If it appears to the satisfaction of the court that the default is not contempt, the court may enter an order for any of the following or any combination of the following:

(a) require the defendant to pay the criminal judgment account receivable or a specified part of it by a date certain;

(b) restructure the payment schedule;

(c) restructure the installment amount;

(d) except as provided in Section 77-18-8, execute the original sentence of imprisonment;

(e) start the period of probation anew;

(f) except as limited by Subsection (6), convert the criminal judgment account receivable or any part of it to compensatory service;

(g) except as limited by Subsection (6), reduce or revoke the unpaid amount of the criminal judgment account receivable; or

(h) in the court, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(6) In issuing an order under this section, the court may not modify the amount of the judgment of complete restitution.

(7) Whether or not a default constitutes contempt, the court may add to the amount owed the fees established under Subsection 63A-3-502(4)(g) and postjudgment interest.

(8) (a) (i) If a criminal judgment account receivable is past due in a case supervised by the Department of Corrections, the judge shall determine whether to record the unpaid balance of the account receivable as a civil judgment.

(ii) If the judge records the unpaid balance of the account receivable as a civil judgment, the judge shall transfer the responsibility for collecting the judgment to the Office of State Debt Collection.

(b) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is past due, the court may, without a motion or hearing,

record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the account receivable to the Office of State Debt Collection.

(c) If a criminal judgment account receivable in a case not supervised by the Department of Corrections is more than 90 days past due, the district court shall, without a motion or hearing, record the unpaid balance of the criminal judgment account receivable as a civil judgment and transfer the responsibility for collecting the criminal judgment account receivable to the Office of State Debt Collection.

(9) (a) When a fine, forfeiture, surcharge, cost permitted by statute, fee, or an order of restitution is imposed on a corporation or unincorporated association, the person authorized to make disbursement from the assets of the corporation or association shall pay the obligation from those assets.

(b) Failure to pay the obligation may be held to be contempt under Subsection (3).

(10) The prosecuting attorney may collect restitution in behalf of a victim.

Amended by Chapter 74, 2013 General Session

76-3-202. Paroled persons -- Termination or discharge from sentence -- Time served on parole -- Discretion of Board of Pardons and Parole.

(1) (a) Except as provided in Subsection (1)(b), every person committed to the state prison to serve an indeterminate term and later released on parole shall, upon completion of three years on parole outside of confinement and without violation, be terminated from the person's sentence unless the parole is earlier terminated by the Board of Pardons and Parole.

(b) Every person committed to the state prison to serve an indeterminate term and later released on parole on or after July 1, 2008, and who was convicted of any felony offense under Title 76, Chapter 5, Offenses Against the Person, or any attempt, conspiracy, or solicitation to commit any of these felony offenses, shall complete a term of parole that extends through the expiration of the person's maximum sentence, unless the parole is earlier terminated by the Board of Pardons and Parole.

(2) Every person convicted of a second degree felony for violating Section 76-5-404, forcible sexual abuse, or 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child, or attempting, conspiring, or soliciting the commission of a violation of any of those sections, and who is paroled before July 1, 2008, shall, upon completion of 10 years parole outside of confinement and without violation, be terminated from the sentence unless the person is earlier terminated by the Board of Pardons and Parole.

(3) (a) Every person convicted of a first degree felony for committing any offense listed in Subsection (3)(b), or attempting, conspiring, or soliciting the commission of a violation of any of those sections, shall complete a term of lifetime parole outside of confinement and without violation unless the person is earlier terminated by the Board of Pardons and Parole.

(b) The offenses referred to in Subsection (3)(a) are:

(i) Section 76-5-301.1, child kidnapping;

(ii) Subsection 76-5-302(1)(b)(vi), aggravated kidnapping involving a sexual offense;

(iii) Section 76-5-402, rape;

(iv) Section 76-5-402.1, rape of a child;

(v) Section 76-5-402.2, object rape;

(vi) Section 76-5-402.3, object rape of a child;

(vii) Subsection 76-5-403(2), forcible sodomy;

(viii) Section 76-5-403.1, sodomy on a child;

(ix) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child; or

(x) Section 76-5-405, aggravated sexual assault.

(4) Any person who violates the terms of parole, while serving parole, for any offense under Subsection (1), (2), or (3), shall at the discretion of the Board of Pardons and Parole be recommitted to prison to serve the portion of the balance of the term as determined by the Board of Pardons and Parole, but not to exceed the maximum term.

(5) In order for a parolee convicted on or after May 5, 1997, to be eligible for early termination from parole, the parolee must provide to the Board of Pardons and Parole:

(a) evidence that the parolee has completed high school classwork and has obtained a high school graduation diploma, a GED certificate, or a vocational certificate; or

(b) documentation of the inability to obtain one of the items listed in Subsection (5)(a) because of:

(i) a diagnosed learning disability; or

(ii) other justified cause.

(6) Any person paroled following a former parole revocation may not be discharged from the person's sentence until:

(a) the person has served the applicable period of parole under this section outside of confinement and without violation;

(b) the person's maximum sentence has expired; or

(c) the Board of Pardons and Parole orders the person to be discharged from the sentence.

(7) (a) All time served on parole, outside of confinement and without violation, constitutes service of the total sentence but does not preclude the requirement of serving the applicable period of parole under this section, outside of confinement and without violation.

(b) Any time a person spends outside of confinement after commission of a parole violation does not constitute service of the total sentence unless the person is exonerated at a parole revocation hearing.

(c) (i) Any time a person spends in confinement awaiting a hearing before the Board of Pardons and Parole or a decision by the board concerning revocation of parole constitutes service of the sentence.

(ii) In the case of exoneration by the board, the time spent is included in computing the total parole term.

(8) When any parolee without authority from the Board of Pardons and Parole

absents himself from the state or avoids or evades parole supervision, the period of absence, avoidance, or evasion tolls the parole period.

(9) (a) While on parole, time spent in confinement outside the state may not be credited toward the service of any Utah sentence.

(b) Time in confinement outside the state or in the custody of any tribal authority or the United States government for a conviction obtained in another jurisdiction tolls the expiration of the Utah sentence.

(10) This section does not preclude the Board of Pardons and Parole from paroling or discharging an inmate at any time within the discretion of the Board of Pardons and Parole unless otherwise specifically provided by law.

(11) A parolee sentenced to lifetime parole may petition the Board of Pardons and Parole for termination of lifetime parole.

Amended by Chapter 278, 2013 General Session

76-3-203. Felony conviction -- Indeterminate term of imprisonment.

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

(1) In the case of a felony of the first degree, unless the statute provides otherwise, for a term of not less than five years and which may be for life.

(2) In the case of a felony of the second degree, unless the statute provides otherwise, for a term of not less than one year nor more than 15 years.

(3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years.

Amended by Chapter 148, 2003 General Session

76-3-203.1. Offenses committed in concert with two or more persons or in relation to a criminal street gang -- Notice -- Enhanced penalties.

(1) As used in this section:

(a) "Criminal street gang" has the same definition as in Section 76-9-802.

(b) "In concert with two or more persons" means:

(i) the defendant was aided or encouraged by at least two other persons in committing the offense and was aware of this aid or encouragement; and

(ii) each of the other persons:

(A) was physically present; or

(B) participated as a party to any offense listed in Subsection (5).

(c) "In concert with two or more persons" means, regarding intent:

(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and

(ii) a minor is a party if the minor's actions would cause the minor to be a party if the minor were an adult.

(2) A person who commits any offense listed in Subsection (5) is subject to an enhanced penalty for the offense as provided in Subsection (4) if the trier of fact finds beyond a reasonable doubt that the person acted:

(a) in concert with two or more persons;

(b) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(c) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802.

(3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

(4) The enhanced penalty for a:

(a) class B misdemeanor is a class A misdemeanor;

(b) class A misdemeanor is a third degree felony;

(c) third degree felony is a second degree felony;

(d) second degree felony is a first degree felony; and

(e) first degree felony is an indeterminate prison term of not less than five years in addition to the statutory minimum prison term for the offense, and which may be for life.

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

(a) any criminal violation of the following chapters of Title 58:

(i) Chapter 37, Utah Controlled Substances Act;

(ii) Chapter 37a, Utah Drug Paraphernalia Act;

(iii) Chapter 37b, Imitation Controlled Substances Act; or

(iv) Chapter 37c, Utah Controlled Substance Precursor Act;

(b) assault and related offenses under Title 76, Chapter 5, Part 1, Assault and Related Offenses;

(c) any criminal homicide offense under Title 76, Chapter 5, Part 2, Criminal Homicide;

(d) kidnapping and related offenses under Title 76, Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

(e) any felony sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

(f) sexual exploitation of a minor as defined in Section 76-5b-201;

(g) any property destruction offense under Title 76, Chapter 6, Part 1, Property Destruction;

(h) burglary, criminal trespass, and related offenses under Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;

(i) robbery and aggravated robbery under Title 76, Chapter 6, Part 3, Robbery;

(j) theft and related offenses under Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail Theft;

(k) any fraud offense under Title 76, Chapter 6, Part 5, except Sections 76-6-504, 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

(l) any offense of obstructing government operations under Title 76, Chapter 8, Part 3, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

(m) tampering with a witness or other violation of Section 76-8-508;

(n) extortion or bribery to dismiss criminal proceeding as defined in Section 76-8-509;

(o) any explosives offense under Title 76, Chapter 10, Part 3, Explosives;

(p) any weapons offense under Title 76, Chapter 10, Part 5, Weapons;

(q) pornographic and harmful materials and performances offenses under Title 76, Chapter 10, Part 12, Pornographic and Harmful Materials and Performances;

(r) prostitution and related offenses under Title 76, Chapter 10, Part 13, Prostitution;

(s) any violation of Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

(t) any violation of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

(u) communications fraud as defined in Section 76-10-1801;

(v) any violation of Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; and

(w) burglary of a research facility as defined in Section 76-10-2002.

(6) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different or lesser offense.

Amended by Chapter 320, 2011 General Session

76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or about school premises -- Enhanced penalties.

(1) (a) As used in this section "on or about school premises" means:

(i) (A) in a public or private elementary or secondary school; or

(B) on the grounds of any of those schools;

(ii) (A) in a public or private institution of higher education; or

(B) on the grounds of a public or private institution of higher education;

(iii) within 1,000 feet of any school, institution, or grounds included in Subsections (1)(a)(i) and (ii); and

(iv) in or on the grounds of a preschool or child care facility.

(b) As used in this section:

(i) "Dangerous weapon" has the same definition as in Section 76-1-601.

(ii) "Educator" means a person who is:

(A) employed by a public school district; and

(B) required to hold a certificate issued by the State Board of Education in order to perform duties of employment.

(iii) "Within the course of employment" means that an educator is providing services or engaging in conduct required by the educator's employer to perform the duties of employment.

(2) A person who, on or about school premises, commits an offense and uses or threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the offense is subject to an enhanced degree of offense as provided in Subsection (4).

(3) (a) A person who commits an offense against an educator when the

educator is acting within the course of employment is subject to an enhanced degree of offense as provided in Subsection (4).

(b) As used in Subsection (3)(a), "offense" means:

(i) an offense under Title 76, Chapter 5, Offenses Against the Person; and

(ii) an offense under Title 76, Chapter 6, Part 3, Robbery.

(4) If the trier of fact finds beyond a reasonable doubt that the defendant, while on or about school premises, commits an offense and in the commission of the offense uses or threatens to use a dangerous weapon, or that the defendant committed an offense against an educator when the educator was acting within the course of the educator's employment, the enhanced penalty for a:

(a) class B misdemeanor is a class A misdemeanor;

(b) class A misdemeanor is a third degree felony;

(c) third degree felony is a second degree felony; or

(d) second degree felony is a first degree felony.

(5) The enhanced penalty for a first degree felony offense of a convicted person:

(a) is imprisonment for a term of not less than five years and which may be for life, and imposition or execution of the sentence may not be suspended unless the court finds that the interests of justice would be best served and states the specific circumstances justifying the disposition on the record; and

(b) is subject also to the dangerous weapon enhancement provided in Section 76-3-203.8, except for an offense committed under Subsection (3) that does not involve a firearm.

(6) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice upon the information or indictment that the defendant is subject to the enhanced degree of offense or penalty under Subsection (4) or (5).

(7) In cases where an offense is enhanced under Subsection (4), or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve a firearm, the convicted person is not subject to the dangerous weapon enhancement in Section 76-3-203.8.

(8) 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 under Section 76-5-301.1;

(iii) aggravated kidnapping under Section 76-5-302; or

(iv) forcible sexual abuse under 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.

Amended by Chapter 91, 2011 General Session

76-3-203.3. Penalty for hate crimes -- Civil rights violation.

As used in this section:

(1) "Primary offense" means those offenses provided in Subsection (4).

(2) (a) A person who commits any primary offense with the intent to intimidate or terrorize another person or with reason to believe that his action would intimidate or terrorize that person is subject to Subsection (2)(b).

(b) (i) A class C misdemeanor primary offense is a class B misdemeanor; and

(ii) a class B misdemeanor primary offense is a class A misdemeanor.

(3) "Intimidate or terrorize" means an act which causes the person to fear for his physical safety or damages the property of that person or another. The act must be accompanied with the intent to cause or has the effect of causing a person to reasonably fear to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

(4) Primary offenses referred to in Subsection (1) are the misdemeanor offenses for:

(a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106, 76-5-107, and 76-5-108;

(b) any misdemeanor property destruction offense under Sections 76-6-102 and 76-6-104, and Subsection 76-6-106(2)(b);

(c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;

(d) any misdemeanor theft offense under Section 76-6-412;

(e) any offense of obstructing government operations under Sections 76-8-301, 76-8-302, 76-8-304, 76-8-305, 76-8-306, 76-8-307, 76-8-308, and 76-8-313;

(f) any offense of interfering or intending to interfere with activities of colleges and universities under Title 76, Chapter 8, Part 7, Colleges and Universities;

(g) any misdemeanor offense against public order and decency as defined in Title 76, Chapter 9, Part 1, Breaches of the Peace and Related Offenses;

(h) any telephone abuse offense under Title 76, Chapter 9, Part 2, Telephone Abuse;

(i) any cruelty to animals offense under Section 76-9-301; and

(j) any weapons offense under Section 76-10-506.

(5) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

Amended by Chapter 229, 2007 General Session

76-3-203.4. Hate crimes -- Aggravating factors.

(1) The sentencing judge or the Board of Pardons and Parole shall consider in their deliberations as an aggravating factor the public harm resulting from the commission of the offense, including the degree to which the offense is likely to incite community unrest or cause members of the community to reasonably fear for their physical safety or to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

(2) The sentencing judge or the Board of Pardons and Parole shall also consider whether the penalty for the offense is already increased by other existing provisions of law.

(3) This section does not affect or limit any individual's constitutional right to the

lawful expression of free speech or other recognized rights secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

Enacted by Chapter 184, 2006 General Session

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);

(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 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 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.

(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.

Amended by Chapter 278, 2013 General Session

76-3-203.6. Enhanced penalty for certain offenses committed by prisoner.

(1) As used in this section, "serving a sentence" means a prisoner is sentenced and committed to the custody of the Department of Corrections, the sentence has not been terminated or voided, and the prisoner:
(a) has not been paroled; or
(b) is in custody after arrest for a parole violation.
(2) If the trier of fact finds beyond a reasonable doubt that a prisoner serving a sentence for a capital felony or a first degree felony commits any offense listed in Subsection (3), the court shall sentence the defendant to life in prison without parole. However, the court may sentence the defendant to an indeterminate prison term of not less than 20 years and which may be for life if the court finds that the interests of justice would best be served and states the specific circumstances justifying the disposition on the record.
(3) Offenses referred to in Subsection (2) are:
(a) aggravated assault, Subsection 76-5-103(2);
(b) mayhem, Section 76-5-105;
(c) attempted murder, Section 76-5-203;
(d) kidnapping, Section 76-5-301;
(e) child kidnapping, Section 76-5-301.1;
(f) aggravated kidnapping, Section 76-5-302;
(g) rape, Section 76-5-402;
(h) rape of a child, Section 76-5-402.1;
(i) object rape, Section 76-5-402.2;
(j) object rape of a child, Section 76-5-402.3;
(k) forcible sodomy, Section 76-5-403;
(l) sodomy on a child, Section 76-5-403.1;
(m) aggravated sexual abuse of a child, Section 76-5-404.1;
(n) aggravated sexual assault, Section 76-5-405;
(o) aggravated arson, Section 76-6-103;
(p) aggravated burglary, Section 76-6-203; and
(q) aggravated robbery, Section 76-6-302.
(4) 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; or
(iii) aggravated kidnapping, Section 76-5-302; 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.

Amended by Chapter 339, 2007 General Session

76-3-203.7. Increase of sentence for violent felony if body armor used.

(1) As used in this section:

(a) "Body armor" means any material designed or intended to provide bullet penetration resistance or protection from bodily injury caused by a dangerous weapon.

(b) "Dangerous weapon" has the same definition as in Section 76-1-601.

(c) "Violent felony" has the same definition as in Section 76-3-203.5.

(2) A person convicted of a violent felony may be sentenced to imprisonment for an indeterminate term, as provided in Section 76-3-203, but if the trier of fact finds beyond a reasonable doubt that the defendant used, carried, or possessed a dangerous weapon and also used or wore body armor, with the intent to facilitate the commission of the violent felony, and the violent felony is:

(a) a first degree felony, the court shall sentence the person convicted for a term of not less than six years, and which may be for life;

(b) a second degree felony, the court shall sentence the person convicted for a term of not less than two years nor more than 15 years, and the court may sentence the person convicted for a term of not less than two years nor more than 20 years; and

(c) a third degree felony, the court shall sentence the person convicted for a term of not less than one year nor more than five years, and the court may sentence the person convicted for a term of not less than one year nor more than 10 years.

(3) 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.

Amended by Chapter 339, 2007 General Session

76-3-203.8. Increase of sentence if dangerous weapon used.

(1) As used in this section, "dangerous weapon" has the same definition as in Section 76-1-601.

(2) If the trier of fact finds beyond a reasonable doubt that a dangerous weapon was used in the commission or furtherance of a felony, the court:

(a) (i) shall increase by one year the minimum term of the sentence applicable by law; and

(ii) if the minimum term applicable by law is zero, shall set the minimum term as

one year; and

(b) may increase by five years the maximum sentence applicable by law in the case of a felony of the second or third degree.

(3) A defendant who is a party to a felony offense shall be sentenced to the increases in punishment provided in Subsection (2) if the trier of fact finds beyond a reasonable doubt that:

(a) a dangerous weapon was used in the commission or furtherance of the felony; and

(b) the defendant knew that the dangerous weapon was present.

(4) If the trier of fact finds beyond a reasonable doubt that a person has been sentenced to a term of imprisonment for a felony in which a dangerous weapon was used in the commission of or furtherance of the felony and that person is subsequently convicted of another felony in which a dangerous weapon was used in the commission of or furtherance of the felony, the court shall, in addition to any other sentence imposed including those in Subsection (2), impose an indeterminate prison term to be not less than five nor more than 10 years to run consecutively and not concurrently.

Amended by Chapter 276, 2004 General Session

76-3-203.9. Violent offense committed in presence of a child -- Aggravating factor.

(1) As used in this section:

(a) "In the presence of a child" means:

(i) in the physical presence of a child younger than 14 years of age; or

(ii) having knowledge that a child younger than 14 years of age is present and may see or hear a violent criminal offense.

(b) "Violent criminal offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt to commit a criminal offense involving violence or physical harm.

(2) The sentencing judge or the Board of Pardons and Parole shall consider as an aggravating factor in their deliberations that the defendant committed the violent criminal offense in the presence of a child.

(3) The sentencing judge or the Board of Pardons and Parole shall also consider whether the penalty for the offense is already increased by other existing provisions of law.

(4) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.

(5) This section does not affect or restrict the exercise of judicial discretion under any other provision of Utah law.

Enacted by Chapter 347, 2007 General Session

76-3-203.10. Violent offense committed in presence of a child -- Penalties.

(1) As used in this section:

(a) "In the presence of a child" means:

(i) in the physical presence of a child younger than 14 years of age; and

(ii) having knowledge that the child is present and may see or hear the commission of a violent criminal offense.

(b) "Violent criminal offense" means any criminal offense involving violence or physical harm or threat of violence or physical harm, or any attempt to commit a criminal offense involving violence or physical harm that is not a domestic violence offense as defined in Section 77-36-1.

(2) A person commits a violent criminal offense in the presence of a child if the person:

(a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a third party in the presence of a child;

(b) intentionally causes or attempts to cause serious bodily injury to a third party or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury, against a third party in the presence of a child; or

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits a violent criminal offense in the presence of a child.

(3) A person who violates Subsection (2) is guilty of a class B misdemeanor.

Enacted by Chapter 359, 2010 General Session

76-3-203.11. Reporting an overdose -- Mitigating factor.

It is a mitigating factor in sentencing for an offense under Title 58, Chapter 37, Utah Controlled Substances Act, that the person:

(1) reasonably believes that the person or another person is experiencing an overdose event due to the ingestion, injection, inhalation, or other introduction into the human body of a controlled substance or other substance;

(2) reports in good faith the overdose event to a medical provider, an emergency medical service provider as defined in Section 26-8a-102, a law enforcement officer, a 911 emergency call system, or an emergency dispatch system, or the person is the subject of a report made under this section;

(3) provides in the report under Subsection (2) a functional description of the location of the actual overdose event that facilitates responding to the person experiencing the overdose event;

(4) remains at the location of the person experiencing the overdose event until a responding law enforcement officer or emergency medical service provider arrives, or remains at the medical care facility where the person experiencing an overdose event is located until a responding law enforcement officer arrives;

(5) cooperates with the responding medical provider, emergency medical service provider, and law enforcement officer, including providing information regarding the person experiencing the overdose event and any substances the person may have injected, inhaled, or otherwise introduced into the person's body; and

(6) committed the offense in the same course of events from which the reported overdose arose.

Enacted by Chapter 19, 2014 General Session

76-3-204. Misdemeanor conviction -- Term of imprisonment.

A person who has been convicted of a misdemeanor may be sentenced to imprisonment as follows:

(1) In the case of a class A misdemeanor, for a term not exceeding one year;

(2) In the case of a class B misdemeanor, for a term not exceeding six months;

(3) In the case of a class C misdemeanor, for a term not exceeding 90 days.

Enacted by Chapter 196, 1973 General Session

76-3-205. Infraction conviction -- Fine, forfeiture, and disqualification.

(1) A person convicted of an infraction may not be imprisoned but may be subject to a fine, forfeiture, and disqualification, or any combination.

(2) Whenever a person is convicted of an infraction and no punishment is specified, the person may be fined as for a class C misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-3-206. Capital felony -- Penalties.

(1) A person who has pled guilty to or been convicted of a capital felony shall be sentenced in accordance with Section 76-3-207. That sentence shall be death, an indeterminate prison term of not less than 25 years and which may be for life, or, on or after April 27, 1992, life in prison without parole.

(2) (a) The judgment of conviction and sentence of death is subject to automatic review by the Utah State Supreme Court within 60 days after certification by the sentencing court of the entire record unless time is extended an additional period not to exceed 30 days by the Utah State Supreme Court for good cause shown.

(b) The review by the Utah State Supreme Court has priority over all other cases and shall be heard in accordance with rules promulgated by the Utah State Supreme Court.

Amended by Chapter 76, 2009 General Session

76-3-207. Capital felony -- Sentencing proceeding.

(1) (a) When a defendant has pled guilty to or been found guilty of a capital felony, there shall be further proceedings before the court or jury on the issue of sentence.

(b) In the case of a plea of guilty to a capital felony, the sentencing proceedings shall be conducted before a jury or, upon request of the defendant and with the approval of the court and the consent of the prosecution, by the court which accepted the plea.

(c) (i) When a defendant has been found guilty of a capital felony, the proceedings shall be conducted before the court or jury which found the defendant

guilty, provided the defendant may waive hearing before the jury with the approval of the court and the consent of the prosecution, in which event the hearing shall be before the court.

(ii) If circumstances make it impossible or impractical to reconvene the same jury for the sentencing proceedings, the court may dismiss that jury and convene a new jury for the proceedings.

(d) If a retrial of the sentencing proceedings is necessary as a consequence of a remand from an appellate court, the sentencing authority shall be determined as provided in Subsection (6).

(2) (a) In capital sentencing proceedings, evidence may be presented on:

(i) the nature and circumstances of the crime;

(ii) the defendant's character, background, history, and mental and physical condition;

(iii) the victim and the impact of the crime on the victim's family and community without comparison to other persons or victims; and

(iv) any other facts in aggravation or mitigation of the penalty that the court considers relevant to the sentence.

(b) Any evidence the court considers to have probative force may be received regardless of its admissibility under the exclusionary rules of evidence. The state's attorney and the defendant shall be permitted to present argument for or against the sentence of death.

(3) Aggravating circumstances include those outlined in Section 76-5-202.

(4) Mitigating circumstances include:

(a) the defendant has no significant history of prior criminal activity;

(b) the homicide was committed while the defendant was under the influence of mental or emotional disturbance;

(c) the defendant acted under duress or under the domination of another person;

(d) at the time of the homicide, the capacity of the defendant to appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law was impaired as a result of a mental condition, intoxication, or influence of drugs, except that "mental condition" under this Subsection (4)(d) does not mean an abnormality manifested primarily by repeated criminal conduct;

(e) the youth of the defendant at the time of the crime;

(f) the defendant was an accomplice in the homicide committed by another person and the defendant's participation was relatively minor; and

(g) any other fact in mitigation of the penalty.

(5) (a) The court or jury, as the case may be, shall retire to consider the penalty. Except as provided in Subsection 76-3-207.5(2), in all proceedings before a jury, under this section, it shall be instructed as to the punishment to be imposed upon a unanimous decision for death and that the penalty of either an indeterminate prison term of not less than 25 years and which may be for life or life in prison without parole, shall be imposed if a unanimous decision for death is not found.

(b) The death penalty shall only be imposed if, after considering the totality of the aggravating and mitigating circumstances, the jury is persuaded beyond a

reasonable doubt that total aggravation outweighs total mitigation, and is further persuaded, beyond a reasonable doubt, that the imposition of the death penalty is justified and appropriate in the circumstances. If the jury reports unanimous agreement to impose the sentence of death, the court shall discharge the jury and shall impose the sentence of death.

(c) If the jury is unable to reach a unanimous decision imposing the sentence of death, the jury shall then determine whether the penalty of life in prison without parole shall be imposed, except as provided in Subsection 76-3-207.5(2). The penalty of life in prison without parole shall only be imposed if the jury determines that the sentence of life in prison without parole is appropriate. If the jury reports agreement by 10 jurors or more to impose the sentence of life in prison without parole, the court shall discharge the jury and shall impose the sentence of life in prison without parole. If 10 jurors or more do not agree upon a sentence of life in prison without parole, the court shall discharge the jury and impose an indeterminate prison term of not less than 25 years and which may be for life.

(d) If the defendant waives hearing before the jury as to sentencing, with the approval of the court and the consent of the prosecution, the court shall determine the appropriate penalty according to the standards of Subsections (5)(b) and (c).

(e) If the defendant is sentenced to more than one term of life in prison with or without the possibility of parole, or in addition to a sentence of life in prison with or without the possibility of parole the defendant is sentenced for other offenses which result in terms of imprisonment, the judge shall determine whether the terms of imprisonment shall be imposed as concurrent or consecutive sentences in accordance with Section 76-3-401.

(6) Upon any appeal by the defendant where the sentence is of death, the appellate court, if it finds prejudicial error in the sentencing proceeding only, may set aside the sentence of death and remand the case to the trial court for new sentencing proceedings to the extent necessary to correct the error or errors. An error in the sentencing proceedings may not result in the reversal of the conviction of a capital felony. In cases of remand for new sentencing proceedings, all exhibits and a transcript of all testimony and other evidence properly admitted in the prior trial and sentencing proceedings are admissible in the new sentencing proceedings, and if the sentencing proceeding was before a:

(a) jury, a new jury shall be impaneled for the new sentencing proceeding unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution, in which case the proceeding shall be held according to Subsection (6)(b) or (c), as applicable;

(b) judge, the original trial judge shall conduct the new sentencing proceeding; or

(c) judge, and the original trial judge is unable or unavailable to conduct a new sentencing proceeding, then another judge shall be designated to conduct the new sentencing proceeding, and the new proceeding will be before a jury unless the defendant waives the hearing before the jury with the approval of the court and the consent of the prosecution.

(7) If the penalty of death is held to be unconstitutional by the Utah Supreme

Court or the United States Supreme Court, the court having jurisdiction over a person previously sentenced to death for a capital felony shall cause the person to be brought before the court, and the court shall sentence the person to life in prison without parole.

(8) (a) If the appellate court's final decision regarding any appeal of a sentence of death precludes the imposition of the death penalty due to mental retardation or subaverage general intellectual functioning under Section 77-15a-101, the court having jurisdiction over a defendant previously sentenced to death for a capital felony shall cause the defendant to be brought before the sentencing court, and the court shall sentence the defendant to life in prison without parole.

(b) If the appellate court precludes the imposition of the death penalty under Subsection (8)(a), but the appellate court finds that sentencing the defendant to life in prison without parole is likely to result in a manifest injustice, it may remand the case to the sentencing court for further sentencing proceedings to determine if the defendant should serve a sentence of life in prison without parole or an indeterminate prison term of not less than 25 years and which may be for life.

Amended by Chapter 373, 2010 General Session

76-3-207.5. Applicability -- Effect on sentencing -- Options of offenders.

(1) (a) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 applies only to those capital felonies for which the offender is sentenced on or after April 27, 1992.

(b) The sentencing option of life without parole provided in Sections 76-3-201 and 76-3-207 has no effect on sentences imposed in capital cases prior to April 27, 1992.

(2) An offender, who commits a capital felony prior to April 27, 1992, but is sentenced on or after April 27, 1992, shall be given the option, prior to a sentencing hearing pursuant to Section 76-3-207, to proceed either under the law which was in effect at the time the offense was committed or under the additional sentencing option of life in prison without parole provided in Sections 76-3-201 and 76-3-207.

Amended by Chapter 209, 2001 General Session

76-3-207.7. First degree felony aggravated murder -- Noncapital felony -- Penalties -- Sentenced by court.

(1) A person who has pled guilty to or been convicted of first degree felony aggravated murder under Section 76-5-202 shall be sentenced by the court.

(2) The sentence under this section shall be life in prison without parole or an indeterminate prison term of not less than 25 years and which may be for life.

Amended by Chapter 76, 2009 General Session

76-3-208. Imprisonment -- Custodial authorities.

(1) Persons sentenced to imprisonment shall be committed to the following custodial authorities:

(a) felony commitments shall be to the Utah State Prison;

(b) (i) class A misdemeanor commitments shall be to the jail, or other facility designated by the town, city, or county where the defendant was convicted, unless the defendant is also serving a felony commitment at the Utah State Prison at the commencement of the class A misdemeanor conviction, in which case, the class A misdemeanor commitment shall be to the Utah State Prison for an indeterminate term not to exceed one year; and

(ii) the court may not order the imprisonment of a defendant to the Utah State Prison for a fixed term or other term that is inconsistent with this section and Section 77-18-4; and

(c) all other misdemeanor commitments shall be to the jail or other facility designated by the town, city or county where the defendant was convicted.

(2) Custodial authorities may place a prisoner in a facility other than the one to which the prisoner was committed when:

(a) it does not have space to accommodate the prisoner; or

(b) the security of the institution or inmate requires it.

Amended by Chapter 56, 2011 General Session

76-3-301. Fines of persons.

(1) A person convicted of an offense may be sentenced to pay a fine, not exceeding:

(a) $10,000 for a felony conviction of the first degree or second degree;

(b) $5,000 for a felony conviction of the third degree;

(c) $2,500 for a class A misdemeanor conviction;

(d) $1,000 for a class B misdemeanor conviction;

(e) $750 for a class C misdemeanor conviction or infraction conviction; and

(f) any greater amounts specifically authorized by statute.

(2) This section does not apply to a corporation, association, partnership, government, or governmental instrumentality.

Amended by Chapter 291, 1995 General Session

76-3-301.5. Uniform fine schedule -- Judicial Council.

(1) The Judicial Council shall establish a uniform recommended fine schedule for each offense under Subsection 76-3-301(1).

(a) The fine for each offense shall proportionally reflect the seriousness of the offense and other factors as determined in writing by the Judicial Council.

(b) The schedule shall be reviewed annually by the Judicial Council.

(c) The fines shall be collected under Section 77-18-1.

(2) The schedule shall incorporate:

(a) criteria for determining aggravating and mitigating circumstances; and

(b) guidelines for enhancement or reduction of the fine, based on aggravating or mitigating circumstances.

(3) Presentence investigation reports shall include documentation of

aggravating and mitigating circumstances as determined under the criteria, and a recommended fine under the schedule.

(4) The Judicial Council shall also establish a separate uniform recommended fine schedule for the juvenile court and by rule provide for its implementation.

(5) This section does not prohibit the court from in its discretion imposing no fine, or a fine in any amount up to and including the maximum fine, for the offense.

Enacted by Chapter 152, 1988 General Session

76-3-302. Fines of corporations, associations, partnerships, or government instrumentalities.

A corporation, association, partnership, or governmental instrumentality shall pay a fine for an offense defined in this code for which no special corporate fine is specified. The fine shall not exceed:

(1) $20,000 for a felony conviction;

(2) $10,000 for a class A misdemeanor conviction;

(3) $5,000 for a class B misdemeanor conviction; and

(4) $1,000 for a class C misdemeanor conviction or for an infraction conviction.

Amended by Chapter 291, 1995 General Session

76-3-303. Additional sanctions against corporation or association -- Advertising of conviction -- Disqualification of officer.

(1) When a corporation or association is convicted of an offense, the court may, in addition to or in lieu of imposing other authorized sanctions, require the corporation or association to give appropriate publicity of the conviction by notice to the class or classes of persons or section of the public interested in or affected by the conviction, by advertising in designated areas, or by designated media or otherwise.

(2) When an executive or high managerial officer of a corporation or association is convicted of an offense committed in furtherance of the affairs of the corporation or association, the court may include in the sentence an order disqualifying him from exercising similar functions in the same or other corporations or associations for a period of not exceeding five years if it finds the scope or willfulness of his illegal actions make it dangerous or inadvisable for such functions to be entrusted to him.

Enacted by Chapter 196, 1973 General Session

76-3-401. Concurrent or consecutive sentences -- Limitations -- Definition.

(1) A court shall determine, if a defendant has been adjudged guilty of more than one felony offense, whether to impose concurrent or consecutive sentences for the offenses. The court shall state on the record and shall indicate in the order of judgment and commitment:

(a) if the sentences imposed are to run concurrently or consecutively to each other; and

(b) if the sentences before the court are to run concurrently or consecutively

with any other sentences the defendant is already serving.

(2) In determining whether state offenses are to run concurrently or consecutively, the court shall consider the gravity and circumstances of the offenses, the number of victims, and the history, character, and rehabilitative needs of the defendant.

(3) The court shall order that sentences for state offenses run consecutively if the later offense is committed while the defendant is imprisoned or on parole, unless the court finds and states on the record that consecutive sentencing would be inappropriate.

(4) If a written order of commitment does not clearly state whether the sentences are to run consecutively or concurrently, the Board of Pardons and Parole shall request clarification from the court. Upon receipt of the request, the court shall enter a clarified order of commitment stating whether the sentences are to run consecutively or concurrently.

(5) A court may impose consecutive sentences for offenses arising out of a single criminal episode as defined in Section 76-1-401.

(6) (a) If a court imposes consecutive sentences, the aggregate maximum of all sentences imposed may not exceed 30 years imprisonment, except as provided under Subsection (6)(b).

(b) The limitation under Subsection (6)(a) does not apply if:

(i) an offense for which the defendant is sentenced authorizes the death penalty or a maximum sentence of life imprisonment; or

(ii) the defendant is convicted of an additional offense based on conduct which occurs after his initial sentence or sentences are imposed.

(7) The limitation in Subsection (6)(a) applies if a defendant:

(a) is sentenced at the same time for more than one offense;

(b) is sentenced at different times for one or more offenses, all of which were committed prior to imposition of the defendant's initial sentence; or

(c) has already been sentenced by a court of this state other than the present sentencing court or by a court of another state or federal jurisdiction, and the conduct giving rise to the present offense did not occur after his initial sentencing by any other court.

(8) When the limitation of Subsection (6)(a) applies, determining the effect of consecutive sentences and the manner in which they shall be served, the Board of Pardons and Parole shall treat the defendant as though he has been committed for a single term that consists of the aggregate of the validly imposed prison terms as follows:

(a) if the aggregate maximum term exceeds the 30-year limitation, the maximum sentence is considered to be 30 years; and

(b) when indeterminate sentences run consecutively, the minimum term, if any, constitutes the aggregate of the validly imposed minimum terms.

(9) When a sentence is imposed or sentences are imposed to run concurrently with the other or with a sentence presently being served, the term that provides the longer remaining imprisonment constitutes the time to be served.

(10) This section may not be construed to restrict the number or length of

individual consecutive sentences that may be imposed or to affect the validity of any sentence so imposed, but only to limit the length of sentences actually served under the commitments.

(11) This section may not be construed to limit the authority of a court to impose consecutive sentences in misdemeanor cases.

(12) As used in this section, "imprisoned" means sentenced and committed to a secure correctional facility as defined in Section 64-13-1, the sentence has not been terminated or voided, and the person is not on parole, regardless of where the person is located.

Amended by Chapter 129, 2002 General Session

76-3-402. Conviction of lower degree of offense -- Procedure and limitations.

(1) If at the time of sentencing the court, having regard to the nature and circumstances of the offense of which the defendant was found guilty and to the history and character of the defendant, and after having given any victims present at the sentencing and the prosecuting attorney an opportunity to be heard, concludes it would be unduly harsh to record the conviction as being for that degree of offense established by statute, the court may enter a judgment of conviction for the next lower degree of offense and impose sentence accordingly.

(2) If the court suspends the execution of the sentence and places the defendant on probation, whether or not the defendant is committed to jail as a condition of probation, the court may enter a judgment of conviction for the next lower degree of offense:

(a) after the defendant has been successfully discharged from probation;

(b) upon motion and notice to the prosecuting attorney;

(c) after reasonable effort has been made by the prosecuting attorney to provide notice to any victims;

(d) after a hearing if requested by either party under Subsection (2)(c); and

(e) if the court finds entering a judgment of conviction for the next lower degree of offense is in the interest of justice.

(3) (a) An offense may be reduced only one degree under this section, whether the reduction is entered under Subsection (1) or (2), unless the prosecutor specifically agrees in writing or on the court record that the offense may be reduced two degrees.

(b) In no case may an offense be reduced under this section by more than two degrees.

(4) This section does not preclude any person from obtaining or being granted an expungement of his record as provided by law.

(5) The court may not enter judgment for a conviction for a lower degree of offense if:

(a) the reduction is specifically precluded by law; or

(b) if any unpaid balance remains on court ordered restitution for the offense for which the reduction is sought.

(6) When the court enters judgment for a lower degree of offense under this

section, the actual title of the offense for which the reduction is made may not be altered.

(7) (a) A person may not obtain a reduction under this section of a conviction that requires the person to register as a sex offender until the registration requirements under Title 77, Chapter 41, Sex and Kidnap Offender Registry, have expired.

(b) A person required to register as a sex offender for the person's lifetime under Subsection 77-41-105(3)(c) may not be granted a reduction of the conviction for the offense or offenses that require the person to register as a sex offender.

(8) As used in this section, "next lower degree of offense" includes an offense regarding which:

(a) a statutory enhancement is charged in the information or indictment that would increase either the maximum or the minimum sentence; and

(b) the court removes the statutory enhancement pursuant to this section.

Amended by Chapter 145, 2012 General Session

76-3-403. Credit for good behavior against jail sentence for misdemeanors and certain felonies.

In any commitment for incarceration in a county jail or detention facility, other than the Utah State Prison, the custodial authority may in its discretion and upon good behavior of the inmate allow up to 10 days credit against the sentence to be served for every 30 days served or up to two days credit for every 10 days served when the period to be served is less than 30 days if:

(1) the incarceration is for a misdemeanor offense, and the sentencing judge has not entered an order to the contrary; or

(2) the incarceration is part of a probation agreement for a felony offense, and the sentencing district judge has not entered an order to the contrary.

Amended by Chapter 91, 1998 General Session

76-3-403.5. Work or school release from county jail or facility -- Conditions.

When an inmate is incarcerated in a county jail or in a detention facility, the custodial authority may, in accordance with the release policy of the facility, allow the inmate to work outside of the jail or facility as part of a jail or facility supervised work detail, to seek or work at employment, or to attend an educational institution, if the inmate's incarceration:

(1) is not for an offense for which release is prohibited under state law; and

(2) (a) is for a misdemeanor offense, and the sentencing judge has not entered an order prohibiting release under this section; or

(b) is part of a probation agreement for a felony offense, and the sentencing district judge has not entered an order prohibiting release under this section.

Amended by Chapter 148, 2007 General Session

76-3-405. Limitation on sentence where conviction or prior sentence set aside.

(1) Where a conviction or sentence has been set aside on direct review or on collateral attack, the court shall not impose a new sentence for the same offense or for a different offense based on the same conduct which is more severe than the prior sentence less the portion of the prior sentence previously satisfied.

(2) This section does not apply when:

(a) the increased sentence is based on facts which were not known to the court at the time of the original sentence, and the court affirmatively places on the record the facts which provide the basis for the increased sentence; or

(b) a defendant enters into a plea agreement with the prosecution and later successfully moves to invalidate his conviction, in which case the defendant and the prosecution stand in the same position as though the plea bargain, conviction, and sentence had never occurred.

Amended by Chapter 291, 1997 General Session

76-3-406. Crimes for which probation, suspension of sentence, lower category of offense, or hospitalization may not be granted.

Notwithstanding Sections 76-3-201 and 77-18-1 and Title 77, Chapter 16a, Commitment and Treatment of Persons with a Mental Illness, except as provided in Section 76-5-406.5, probation shall not be granted, the execution or imposition of sentence shall not be suspended, the court shall not enter a judgment for a lower category of offense, and hospitalization shall not be ordered, the effect of which would in any way shorten the prison sentence for any person who commits a capital felony or a first degree felony involving:

(1) Section 76-5-202, aggravated murder;

(2) Section 76-5-203, murder;

(3) Section 76-5-301.1, child kidnaping;

(4) Section 76-5-302, aggravated kidnaping;

(5) Section 76-5-402, rape, if the person is sentenced under Subsection 76-5-402(3)(b), (3)(c), or (4);

(6) Section 76-5-402.1, rape of a child;

(7) Section 76-5-402.2, object rape, if the person is sentenced under Subsection 76-5-402.2 (1)(b), (1)(c), or (2);

(8) Section 76-5-402.3, object rape of a child;

(9) Section 76-5-403, forcible sodomy, if the person is sentenced under Subsection 76-5-403(4)(b), (4)(c), or (5);

(10) Section 76-5-403.1, sodomy on a child;

(11) Section 76-5-404, forcible sexual abuse, if the person is sentenced under Subsection 76-5-404(2)(b) or (3);

(12) Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child;

(13) Section 76-5-405, aggravated sexual assault; or

(14) any attempt to commit a felony listed in Subsection (6), (8), or (10).

Amended by Chapter 366, 2011 General Session

76-3-406.5. Aggravating factors in imprisonment for certain criminal homicide cases.

(1) As used in this section:

(a) "Cohabitant" has the same definition as in Section 78B-7-102.

(b) "Position of trust" includes the position of a spouse, parent, or cohabitant.

(2) It is an aggravating factor that the person occupied a position of trust in relation to the victim.

(3) The Board of Pardons and Parole shall consider the aggravating factor in Subsection (2) in determining the length of imprisonment for a person convicted of:

(a) aggravated murder under Section 76-5-202;

(b) murder under Section 76-5-203; or

(c) manslaughter under Section 76-5-205.

(4) The sentencing court shall consider the aggravating factor in Subsection (2) in sentencing a person convicted of manslaughter under Section 76-5-205.

Amended by Chapter 3, 2008 General Session

76-3-407. Repeat and habitual sex offenders -- Additional prison term for prior felony convictions.

(1) As used in this section:

(a) "Prior sexual offense" means:

(i) a felony offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

(ii) sexual exploitation of a minor, Section 76-5b-201;

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

(iv) a felony attempt to commit an offense described in Subsections (1)(a)(i) through (iii); or

(v) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(a)(i) through (iv).

(b) "Sexual offense" means:

(i) an offense that is a felony of the second or third degree, or an attempted offense, which attempt is a felony of the second or third degree, described in Title 76, Chapter 5, Part 4, Sexual Offenses;

(ii) sexual exploitation of a minor, Section 76-5b-201;

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

(iv) a felony attempt to commit an offense described in Subsection (1)(b)(ii) or (iii); or

(v) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (1)(b)(i) through (iv).

(2) Notwithstanding any other provision of law, the maximum penalty for a sexual offense is increased by five years for each conviction of the defendant for a prior sexual offense that arose from a separate criminal episode, if the trier of fact finds that:

(a) the defendant was convicted of a prior sexual offense; and

(b) the defendant was convicted of the prior sexual offense described in Subsection (2)(a) before the defendant was convicted of the sexual offense for which the defendant is being sentenced.

(3) The increased maximum term described in Subsection (2) shall be in addition to, and consecutive to, any other prison term served by the defendant.

Amended by Chapter 320, 2011 General Session

76-3-409. Child abuse or sex offense against child -- Treatment of offender or victim -- Payment of costs.

(1) Any person convicted in the district court of child abuse, or a sexual offense if the victim is under 18 years of age, may be ordered to participate in treatment or therapy under the supervision of the adult probation and parole section of the Department of Corrections, in cooperation with the division of children, youth, and families until the court is satisfied that such treatment or therapy has been successful or that no further benefit to the convicted offender would result if such treatment or therapy were continued. The court may also order treatment of the victim if it believes the same would be beneficial under the circumstances. Nothing in this section shall preclude the court from imposing any additional sentence as provided by law.

(2) The convicted offender shall be ordered to pay, to the extent that he or she is able, the costs of his or her treatment, together with treatment costs incurred by the victim and any administrative costs incurred by the appropriate state agency in the supervision of such treatment. If the convicted offender is unable to pay all or part of the costs of treatment, the court may order the appropriate state agency to pay such costs to the extent funding is provided by the Legislature for such purpose and shall order the convicted offender to perform public service work as compensation for the cost of treatment.

Amended by Chapter 212, 1985 General Session

76-4-101. Attempt -- Elements of offense.

(1) For purposes of this part, a person is guilty of an attempt to commit a crime if he:

(a) engages in conduct constituting a substantial step toward commission of the crime; and

(b) (i) intends to commit the crime; or

(ii) when causing a particular result is an element of the crime, he acts with an awareness that his conduct is reasonably certain to cause that result.

(2) For purposes of this part, conduct constitutes a substantial step if it strongly corroborates the actor's mental state as defined in Subsection (1)(b).

(3) A defense to the offense of attempt does not arise:

(a) because the offense attempted was actually committed; or

(b) due to factual or legal impossibility if the offense could have been committed if the attendant circumstances had been as the actor believed them to be.

Amended by Chapter 154, 2004 General Session

76-4-102. Attempt -- Classification of offenses.

(1) Criminal attempt to commit:

(a) (i) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;

(ii) except as provided in Subsection (2), an attempt to commit aggravated murder, Section 76-5-202, which results in serious bodily injury, is punishable by imprisonment for an indeterminate term of not fewer than 15 years and which may be for life;

(b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second degree felony;

(c) any of the following offenses is a first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life:

(i) murder, Subsection 76-5-203(2)(a);

(ii) child kidnapping, Section 76-5-301.1; or

(iii) except as provided in Subsection (1)(d), any of the felonies described in Title 76, Chapter 5, Part 4, Sexual Offenses, that are first degree felonies;

(d) except as provided in Subsection (3), any of the following offenses is a first degree felony, punishable by a term of imprisonment of not less than 15 years and which may be for life:

(i) rape of a child, Section 76-5-402.1;

(ii) object rape of a child, Section 76-5-402.3; or

(iii) sodomy on a child, Section 76-5-403.1;

(e) a second degree felony is a third degree felony;

(f) a third degree felony is a class A misdemeanor;

(g) a class A misdemeanor is a class B misdemeanor;

(h) a class B misdemeanor is a class C misdemeanor; and

(i) a class C misdemeanor is punishable by a penalty not exceeding one half the penalty for a class C misdemeanor.

(2) If, when imposing a sentence under Subsection (1)(a)(ii), a court finds that a lesser term than the term described in Subsection (1)(a)(ii) is in the interests of justice and the court states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(3) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser term than the term described in Subsection (1)(d) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life;

(b) six years and which may be for life; or

(c) three years and which may be for life.

Amended by Chapter 93, 2013 General Session

76-4-201. Conspiracy -- Elements of offense.

For purposes of this part a person is guilty of conspiracy when he, intending that conduct constituting a crime be performed, agrees with one or more persons to engage in or cause the performance of the conduct and any one of them commits an overt act in pursuance of the conspiracy, except where the offense is a capital felony, a felony against the person, arson, burglary, or robbery, the overt act is not required for the commission of conspiracy.

Amended by Chapter 209, 2001 General Session

76-4-202. Conspiracy -- Classification of offenses.

Conspiracy to commit:

(1) a capital felony is a first degree felony;

(2) a first degree felony is a second degree felony; except that conspiracy to commit child kidnaping, in violation of Section 76-5-301.1 or to commit any of those felonies described in Title 76, Chapter 5, Part 4, which are first degree felonies, is a first degree felony punishable by imprisonment for an indeterminate term of not less than three years and which may be for life;

(3) a second degree felony is a third degree felony;

(4) a third degree felony is a class A misdemeanor;

(5) a class A misdemeanor is a class B misdemeanor;

(6) a class B misdemeanor is a class C misdemeanor;

(7) A class C misdemeanor is punishable by a penalty not exceeding one half the penalty for a class C misdemeanor.

Amended by Chapter 40, 1996 General Session

76-4-203. Criminal solicitation -- Elements.

(1) An actor commits criminal solicitation if, with intent that a felony be committed, he solicits, requests, commands, offers to hire, or importunes another person to engage in specific conduct that under the circumstances as the actor believes them to be would be a felony or would cause the other person to be a party to the commission of a felony.

(2) An actor may be convicted under this section only if the solicitation is made under circumstances strongly corroborative of the actor's intent that the offense be committed.

(3) It is not a defense under this section that the person solicited by the actor:

(a) does not agree to act upon the solicitation;

(b) does not commit an overt act;

(c) does not engage in conduct constituting a substantial step toward the commission of any offense;

(d) is not criminally responsible for the felony solicited;

(e) was acquitted, was not prosecuted or convicted, or was convicted of a different offense or of a different type or degree of offense; or

(f) is immune from prosecution.

(4) It is not a defense under this section that the actor:

(a) belongs to a class of persons that by definition is legally incapable of committing the offense in an individual capacity; or

(b) fails to communicate with the person he solicits to commit an offense, if the intent of the actor's conduct was to effect the communication.

(5) Nothing in this section prevents an actor who otherwise solicits, requests, commands, encourages, or intentionally aids another person to engage in conduct which constitutes an offense from being prosecuted and convicted as a party to the offense under Section 76-2-202 if the person solicited actually commits the offense.

Amended by Chapter 278, 2013 General Session

76-4-204. Criminal solicitation -- Penalties.

(1) Criminal solicitation to commit:

(a) a capital felony, or a felony punishable by imprisonment for life without parole, is a first degree felony;

(b) except as provided in Subsection (1)(c) or (d), a first degree felony is a second degree felony;

(c) any of the following offenses is a first degree felony punishable by imprisonment for an indeterminate term of not fewer than three years and which may be for life:

(i) murder, Subsection 76-5-203(2)(a);

(ii) child kidnapping, Section 76-5-301.1; or

(iii) except as provided in Subsection (1)(d), any of the felonies described in Title 76, Chapter 5, Part 4, Sexual Offenses, that are first degree felonies;

(d) except as provided in Subsection (2), any of the following offenses is a first degree felony, punishable by a term of imprisonment of not less than 15 years and which may be for life:

(i) rape of a child, Section 76-5-402.1;

(ii) object rape of a child, Section 76-5-402.3; or

(iii) sodomy on a child, Section 76-5-403.1;

(e) a second degree felony is a third degree felony; and

(f) a third degree felony is a class A misdemeanor.

(2) If, when imposing a sentence under Subsection (1)(d), a court finds that a lesser term than the term described in Subsection (1)(d) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life;

(b) six years and which may be for life; or

(c) three years and which may be for life.

Amended by Chapter 179, 2008 General Session

76-4-301. Specific attempt or conspiracy offense prevails.

Whenever any offense specifically designates or defines an attempt or conspiracy and provides a penalty for the attempt or conspiracy other than provided in this chapter, the specific offense shall prevail over the provisions of this chapter.

Amended by Chapter 20, 1995 General Session

76-4-302. Conviction of inchoate and principal offense or attempt and conspiracy to commit offense prohibited.

No person shall be convicted of both an inchoate and principal offense or of both an attempt to commit an offense and a conspiracy to commit the same offense.

Amended by Chapter 32, 1974 General Session

76-4-401. Enticing a minor -- Elements -- Penalties.

(1) As used in this section:

(a) "Minor" means a person who is under the age of 18.

(b) "Text messaging" means a communication in the form of electronic text or one or more electronic images sent by the actor from a telephone, computer, or other electronic communication device to another person's telephone, computer, or other electronic communication device by addressing the communication to the person's telephone number or other electronic communication access code or number.

(2) (a) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to solicit, seduce, lure, or entice a minor, or to attempt to solicit, seduce, lure, or entice a minor, or another person that the actor believes to be a minor, to engage in any sexual activity which is a violation of state criminal law.

(b) A person commits enticement of a minor when the person knowingly uses the Internet or text messaging to:

(i) initiate contact with a minor or a person the actor believes to be a minor; and

(ii) subsequently to the action under Subsection (2)(b)(i), by any electronic or written means, solicits, seduces, lures, or entices, or attempts to solicit, seduce, lure, or entice the minor or a person the actor believes to be the minor to engage in any sexual activity which is a violation of state criminal law.

(3) It is not a defense to the crime of enticing a minor under Subsection (2), or an attempt to commit this offense, that a law enforcement officer or an undercover operative who is working with a law enforcement agency was involved in the detection or investigation of the offense.

(4) Enticement of a minor under Subsection (2)(a) or (b) is punishable as follows:

(a) enticement to engage in sexual activity which would be a first degree felony for the actor is a:

(i) second degree felony upon the first conviction for violation of this Subsection (4)(a); and

(ii) first degree felony punishable by imprisonment for an indeterminate term of

not fewer than three years and which may be for life, upon a second or any subsequent conviction for a violation of this Subsection (4)(a);

(b) enticement to engage in sexual activity which would be a second degree felony for the actor is a third degree felony;

(c) enticement to engage in sexual activity which would be a third degree felony for the actor is a class A misdemeanor;

(d) enticement to engage in sexual activity which would be a class A misdemeanor for the actor is a class B misdemeanor; and

(e) enticement to engage in sexual activity which would be a class B misdemeanor for the actor is a class C misdemeanor.

(5) (a) When a person who commits a felony violation of this section has been previously convicted of an offense under Subsection (5)(b), the court may not in any way shorten the prison sentence, and the court may not:

(i) grant probation;

(ii) suspend the execution or imposition of the sentence;

(iii) enter a judgment for a lower category of offense; or

(iv) order hospitalization.

(b) The sections referred to in Subsection (5)(a) are:

(i) Section 76-4-401, enticing a minor;

(ii) Section 76-5-301.1, child kidnapping;

(iii) Section 76-5-402, rape;

(iv) Section 76-5-402.1, rape of a child;

(v) Section 76-5-402.2, object rape;

(vi) Section 76-5-402.3, object rape of a child;

(vii) Subsection 76-5-403(2), forcible sodomy;

(viii) Section 76-5-403.1, sodomy on a child;

(ix) Section 76-5-404, forcible sexual abuse;

(x) Section 76-5-404.1, sexual abuse of a child and aggravated sexual abuse of a child;

(xi) Section 76-5-405, aggravated sexual assault;

(xii) any offense in any other state or federal jurisdiction which constitutes or would constitute a crime in Subsections (5)(b)(i) through (xi); or

(xiii) the attempt, solicitation, or conspiracy to commit any of the offenses in Subsections (5)(b)(i) through (xii).

Amended by Chapter 175, 2013 General Session
Amended by Chapter 278, 2013 General Session

76-5-101. "Prisoner" defined.

For purposes of this part "prisoner" means any person who is in custody of a peace officer pursuant to a lawful arrest or who is confined in a jail or other penal institution or a facility used for confinement of delinquent juveniles operated by the Division of Juvenile Justice Services regardless of whether the confinement is legal.

Amended by Chapter 171, 2003 General Session

76-5-102. Assault.

(1) Assault is:

(a) an attempt, with unlawful force or violence, to do bodily injury to another;

(b) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or

(c) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.

(2) Assault is a class B misdemeanor.

(3) Assault is a class A misdemeanor if:

(a) the person causes substantial bodily injury to another; or

(b) the victim is pregnant and the person has knowledge of the pregnancy.

(4) It is not a defense against assault, that the accused caused serious bodily injury to another.

Amended by Chapter 109, 2003 General Session

76-5-102.3. Assault against school employees.

(1) Any person who assaults an employee of a public or private school, with knowledge that the individual is an employee, and when the employee is acting within the scope of his authority as an employee, is guilty of a class A misdemeanor.

(2) As used in this section, "employee" includes a volunteer.

Enacted by Chapter 163, 1992 General Session

76-5-102.4. Assault against peace officer or a military servicemember in uniform -- Penalties.

(1) As used in this section:

(a) "Military servicemember in uniform" means:

(i) a member of any branch of the United States military who is wearing a uniform as authorized by the member's branch of service; or

(ii) a member of the National Guard serving as provided in Section 39-1-5 or 39-1-9.

(b) "Peace officer" means a law enforcement officer certified under Section 53-13-103.

(2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3) and (4), who:

(a) assaults a peace officer, with knowledge that the person is a peace officer, and when the peace officer is acting within the scope of authority as a peace officer; or

(b) assaults a military servicemember in uniform when that servicemember is on orders and acting within the scope of authority granted to the military servicemember in uniform.

(3) A person who violates Subsection (2) is guilty of a third degree felony if the person:

(a) has been previously convicted of a class A misdemeanor or a felony violation of this section; or

(b) the person causes substantial bodily injury.

(4) A person who violates Subsection (2) is guilty of a second degree felony if the person uses:

(a) a dangerous weapon as defined in Section 76-1-601; or

(b) other means or force likely to produce death or serious bodily injury.

(5) A person who violates this section shall serve, in jail or another correctional facility, a minimum of:

(a) 90 consecutive days for a second offense; and

(b) 180 consecutive days for each subsequent offense.

(6) The court may suspend the imposition or execution of the sentence required under Subsection (5) if the court finds that the interests of justice would be best served by the suspension and the court makes specific findings concerning the disposition on the record.

(7) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech, the right of assembly, or any other recognized rights secured by the Constitution or laws of Utah or by the Constitution or laws of the United States.

Amended by Chapter 189, 2014 General Session

76-5-102.5. Assault by prisoner.

Any prisoner who commits assault, intending to cause bodily injury, is guilty of a felony of the third degree.

Enacted by Chapter 32, 1974 General Session

76-5-102.6. Propelling substance or object at a correctional or peace officer -- Penalties.

(1) Any prisoner or person detained pursuant to Section 77-7-15 who throws or otherwise propels any substance or object at a peace or correctional officer is guilty of a class A misdemeanor, except as provided under Subsection (2).

(2) A violation of Subsection (1) is a third degree felony if:

(a) the object or substance is:

(i) blood, urine, or fecal material;

(ii) an infectious agent as defined in Section 26-6-2 or a material that carries an infectious agent;

(iii) vomit or a material that carries vomit; or

(iv) the prisoner's or detained person's saliva, and the prisoner or detained person knows he or she is infected with HIV, hepatitis B, or hepatitis C; and

(b) the object or substance comes into contact with any portion of the officer's face, including the eyes or mouth, or comes into contact with any open wound on the officer's body.

(3) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Amended by Chapter 306, 2013 General Session

76-5-102.7. Assault against health care provider and emergency medical service worker -- Penalty.

(1) A person who assaults a health care provider or emergency medical service worker is guilty of a class A misdemeanor if:

(a) the person knew that the victim was a health care provider or emergency medical service worker; and

(b) the health care provider or emergency medical service worker was performing emergency or life saving duties within the scope of his authority at the time of the assault.

(2) As used in this section:

(a) "Emergency medical service worker" means a person certified under Section 26-8a-302.

(b) "Health care provider" has the meaning as provided in Section 78B-3-403.

Amended by Chapter 3, 2008 General Session

76-5-102.8. Disarming a peace officer -- Penalties.

(1) As used in this section:

(a) "Conductive energy device" means a weapon that uses electrical current to disrupt voluntary control of muscles.

(b) "Firearm" has the same meaning as in Section 76-10-501.

(2) An actor is guilty of an offense under Subsection (3) who intentionally takes or removes, or attempts to take or remove a firearm or a conductive energy device from the person or immediate presence of a person the actor knows is a peace officer:

(a) without the consent of the peace officer; and

(b) while the peace officer is acting within the scope of his authority as a peace officer.

(3) (a) Conduct under Subsection (2) regarding a firearm is a first degree felony.

(b) Conduct under Subsection (2) regarding a conductive energy device is a third degree felony.

Amended by Chapter 222, 2010 General Session

76-5-102.9. Propelling a bodily substance -- Penalties.

(1) As used in this section, a listed substance or material is:

(a) saliva, blood, urine, or fecal material;

(b) an infectious agent as defined in Section 26-6-2 of a material that carries an infectious agent; or

(c) vomit or a material that carries vomit.

(2) Any person who knowingly or intentionally throws or otherwise propels any bodily substance or material listed under Subsection (1) at another person is guilty of a class B misdemeanor, except as provided in Subsection (3).

(3) A violation of this section is a class A misdemeanor if the substance or material propelled is listed in Subsection (1), and:

(a) if the substance is the person's saliva, the person knows he or she is infected with HIV, hepatitis B, or hepatitis C; or

(b) the substance or material comes into contact with any portion of the other person's face, including the eyes or mouth, or comes into contact with any open wound on the other person's body.

(4) If an offense committed under this section amounts to an offense subject to a greater penalty under another provision of state law than under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Enacted by Chapter 153, 2013 General Session

76-5-103. Aggravated assault.

(1) A person commits aggravated assault if the person commits assault as defined in Section 76-5-102 and uses:

(a) a dangerous weapon as defined in Section 76-1-601; or

(b) other means or force likely to produce death or serious bodily injury.

(2) (a) A violation of Subsection (1) is a third degree felony, except under Subsection (2)(b).

(b) A violation of Subsection (1) that results in serious bodily injury is a second degree felony.

Amended by Chapter 193, 2010 General Session

76-5-103.5. Aggravated assault by prisoner.

Any prisoner who commits aggravated assault not amounting to a violation of Section 76-3-203.6 is guilty of:

(1) a second degree felony if no serious bodily injury was intentionally caused; or

(2) a first degree felony if serious bodily injury was intentionally caused.

Amended by Chapter 102, 2006 General Session

76-5-104. Consensual altercation.

In any prosecution for criminal homicide under Part 2 of this chapter or assault, it is no defense to the prosecution that the defendant was a party to any duel, mutual combat, or other consensual altercation if during the course of the duel, combat, or altercation any dangerous weapon as defined in Section 76-1-601 was used or if the defendant was engaged in an ultimate fighting match as defined in Section 76-9-705.

Amended by Chapter 83, 1997 General Session

76-5-105. Mayhem.

(1) Every person who unlawfully and intentionally deprives a human being of a

member of his body, or disables or renders it useless, or who cuts out or disables the tongue, puts out an eye, or slits the nose, ear, or lip, is guilty of mayhem.

(2) Mayhem is a felony of the second degree.

Enacted by Chapter 196, 1973 General Session

76-5-106. Harassment.

(1) A person is guilty of harassment if, with intent to frighten or harass another, he communicates a written or recorded threat to commit any violent felony.

(2) Harassment is a class B misdemeanor.

Amended by Chapter 300, 1995 General Session

76-5-106.5. Stalking -- Definitions -- Injunction -- Penalties.

(1) As used in this section:

(a) "Conviction" means:

(i) a verdict or conviction;

(ii) a plea of guilty or guilty and mentally ill;

(iii) a plea of no contest; or

(iv) the acceptance by the court of a plea in abeyance.

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

(i) acts in which the actor follows, monitors, observes, photographs, surveils, threatens, or communicates to or about a person, or interferes with a person'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;

(B) appears at the person's workplace or contacts the person's employer or coworkers;

(C) appears at a person's residence or contacts a person's neighbors, or enters property owned, leased, or occupied by a person;

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

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

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

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

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

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

(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 telephone or computer by addressing the communication to the recipient's telephone number.

(2) A person is guilty of stalking who intentionally or knowingly engages in a course of conduct directed at a specific person and knows or should know that the course of conduct would cause a reasonable person:

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

(b) to suffer other emotional distress.

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

(a) a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions; or

(b) a permanent criminal stalking injunction issued pursuant to this section.

(4) In any 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) Stalking is a class A misdemeanor:

(a) upon the offender's first violation of Subsection (2); or

(b) if the offender violated a stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions.

(7) Stalking is a third degree felony if the offender:

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

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

(c) 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) violated a permanent criminal stalking injunction issued pursuant to Subsection (9); or

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

(8) Stalking is a second degree felony if the offender:

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

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

(d) has been convicted two or more times, in any combination, of offenses under Subsection (7)(a), (b), or (c);

(e) 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) has been previously convicted of an offense under Subsection (7)(d) or (e).

(9) (a) A conviction for stalking or a plea accepted by the court and held in abeyance for a period of time serves as an application for a permanent criminal stalking injunction limiting the contact between the defendant and the victim.

(b) A permanent criminal stalking injunction shall be issued by the court at the time of the conviction. The court shall give the defendant notice of the right to request a hearing.

(c) If the defendant requests a hearing under Subsection (9)(b), it shall be held at the time of the conviction unless the victim requests otherwise, or for good cause.

(d) If the conviction was entered in a justice court, a certified copy of the judgment and conviction or a certified copy of the court's order holding the plea in abeyance shall be filed by the victim in the district court as an application and request for a hearing for a permanent criminal stalking injunction.

(10) A permanent criminal stalking injunction shall be issued by the district court granting the following relief where appropriate:

(a) an order:

(i) restraining the defendant from entering the residence, property, school, or place of employment of the victim; and

(ii) requiring the defendant to stay away from the victim, except as provided in Subsection (11), and to stay away from any specified place that is named in the order and is frequented regularly by the victim;

(b) an order restraining the defendant from making contact with or regarding the victim, including an order forbidding the defendant from personally or through an agent initiating any communication, except as provided in Subsection (11), likely to cause annoyance or alarm to the victim, including personal, written, or telephone contact with or regarding the victim, with the victim's employers, employees, coworkers, friends, associates, or others with whom communication would be likely to cause annoyance or alarm to the victim; and

(c) any other orders the court considers necessary to protect the victim and members of the victim's immediate family or household.

(11) If the victim and defendant have minor children together, the court may consider provisions regarding the defendant's exercise of custody and parent-time rights while ensuring the safety of the victim and any minor children. If the court issues a permanent criminal stalking injunction, but declines to address custody and parent-time issues, a copy of the stalking injunction shall be filed in any action in which custody and parent-time issues are being considered and that court may modify the injunction to balance the parties' custody and parent-time rights.

(12) Except as provided in Subsection (11), a permanent criminal stalking injunction may be modified, dissolved, or dismissed only upon application of the victim to the court which granted the injunction.

(13) Notice of permanent criminal stalking injunctions issued pursuant to this section shall be sent by the court to the statewide warrants network or similar system.

(14) A permanent criminal stalking injunction issued pursuant to this section has effect statewide.

(15) (a) Violation of an injunction issued pursuant to this section constitutes a third degree felony offense of stalking under Subsection (7).

(b) Violations may be enforced in a civil action initiated by the stalking victim, a criminal action initiated by a prosecuting attorney, or both.

(16) This section does not preclude the filing of a criminal information for stalking based on the same act which is the basis for the violation of the stalking injunction issued pursuant to Title 77, Chapter 3a, Stalking Injunctions, or a permanent criminal stalking injunction.

Amended by Chapter 383, 2012 General Session

76-5-107. Threat of violence -- Penalty.

(1) A person commits a threat of violence if the person threatens to commit any offense involving bodily injury, death, or substantial property damage, and acts with intent to place a person in fear of imminent serious bodily injury, substantial bodily injury, or death.

(2) A violation of this section is a class B misdemeanor.

(3) It is not a defense under this section that the person did not attempt to or was incapable of carrying out the threat.

(4) A threat under this section may be express or implied.

(5) A person 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.

(6) In addition to any other penalty authorized by law, a court shall order any person convicted of any 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.

Amended by Chapter 334, 2010 General Session

76-5-107.3. Threat of terrorism -- Penalty.

(1) A person commits a threat of terrorism if the person threatens to commit any offense involving bodily injury, death, or substantial property damage, and:

(a) (i) threatens the use of a weapon of mass destruction, as defined in Section 76-10-401; or

(ii) threatens the use of a hoax weapon of mass destruction, as defined in Section 76-10-401; or

(b) acts with intent to:

(i) intimidate or coerce a civilian population or to influence or affect the conduct of a government or a unit of government;

(ii) prevent or interrupt the occupation of a building or a portion of the building, a place to which the public has access, or a facility or vehicle of public transportation operated by a common carrier; or

(iii) cause an official or volunteer agency organized to deal with emergencies to take action due to the person's conduct posing a serious and substantial risk to the general public.

(2) (a) A violation of Subsection (1)(a) or (1)(b)(i) is a second degree felony.

(b) A violation of Subsection (1)(b)(ii) is a third degree felony.

(c) A violation of Subsection (1)(b)(iii) is a class B misdemeanor.

(3) It is not a defense under this section that the person did not attempt to carry out or was incapable of carrying out the threat.

(4) A threat under this section may be express or implied.

(5) A person 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.

(6) In addition to any other penalty authorized by law, a court shall order any person convicted of any 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.

Amended by Chapter 39, 2013 General Session

76-5-107.5. Prohibition of "hazing" -- Definitions -- Penalties.

(1) A person is guilty of hazing if that person intentionally, knowingly, or recklessly commits an act or causes another to commit an act that:

(a) (i) endangers the mental or physical health or safety of another;

(ii) involves any brutality of a physical nature such as whipping, beating, branding, calisthenics, bruising, electric shocking, placing of a harmful substance on the body, or exposure to the elements;

(iii) involves consumption of any food, alcoholic product, drug, or other substance or any other physical activity that endangers the mental or physical health and safety of an individual; or

(iv) involves any activity that would subject the individual to extreme mental stress, such as sleep deprivation, extended isolation from social contact, or conduct that subjects another to extreme embarrassment, shame, or humiliation; and

(b) (i) is for the purpose of initiation, admission into, affiliation with, holding office in, or as a condition for continued membership in any organization; or

(ii) if the actor knew that the victim is a member of or candidate for membership with a school team or school organization to which the actor belongs or did belong within the preceding two years.

(2) It is not a defense to prosecution of hazing that a person under 21, against

whom the hazing was directed, consented to or acquiesced in the hazing activity.

(3) An actor who hazes another is guilty of a:

(a) class B misdemeanor except as provided in Subsection (3)(b), (c), (d), or (e);

(b) class A misdemeanor if the act involves:

(i) the operation or other use of a motor vehicle;

(ii) the consumption of an alcoholic product as defined in Section 32B-1-102; or

(iii) the consumption of a drug or a substance as defined in Section 76-5-113;

(c) third degree felony if the act involves the use of a dangerous weapon as defined in Section 76-1-601;

(d) third degree felony if the hazing results in serious bodily injury to a person; or

(e) second degree felony if hazing under Subsection (3)(d) involves the use of a dangerous weapon as defined in Section 76-1-601.

(4) A person who in good faith reports or participates in reporting of an alleged hazing is not subject to any civil or criminal liability regarding the reporting.

(5) (a) This section does not apply to military training or other official military activities.

(b) Military conduct is governed by Title 39, Chapter 6, Utah Code of Military Justice.

(6) (a) A prosecution under this section does not bar a prosecution of the actor for:

(i) any other offense for which the actor may be liable as a party for conduct committed by the person hazed; or

(ii) any offense, caused in the course of the hazing, that the actor commits against the person who is hazed.

(b) Under Subsection (6)(a)(i) a person may be separately punished, both for the hazing offense and the conduct committed by the person hazed.

(c) Under Subsection (6)(a)(ii) a person may not be punished both for hazing and for the other offense, but shall be punished for the offense carrying the greater maximum penalty.

Amended by Chapter 340, 2011 General Session

76-5-108. Protective orders restraining abuse of another -- Violation.

(1) Any person who is the respondent or defendant subject to a protective order, child protective order, ex parte protective order, or ex parte child protective order issued under Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act; Title 78A, Chapter 6, Juvenile Court Act; Title 77, Chapter 36, Cohabitant Abuse Procedures Act; or a foreign protection order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of Domestic Violence Protection Orders Act, who intentionally or knowingly violates that order after having been properly served, is guilty of a class A misdemeanor, except as a greater penalty may be provided in Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(2) Violation of an order as described in Subsection (1) is a domestic violence offense under Section 77-36-1 and subject to increased penalties in accordance with

Section 77-36-1.1.

Amended by Chapter 196, 2013 General Session

76-5-109. Child abuse -- Child abandonment.

(1) As used in this section:

(a) "Child" means a human being who is under 18 years of age.

(b) (i) "Child abandonment" means that a parent or legal guardian of a child:

(A) intentionally ceases to maintain physical custody of the child;

(B) intentionally fails to make reasonable arrangements for the safety, care, and physical custody of the child; and

(C) (I) intentionally fails to provide the child with food, shelter, or clothing;

(II) manifests an intent to permanently not resume physical custody of the child; or

(III) for a period of at least 30 days:

(Aa) intentionally fails to resume physical custody of the child; and

(Bb) fails to manifest a genuine intent to resume physical custody of the child.

(ii) "Child abandonment" does not include:

(A) safe relinquishment of a child pursuant to the provisions of Section 62A-4a-802; or

(B) giving legal consent to a court order for termination of parental rights:

(I) in a legal adoption proceeding; or

(II) in a case where a petition for the termination of parental rights, or the termination of a guardianship, has been filed.

(c) "Child abuse" means any offense described in Subsection (2), (3), or (4) or in Section 76-5-109.1.

(d) "Enterprise" is as defined in Section 76-10-1602.

(e) "Physical injury" means an injury to or condition of a child which impairs the physical condition of the child, including:

(i) a bruise or other contusion of the skin;

(ii) a minor laceration or abrasion;

(iii) failure to thrive or malnutrition; or

(iv) any other condition which imperils the child's health or welfare and which is not a serious physical injury as defined in Subsection (1)(f).

(f) (i) "Serious physical injury" means any physical injury or set of injuries that:

(A) seriously impairs the child's health;

(B) involves physical torture;

(C) causes serious emotional harm to the child; or

(D) involves a substantial risk of death to the child.

(ii) "Serious physical injury" includes:

(A) fracture of any bone or bones;

(B) intracranial bleeding, swelling or contusion of the brain, whether caused by blows, shaking, or causing the child's head to impact with an object or surface;

(C) any burn, including burns inflicted by hot water, or those caused by placing a hot object upon the skin or body of the child;

(D) any injury caused by use of a dangerous weapon as defined in Section 76-1-601;

(E) any combination of two or more physical injuries inflicted by the same person, either at the same time or on different occasions;

(F) any damage to internal organs of the body;

(G) any conduct toward a child that results in severe emotional harm, severe developmental delay or intellectual disability, or severe impairment of the child's ability to function;

(H) any injury that creates a permanent disfigurement or protracted loss or impairment of the function of a bodily member, limb, or organ;

(I) any conduct that causes a child to cease breathing, even if resuscitation is successful following the conduct; or

(J) any conduct that results in starvation or failure to thrive or malnutrition that jeopardizes the child's life.

(2) Any person who inflicts upon a child serious physical injury or, having the care or custody of such child, causes or permits another to inflict serious physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a felony of the second degree;

(b) if done recklessly, the offense is a felony of the third degree; or

(c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Any person who inflicts upon a child physical injury or, having the care or custody of such child, causes or permits another to inflict physical injury upon a child is guilty of an offense as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;

(b) if done recklessly, the offense is a class B misdemeanor; or

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) A person who commits child abandonment, or encourages or causes another to commit child abandonment, or an enterprise that encourages, commands, or causes another to commit child abandonment, is:

(a) except as provided in Subsection (4)(b), guilty of a felony of the third degree; or

(b) guilty of a felony of the second degree, if, as a result of the child abandonment:

(i) the child suffers a serious physical injury; or

(ii) the person or enterprise receives, directly or indirectly, any benefit.

(5) (a) In addition to the penalty described in Subsection (4)(b), the court may order the person or enterprise described in Subsection (4)(b)(ii) to pay the costs of investigating and prosecuting the offense and the costs of securing any forfeiture provided for under Subsection (5)(b).

(b) Any tangible or pecuniary benefit received under Subsection (4)(b)(ii) is subject to criminal or civil forfeiture pursuant to Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(6) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets

and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to have committed an offense under this section.

(7) A parent or guardian of a child does not violate this section by selecting a treatment option for the medical condition of the child, if the treatment option is one that a reasonable parent or guardian would believe to be in the best interest of the child.

(8) A person is not guilty of an offense under this section for conduct that constitutes:

(a) reasonable discipline or management of a child, including withholding privileges;

(b) conduct described in Section 76-2-401; or

(c) the use of reasonable and necessary physical restraint or force on a child:

(i) in self-defense;

(ii) in defense of others;

(iii) to protect the child; or

(iv) to remove a weapon in the possession of a child for any of the reasons described in Subsections (8)(c)(i) through (iii).

Amended by Chapter 366, 2011 General Session

76-5-109.1. Commission of domestic violence in the presence of a child.

(1) As used in this section:

(a) "Cohabitant" has the same meaning as defined in Section 78B-7-102.

(b) "Domestic violence" has the same meaning as in Section 77-36-1.

(c) "In the presence of a child" means:

(i) in the physical presence of a child; or

(ii) having knowledge that a child is present and may see or hear an act of domestic violence.

(2) A person commits domestic violence in the presence of a child if the person:

(a) commits or attempts to commit criminal homicide, as defined in Section 76-5-201, against a cohabitant in the presence of a child; or

(b) intentionally causes serious bodily injury to a cohabitant or uses a dangerous weapon, as defined in Section 76-1-601, or other means or force likely to produce death or serious bodily injury against a cohabitant, in the presence of a child; or

(c) under circumstances not amounting to a violation of Subsection (2)(a) or (b), commits an act of domestic violence in the presence of a child.

(3) (a) A person who violates Subsection (2)(a) or (b) is guilty of a third degree felony.

(b) A person who violates Subsection (2)(c) is guilty of a class B misdemeanor.

(4) A charge under this section is separate and distinct from, and is in addition to, a charge of domestic violence where the victim is the cohabitant. Either or both charges may be filed by the prosecutor.

(5) A person who commits a violation of this section when more than one child is present is guilty of one offense of domestic violence in the presence of a child

regarding each child present when the violation occurred.

Amended by Chapter 70, 2009 General Session

76-5-110. Abuse or neglect of a child with a disability.

(1) As used in this section:

(a) "Abuse" means:

(i) inflicting physical injury, as that term is defined in Section 76-5-109;

(ii) having the care or custody of a child with a disability, causing or permitting another to inflict physical injury, as that term is defined in Section 76-5-109; or

(iii) unreasonable confinement.

(b) "Caretaker" means:

(i) any parent, legal guardian, or other person having under that person's care and custody a child with a disability; or

(ii) any person, corporation, or public institution that has assumed by contract or court order the responsibility to provide food, shelter, clothing, medical, and other necessities to a child with a disability.

(c) "Child with a disability" means any person under 18 years of age who is impaired because of mental illness, mental deficiency, physical illness or disability, or other cause, to the extent that the person is unable to care for the person's own personal safety or to provide necessities such as food, shelter, clothing, and medical care.

(d) "Neglect" means failure by a caretaker to provide care, nutrition, clothing, shelter, supervision, or medical care.

(2) Any caretaker who intentionally, knowingly, or recklessly abuses or neglects a child with a disability is guilty of a third degree felony.

(3) (a) A parent or legal guardian who provides a child with treatment by spiritual means alone through prayer, in lieu of medical treatment, in accordance with the tenets and practices of an established church or religious denomination of which the parent or legal guardian is a member or adherent shall not, for that reason alone, be considered to be in violation under this section.

(b) Subject to Subsection 78A-6-117(2)(n)(iii), the exception under Subsection (3)(a) does not preclude a court from ordering medical services from a physician licensed to engage in the practice of medicine to be provided to the child where there is substantial risk of harm to the child's health or welfare if the treatment is not provided.

(c) A caretaker of a child with a disability does not violate this section by selecting a treatment option for a medical condition of a child with a disability, if the treatment option is one that a reasonable caretaker would believe to be in the best interest of the child with a disability.

Amended by Chapter 366, 2011 General Session

76-5-111. Abuse, neglect, or exploitation of a vulnerable adult -- Penalties.

(1) As used in this section:

(a) "Abandonment" means a knowing or intentional action or inaction, including

desertion, by a person or entity acting as a caretaker for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or medical or other health care.

(b) "Abuse" means:

(i) attempting to cause harm, intentionally or knowingly causing harm, or intentionally or knowingly placing another in fear of imminent harm;

(ii) causing physical injury by knowing or intentional acts or omissions;

(iii) unreasonable or inappropriate use of physical restraint, medication, or isolation that causes or is likely to cause harm to a vulnerable adult that is in conflict with a physician's orders or used as an unauthorized substitute for treatment, unless that conduct furthers the health and safety of the adult; or

(iv) deprivation of life-sustaining treatment, except:

(A) as provided in Title 75, Chapter 2a, Advance Health Care Directive Act; or

(B) when informed consent, as defined in this section, has been obtained.

(c) "Business relationship" means a relationship between two or more individuals or entities where there exists an oral or written agreement for the exchange of goods or services.

(d) (i) "Caretaker" means any person, entity, corporation, or public institution that assumes the responsibility to provide a vulnerable adult with care, food, shelter, clothing, supervision, medical or other health care, or other necessities.

(ii) "Caretaker" includes a relative by blood or marriage, a household member, a person who is employed or who provides volunteer work, or a person who contracts or is under court order to provide care.

(e) "Deception" means:

(i) a misrepresentation or concealment:

(A) of a material fact relating to services rendered, disposition of property, or use of property intended to benefit a vulnerable adult;

(B) of the terms of a contract or agreement entered into with a vulnerable adult; or

(C) relating to the existing or preexisting condition of any property involved in a contract or agreement entered into with a vulnerable adult; or

(ii) the use or employment of any misrepresentation, false pretense, or false promise in order to induce, encourage, or solicit a vulnerable adult to enter into a contract or agreement.

(f) "Elder adult" means a person 65 years of age or older.

(g) "Endeavor" means to attempt or try.

(h) "Exploitation" means an offense described in Subsection (4) or Section 76-5b-202.

(i) "Harm" means pain, mental anguish, emotional distress, hurt, physical or psychological damage, physical injury, suffering, or distress inflicted knowingly or intentionally.

(j) "Informed consent" means:

(i) a written expression by the person or authorized by the person, stating that the person fully understands the potential risks and benefits of the withdrawal of food, water, medication, medical services, shelter, cooling, heating, or other services

necessary to maintain minimum physical or mental health, and that the person desires that the services be withdrawn. A written expression is valid only if the person is of sound mind when the consent is given, and the consent is witnessed by at least two individuals who do not benefit from the withdrawal of services; or

(ii) consent to withdraw food, water, medication, medical services, shelter, cooling, heating, or other services necessary to maintain minimum physical or mental health, as permitted by court order.

(k) "Intimidation" means communication conveyed through verbal or nonverbal conduct which threatens deprivation of money, food, clothing, medicine, shelter, social interaction, supervision, health care, or companionship, or which threatens isolation or harm.

(l) (i) "Isolation" means knowingly or intentionally preventing a vulnerable adult from having contact with another person by:

(A) preventing the vulnerable adult from receiving visitors, mail, or telephone calls, contrary to the express wishes of the vulnerable adult, including communicating to a visitor that the vulnerable adult is not present or does not want to meet with or talk to the visitor, knowing that communication to be false;

(B) physically restraining the vulnerable adult in order to prevent the vulnerable adult from meeting with a visitor; or

(C) making false or misleading statements to the vulnerable adult in order to induce the vulnerable adult to refuse to receive communication from visitors or other family members.

(ii) The term "isolation" does not include an act intended to protect the physical or mental welfare of the vulnerable adult or an act performed pursuant to the treatment plan or instructions of a physician or other professional advisor of the vulnerable adult.

(m) "Lacks capacity to consent" means an impairment by reason of mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause to the extent that a vulnerable adult lacks sufficient understanding of the nature or consequences of decisions concerning the adult's person or property.

(n) "Neglect" means:

(i) failure of a caretaker to provide nutrition, clothing, shelter, supervision, personal care, or dental or other health care, or failure to provide protection from health and safety hazards or maltreatment;

(ii) failure of a caretaker to provide care to a vulnerable adult in a timely manner and with the degree of care that a reasonable person in a like position would exercise;

(iii) a pattern of conduct by a caretaker, without the vulnerable adult's informed consent, resulting in deprivation of food, water, medication, health care, shelter, cooling, heating, or other services necessary to maintain the vulnerable adult's well being;

(iv) intentional failure by a caretaker to carry out a prescribed treatment plan that results or could result in physical injury or physical harm; or

(v) abandonment by a caretaker.

(o) "Physical injury" includes damage to any bodily tissue caused by nontherapeutic conduct, to the extent that the tissue must undergo a healing process in

order to be restored to a sound and healthy condition, or damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition. "Physical injury" includes skin bruising, a dislocation, physical pain, illness, impairment of physical function, a pressure sore, bleeding, malnutrition, dehydration, a burn, a bone fracture, a subdural hematoma, soft tissue swelling, injury to any internal organ, or any other physical condition that imperils the health or welfare of the vulnerable adult and is not a serious physical injury as defined in this section.

(p) "Position of trust and confidence" means the position of a person who:

(i) is a parent, spouse, adult child, or other relative by blood or marriage of a vulnerable adult;

(ii) is a joint tenant or tenant in common with a vulnerable adult;

(iii) has a legal or fiduciary relationship with a vulnerable adult, including a court-appointed or voluntary guardian, trustee, attorney, or conservator; or

(iv) is a caretaker of a vulnerable adult.

(q) "Serious physical injury" means any physical injury or set of physical injuries that:

(i) seriously impairs a vulnerable adult's health;

(ii) was caused by use of a dangerous weapon as defined in Section 76-1-601;

(iii) involves physical torture or causes serious emotional harm to a vulnerable adult; or

(iv) creates a reasonable risk of death.

(r) "Undue influence" occurs when a person uses the person's role, relationship, or power to exploit, or knowingly assist or cause another to exploit, the trust, dependency, or fear of a vulnerable adult, or uses the person's role, relationship, or power to gain control deceptively over the decision making of the vulnerable adult.

(s) "Vulnerable adult" means an elder adult, or an adult 18 years of age or older who has a mental or physical impairment which substantially affects that person's ability to:

(i) provide personal protection;

(ii) provide necessities such as food, shelter, clothing, or medical or other health care;

(iii) obtain services necessary for health, safety, or welfare;

(iv) carry out the activities of daily living;

(v) manage the adult's own resources; or

(vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(2) Under any circumstances likely to produce death or serious physical injury, any person, including a caretaker, who causes a vulnerable adult to suffer serious physical injury or, having the care or custody of a vulnerable adult, causes or permits that adult’s person or health to be injured, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of aggravated abuse of a vulnerable adult as follows:

(a) if done intentionally or knowingly, the offense is a second degree felony;

(b) if done recklessly, the offense is third degree felony; and

(c) if done with criminal negligence, the offense is a class A misdemeanor.

(3) Under circumstances other than those likely to produce death or serious physical injury any person, including a caretaker, who causes a vulnerable adult to suffer harm, abuse, or neglect; or, having the care or custody of a vulnerable adult, causes or permits that adult's person or health to be injured, abused, or neglected, or causes or permits a vulnerable adult to be placed in a situation where the adult's person or health is endangered, is guilty of the offense of abuse of a vulnerable adult as follows:

(a) if done intentionally or knowingly, the offense is a class A misdemeanor;

(b) if done recklessly, the offense is a class B misdemeanor; and

(c) if done with criminal negligence, the offense is a class C misdemeanor.

(4) (a) A person commits the offense of exploitation of a vulnerable adult when the person:

(i) is in a position of trust and confidence, or has a business relationship, with the vulnerable adult or has undue influence over the vulnerable adult and knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, the vulnerable adult's funds, credit, assets, or other property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of the adult's property, for the benefit of someone other than the vulnerable adult;

(ii) knows or should know that the vulnerable adult lacks the capacity to consent, and obtains or uses, or endeavors to obtain or use, or assists another in obtaining or using or endeavoring to obtain or use, the vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive the vulnerable adult of the use, benefit, or possession of his property for the benefit of someone other than the vulnerable adult;

(iii) unjustly or improperly uses or manages the resources of a vulnerable adult for the profit or advantage of someone other than the vulnerable adult;

(iv) unjustly or improperly uses a vulnerable adult's power of attorney or guardianship for the profit or advantage of someone other than the vulnerable adult; or

(v) involves a vulnerable adult who lacks the capacity to consent in the facilitation or furtherance of any criminal activity.

(b) A person is guilty of the offense of exploitation of a vulnerable adult as follows:

(i) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is or exceeds $5,000, the offense is a second degree felony;

(ii) if done intentionally or knowingly and the aggregate value of the resources used or the profit made is less than $5,000 or cannot be determined, the offense is a third degree felony;

(iii) if done recklessly, the offense is a class A misdemeanor; or

(iv) if done with criminal negligence, the offense is a class B misdemeanor.

(5) It does not constitute a defense to a prosecution for any violation of this section that the accused did not know the age of the victim.

(6) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Amended by Chapter 320, 2011 General Session

76-5-111.1. Reporting requirements -- Investigation -- Immunity -- Violation -- Penalty -- Physician-patient privilege -- Nonmedical healing.

(1) As provided in Section 62A-3-305, any person who has reason to believe that any vulnerable adult has been the subject of abuse, neglect, or exploitation shall immediately notify the nearest peace officer, law enforcement agency, or Adult Protective Services intake within the Department of Human Services, Division of Aging and Adult Services.

(2) Anyone who makes that report in good faith to a law enforcement agency, the Division of Aging and Adult Services, or Adult Protective Services of suspected abuse, neglect, or exploitation is immune from civil and criminal liability in connection with the report or other notification.

(3) (a) When the initial report is made to a peace officer or law enforcement agency, the officer or law enforcement agency shall immediately notify Adult Protective Services intake. Adult Protective Services and law enforcement shall coordinate, as appropriate, their investigations and provide protection to the vulnerable adult as necessary.

(b) Adult Protective Services will notify the Long-Term Care Ombudsman, as defined in Section 62A-3-202, when the initial report to Adult Protective Services involves a resident of a long-term care facility as defined in Section 62A-3-202. The Long-Term Care Ombudsman and Adult Protective Services shall coordinate, as appropriate, in conducting their investigations.

(c) When the initial report or subsequent investigation by Adult Protective Services indicates that a criminal offense may have occurred against a vulnerable adult, Adult Protective Services shall immediately notify the nearest local law enforcement agency. That law enforcement agency shall initiate an investigation in cooperation with Adult Protective Services.

(4) A person who is required to report suspected abuse, neglect, or exploitation of a vulnerable adult under Subsection (1), and who willfully fails to do so, is guilty of a class B misdemeanor.

(5) Under circumstances not amounting to a violation of Section 76-8-508, a person who threatens, intimidates, or attempts to intimidate a vulnerable adult who is the subject of a report, a witness, the person who made the report, or any other person cooperating with an investigation conducted pursuant to this chapter is guilty of a class B misdemeanor.

(6) The physician-patient privilege does not constitute grounds for excluding evidence regarding a vulnerable adult's injuries, or the cause of those injuries, in any judicial or administrative proceeding resulting from a report made in good faith pursuant to this part.

(7) An adult is not considered abused, neglected, or a vulnerable adult for the reason that the adult has chosen to rely solely upon religious, nonmedical forms of healing in lieu of medical care.

Amended by Chapter 50, 2004 General Session

76-5-112. Reckless endangerment -- Penalty.

(1) A person commits reckless endangerment if, under circumstances not amounting to a felony offense, the person recklessly engages in conduct that creates a substantial risk of death or serious bodily injury to another person.

(2) Reckless endangerment is a class A misdemeanor.

Enacted by Chapter 66, 1999 General Session

76-5-112.5. Endangerment of a child or vulnerable adult.

(1) As used in this section:

(a) (i) "Chemical substance" means:

(A) a substance intended to be used as a precursor in the manufacture of a controlled substance;

(B) a substance intended to be used in the manufacture of a controlled substance; or

(C) any fumes or by-product resulting from the manufacture of a controlled substance.

(ii) Intent under this Subsection (1)(a) may be demonstrated by:

(A) the use, quantity, or manner of storage of the substance; or

(B) the proximity of the substance to other precursors or to manufacturing equipment.

(b) "Child" means a human being who is under 18 years of age.

(c) "Controlled substance" is as defined in Section 58-37-2.

(d) "Drug paraphernalia" is as defined in Section 58-37a-3.

(e) "Exposed to" means that the child or vulnerable adult:

(i) is able to access or view an unlawfully possessed:

(A) controlled substance; or

(B) chemical substance;

(ii) has the reasonable capacity to access drug paraphernalia; or

(iii) is able to smell an odor produced during, or as a result of, the manufacture or production of a controlled substance.

(f) "Prescription" is as defined in Section 58-37-2.

(g) "Vulnerable adult" is as defined in Subsection 76-5-111(1).

(2) Unless a greater penalty is otherwise provided by law:

(a) except as provided in Subsection (2)(b) or (c), a person is guilty of a felony of the third degree if the person knowingly or intentionally causes or permits a child or a vulnerable adult to be exposed to, inhale, ingest, or have contact with a controlled substance, chemical substance, or drug paraphernalia;

(b) except as provided in Subsection (2)(c), a person is guilty of a felony of the second degree, if:

(i) the person engages in the conduct described in Subsection (2)(a); and

(ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable adult suffers bodily injury, substantial bodily injury, or serious bodily injury; or

(c) a person is guilty of a felony of the first degree, if:

(i) the person engages in the conduct described in Subsection (2)(a); and

(ii) as a result of the conduct described in Subsection (2)(a), a child or a vulnerable adult dies.

(3) It is an affirmative defense to a violation of this section that the controlled substance:

(a) was obtained by lawful prescription; and

(b) is used or possessed by the person to whom it was lawfully prescribed.

(4) The penalties described in this section are separate from, and in addition to, the penalties and enhancements described in Title 58, Occupations and Professions.

Amended by Chapter 320, 2011 General Session

76-5-113. Surreptitious administration of certain substances -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

(a) "Administer" means the introduction of a substance into the body by injection, inhalation, ingestion, or by any other means.

(b) "Alcoholic beverage" has the same meaning as "alcoholic beverage" in Section 32B-1-102.

(c) "Bodily injury" has the same definition as in Section 76-1-601.

(d) "Controlled substance" has the same definition as in Section 58-37-2.

(e) "Deleterious substance" means a substance which, if administered, would likely cause bodily injury.

(f) "Poisonous" means a substance which, if administered, would likely cause serious bodily injury or death.

(g) "Prescription drug" has the same definition as in Section 58-17b-102.

(h) "Serious bodily injury" has the same definition as in Section 19-2-115.

(i) "Substance" means a controlled substance, poisonous substance, or deleterious substance as defined in this Subsection (1).

(2) In addition to any other offense the actor's conduct may constitute, it is a criminal offense for a person, surreptitiously or by means of fraud, deception, or misrepresentation, to cause another person to unknowingly consume or receive the administration of:

(a) any poisonous, deleterious, or controlled substance; or

(b) any alcoholic beverage.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the substance is a poisonous substance, regardless of whether the substance is a controlled substance or a prescription drug;

(b) a third degree felony if the substance is not within the scope of Subsection (3)(a), and is a controlled substance or a prescription drug; and

(c) a class A misdemeanor if the substance is a deleterious substance or an alcoholic beverage.

(4) (a) It is an affirmative defense to a prosecution under Subsection (2) that the actor:

(i) provided the appropriate administration of a prescription drug; and

(ii) acted on the reasonable belief that the actor's conduct was in the best interest of the well-being of the person to whom the prescription drug was administered.

(b) (i) The defendant shall file and serve on the prosecuting attorney a notice in writing of the defendant's intention to claim a defense under Subsection (4)(a) not fewer than 20 days before the trial.

(ii) The notice shall specifically identify the factual basis for the defense and the names and addresses of the witnesses the defendant proposes to examine to establish the defense.

(c) The prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses the prosecutor proposes to examine in order to contradict or rebut the defendant's claim of an affirmative defense under Subsection (4)(a). This notice shall be filed or served not more than 10 days after receipt of the defendant's notice under Subsection (4)(b), or at another time as the court may direct.

(d) (i) Failure of a party to comply with the requirements of Subsection (4)(b) or (4)(c) entitles the opposing party to a continuance to allow for preparation.

(ii) If the court finds that a party's failure to comply is the result of bad faith, it may impose appropriate sanctions.

(5) This section does not diminish the scope of authorized health care by a health care provider as defined in Section 26-23a-1.

Amended by Chapter 276, 2010 General Session

76-5-201. Criminal homicide -- Elements -- Designations of offenses -- Exceptions.

(1) (a) Except as provided in Subsections (3) and (4), a person commits criminal homicide if the person intentionally, knowingly, recklessly, with criminal negligence, or acting with a mental state otherwise specified in the statute defining the offense, causes the death of another human being, including an unborn child at any stage of its development.

(b) There shall be no cause of action for criminal homicide for the death of an unborn child caused by an abortion, as defined in Section 76-7-301.

(2) Criminal homicide is aggravated murder, murder, manslaughter, child abuse homicide, homicide by assault, negligent homicide, or automobile homicide.

(3) A person is not guilty of criminal homicide of an unborn child if the sole reason for the death of the unborn child is that the person:

(a) refused to consent to:

(i) medical treatment; or

(ii) a cesarean section; or

(b) failed to follow medical advice.

(4) A woman is not guilty of criminal homicide of her own unborn child if the death of her unborn child:

(a) is caused by a criminally negligent act or reckless act of the woman; and

(b) is not caused by an intentional or knowing act of the woman.

Amended by Chapter 13, 2010 General Session

76-5-202. Aggravated murder.

(1) Criminal homicide constitutes aggravated murder if the actor intentionally or knowingly causes the death of another under any of the following circumstances:

(a) the homicide was committed by a person who is confined in a jail or other correctional institution;

(b) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which two or more persons were killed, or during which the actor attempted to kill one or more persons in addition to the victim who was killed;

(c) the actor knowingly created a great risk of death to a person other than the victim and the actor;

(d) the homicide was committed incident to an act, scheme, course of conduct, or criminal episode during which the actor committed or attempted to commit aggravated robbery, robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson, arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child kidnapping;

(e) the homicide was committed incident to one act, scheme, course of conduct, or criminal episode during which the actor committed the crime of abuse or desecration of a dead human body as defined in Subsection 76-9-704(2)(e);

(f) the homicide was committed for the purpose of avoiding or preventing an arrest of the defendant or another by a peace officer acting under color of legal authority or for the purpose of effecting the defendant's or another's escape from lawful custody;

(g) the homicide was committed for pecuniary gain;

(h) the defendant committed, or engaged or employed another person to commit the homicide pursuant to an agreement or contract for remuneration or the promise of remuneration for commission of the homicide;

(i) the actor previously committed or was convicted of:

(i) aggravated murder under this section;

(ii) attempted aggravated murder under this section;

(iii) murder, Section 76-5-203;

(iv) attempted murder, Section 76-5-203; or

(v) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(i);

(j) the actor was previously convicted of:

(i) aggravated assault, Subsection 76-5-103(2);

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

(iii) kidnapping, Section 76-5-301;

(iv) child kidnapping, Section 76-5-301.1;

(v) aggravated kidnapping, Section 76-5-302;

(vi) rape, Section 76-5-402;

(vii) rape of a child, Section 76-5-402.1;

(viii) object rape, Section 76-5-402.2;
(ix) object rape of a child, Section 76-5-402.3;
(x) forcible sodomy, Section 76-5-403;
(xi) sodomy on a child, Section 76-5-403.1;
(xii) aggravated sexual abuse of a child, Section 76-5-404.1;
(xiii) aggravated sexual assault, Section 76-5-405;
(xiv) aggravated arson, Section 76-6-103;
(xv) aggravated burglary, Section 76-6-203;
(xvi) aggravated robbery, Section 76-6-302;
(xvii) felony discharge of a firearm, Section 76-10-508.1; or
(xviii) an offense committed in another jurisdiction which if committed in this state would be a violation of a crime listed in this Subsection (1)(j);
(k) the homicide was committed for the purpose of:
(i) preventing a witness from testifying;
(ii) preventing a person from providing evidence or participating in any legal proceedings or official investigation;
(iii) retaliating against a person for testifying, providing evidence, or participating in any legal proceedings or official investigation; or
(iv) disrupting or hindering any lawful governmental function or enforcement of laws;
(l) the victim is or has been a local, state, or federal public official, or a candidate for public office, and the homicide is based on, is caused by, or is related to that official position, act, capacity, or candidacy;
(m) the victim is or has been a peace officer, law enforcement officer, executive officer, prosecuting officer, jailer, prison official, firefighter, judge or other court official, juror, probation officer, or parole officer, and the victim is either on duty or the homicide is based on, is caused by, or is related to that official position, and the actor knew, or reasonably should have known, that the victim holds or has held that official position;
(n) the homicide was committed:
(i) by means of a destructive device, bomb, explosive, incendiary device, or similar device which was planted, hidden, or concealed in any place, area, dwelling, building, or structure, or was mailed or delivered; or
(ii) by means of any weapon of mass destruction as defined in Section 76-10-401;
(o) the homicide was committed during the act of unlawfully assuming control of any aircraft, train, or other public conveyance by use of threats or force with intent to obtain any valuable consideration for the release of the public conveyance or any passenger, crew member, or any other person aboard, or to direct the route or movement of the public conveyance or otherwise exert control over the public conveyance;
(p) the homicide was committed by means of the administration of a poison or of any lethal substance or of any substance administered in a lethal amount, dosage, or quantity;
(q) the victim was a person held or otherwise detained as a shield, hostage, or for ransom;

(r) the homicide was committed in an especially heinous, atrocious, cruel, or exceptionally depraved manner, any of which must be demonstrated by physical torture, serious physical abuse, or serious bodily injury of the victim before death;

(s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or after death, in a manner demonstrating the actor's depravity of mind; or

(t) the victim, at the time of the death of the victim:

(i) was younger than 14 years of age; and

(ii) was not an unborn child.

(2) Criminal homicide constitutes aggravated murder if the actor, with reckless indifference to human life, causes the death of another incident to an act, scheme, course of conduct, or criminal episode during which the actor is a major participant in the commission or attempted commission of:

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

(b) child kidnapping, Section 76-5-301.1;

(c) rape of a child, Section 76-5-402.1;

(d) object rape of a child, Section 76-5-402.3;

(e) sodomy on a child, Section 76-5-403.1; or

(f) sexual abuse or aggravated sexual abuse of a child, Section 76-5-404.1.

(3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder is a capital felony.

(b) If a notice of intent to seek the death penalty has not been filed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice of intent to seek the death penalty. The notice shall be served on the defendant or defense counsel and filed with the court.

(ii) Notice of intent to seek the death penalty may be served and filed more than 60 days after the arraignment upon written stipulation of the parties or upon a finding by the court of good cause.

(d) Without the consent of the prosecutor, the court may not accept a plea of guilty to noncapital first degree felony aggravated murder during the period in which the prosecutor may file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

(e) If the defendant was younger than 18 years of age at the time the offense was committed, aggravated murder is a noncapital first degree felony punishable as provided in Section 76-3-207.7.

(4) (a) It is an affirmative defense to a charge of aggravated murder or attempted aggravated murder that the defendant caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(c) This affirmative defense reduces charges only as follows:

(i) aggravated murder to murder; and
(ii) attempted aggravated murder to attempted murder.
(5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense does not merge with the crime of aggravated murder.
(b) A person who is convicted of aggravated murder, based on an aggravating circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Amended by Chapter 81, 2013 General Session

76-5-203. Murder.
(1) As used in this section, "predicate offense" means:
(a) a clandestine drug lab violation under Section 58-37d-4 or 58-37d-5;
(b) child abuse, under Subsection 76-5-109(2)(a), when the victim is younger than 18 years of age;
(c) kidnapping under Section 76-5-301;
(d) child kidnapping under Section 76-5-301.1;
(e) aggravated kidnapping under Section 76-5-302;
(f) rape of a child under Section 76-5-402.1;
(g) object rape of a child under Section 76-5-402.3;
(h) sodomy upon a child under Section 76-5-403.1;
(i) forcible sexual abuse under Section 76-5-404;
(j) sexual abuse of a child or aggravated sexual abuse of a child under Section 76-5-404.1;
(k) rape under Section 76-5-402;
(l) object rape under Section 76-5-402.2;
(m) forcible sodomy under Section 76-5-403;
(n) aggravated sexual assault under Section 76-5-405;
(o) arson under Section 76-6-102;
(p) aggravated arson under Section 76-6-103;
(q) burglary under Section 76-6-202;
(r) aggravated burglary under Section 76-6-203;
(s) robbery under Section 76-6-301;
(t) aggravated robbery under Section 76-6-302;
(u) escape or aggravated escape under Section 76-8-309; or
(v) a felony violation of Section 76-10-508 or 76-10-508.1 regarding discharge of a firearm or dangerous weapon.
(2) Criminal homicide constitutes murder if:
(a) the actor intentionally or knowingly causes the death of another;
(b) intending to cause serious bodily injury to another, the actor commits an act clearly dangerous to human life that causes the death of another;
(c) acting under circumstances evidencing a depraved indifference to human life, the actor knowingly engages in conduct which creates a grave risk of death to another and thereby causes the death of another;
(d) (i) the actor is engaged in the commission, attempted commission, or

immediate flight from the commission or attempted commission of any predicate offense, or is a party to the predicate offense;

(ii) a person other than a party as defined in Section 76-2-202 is killed in the course of the commission, attempted commission, or immediate flight from the commission or attempted commission of any predicate offense; and

(iii) the actor acted with the intent required as an element of the predicate offense;

(e) the actor recklessly causes the death of a peace officer or military service member in uniform while in the commission or attempted commission of:

(i) an assault against a peace officer under Section 76-5-102.4;

(ii) interference with a peace officer while making a lawful arrest under Section 76-8-305 if the actor uses force against a peace officer; or

(iii) an assault against a military service member in uniform under Section 76-5-102.4;

(f) commits a homicide which would be aggravated murder, but the offense is reduced pursuant to Subsection 76-5-202(4); or

(g) the actor commits aggravated murder, but special mitigation is established under Section 76-5-205.5.

(3) (a) Murder is a first degree felony.

(b) A person who is convicted of murder shall be sentenced to imprisonment for an indeterminate term of not less than 15 years and which may be for life.

(4) (a) It is an affirmative defense to a charge of murder or attempted murder that the defendant caused the death of another or attempted to cause the death of another under a reasonable belief that the circumstances provided a legal justification or excuse for the conduct although the conduct was not legally justifiable or excusable under the existing circumstances.

(b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(c) This affirmative defense reduces charges only from:

(i) murder to manslaughter; and

(ii) attempted murder to attempted manslaughter.

(5) (a) Any predicate offense described in Subsection (1) that constitutes a separate offense does not merge with the crime of murder.

(b) A person who is convicted of murder, based on a predicate offense described in Subsection (1) that constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

Amended by Chapter 125, 2009 General Session
Amended by Chapter 206, 2009 General Session

76-5-204. Death of other than intended victim no defense.

In any prosecution for criminal homicide, evidence that the actor caused the death of a person other than the intended victim shall not constitute a defense for any purpose to criminal homicide.

Enacted by Chapter 196, 1973 General Session

76-5-205. Manslaughter.

(1) Criminal homicide constitutes manslaughter if the actor:

(a) recklessly causes the death of another;

(b) commits a homicide which would be murder, but the offense is reduced pursuant to Subsection 76-5-203(4); or

(c) commits murder, but special mitigation is established under Section 76-5-205.5.

(2) Manslaughter is a felony of the second degree.

(3) (a) In addition to the penalty provided under this section or any other section, a person who is convicted of violating this section shall have the person's driver license revoked under Section 53-3-220 if the death of another person results from driving a motor vehicle.

(b) The court shall forward the report of the conviction resulting from driving a motor vehicle to the Driver License Division in accordance with Section 53-3-218.

Amended by Chapter 157, 2010 General Session

76-5-205.5. Special mitigation reducing the level of criminal homicide offense -- Burden of proof -- Application to reduce offense.

(1) Special mitigation exists when the actor causes the death of another or attempts to cause the death of another:

(a) (i) under circumstances that are not legally justified, but the actor acts under a delusion attributable to a mental illness as defined in Section 76-2-305;

(ii) the nature of the delusion is such that, if the facts existed as the defendant believed them to be in the delusional state, those facts would provide a legal justification for the defendant's conduct; and

(iii) the defendant's actions, in light of the delusion, were reasonable from the objective viewpoint of a reasonable person; or

(b) under the influence of extreme emotional distress for which there is a reasonable explanation or excuse.

(2) A defendant who was under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense may not claim mitigation of the offense under Subsection (1)(a) on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness.

(3) Under Subsection (1)(b), emotional distress does not include:

(a) a condition resulting from mental illness as defined in Section 76-2-305; or

(b) distress that is substantially caused by the defendant's own conduct.

(4) The reasonableness of an explanation or excuse under Subsection (1)(b) shall be determined from the viewpoint of a reasonable person under the then existing circumstances.

(5) (a) If the trier of fact finds the elements of an offense as listed in Subsection

(5)(b) are proven beyond a reasonable doubt, and also that the existence of special mitigation under this section is established by a preponderance of the evidence, it shall return a verdict on the reduced charge as provided in Subsection (5)(b).

(b) If under Subsection (5)(a) the offense is:

(i) aggravated murder, the defendant shall instead be found guilty of murder;

(ii) attempted aggravated murder, the defendant shall instead be found guilty of attempted murder;

(iii) murder, the defendant shall instead be found guilty of manslaughter; or

(iv) attempted murder, the defendant shall instead be found guilty of attempted manslaughter.

(6) (a) If a jury is the trier of fact, a unanimous vote of the jury is required to establish the existence of the special mitigation.

(b) If the jury does find special mitigation by a unanimous vote, it shall return a verdict on the reduced charge as provided in Subsection (5).

(c) If the jury finds by a unanimous vote that special mitigation has not been established, it shall convict the defendant of the greater offense for which the prosecution has established all the elements beyond a reasonable doubt.

(d) If the jury is unable to unanimously agree whether or not special mitigation has been established, the result is a hung jury.

(7) (a) If the issue of special mitigation is submitted to the trier of fact, it shall return a special verdict indicating whether the existence of special mitigation has been found.

(b) The trier of fact shall return the special verdict at the same time as the general verdict, to indicate the basis for its general verdict.

(8) Special mitigation under this section does not, in any case, reduce the level of an offense by more than one degree from that offense, the elements of which the evidence has established beyond a reasonable doubt.

Amended by Chapter 206, 2009 General Session

76-5-206. Negligent homicide.

(1) Criminal homicide constitutes negligent homicide if the actor, acting with criminal negligence, causes the death of another.

(2) Negligent homicide is a class A misdemeanor.

(3) (a) In addition to the penalty provided under this section or any other section, a person who is convicted of violating this section shall have the person's driver license revoked under Section 53-3-220 if the death of another person results from driving a motor vehicle.

(b) The court shall forward the report of the conviction to the Driver License Division in accordance with Section 53-3-218.

Amended by Chapter 157, 2010 General Session

76-5-207. Automobile homicide.

(1) As used in this section:

(a) "Drug" or "drugs" means:

(i) a controlled substance as defined in Section 58-37-2;

(ii) a drug as defined in Section 58-17b-102; or

(iii) any substance that, when knowingly, intentionally, or recklessly taken into the human body, can impair the ability of a person to safely operate a motor vehicle.

(b) "Motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

(2) (a) Criminal homicide is automobile homicide, a third degree felony, if the person operates a motor vehicle in a negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) A conviction for a violation of this Subsection (2) is a second degree felony if it is subsequent to a conviction as defined in Subsection 41-6a-501(2).

(c) As used in this Subsection (2), "negligent" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

(3) (a) Criminal homicide is automobile homicide, a second degree felony, if the person operates a motor vehicle in a criminally negligent manner causing the death of another and:

(i) has sufficient alcohol in his body that a subsequent chemical test shows that the person has a blood or breath alcohol concentration of .08 grams or greater at the time of the test;

(ii) is under the influence of alcohol, any drug, or the combined influence of alcohol and any drug to a degree that renders the person incapable of safely operating a vehicle; or

(iii) has a blood or breath alcohol concentration of .08 grams or greater at the time of operation.

(b) As used in this Subsection (3), "criminally negligent" means criminal negligence as defined by Subsection 76-2-103(4).

(4) The standards for chemical breath analysis as provided by Section 41-6a-515 and the provisions for the admissibility of chemical test results as provided by Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.

(5) Calculations of blood or breath alcohol concentration under this section shall be made in accordance with Subsection 41-6a-502(1).

(6) The fact that a person charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

(7) Evidence of a defendant's blood or breath alcohol content or drug content is

admissible except when prohibited by Rules of Evidence or the constitution.

(8) A person is guilty of a separate offense for each victim suffering bodily injury or serious bodily injury as a result of the person's violation of Section 41-6a-502 or death as a result of the person's violation of this section whether or not the injuries arise from the same episode of driving.

Amended by Chapter 214, 2009 General Session

76-5-207.5. Automobile homicide involving using a handheld wireless communication device while driving.

(1) As used in this section:

(a) "Criminally negligent" means criminal negligence as defined by Subsection 76-2-103(4).

(b) "Handheld wireless communication device" has the same meaning as defined in Section 41-6a-1716.

(c) "Motor vehicle" means any self-propelled vehicle and includes any automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

(d) "Negligent" means simple negligence, the failure to exercise that degree of care that reasonable and prudent persons exercise under like or similar circumstances.

(2) Criminal homicide is automobile homicide, a third degree felony, if the person operates a moving motor vehicle in a negligent manner:

(a) while using a handheld wireless communication device in violation of Section 41-6a-1716; and

(b) causing the death of another person.

(3) Criminal homicide is automobile homicide, a second degree felony, if the person operates a moving motor vehicle in a criminally negligent manner:

(a) while using a handheld wireless communication device in violation of Section 41-6a-1716; and

(b) causing the death of another person.

Amended by Chapter 193, 2012 General Session

76-5-208. Child abuse homicide.

(1) Criminal homicide constitutes child abuse homicide if, under circumstances not amounting to aggravated murder, as described in Section 76-5-202, the actor causes the death of a person under 18 years of age and the death results from child abuse, as defined in Subsection 76-5-109(1):

(a) if the child abuse is done recklessly under Subsection 76-5-109(2)(b);

(b) if the child abuse is done with criminal negligence under Subsection 76-5-109(2)(c); or

(c) if, under circumstances not amounting to the type of child abuse homicide described in Subsection (1)(a), the child abuse is done intentionally, knowingly, recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or (c).

(2) Child abuse homicide as described in Subsection (1)(a) is a first degree felony.

(3) Child abuse homicide as described in Subsections (1)(b) and (c) is a second degree felony.

Amended by Chapter 152, 2008 General Session

76-5-209. Homicide by assault -- Penalty.

(1) A person commits homicide by assault if, under circumstances not amounting to aggravated murder, murder, or manslaughter, a person causes the death of another while intentionally or knowingly attempting, with unlawful force or violence, to do bodily injury to another.

(2) Homicide by assault is a third degree felony.

Enacted by Chapter 291, 1995 General Session

76-5-301. Kidnapping.

(1) An actor commits kidnapping if the actor intentionally or knowingly, without authority of law, and against the will of the victim:

(a) detains or restrains the victim for any substantial period of time;

(b) detains or restrains the victim in circumstances exposing the victim to risk of bodily injury;

(c) holds the victim in involuntary servitude;

(d) detains or restrains a minor without the consent of the minor's parent or legal guardian or the consent of a person acting in loco parentis, if the minor is 14 years of age or older but younger than 18 years of age; or

(e) moves the victim any substantial distance or across a state line.

(2) As used in this section, acting "against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is a mentally incompetent person.

(3) Kidnapping is a second degree felony.

Amended by Chapter 301, 2001 General Session

76-5-301.1. Child kidnapping.

(1) An actor commits child kidnapping if the actor intentionally or knowingly, without authority of law, and by any means and in any manner, seizes, confines, detains, or transports a child under the age of 14 without the consent of the victim's parent or guardian, or the consent of a person acting in loco parentis.

(2) Violation of Section 76-5-303 is not a violation of this section.

(3) Child kidnapping is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during the course of the commission of the child kidnapping the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the child kidnapping the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (3)(a) or (b):

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(c).

(6) Subsections (3)(b) and (3)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-302. Aggravated kidnapping.

(1) An actor commits aggravated kidnapping if the actor, in the course of committing unlawful detention or kidnapping:

(a) possesses, uses, or threatens to use a dangerous weapon as defined in Section 76-1-601; or

(b) acts with intent:

(i) to hold the victim for ransom or reward, or as a shield or hostage, or to compel a third person to engage in particular conduct or to forbear from engaging in particular conduct;

(ii) to facilitate the commission, attempted commission, or flight after commission or attempted commission of a felony;

(iii) to hinder or delay the discovery of or reporting of a felony;

(iv) to inflict bodily injury on or to terrorize the victim or another;

(v) to interfere with the performance of any governmental or political function; or

(vi) to commit a sexual offense as described in Title 76, Chapter 5, Part 4, Sexual Offenses.

(2) As used in this section, "in the course of committing unlawful detention or kidnapping" means in the course of committing, attempting to commit, or in the immediate flight after the attempt or commission of a violation of:

(a) Section 76-5-301, kidnapping; or

(b) Section 76-5-304, unlawful detention.

(3) Aggravated kidnapping is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b), (3)(c), or (4), not less than 15 years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), life without parole, if the trier of fact finds that during the course of the commission of the aggravated kidnapping the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated kidnapping, the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(a) or (b), a court finds that a lesser term than the term described in Subsection (3)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (3)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (3)(a) or (b):

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(c).

(6) Subsections (3)(b) and (3)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-303. Custodial interference.

(1) As used in this section:

(a) "Child" means a person under the age of 18.

(b) "Custody" means court-ordered physical custody entered by a court of competent jurisdiction.

(c) "Visitation" means court-ordered parent-time or visitation entered by a court of competent jurisdiction.

(2) (a) A person who is entitled to custody of a child is guilty of custodial interference if, during a period of time when another person is entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from the person entitled to visitation of the child, with the intent to interfere with the visitation of the child.

(b) A person who is entitled to visitation of a child is guilty of custodial interference if, during a period of time when the person is not entitled to visitation of the child, the person takes, entices, conceals, detains, or withholds the child from a person who is entitled to custody of the child, with the intent to interfere with the custody of the child.

(3) Except as provided in Subsection (4) or (5), custodial interference is a class B misdemeanor.

(4) Except as provided in Subsection (5), the actor described in Subsection (2) is guilty of a class A misdemeanor if the actor:

(a) commits custodial interference; and

(b) has been convicted of custodial interference at least twice in the two-year period immediately preceding the day on which the commission of custodial interference described in Subsection (4)(a) occurs.

(5) Custodial interference is a felony of the third degree if, during the course of the custodial interference, the actor described in Subsection (2) removes, causes the removal, or directs the removal of the child from the state.

(6) In addition to the affirmative defenses described in Section 76-5-305, it is an affirmative defense to the crime of custodial interference that:

(a) the action is consented to by the person whose custody or visitation of the child was interfered with; or

(b) (i) the action is based on a reasonable belief that the action is necessary to protect a child from abuse, including sexual abuse; and

(ii) before engaging in the action, the person reports the person's intention to engage in the action, and the basis for the belief described in Subsection (6)(b)(i), to the Division of Child and Family Services or law enforcement.

(7) In addition to the other penalties described in this section, a person who is convicted of custodial interference is subject to the driver license suspension provisions of Subsection 53-3-220(1)(a)(xviii).

Repealed and Re-enacted by Chapter 374, 2010 General Session

76-5-303.5. Notification of conviction of custodial interference.

(1) As used in this section:

(a) "Convicted" means that a person has received a conviction.

(b) "Conviction" is as defined in Section 53-3-102.

(2) If a person is convicted of custodial interference under Section 76-5-303, the court shall notify the Driver License Division, created in Section 53-3-103, of the conviction, and whether the conviction is for:

(a) a class B misdemeanor, under Subsection 76-5-303(3);

(b) a class A misdemeanor, under Subsection 76-5-303(4); or

(c) a felony, under Subsection 76-5-303(5).

Enacted by Chapter 374, 2010 General Session

76-5-304. Unlawful detention and unlawful detention of a minor.

(1) An actor commits unlawful detention if the actor intentionally or knowingly, without authority of law, and against the will of the victim, detains or restrains the victim under circumstances not constituting a violation of:

(a) kidnapping, Section 76-5-301;

(b) child kidnapping, Section 76-5-301.1; or

(c) aggravated kidnapping, Section 76-5-302.

(2) An actor commits unlawful detention of a minor if the actor intentionally or knowingly, without authority of law, and against the will of the victim, coerces or exerts influence over the victim with the intent to cause the victim to remain with the actor for an unreasonable period of time under the circumstances, and:

(a) the act is under circumstances not constituting a violation of:
(i) kidnapping, Section 76-5-301;
(ii) child kidnapping, Section 76-5-301.1; or
(iii) aggravated kidnapping, Section 76-5-302; and
(b) the actor is at least four or more years older than the victim.
(3) As used in this section, acting "against the will of the victim" includes acting without the consent of the legal guardian or custodian of a victim who is:
(a) a mentally incompetent person; or
(b) a minor who is 14 or 15 years of age.
(4) Unlawful detention is a class B misdemeanor.

Amended by Chapter 39, 2012 General Session

76-5-305. Defenses.
It is a defense under this part that:
(1) the actor was acting under a reasonable belief that:
(a) the conduct was necessary to protect any person from imminent bodily injury or death; or
(b) the detention or restraint was authorized by law; or
(2) the alleged victim is younger than 18 years of age or is mentally incompetent, and the actor was acting under a reasonable belief that the custodian, guardian, legal guardian, custodial parent, or person acting in loco parentis to the victim would, if present, have consented to the actor's conduct.

Enacted by Chapter 301, 2001 General Session

76-5-306. Lesser included offenses.
In this part, the following offenses are lesser included offenses of Section 76-5-302, aggravated kidnapping:
(1) Section 76-5-301, kidnapping; and
(2) Section 76-5-304, unlawful detention or unlawful detention of a minor.

Amended by Chapter 39, 2012 General Session

76-5-307. Definitions.
As used in Sections 76-5-308 through 76-5-310 of this part:
(1) "Child" means a person younger than 18 years of age.
(2) "Commercial purpose" includes direct or indirect participation in or facilitation of the transportation of one or more persons for the purpose of:
(a) charging or obtaining a fee for the transportation; or
(b) obtaining, exchanging, or receiving any thing or item of value or an attempt to conduct any of these activities.
(3) "Facilitation" regarding transportation under Subsection (2) includes providing:
(a) travel arrangement services;

(b) payment for the costs of travel; or

(c) property that would advance an act of transportation, including a vehicle or other means of transportation, a weapon, false identification, and making lodging available, including by rent, lease, or sale.

(4) "Family member" means a person's parent, grandparent, sibling, or any other person related to the person by consanguinity or affinity to the second degree.

Amended by Chapter 196, 2013 General Session
Amended by Chapter 278, 2013 General Session

76-5-308. Human trafficking -- Human smuggling.

(1) An actor commits human trafficking for forced labor or forced sexual exploitation if the actor recruits, harbors, transports, or obtains a person through the use of force, fraud, or coercion by means of:

(a) threatening serious harm to, or physical restraint against, that person or a third person;

(b) destroying, concealing, removing, confiscating, or possessing any passport, immigration document, or other government identification document;

(c) abusing or threatening abuse of the law or legal process against the person or a third person;

(d) using a condition of a person being a debtor due to a pledge of the debtor's personal services or the personal services of a person under the control of the debtor as a security for debt where the reasonable value of the services is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined; or

(e) using a condition of servitude by means of any scheme, plan, or pattern intended to cause a person to believe that if the person did not enter into or continue in a condition of servitude, that person or a third person would suffer serious harm or physical restraint, or would be threatened with abuse of legal process.

(2) (a) Human trafficking for forced labor includes forced labor in industrial facilities, sweatshops, households, agricultural enterprises, and any other workplace.

(b) Human trafficking for forced sexual exploitation includes all forms of forced commercial sexual activity, including forced sexually explicit performance, forced prostitution, forced participation in the production of pornography, forced performance in strip clubs, and forced exotic dancing or display.

(3) A person commits human smuggling by transporting or procuring the transportation for one or more persons for a commercial purpose, knowing or having reason to know that the person or persons transported or to be transported are not:

(a) citizens of the United States;

(b) permanent resident aliens; or

(c) otherwise lawfully in this state or entitled to be in this state.

Amended by Chapter 196, 2013 General Session

76-5-309. Human trafficking and human smuggling -- Penalties.

(1) Human trafficking for forced labor and human trafficking for forced sexual exploitation are each a second degree felony, except under Section 76-5-310.

(2) Human smuggling, under Section 76-5-308 of one or more persons is a third degree felony, except under Section 76-5-310.

(3) Human trafficking for forced labor or for forced sexual exploitation and human smuggling are each a separate offense from any other crime committed in relationship to the commission of either of these offenses.

(4) Under circumstances not amounting to aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4)(h), a person who benefits, receives, or exchanges anything of value from knowing participation in:

(a) human trafficking for forced labor or for forced sexual exploitation in violation of Section 76-5-308 is guilty of a second degree felony; and

(b) human smuggling is guilty of a third degree felony.

(5) A person commits a separate offense of human trafficking or human smuggling for each person who is smuggled or trafficked under Section 76-5-308 or 76-5-310.

Amended by Chapter 135, 2014 General Session
Amended by Chapter 141, 2014 General Session

76-5-310. Aggravated human trafficking and aggravated human smuggling -- Penalties.

(1) An actor commits aggravated human trafficking for forced labor or forced sexual exploitation or aggravated human smuggling if, in the course of committing a human trafficking for forced labor or for forced sexual exploitation, a violation of Section 76-5-308, or human smuggling offense under Section 76-5-308, the offense:

(a) results in the death of the trafficked or smuggled person;

(b) results in serious bodily injury of the trafficked or smuggled person;

(c) involves:

(i) rape under Section 76-5-402;

(ii) rape of a child under Section 76-5-402.1;

(iii) object rape under Section 76-5-402.2;

(iv) object rape of a child under Section 76-5-402.3;

(v) forcible sodomy under Section 76-5-403;

(vi) sodomy on a child under Section 76-5-403.1;

(vii) aggravated sexual abuse of a child under Section 76-5-404.1; or

(viii) aggravated sexual assault under 76-5-405;

(d) involves 10 or more victims in a single episode of human trafficking or human smuggling; or

(e) involves a victim who is held against the victim's will for longer than 30 consecutive days.

(2) An actor commits aggravated human trafficking for forced labor or forced sexual exploitation if the actor recruits, harbors, transports, or obtains a child for forced labor or forced sexual exploitation.

(3) An actor commits aggravated human smuggling if the actor commits human

smuggling under Section 76-5-308 and any human being whom the person engages in smuggling is:

(a) a child; and

(b) not accompanied by a family member who is 18 years of age or older.

(4) (a) Aggravated human trafficking is a first degree felony.

(b) Aggravated human smuggling is a second degree felony.

(c) Aggravated human trafficking and aggravated human smuggling are each a separate offense from any other crime committed in relationship to the commission of either of these offenses.

Amended by Chapter 196, 2013 General Session

76-5-401. Unlawful sexual activity with a minor -- Elements -- Penalties -- Evidence of age raised by defendant.

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person commits unlawful sexual activity with a minor if, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, or aggravated sexual assault, in violation of Section 76-5-405, the actor:

(a) has sexual intercourse with the minor;

(b) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(3) A violation of Subsection (2) is a third degree felony unless the defendant establishes by a preponderance of the evidence the mitigating factor that the defendant is less than four years older than the minor at the time the sexual activity occurred, in which case it is a class B misdemeanor.

Repealed and Re-enacted by Chapter 82, 1998 General Session

76-5-401.1. Sexual abuse of a minor.

(1) For purposes of this section "minor" is a person who is 14 years of age or older, but younger than 16 years of age, at the time the sexual activity described in this section occurred.

(2) A person commits sexual abuse of a minor if the person is seven years or more older than the minor or holds a relationship of special trust as an adult teacher, employee, or volunteer, as described in Subsection 76-5-404.1(1)(c)(xix) and, under circumstances not amounting to rape, in violation of Section 76-5-402, object rape, in

violation of Section 76-5-402.2, forcible sodomy, in violation of Section 76-5-403, aggravated sexual assault, in violation of Section 76-5-405, unlawful sexual activity with a minor, in violation of Section 76-5-401, or an attempt to commit any of those offenses, the person touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) (a) A violation of this section is a class A misdemeanor, except under Subsection (3)(b).

(b) A violation of this section is a third degree felony if the actor at the time of the commission of the offense:

(i) is 18 years of age or older;

(ii) held a position of special trust as a teacher or a volunteer at a school, as that position is defined in Subsection 76-5-404.1(1)(c)(xix); and

(iii) committed the offense against an individual who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.

Amended by Chapter 135, 2014 General Session

76-5-401.2. Unlawful sexual conduct with a 16- or 17-year-old.

(1) As used in this section, "minor" means a person who is 16 years of age or older, but younger than 18 years of age, at the time the sexual conduct described in Subsection (2) occurred.

(2) (a) A person commits unlawful sexual conduct with a minor if, under circumstances not amounting to an offense listed under Subsection (3), a person who is:

(i) seven or more years older but less than 10 years older than the minor at the time of the sexual conduct engages in any conduct listed in Subsection (2)(b), and the person knew or reasonably should have known the age of the minor;

(ii) 10 or more years older than the minor at the time of the sexual conduct and engages in any conduct listed in Subsection (2)(b); or

(iii) holds a relationship of special trust as an adult teacher, employee, or volunteer, as described in Subsection 76-5-404.1(1)(c)(xix).

(b) As used in Subsection (2)(a), "sexual conduct" refers to when the person:

(i) has sexual intercourse with the minor;

(ii) engages in any sexual act with the minor involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant;

(iii) causes the penetration, however slight, of the genital or anal opening of the minor by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the

sex of any participant; or

(iv) touches the anus, buttocks, or any part of the genitals of the minor, or touches the breast of a female minor, or otherwise takes indecent liberties with the minor, or causes a minor to take indecent liberties with the actor or another person, with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) The offenses referred to in Subsection (2) are:

(a) (i) rape, in violation of Section 76-5-402;

(ii) object rape, in violation of Section 76-5-402.2;

(iii) forcible sodomy, in violation of Section 76-5-403;

(iv) forcible sexual abuse, in violation of Section 76-5-404; or

(v) aggravated sexual assault, in violation of Section 76-5-405; or

(b) an attempt to commit any offense under Subsection (3)(a).

(4) A violation of Subsection (2)(b)(i), (ii), or (iii) is a third degree felony.

(5) (a) A violation of Subsection (2)(b)(iv) is a class A misdemeanor, except under Subsection (5)(b).

(b) A violation of Subsection (2)(b)(iv) is a third degree felony if the actor at the time of the commission of the offense:

(i) is 18 years of age or older;

(ii) held a position of special trust as a teacher or a volunteer at a school, as that position is defined in Subsection 76-5-404.1(1)(c)(xix); and

(iii) committed the offense against an individual who at the time of the offense was enrolled as a student at the school where the actor was employed or was acting as a volunteer.

Amended by Chapter 135, 2014 General Session

76-5-402. Rape.

(1) A person commits rape when the actor has sexual intercourse with another person without the victim's consent.

(2) This section applies whether or not the actor is married to the victim.

(3) Rape is a felony of the first degree, punishable by a term of imprisonment of:

(a) except as provided in Subsection (3)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (3)(c) or (4), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the rape the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the rape the defendant was previously convicted of a grievous sexual offense.

(4) If, when imposing a sentence under Subsection (3)(b), a court finds that a lesser term than the term described in Subsection (3)(b) is in the interests of justice and

states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(5) The provisions of Subsection (4) do not apply when a person is sentenced under Subsection (3)(a) or (c).

(6) Imprisonment under Subsection (3)(b), (3)(c), or (4) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-402.1. Rape of a child.

(1) A person commits rape of a child when the person has sexual intercourse with a child who is under the age of 14.

(2) Rape of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (2)(b), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the rape of a child, the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape of a child the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-402.2. Object rape.

(1) A person who, without the victim's consent, causes the penetration, however slight, of the genital or anal opening of another person who is 14 years of age or older, by any foreign object, substance, instrument, or device, including a part of the human body other than the mouth or genitals, with intent to cause substantial emotional or bodily pain to the victim or with the intent to arouse or gratify the sexual desire of any person, commits an offense which is a first degree felony, punishable by a term of imprisonment of:

(a) except as provided in Subsection (1)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (1)(c) or (2), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the object rape the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the object rape, the defendant was younger

than 18 years of age and was previously convicted of a grievous sexual offense; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the object rape, the defendant was previously convicted of a grievous sexual offense.

(2) If, when imposing a sentence under Subsection (1)(b), a court finds that a lesser term than the term described in Subsection (1)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(3) The provisions of Subsection (2) do not apply when a person is sentenced under Subsection (1)(a) or (c).

(4) Imprisonment under Subsection (1)(b), (1)(c), or (2) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-402.3. Object rape of a child -- Penalty.

(1) A person commits object rape of a child when the person causes the penetration or touching, however slight, of the genital or anal opening of a child who is under the age of 14 by any foreign object, substance, instrument, or device, not including a part of the human body, with intent to cause substantial emotional or bodily pain to the child or with the intent to arouse or gratify the sexual desire of any person.

(2) Object rape of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (2)(b) not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the object rape of a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the object rape of a child the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-403. Sodomy -- Forcible sodomy.

(1) A person commits sodomy when the actor engages in any sexual act with a person who is 14 years of age or older involving the genitals of one person and mouth or anus of another person, regardless of the sex of either participant.

(2) A person commits forcible sodomy when the actor commits sodomy upon another without the other's consent.

(3) Sodomy is a class B misdemeanor.

(4) Forcible sodomy is a first degree felony, punishable by a term of imprisonment of:

(a) except as provided in Subsection (4)(b) or (c), not less than five years and which may be for life;

(b) except as provided in Subsection (4)(c) or (5), 15 years and which may be for life, if the trier of fact finds that:

(i) during the course of the commission of the forcible sodomy the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the rape, the defendant was younger than 18 years of age and was previously convicted of a grievous sexual offense; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the forcible sodomy the defendant was previously convicted of a grievous sexual offense.

(5) If, when imposing a sentence under Subsection (4)(b), a court finds that a lesser term than the term described in Subsection (4)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(6) The provisions of Subsection (5) do not apply when a person is sentenced under Subsection (4)(a) or (c).

(7) Imprisonment under Subsection (4)(b), (4)(c), or (5) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-403.1. Sodomy on a child.

(1) A person commits sodomy upon a child if the actor engages in any sexual act upon or with a child who is under the age of 14, involving the genitals or anus of the actor or the child and the mouth or anus of either person, regardless of the sex of either participant.

(2) Sodomy upon a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (2)(b), not less than 25 years and which may be for life; or

(b) life without parole, if the trier of fact finds that:

(i) during the course of the commission of the sodomy upon a child the defendant caused serious bodily injury to another; or

(ii) at the time of the commission of the sodomy upon a child, the defendant was previously convicted of a grievous sexual offense.

(3) Subsection (2)(b) does not apply if the defendant was younger than 18 years of age at the time of the offense.

(4) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-404. Forcible sexual abuse.

(1) A person commits forcible sexual abuse if the victim is 14 years of age or older and, under circumstances not amounting to rape, object rape, sodomy, or attempted rape or sodomy, the actor touches the anus, buttocks, or any part of the genitals of another, or touches the breast of a female, or otherwise takes indecent liberties with another, or causes another to take indecent liberties with the actor or another, with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, without the consent of the other, regardless of the sex of any participant.

(2) Forcible sexual abuse is:

(a) except as provided in Subsection (2)(b), a felony of the second degree, punishable by a term of imprisonment of not less than one year nor more than 15 years; or

(b) except as provided in Subsection (3), a felony of the first degree, punishable by a term of imprisonment for 15 years and which may be for life, if the trier of fact finds that during the course of the commission of the forcible sexual abuse the defendant caused serious bodily injury to another.

(3) If, when imposing a sentence under Subsection (2)(b), a court finds that a lesser term than the term described in Subsection (2)(b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) 10 years and which may be for life; or

(b) six years and which may be for life.

(4) Imprisonment under Subsection (2)(b) or (3) is mandatory in accordance with Section 76-3-406.

Amended by Chapter 218, 2010 General Session

76-5-404.1. Sexual abuse of a child -- Aggravated sexual abuse of a child.

(1) As used in this section:

(a) "Adult" means an individual 18 years of age or older.

(b) "Child" means an individual under the age of 14.

(c) "Position of special trust" means:

(i) an adoptive parent;

(ii) an athletic manager who is an adult;

(iii) an aunt;

(iv) a babysitter;

(v) a coach;

(vi) a cohabitant of a parent if the cohabitant is an adult;

(vii) a counselor;

(viii) a doctor or physician;

(ix) an employer;

(x) a foster parent;

(xi) a grandparent;
(xii) a legal guardian;
(xiii) a natural parent;
(xiv) a recreational leader who is an adult;
(xv) a religious leader;
(xvi) a sibling or a stepsibling who is an adult;
(xvii) a scout leader who is an adult;
(xviii) a stepparent;
(xix) a teacher or any other person employed by or volunteering at a public or private elementary school or secondary school, and who is 18 years of age or older;
(xx) an uncle;
(xxi) a youth leader who is an adult; or
(xxii) any person in a position of authority, other than those persons listed in Subsections (1)(c)(i) through (xxi), which enables the person to exercise undue influence over the child.

(2) A person commits sexual abuse of a child if, under circumstances not amounting to rape of a child, object rape of a child, sodomy on a child, or an attempt to commit any of these offenses, the actor touches the anus, buttocks, or genitalia of any child, the breast of a female child, or otherwise takes indecent liberties with a child, or causes a child to take indecent liberties with the actor or another with intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person regardless of the sex of any participant.

(3) Sexual abuse of a child is a second degree felony.

(4) A person commits aggravated sexual abuse of a child when in conjunction with the offense described in Subsection (2) any of the following circumstances have been charged and admitted or found true in the action for the offense:

(a) the offense was committed by the use of a dangerous weapon as defined in Section 76-1-601, or by force, duress, violence, intimidation, coercion, menace, or threat of harm, or was committed during the course of a kidnapping;

(b) the accused caused bodily injury or severe psychological injury to the victim during or as a result of the offense;

(c) the accused was a stranger to the victim or made friends with the victim for the purpose of committing the offense;

(d) the accused used, showed, or displayed pornography or caused the victim to be photographed in a lewd condition during the course of the offense;

(e) the accused, prior to sentencing for this offense, was previously convicted of any sexual offense;

(f) the accused committed the same or similar sexual act upon two or more victims at the same time or during the same course of conduct;

(g) the accused committed, in Utah or elsewhere, more than five separate acts, which if committed in Utah would constitute an offense described in this chapter, and were committed at the same time, or during the same course of conduct, or before or after the instant offense;

(h) the offense was committed by a person who occupied a position of special trust in relation to the victim;

(i) the accused encouraged, aided, allowed, or benefitted from acts of prostitution or sexual acts by the victim with any other person, or sexual performance by the victim before any other person, human trafficking, or human smuggling; or

(j) the accused caused the penetration, however slight, of the genital or anal opening of the child by any part or parts of the human body other than the genitals or mouth.

(5) Aggravated sexual abuse of a child is a first degree felony punishable by a term of imprisonment of:

(a) except as provided in Subsection (5)(b), (5)(c), or (6), not less than 15 years and which may be for life;

(b) except as provided in Subsection (5)(c) or (6), life without parole, if the trier of fact finds that during the course of the commission of the aggravated sexual abuse of a child the defendant caused serious bodily injury to another; or

(c) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual abuse of a child, the defendant was previously convicted of a grievous sexual offense.

(6) If, when imposing a sentence under Subsection (5)(a) or (b), a court finds that a lesser term than the term described in Subsection (5)(a) or (b) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(a) for purposes of Subsection (5)(b), 15 years and which may be for life; or

(b) for purposes of Subsection (5)(a) or (b):

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(7) The provisions of Subsection (6) do not apply when a person is sentenced under Subsection (5)(c).

(8) Subsections (5)(b) and (5)(c) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(9) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 135, 2014 General Session
Amended by Chapter 141, 2014 General Session

76-5-405. Aggravated sexual assault -- Penalty.

(1) A person commits aggravated sexual assault if:

(a) in the course of a rape, object rape, forcible sodomy, or forcible sexual abuse, the actor:

(i) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;

(ii) compels, or attempts to compel, the victim to submit to rape, object rape, forcible sodomy, or forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iii) is aided or abetted by one or more persons;

(b) in the course of an attempted rape, attempted object rape, or attempted

forcible sodomy, the actor:

(i) causes serious bodily injury to any person;

(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;

(iii) attempts to compel the victim to submit to rape, object rape, or forcible sodomy, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iv) is aided or abetted by one or more persons; or

(c) in the course of an attempted forcible sexual abuse, the actor:

(i) causes serious bodily injury to any person;

(ii) uses, or threatens the victim with the use of, a dangerous weapon as defined in Section 76-1-601;

(iii) attempts to compel the victim to submit to forcible sexual abuse, by threat of kidnaping, death, or serious bodily injury to be inflicted imminently on any person; or

(iv) is aided or abetted by one or more persons.

(2) Aggravated sexual assault is a first degree felony, punishable by a term of imprisonment of:

(a) for an aggravated sexual assault described in Subsection (1)(a):

(i) except as provided in Subsection (2)(a)(ii) or (3)(a), not less than 15 years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense;

(b) for an aggravated sexual assault described in Subsection (1)(b):

(i) except as provided in Subsection (2)(b)(ii) or (4)(a), not less than 10 years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense; or

(c) for an aggravated sexual assault described in Subsection (1)(c):

(i) except as provided in Subsection (2)(c)(ii) or (5)(a), not less than six years and which may be for life; or

(ii) life without parole, if the trier of fact finds that at the time of the commission of the aggravated sexual assault, the defendant was previously convicted of a grievous sexual offense.

(3) (a) If, when imposing a sentence under Subsection (2)(a)(i), a court finds that a lesser term than the term described in Subsection (2)(a)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than:

(i) 10 years and which may be for life; or

(ii) six years and which may be for life.

(b) The provisions of Subsection (3)(a) do not apply when a person is sentenced under Subsection (2)(a)(ii).

(4) (a) If, when imposing a sentence under Subsection (2)(b)(i), a court finds that a lesser term than the term described in Subsection (2)(b)(i) is in the interests of

justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than six years and which may be for life.

(b) The provisions of Subsection (4)(a) do not apply when a person is sentenced under Subsection (2)(b)(ii).

(5) (a) If, when imposing a sentence under Subsection (2)(c)(i), a court finds that a lesser term than the term described in Subsection (2)(c)(i) is in the interests of justice and states the reasons for this finding on the record, the court may impose a term of imprisonment of not less than three years and which may be for life.

(b) The provisions of Subsection (5)(a) do not apply when a person is sentenced under Subsection (2)(c)(ii).

(6) Subsections (2)(a)(ii), (2)(b)(ii), and (2)(c)(ii) do not apply if the defendant was younger than 18 years of age at the time of the offense.

(7) Imprisonment under this section is mandatory in accordance with Section 76-3-406.

Amended by Chapter 81, 2013 General Session

76-5-406. Sexual offenses against the victim without consent of victim -- Circumstances.

An act of sexual intercourse, rape, attempted rape, rape of a child, attempted rape of a child, object rape, attempted object rape, object rape of a child, attempted object rape of a child, sodomy, attempted sodomy, forcible sodomy, attempted forcible sodomy, sodomy on a child, attempted sodomy on a child, forcible sexual abuse, attempted forcible sexual abuse, sexual abuse of a child, attempted sexual abuse of a child, aggravated sexual abuse of a child, attempted aggravated sexual abuse of a child, or simple sexual abuse is without consent of the victim under any of the following circumstances:

(1) the victim expresses lack of consent through words or conduct;

(2) the actor overcomes the victim through the actual application of physical force or violence;

(3) the actor is able to overcome the victim through concealment or by the element of surprise;

(4) (a) (i) the actor coerces the victim to submit by threatening to retaliate in the immediate future against the victim or any other person, and the victim perceives at the time that the actor has the ability to execute this threat; or

(ii) the actor coerces the victim to submit by threatening to retaliate in the future against the victim or any other person, and the victim believes at the time that the actor has the ability to execute this threat;

(b) as used in this Subsection (4), "to retaliate" includes threats of physical force, kidnapping, or extortion;

(5) the victim has not consented and the actor knows the victim is unconscious, unaware that the act is occurring, or physically unable to resist;

(6) the actor knows that as a result of mental disease or defect, the victim is at the time of the act incapable either of appraising the nature of the act or of resisting it;

(7) the actor knows that the victim submits or participates because the victim

erroneously believes that the actor is the victim's spouse;

(8) the actor intentionally impaired the power of the victim to appraise or control his or her conduct by administering any substance without the victim's knowledge;

(9) the victim is younger than 14 years of age;

(10) the victim is younger than 18 years of age and at the time of the offense the actor was the victim's parent, stepparent, adoptive parent, or legal guardian or occupied a position of special trust in relation to the victim as defined in Section 76-5-404.1;

(11) the victim is 14 years of age or older, but younger than 18 years of age, and the actor is more than three years older than the victim and entices or coerces the victim to submit or participate, under circumstances not amounting to the force or threat required under Subsection (2) or (4); or

(12) the actor is a health professional or religious counselor, as those terms are defined in this Subsection (12), the act is committed under the guise of providing professional diagnosis, counseling, or treatment, and at the time of the act the victim reasonably believed that the act was for medically or professionally appropriate diagnosis, counseling, or treatment to the extent that resistance by the victim could not reasonably be expected to have been manifested; for purposes of this Subsection (12):

(a) "health professional" means an individual who is licensed or who holds himself or herself out to be licensed, or who otherwise provides professional physical or mental health services, diagnosis, treatment, or counseling including, but not limited to, a physician, osteopathic physician, nurse, dentist, physical therapist, chiropractor, mental health therapist, social service worker, clinical social worker, certified social worker, marriage and family therapist, professional counselor, psychiatrist, psychologist, psychiatric mental health nurse specialist, or substance abuse counselor; and

(b) "religious counselor" means a minister, priest, rabbi, bishop, or other recognized member of the clergy.

Amended by Chapter 135, 2014 General Session
Amended by Chapter 141, 2014 General Session

76-5-406.3. Applicability of sentencing provisions.

A person convicted of a violation of Section 76-5-301.1, child kidnaping; Section 76-5-302, aggravated kidnaping; Section 76-5-402.1, rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; Section 76-5-404.1, aggravated sexual abuse of a child; or Section 76-5-405, aggravated sexual assault shall be sentenced as follows:

(1) If the person is sentenced prior to April 29, 1996, he shall be sentenced in accordance with the statutory provisions in effect prior to that date.

(2) If the person commits the crime and is sentenced on or after April 29, 1996, he shall be punished in accordance with the statutory provisions in effect after April 29, 1996.

(3) If the person commits the crime prior to April 29, 1996, but is sentenced on or after April 29, 1996, he shall be given the option prior to sentencing to proceed

either under the law which was in effect at the time the offense was committed or the law which was in effect at the time of sentencing. If the person refuses to select, the court shall sentence the person in accordance with the law in effect at the time of sentencing. The provisions of Subsections 77-27-9(2)(a) and (b) apply to the sentence of any person who selects under this section to be sentenced in accordance with the law in effect prior to April 29, 1996.

Enacted by Chapter 40, 1996 General Session

76-5-406.5. Circumstances required for probation or suspension of sentence for certain sex offenses against a child.

(1) In a case involving a conviction for a violation of Section 76-5-402.1, rape of a child; Section 76-5-402.3, object rape of a child; Section 76-5-403.1, sodomy on a child; or any attempt to commit a felony under those sections or a conviction for a violation of Subsections 76-5-404.1(4) and (5), aggravated sexual abuse of a child, the court may suspend execution of sentence and consider probation to a residential sexual abuse treatment center only if all of the following circumstances are found by the court to be present and the court in its discretion, considering the circumstances of the offense, including the nature, frequency, and duration of the conduct, and considering the best interests of the public and the child victim, finds probation to a residential sexual abuse treatment center to be proper:

(a) the defendant did not use a weapon, force, violence, substantial duress or menace, or threat of harm, in committing the offense or before or after committing the offense, in an attempt to frighten the child victim or keep the child victim from reporting the offense;

(b) the defendant did not cause bodily injury to the child victim during or as a result of the offense and did not cause the child victim severe psychological harm;

(c) the defendant, prior to the offense, had not been convicted of any public offense in Utah or elsewhere involving sexual misconduct in the commission of the offense;

(d) the defendant did not commit an offense described in this Part 4, Sexual Offenses, against more than one child victim or victim, at the same time, or during the same course of conduct, or previous to or subsequent to the instant offense;

(e) the defendant did not use, show, or display pornography or create sexually-related photographs or tape recordings in the course of the offense;

(f) the defendant did not act in concert with another offender during the offense or knowingly commit the offense in the presence of a person other than the victim or with lewd intent to reveal the offense to another;

(g) the defendant did not encourage, aid, allow, or benefit from any act of prostitution or sexual act by the child victim with any other person or sexual performance by the child victim before any other person;

(h) the defendant admits the offense of which he has been convicted and has been accepted for mental health treatment in a residential sexual abuse treatment center that has been approved by the Department of Corrections under Subsection (3);

(i) rehabilitation of the defendant through treatment is probable, based upon

evidence provided by a treatment professional who has been approved by the Department of Corrections under Subsection (3) and who has accepted the defendant for treatment;

(j) prior to being sentenced, the defendant has undergone a complete psychological evaluation conducted by a professional approved by the Department of Corrections and:

(i) the professional's opinion is that the defendant is not an exclusive pedophile and does not present an immediate and present danger to the community if released on probation and placed in a residential sexual abuse treatment center; and

(ii) the court accepts the opinion of the professional;

(k) if the offense is committed by a parent, stepparent, adoptive parent, or legal guardian of the child victim, the defendant shall, in addition to establishing all other conditions of this section, establish it is in the child victim's best interest that the defendant not be imprisoned, by presenting evidence provided by a treatment professional who:

(i) is treating the child victim and understands he will be treating the family as a whole; or

(ii) has assessed the child victim for purposes of treatment as ordered by the court based on a showing of good cause; and

(l) if probation is imposed, the defendant, as a condition of probation, may not reside in a home where children younger than 18 years of age reside for at least one year beginning with the commencement of treatment, and may not again take up residency in a home where children younger than 18 years of age reside during the period of probation until allowed to do so by order of the court.

(2) A term of incarceration of at least 90 days is to be served prior to treatment and continue until the time when bed space is available at a residential sexual abuse treatment center as provided under Subsection (3) and probation is to be imposed for up to a maximum of 10 years.

(3) (a) The Department of Corrections shall develop qualification criteria for the approval of the sexual abuse treatment programs and professionals under this section. The criteria shall include the screening criteria employed by the department for sexual offenders.

(b) The sexual abuse treatment program shall be at least one year in duration, shall be residential, and shall specifically address the sexual conduct for which the defendant was convicted.

(4) Establishment by the defendant of all the criteria of this section does not mandate the granting under this section of probation or modification of the sentence that would otherwise be imposed by Section 76-3-406 regarding sexual offenses against children. The court has discretion to deny the request based upon its consideration of the circumstances of the offense, including:

(a) the nature, frequency, and duration of the conduct;

(b) the effects of the conduct on any child victim involved;

(c) the best interest of the public and any child victim; and

(d) the characteristics of the defendant, including any risk the defendant presents to the public and specifically to children.

(5) The defendant has the burden to establish by a preponderance of evidence eligibility under all of the criteria of this section.

(6) If the court finds a defendant granted probation under this section fails to cooperate or succeed in treatment or violates probation to any substantial degree, the sentence previously imposed for the offense shall be immediately executed.

(7) The court shall enter written findings of fact regarding the conditions established by the defendant that justify the granting of probation under this section.

(8) In cases involving conviction of any sexual offense against a child other than those offenses provided in Subsection (1), the court shall consider the circumstances described in Subsection (1) as advisory in determining whether or not execution of sentence should be suspended and probation granted. The defendant is not required to satisfy all of those circumstances for eligibility pursuant to this Subsection (8).

Amended by Chapter 213, 2004 General Session

76-5-407. Applicability of part -- "Penetration" or "touching" sufficient to constitute offense.

(1) The provisions of this part do not apply to consensual conduct between persons married to each other.

(2) In any prosecution for:

(a) the following offenses, any sexual penetration, however slight, is sufficient to constitute the relevant element of the offense:

(i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving sexual intercourse;

(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Subsection 76-5-401.2, involving sexual intercourse; or

(iii) rape, a violation of Section 76-5-402; or

(b) the following offenses, any touching, however slight, is sufficient to constitute the relevant element of the offense:

(i) unlawful sexual activity with a minor, a violation of Section 76-5-401, involving acts of sodomy;

(ii) unlawful sexual conduct with a 16 or 17 year old, a violation of Section 76-5-401.2, involving acts of sodomy;

(iii) sodomy, a violation of Subsection 76-5-403(1);

(iv) forcible sodomy, a violation of Subsection 76-5-403(2);

(v) rape of a child, a violation of Section 76-5-402.1; or

(vi) object rape of a child, a violation of Section 76-5-402.3.

(3) In any prosecution for the following offenses, any touching, even if accomplished through clothing, is sufficient to constitute the relevant element of the offense:

(a) sodomy on a child, a violation of Section 76-5-403.1; or

(b) sexual abuse of a child or aggravated sexual abuse of a child, a violation of Section 76-5-404.1.

Amended by Chapter 128, 2000 General Session

76-5-409. Corroboration of admission by child's statement.

(1) Notwithstanding any provision of law requiring corroboration of admissions or confessions, and notwithstanding any prohibition of hearsay evidence, a child's statement indicating in any manner the occurrence of the sexual offense involving the child is sufficient corroboration of the admission or the confession regardless of whether or not the child is available to testify regarding the offense.

(2) A child, for purposes of Subsection (1), is a person under the age of 14.

Enacted by Chapter 88, 1983 General Session

76-5-410. Child victim of sexual abuse as competent witness.

A child victim of sexual abuse under the age of 10 is a competent witness and shall be allowed to testify without prior qualification in any judicial proceeding. The trier of fact shall determine the weight and credibility of the testimony.

Amended by Chapter 74, 1985 General Session

76-5-412. Custodial sexual relations -- Custodial sexual misconduct -- Definitions -- Penalties -- Defenses.

(1) As used in this section:

(a) "Actor" means:

(i) a correctional officer, as defined in Section 53-13-104;

(ii) a law enforcement officer, as defined in Section 53-13-103; or

(iii) an employee of, or private provider or contractor for, the Department of Corrections or a county jail.

(b) "Person in custody" means a person, either an adult 18 years of age or older, or a minor younger than 18 years of age, who is:

(i) a prisoner, as defined in Section 76-5-101, and includes a prisoner who is in the custody of the Department of Corrections created under Section 64-13-2, but who is being housed at the Utah State Hospital established under Section 62A-15-601 or other medical facility;

(ii) under correctional supervision, such as at a work release facility or as a parolee or probationer; or

(iii) under lawful or unlawful arrest, either with or without a warrant.

(c) "Private provider or contractor" means any person or entity that contracts with the Department of Corrections or with a county jail to provide services or functions that are part of the operation of the Department of Corrections or a county jail under state or local law.

(2) (a) An actor commits custodial sexual relations if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the person in custody is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a person in custody;

(b) engaging in any sexual act with a person in custody involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a person in custody by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a person in custody; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a person in custody.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the person in custody is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a person in custody;

(b) touching the breast of a female person in custody;

(c) otherwise taking indecent liberties with a person in custody; or

(d) causing a person in custody to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;
(f) Section 76-5-403, forcible sodomy;
(g) Section 76-5-403.1, sodomy on a child;
(h) Section 76-5-404, forcible sexual abuse;
(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
(j) Section 76-5-405, aggravated sexual assault.
(7) (a) It is not a defense to the commission of the offense of custodial sexual relations under Subsection (2) or custodial sexual misconduct under Subsection (4), or an attempt to commit either of these offenses, if the person in custody is younger than 18 years of age, that the actor:
(i) mistakenly believed the person in custody to be 18 years of age or older at the time of the alleged offense; or
(ii) was unaware of the true age of the person in custody.
(b) Consent of the person in custody is not a defense to any violation or attempted violation of Subsection (2) or (4).
(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Amended by Chapter 8, 2002 Special Session 5

76-5-413. Custodial sexual relations or misconduct with youth receiving state services -- Definitions -- Penalties -- Defenses.
(1) As used in this section:
(a) "Actor" means:
(i) a person employed by the Department of Human Services, as created in Section 62A-1-102, or an employee of a private provider or contractor; or
(ii) a person employed by the juvenile court of the state, or an employee of a private provider or contractor.
(b) "Department" means the Department of Human Services created in Section 62A-1-102.
(c) "Juvenile court" means the juvenile court of the state created in Section 78A-6-102.
(d) "Private provider or contractor" means any person or entity that contracts with the:
(i) department to provide services or functions that are part of the operation of the department; or
(ii) juvenile court to provide services or functions that are part of the operation of the juvenile court.
(e) "Youth receiving state services" means a person:
(i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:
(A) in the custody of the department under Subsection 78A-6-117(2)(c)(ii); or
(B) receiving services from any division of the department if any portion of the

costs of these services is covered by public money as defined in Section 76-8-401; or

(ii) younger than 21 years of age who is:

(A) in the custody of the Division of Juvenile Justice Services, or the Division of Child and Family Services; or

(B) under the jurisdiction of the juvenile court.

(2) (a) An actor commits custodial sexual relations with a youth receiving state services if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a youth receiving state services;

(b) engaging in any sexual act with a youth receiving state services involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a youth receiving state services by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any person, regardless of the sex of any participant or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct with a youth receiving state services if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed

with the intent to cause substantial emotional or bodily pain to any person or with the intent to arouse or gratify the sexual desire of any person, regardless of the sex of any participant:

(a) touching the anus, buttocks, or any part of the genitals of a youth receiving state services;

(b) touching the breast of a female youth receiving state services;

(c) otherwise taking indecent liberties with a youth receiving state services; or

(d) causing a youth receiving state services to take indecent liberties with the actor or another person.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

(d) Section 76-5-402.2, object rape;

(e) Section 76-5-402.3, object rape of a child;

(f) Section 76-5-403, forcible sodomy;

(g) Section 76-5-403.1, sodomy on a child;

(h) Section 76-5-404, forcible sexual abuse;

(i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or

(j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

(i) mistakenly believed the youth receiving state services to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the youth receiving state services.

(b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Amended by Chapter 3, 2008 General Session

76-5-414. Child conceived as a result of sexual offense -- Custody and parent-time.

(1) A person convicted of a violation of Title 76, Chapter 5, Part 4, Sexual Offenses, except for Sections 76-5-401 and 76-5-401.2, that results in conception of a child may not be granted custody or parent-time rights by a court regarding the child, unless:

(a) the nonconvicted biological parent or legal guardian of the child consents and the court determines it is in the best interest of the child to award custody or

parent-time to the convicted person; or

(b) after the date of the conviction, the biological parents cohabit and establish a mutual custodial environment for the child.

(2) A denial of custody or parent-time under this section may not in and of itself:

(a) terminate the parental rights of the person denied parent-time or custody; or

(b) affect the obligation of the convicted person to financially support the child.

Enacted by Chapter 193, 2013 General Session

76-5-415. Educator's license subject to action for violation of this part.

Commission of any offense under this Title 76, Chapter 5, Part 4, Sexual Offenses, by an educator as defined in Section 53A-6-103, is grounds under Section 53A-6-501 for disciplinary action against the educator, including revocation of the educator's license.

Enacted by Chapter 135, 2014 General Session

76-5-501. Definitions.

For purposes of this part:

(1) "Alleged sexual offender" means a person or a minor regarding whom an indictment, petition, or an information has been filed or an arrest has been made alleging the commission of a sexual offense or an attempted sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, and regarding which:

(a) a judge has signed an accompanying arrest warrant, pickup order, or any other order based upon probable cause regarding the alleged offense; and

(b) the judge has found probable cause to believe that the alleged victim has been exposed to HIV infection as a result of the alleged offense.

(2) "Department of Health" means the state Department of Health as defined in Section 26-1-2.

(3) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:

(a) presence of antibodies to HIV, verified by a positive "confirmatory" test, such as Western blot or other method approved by the Utah State Health Laboratory. Western blot interpretation will be based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors;

(b) presence of HIV antigen;

(c) isolation of HIV; or

(d) demonstration of HIV proviral DNA.

(4) "HIV positive individual" means a person who is HIV positive as determined by the State Health Laboratory.

(5) "Local department of health" means the department as defined in Subsection 26A-1-102(5).

(6) "Minor" means a person younger than 18 years of age.

(7) "Positive" means an indication of the HIV infection as defined in Subsection (3).

(8) "Sexual offense" means a violation of state law prohibiting a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses.

(9) "Test" or "testing" means a test or tests for HIV infection conducted by and in accordance with standards recommended by the Department of Health.

Amended by Chapter 177, 2011 General Session

76-5-502. Request for testing -- Mandatory testing -- Liability for costs.

(1) (a) An alleged victim of the sexual offense, the parent or guardian of an alleged victim who is a minor, or the guardian of an alleged victim who is a vulnerable adult as defined in Section 62A-3-301 may request that the alleged sexual offender against whom the indictment, information, or petition is filed or regarding whom the arrest has been made be tested to determine whether the alleged offender is an HIV positive individual.

(b) If the alleged victim under Subsection (1)(a) has requested that the alleged offender be tested, the alleged offender shall submit to being tested not later than 48 hours after an information or indictment is filed or an order requiring a test is signed.

(c) If the alleged victim under Subsection (1)(a) requests that the alleged offender be tested more than 48 hours after an information or indictment is filed, the offender shall submit to being tested not later than 24 hours after the request is made.

(d) As soon as practicable, the results of the test conducted pursuant to this section shall be provided to:

(i) the alleged victim who requested the test;

(ii) the parent or guardian of the alleged victim, if the alleged victim is a minor;

(iii) the legal guardian of the alleged victim if the victim is a vulnerable adult as defined in Section 62A-3-301;

(iv) the alleged offender; and

(v) the parent or legal guardian of the alleged offender, if the offender is a minor.

(e) If follow-up testing is medically indicated, the results of follow-up testing of the defendant shall be sent as soon as practicable to:

(i) the alleged victim;

(ii) the parent or guardian of the alleged victim if the alleged victim is younger than 18 years of age;

(iii) the legal guardian of the alleged victim, if the victim is a vulnerable adult as defined in Section 62A-3-301;

(iv) the alleged offender; and

(v) the parent or legal guardian of the alleged offender, if the offender is a minor.

(2) If the mandatory test has not been conducted, and the alleged offender or alleged minor offender is already confined in a county jail, state prison, or a secure youth corrections facility, the alleged offender shall be tested while in confinement.

(3) The secure youth corrections facility or county jail shall cause the blood specimen of the alleged offender under Subsection (1) confined in that facility to be taken and shall forward the specimen to the Department of Health.

(4) The Department of Corrections shall cause the blood specimen of the alleged offender defined in Subsection (1) confined in any state prison to be taken and shall forward the specimen to the Department of Health as provided in Section 64-13-36.

(5) The alleged offender who is tested is responsible upon conviction for the costs of testing, unless the alleged offender is indigent. The costs will then be paid by the Department of Health from the General Fund.

Amended by Chapter 177, 2011 General Session

76-5-503. Voluntary testing -- Victim to request -- Costs paid by Utah Office for Victims of Crime.

(1) A victim or minor victim of a sexual offense as provided under Title 76, Chapter 5, Part 4, may request a test for the HIV infection.

(2) (a) The local health department shall obtain the blood specimen from the victim and forward the specimen to the Department of Health.

(b) The Department of Health shall analyze the specimen of the victim.

(3) The testing shall consist of a base-line test of the victim at the time immediately or as soon as possible after the alleged occurrence of the sexual offense. If the base-line test result is not positive, follow-up testing shall occur at three months and six months after the alleged occurrence of the sexual offense.

(4) The Crime Victim Reparations Fund shall pay for the costs of the victim testing if the victim provides a substantiated claim of the sexual offense, does not test HIV positive at the base-line testing phase, and complies with eligibility criteria established by the Utah Office for Victims of Crime.

Amended by Chapter 131, 2011 General Session

76-5-504. Victim notification and counseling.

(1) (a) The Department of Health shall provide the victim who requests testing of the alleged sexual offender's human immunodeficiency virus status counseling regarding HIV disease and referral for appropriate health care and support services.

(b) If the local health department in whose jurisdiction the victim resides and the Department of Health agree, the Department of Health shall forward a report of the alleged sexual offender's human immunodeficiency virus status to the local health department and the local health department shall provide the victim who requests the test with the test results, counseling regarding HIV disease, and referral for appropriate health care and support services.

(2) Notwithstanding the provisions of Section 26-6-27, the Department of Health and a local health department acting pursuant to an agreement made under Subsection (1) may disclose to the victim the results of the alleged sexual offender's human immunodeficiency virus status as provided in this section.

Amended by Chapter 177, 2011 General Session

76-5b-101. Title.

This chapter is known as the "Sexual Exploitation Act."

Enacted by Chapter 320, 2011 General Session

76-5b-102. Legislative determinations -- Purpose of chapter.

(1) The Legislature of Utah determines that:

(a) the sexual exploitation of a minor is excessively harmful to the minor's physiological, emotional, social, and mental development;

(b) the sexual exploitation of a vulnerable adult who lacks the capacity to consent to sexual exploitation can result in excessive harm to the vulnerable adult's physiological, emotional, and social well-being;

(c) a minor cannot intelligently and knowingly consent to sexual exploitation;

(d) regardless of whether it is classified as legally obscene, material that sexually exploits a minor, or a vulnerable adult who does not have the capacity to consent to sexual exploitation, is not protected by the First Amendment of the United States Constitution or by the First or Fifteenth sections of Article I of the Utah Constitution and may be prohibited; and

(e) prohibition of and punishment for the distribution, possession, possession with intent to distribute, and production of materials that sexually exploit a minor, or a vulnerable adult who lacks the capacity to consent to sexual exploitation, is necessary and justified to eliminate the market for those materials and to reduce the harm to the minor or vulnerable adult inherent in the perpetuation of the record of the minor's or vulnerable adult's sexually exploitive activities.

(2) It is the purpose of this chapter to prohibit the production, possession, possession with intent to distribute, and distribution of materials that sexually exploit a minor, or a vulnerable adult who lacks capacity to consent to sexual exploitation, regardless of whether the materials are classified as legally obscene.

Renumbered and Amended by Chapter 320, 2011 General Session

76-5b-103. Definitions.

As used in this chapter:

(1) "Child pornography" means any visual depiction, including any live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a minor engaging in sexually explicit conduct;

(b) the visual depiction is of a minor engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable minor is engaging in sexually explicit conduct.

(2) "Distribute" means the selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, or otherwise transferring or presenting child pornography or vulnerable adult pornography with or without consideration.

(3) "Identifiable minor" means a person:

(a) (i) who was a minor at the time the visual depiction was created, adapted, or modified; or

(ii) whose image as a minor was used in creating, adapting, or modifying the visual depiction; and

(b) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature.

(4) "Identifiable vulnerable adult" means a person:

(a) (i) who was a vulnerable adult at the time the visual depiction was created, adapted, or modified; or

(ii) whose image as a vulnerable adult was used in creating, adapting, or modifying the visual depiction; and

(b) who is recognizable as an actual person by the person's face, likeness, or other distinguishing characteristic, such as a birthmark, or other recognizable feature.

(5) "Lacks capacity to consent" is as defined in Subsection 76-5-111(1).

(6) "Live performance" means any act, play, dance, pantomime, song, or other activity performed by live actors in person.

(7) "Minor" means a person younger than 18 years of age.

(8) "Nudity or partial nudity" means any state of dress or undress in which the human genitals, pubic region, buttocks, or the female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(9) "Produce" means:

(a) the photographing, filming, taping, directing, producing, creating, designing, or composing of child pornography or vulnerable adult pornography; or

(b) the securing or hiring of persons to engage in the photographing, filming, taping, directing, producing, creating, designing, or composing of child pornography or vulnerable adult pornography.

(10) "Sexually explicit conduct" means actual or simulated:

(a) sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(b) masturbation;

(c) bestiality;

(d) sadistic or masochistic activities;

(e) lascivious exhibition of the genitals, pubic region, buttocks, or female breast of any person;

(f) the visual depiction of nudity or partial nudity for the purpose of causing sexual arousal of any person;

(g) the fondling or touching of the genitals, pubic region, buttocks, or female breast; or

(h) the explicit representation of the defecation or urination functions.

(11) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct which duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

(12) "Vulnerable adult" is as defined in Subsection 76-5-111(1).

(13) "Vulnerable adult pornography" means any visual depiction, including any

live performance, photograph, film, video, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, of sexually explicit conduct, where:

(a) the production of the visual depiction involves the use of a vulnerable adult engaging in sexually explicit conduct;

(b) the visual depiction is of a vulnerable adult engaging in sexually explicit conduct; or

(c) the visual depiction has been created, adapted, or modified to appear that an identifiable vulnerable adult is engaging in sexually explicit conduct.

Amended by Chapter 290, 2013 General Session

76-5b-201. Sexual exploitation of a minor -- Offenses.

(1) A person is guilty of sexual exploitation of a minor:

(a) when the person:

(i) knowingly produces, possesses, or possesses with intent to distribute child pornography; or

(ii) intentionally distributes or views child pornography; or

(b) if the person is a minor's parent or legal guardian and knowingly consents to or permits the minor to be sexually exploited as described in Subsection (1)(a).

(2) Sexual exploitation of a minor is a second degree felony.

(3) It is a separate offense under this section:

(a) for each minor depicted in the child pornography; and

(b) for each time the same minor is depicted in different child pornography.

(4) It is an affirmative defense to a charge of violating this section that no person under 18 years of age was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

(5) In proving a violation of this section in relation to an identifiable minor, proof of the actual identity of the identifiable minor is not required.

(6) This section may not be construed to impose criminal or civil liability on:

(a) any entity or an employee, director, officer, or agent of an entity when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under any federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of child pornography on any tangible or intangible property, or of detecting and reporting the presence of child pornography on the property; or

(b) any law enforcement officer acting within the scope of a criminal investigation.

Renumbered and Amended by Chapter 320, 2011 General Session

76-5b-202. Sexual exploitation of a vulnerable adult -- Offenses.

(1) A person is guilty of sexual exploitation of a vulnerable adult if the person:

(a) (i) (A) knowingly produces, possesses, or possesses with intent to distribute

material that the person knows is vulnerable adult pornography; or

(B) intentionally distributes or views material that the person knows is vulnerable adult pornography; and

(ii) the vulnerable adult who appears in, or is depicted in, the vulnerable adult pornography lacks capacity to consent to the conduct described in Subsection (1)(a); or

(b) is a vulnerable adult's legal guardian and knowingly consents to, or permits the vulnerable adult to be, sexually exploited as described in Subsection (1)(a).

(2) Sexual exploitation of a vulnerable adult is a third degree felony.

(3) It is a separate offense under this section:

(a) for each vulnerable adult depicted in the vulnerable adult pornography; and

(b) for each time the same vulnerable adult is depicted in different vulnerable adult pornography.

(4) It is an affirmative defense to a charge of violating this section that no vulnerable adult was actually depicted in the visual depiction or used in producing or advertising the visual depiction.

(5) In proving a violation of this section in relation to an identifiable vulnerable adult, proof of the actual identity of the identifiable vulnerable adult is not required.

(6) This section may not be construed to impose criminal or civil liability on:

(a) any entity or an employee, director, officer, or agent of an entity, when acting within the scope of employment, for the good faith performance of:

(i) reporting or data preservation duties required under any federal or state law; or

(ii) implementing a policy of attempting to prevent the presence of vulnerable adult pornography on any tangible or intangible property, or of detecting and reporting the presence of vulnerable adult pornography on the property; or

(b) any law enforcement officer acting within the scope of a criminal investigation.

Enacted by Chapter 320, 2011 General Session

76-5b-203. Distribution of an intimate image -- Penalty.

(1) As used in this section:

(a) "Distribute" means selling, exhibiting, displaying, wholesaling, retailing, providing, giving, granting admission to, providing access to, or otherwise transferring or presenting an image to another individual, with or without consideration.

(b) "Intimate image" means any visual depiction, photograph, film, video, recording, picture, or computer or computer-generated image or picture, whether made or produced by electronic, mechanical, or other means, that depicts:

(i) exposed human male or female genitals or pubic area, with less than an opaque covering;

(ii) a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(iii) the individual engaged in any sexually explicit conduct.

(c) "Sexually explicit conduct" means actual or simulated:

(i) sexual intercourse, including genital-genital, oral-genital, anal-genital, or

oral-anal, whether between persons of the same or opposite sex;

(ii) masturbation;

(iii) bestiality;

(iv) sadistic or masochistic activities;

(v) exhibition of the genitals, pubic region, buttocks, or female breast of any individual;

(vi) visual depiction of nudity or partial nudity;

(vii) fondling or touching of the genitals, pubic region, buttocks, or female breast; or

(viii) explicit representation of the defecation or urination functions.

(d) "Simulated sexually explicit conduct" means a feigned or pretended act of sexually explicit conduct that duplicates, within the perception of an average person, the appearance of an actual act of sexually explicit conduct.

(2) An actor commits the offense of distribution of intimate images if the actor, with the intent to cause emotional distress or harm, knowingly or intentionally distributes to any third party any intimate image of an individual who is 18 years of age or older, if:

(a) the actor knows that the depicted individual has not given consent to the actor to distribute the intimate image;

(b) the intimate image was created by or provided to the actor under circumstances in which the individual has a reasonable expectation of privacy; and

(c) actual emotional distress or harm is caused to the person as a result of the distribution under this section.

(3) This section does not apply to:

(a) (i) lawful practices of law enforcement agencies;

(ii) prosecutorial agency functions;

(iii) the reporting of a criminal offense;

(iv) court proceedings or any other judicial proceeding; or

(v) lawful and generally accepted medical practices and procedures;

(b) an intimate image if the individual portrayed in the image voluntarily allows public exposure of the image; or

(c) an intimate image that is portrayed in a lawful commercial setting.

(4) (a) This section does not apply to an Internet service provider or interactive computer service, as defined in 47 U.S.C. Sec. 230(f)(2), a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(i) the distribution of an intimate image by the Internet service provider occurs only incidentally through the provider's function of:

(A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;

(ii) the provider does not intentionally aid or abet in the distribution of the intimate image; and

(iii) the provider does not knowingly receive from or through a person who

distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the intimate image.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(i) the distribution of an intimate image by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the intimate image; and

(iii) the hosting company does not knowingly receive from or through a person who distributes the intimate image a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the intimate image.

(c) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.

(5) (a) Distribution of an intimate image is a class A misdemeanor except under Subsection (5)(b).

(b) Distribution of an intimate image is a third degree felony on a second or subsequent conviction for an offense under this section that arises from a separate criminal episode as defined in Section 76-1-401.

Enacted by Chapter 124, 2014 General Session

76-5b-301. Determination whether material violates chapter.

(1) In determining whether material is in violation of this chapter, the material need not be considered as a whole, but may be examined by the trier of fact in part only.

(2) It is not an element of the offense of sexual exploitation of a minor that the material appeal to the prurient interest in sex of the average person nor that prohibited conduct need be portrayed in a patently offensive manner.

(3) It is not an element of the offense of sexual exploitation of a vulnerable adult that the material appeal to the prurient interest in sex of the average person nor that prohibited conduct need be portrayed in a patently offensive manner.

Renumbered and Amended by Chapter 320, 2011 General Session

76-5b-302. Lack of knowledge of age not a defense.

It is not a defense to an offense described in this chapter that the accused did not know the age of the victim.

Enacted by Chapter 320, 2011 General Session

76-6-101. Definitions.

(1) For purposes of this chapter:

(a) "Fire" means a flame, heat source capable of combustion, or material capable of combustion that is caused, set, or maintained by a person for any purpose.

(b) "Habitable structure" means any building, vehicle, trailer, railway car, aircraft, or watercraft used for lodging or assembling persons or conducting business whether a person is actually present or not.

(c) "Property" means:

(i) any form of real property or tangible personal property which is capable of being damaged or destroyed and includes a habitable structure; and

(ii) the property of another, if anyone other than the actor has a possessory or proprietary interest in any portion of the property.

(d) "Value" means:

(i) the market value of the property, if totally destroyed, at the time and place of the offense, or where cost of replacement exceeds the market value; or

(ii) where the market value cannot be ascertained, the cost of repairing or replacing the property within a reasonable time following the offense.

(2) If the property damaged has a value that cannot be ascertained by the criteria set forth in Subsection (1)(d), the property shall be considered to have a value less than $500.

Amended by Chapter 340, 2011 General Session

76-6-102. Arson.

(1) A person is guilty of arson if, under circumstances not amounting to aggravated arson, the person by means of fire or explosives unlawfully and intentionally damages:

(a) any property with intention of defrauding an insurer; or

(b) the property of another.

(2) A violation of Subsection (1)(a) is a second degree felony.

(3) A violation of Subsection (1)(b) is a second degree felony if:

(a) the damage caused is or exceeds $5,000 in value;

(b) as a proximate result of the fire or explosion, any person not a participant in the offense suffers serious bodily injury as defined in Section 76-1-601;

(c) (i) the damage caused is or exceeds $1,500 but is less than $5,000 in value; and

(ii) at the time of the offense the actor has been previously convicted of a violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the commission of the violation of Subsection (1)(b).

(4) A violation of Subsection (1)(b) is a third degree felony if:

(a) the damage caused is or exceeds $1,500 but is less than $5,000 in value;

(b) as a proximate result of the fire or explosion, any person not a participant in the offense suffers substantial bodily injury as defined in Section 76-1-601;

(c) the fire or explosion endangers human life; or

(d) (i) the damage caused is or exceeds $500 but is less than $1,500 in value; and

(ii) at the time of the offense the actor has been previously convicted of a

violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the commission of the violation of Subsection (1)(b).

(5) A violation of Subsection (1)(b) is a class A misdemeanor if the damage caused:

(a) is or exceeds $500 but is less than $1,500 in value; or

(b) (i) is less than $500; and

(ii) at the time of the offense the actor has been previously convicted of a violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the commission of the violation of Subsection (1)(b).

(6) A violation of Subsection (1)(b) is a class B misdemeanor if the damage caused is less than $500.

Amended by Chapter 272, 2013 General Session

76-6-103. Aggravated arson.

(1) A person is guilty of aggravated arson if by means of fire or explosives he intentionally and unlawfully damages:

(a) a habitable structure; or

(b) any structure or vehicle when any person not a participant in the offense is in the structure or vehicle.

(2) Aggravated arson is a felony of the first degree.

Amended by Chapter 59, 1986 General Session

76-6-104. Reckless burning.

(1) A person is guilty of reckless burning if the person:

(a) recklessly starts a fire or causes an explosion which endangers human life;

(b) having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm;

(c) builds or maintains a fire without taking reasonable steps to remove all flammable materials surrounding the site of the fire as necessary to prevent the fire's spread or escape; or

(d) damages the property of another by reckless use of fire or causing an explosion.

(2) (a) A violation of Subsection (1)(a) or (b) is a class A misdemeanor.

(b) A violation of Subsection (1)(c) is a class B misdemeanor.

(c) A violation of Subsection (1)(d) is:

(i) a class A misdemeanor if damage to property is or exceeds $1,500 in value;

(ii) a class B misdemeanor if the damage to property is or exceeds $500 but is less than $1,500 in value; and

(iii) a class C misdemeanor if the damage to property is or exceeds $150 but is less than $500 in value.

(d) Any other violation under Subsection (1)(d) is an infraction.

Amended by Chapter 193, 2010 General Session

76-6-104.5. Abandoned fire -- Penalties.

(1) A person is guilty of abandoning a fire if, under circumstances not amounting to the offense of arson, aggravated arson, or causing a catastrophe under Title 76, Chapter 6, Part 1, Property Destruction, the person leaves a fire:

(a) without first completely extinguishing it; and

(b) with the intent to not return to the fire.

(2) A person does not commit a violation of Subsection (1) if the person leaves a fire to report an uncontrolled fire.

(3) A violation of Subsection (1):

(a) is a class C misdemeanor if there is no property damage;

(b) is a class B misdemeanor if property damage is less than $1,000 in value; and

(c) is a class A misdemeanor if property damage is or exceeds $1,000 in value.

(4) If a violation of Subsection (1) involves a wildland fire, the violator is also liable for suppression costs under Section 65A-3-4.

(5) A fire spreading or reigniting is prima facie evidence that the person did not completely extinguish the fire as required by Subsection (1)(a).

Amended by Chapter 320, 2009 General Session

76-6-105. Causing a catastrophe -- Penalties.

(1) Any person is guilty of causing a catastrophe if the person causes widespread injury or damage to persons or property by:

(a) use of a weapon of mass destruction as defined in Section 76-10-401; or

(b) explosion, fire, flood, avalanche, collapse of a building, or other harmful or destructive force or substance that is not a weapon of mass destruction.

(2) Causing a catastrophe is:

(a) a first degree felony if the person causes the catastrophe knowingly and by the use of a weapon of mass destruction;

(b) a second degree felony if the person causes the catastrophe knowingly and by a means other than a weapon of mass destruction; and

(c) a class A misdemeanor if the person causes the catastrophe recklessly.

(3) In addition to any other penalty authorized by law, a court shall order any person convicted of any 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 incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

Amended by Chapter 166, 2002 General Session

76-6-106. Criminal mischief.

(1) As used in this section, "critical infrastructure" includes:

(a) information and communication systems;

(b) financial and banking systems;

(c) any railroads, airlines, airports, airways, highways, bridges, waterways, fixed guideways, or other transportation systems intended for the transportation of persons or property;

(d) any public utility service, including the power, energy, and water supply systems;

(e) sewage and water treatment systems;

(f) health care facilities as listed in Section 26-21-2, and emergency fire, medical, and law enforcement response systems;

(g) public health facilities and systems;

(h) food distribution systems; and

(i) other government operations and services.

(2) A person commits criminal mischief if the person:

(a) under circumstances not amounting to arson, damages or destroys property with the intention of defrauding an insurer;

(b) intentionally and unlawfully tampers with the property of another and as a result:

(i) recklessly endangers:

(A) human life; or

(B) human health or safety; or

(ii) recklessly causes or threatens a substantial interruption or impairment of any critical infrastructure;

(c) intentionally damages, defaces, or destroys the property of another; or

(d) recklessly or willfully shoots or propels a missile or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing.

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

(ii) A violation of Subsection (2)(b)(i)(A) is a class A misdemeanor.

(iii) A violation of Subsection (2)(b)(i)(B) is a class B misdemeanor.

(iv) A violation of Subsection (2)(b)(ii) is a second degree felony.

(b) Any other violation of this section is a:

(i) second degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $5,000 in value;

(ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $1,500 but is less than $5,000 in value;

(iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of $500 but is less than $1,500 in value; and

(iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss less than $500 in value.

(4) In determining the value of damages under this section, or for computer crimes under Section 76-6-703, the value of any item, computer, computer network, computer property, computer services, software, or data includes the measurable value of the loss of use of the items and the measurable cost to replace or restore the items.

(5) In addition to any other penalty authorized by law, a court shall order any person convicted of any 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 incurred in responding to a violation of Subsection (2)(b)(ii), unless the court states on the record the reasons why the reimbursement would be inappropriate.

Amended by Chapter 135, 2012 General Session

76-6-107. Graffiti defined -- Penalties -- Removal costs -- Reimbursement liability.

(1) As used in this section:

(a) "Etching" means defacing, damaging, or destroying hard surfaces by means of a chemical action which uses any caustic cream, gel, liquid, or solution.

(b) "Graffiti" means any form of unauthorized printing, writing, spraying, scratching, affixing, etching, or inscribing on the property of another regardless of the content or the nature of the material used in the commission of the act.

(c) "Victim" means the person or entity whose property was defaced by the graffiti and bears the expense for its removal.

(2) Graffiti is a:

(a) second degree felony if the damage caused is in excess of $5,000;

(b) third degree felony if the damage caused is in excess of $1,000;

(c) class A misdemeanor if the damage caused is equal to or in excess of $300; and

(d) class B misdemeanor if the damage caused is less than $300.

(3) Damages under Subsection (2) include removal costs, repair costs, or replacement costs, whichever is less.

(4) The court, upon conviction or adjudication, shall order restitution to the victim in the amount of removal, repair, or replacement costs.

(5) An additional amount of $1,000 in restitution shall be added to removal costs if the graffiti is positioned on an overpass or an underpass, requires that traffic be interfered with in order to remove it, or the entity responsible for the area in which the clean-up is to take place must provide assistance in order for the removal to take place safely.

(6) A person who voluntarily, and at his own expense, removes graffiti for which he is responsible may be credited for the removal costs against restitution ordered by a court.

Amended by Chapter 278, 2013 General Session

76-6-107.1. Compensatory service -- Graffiti penalties.

(1) If an offender uses graffiti and is convicted under Section 76-6-106 or 76-6-206 for its use, the court may, as a condition of probation under Subsection 77-18-1(8), order the offender to clean up graffiti of his own and any other at a time and place within the jurisdiction of the court.

(a) For a first conviction or adjudication, the court may require the offender to clean up graffiti for not less than eight hours.

(b) For a second conviction or adjudication, the court may require the offender

to clean up graffiti for not less than 16 hours.

(c) For a third conviction or adjudication, the court may require the offender to clean up graffiti for not less than 24 hours.

(2) The offender convicted under Section 76-6-106, 76-6-206, or 76-6-107 shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause.

(3) The court may also require the offender to perform other alternative forms of restitution or repair to the damaged property pursuant to Subsection 77-18-1(8).

Renumbered and Amended by Chapter 3, 2008 General Session

76-6-108. Damage to or interruption of a communication device -- Penalty.

(1) As used in this section:

(a) "Communication device" means any device, including a telephone, cellular telephone, computer, or radio, which may be used in an attempt to summon police, fire, medical, or other emergency aid.

(b) "Emergency aid" means aid or assistance, including law enforcement, fire, or medical services, commonly summoned by persons concerned with imminent or actual:

(i) jeopardy to any person's health or safety; or

(ii) damage to any person's property.

(2) A person is guilty of damage to or interruption of a communication device if the actor attempts to prohibit or interrupt, or prohibits or interrupts, another person's use of a communication device when the other person is attempting to summon emergency aid or has communicated a desire to summon emergency aid, and in the process the actor:

(a) uses force, intimidation, or any other form of violence;

(b) destroys, disables, or damages a communication device; or

(c) commits any other act in an attempt to prohibit or interrupt the person's use of a communication device to summon emergency aid.

(3) Damage to or interruption of a communication device is a class B misdemeanor.

Amended by Chapter 54, 2000 General Session

76-6-109. Offenses committed against timber, mining, or agricultural industries -- Enhanced penalties.

(1) A person who commits any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful management, cultivation, or harvesting of trees or timber, or the management or operations of agricultural or mining industries is subject to an enhanced penalty for the offense as provided below. However, this section does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151 et seq.

(2) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the complaint in misdemeanor cases or the information or indictment in felony cases notice that the defendant is subject to the enhanced

penalties provided under this section.

(3) If the trier of fact finds beyond a reasonable doubt that the defendant committed any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful management, cultivation, or harvesting of trees or timber, or the management or operations of agricultural or mining industries, the penalties are enhanced as provided in this Subsection (3):

(a) a class C misdemeanor is a class B misdemeanor, with a mandatory fine of not less than $1,000, which is in addition to any term of imprisonment the court may impose;

(b) a class B misdemeanor is a Class A misdemeanor, with a fine of not less than $2,500, which is in addition to any term of imprisonment the court may impose;

(c) a class A misdemeanor is a third degree felony, with a fine of not less than $5,000, which is in addition to any term of imprisonment the court may impose;

(d) a third degree felony is a second degree felony, with a fine of not less than $7,500, which is in addition to any term of imprisonment the court may impose; and

(e) a second degree felony is subject to a fine of not less than $10,000, which is in addition to any term of imprisonment the court may impose.

Amended by Chapter 214, 2000 General Session

76-6-110. Offenses committed against animal enterprises -- Definitions -- Enhanced penalties.

(1) As used in this section:

(a) "Animal enterprise" means a commercial or academic enterprise that:

(i) uses animals for food or fiber production;

(ii) is an agricultural operation, including a facility for the production of crops or livestock, or livestock products;

(iii) operates a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or

(iv) any fair or similar event intended to advance agricultural arts and sciences.

(b) "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, domesticated elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.

(c) "Property" includes any buildings, vehicles, animals, data, or records.

(2) (a) A person who commits any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any property owned by, used by, or in the possession of a lawful animal enterprise, is subject to an enhanced penalty under Subsection (3).

(b) Subsection (2)(a) does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151 et seq.

(c) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

(3) If the trier of fact finds beyond a reasonable doubt that the defendant committed any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any property owned by, used by, or in the possession of a lawful animal enterprise, the penalties are enhanced as provided in this Subsection (3):

(a) a class C misdemeanor is a class B misdemeanor, with a mandatory fine of not less than $1,000, which is in addition to any term of imprisonment the court may impose;

(b) a class B misdemeanor is a class A misdemeanor, with a fine of not less than $2,500, which is in addition to any term of imprisonment the court may impose;

(c) a class A misdemeanor is a third degree felony, with a fine of not less than $5,000, which is in addition to any term of imprisonment the court may impose;

(d) a third degree felony is a second degree felony, with a fine of not less than $7,500, which is in addition to any term of imprisonment the court may impose; and

(e) a second degree felony is subject to a fine of not less than $10,000, which is in addition to any term of imprisonment the court may impose.

Enacted by Chapter 225, 2001 General Session

76-6-111. Wanton destruction of livestock -- Penalties -- Seizure and disposition of property.

(1) As used in this section:

(a) "Law enforcement officer" is as defined in Section 53-13-103.

(b) "Livestock" means a domestic animal or fur bearer raised or kept for profit, including:

(i) cattle;

(ii) sheep;

(iii) goats;

(iv) swine;

(v) horses;

(vi) mules;

(vii) poultry; and

(viii) domesticated elk as defined in Section 4-39-102.

(2) Unless authorized by Section 4-25-4, 4-25-5, 4-25-14, 4-39-401, or 18-1-3, a person is guilty of wanton destruction of livestock if that person:

(a) injures, physically alters, releases, or causes the death of livestock; and

(b) does so:

(i) intentionally or knowingly; and

(ii) without the permission of the owner of the livestock.

(3) Wanton destruction of livestock is punishable as a:

(a) class B misdemeanor if the aggregate value of the livestock is $500 or less;

(b) class A misdemeanor if the aggregate value of the livestock is more than $500, but does not exceed $1,500;

(c) third degree felony if the aggregate value of the livestock is more than $1,500, but does not exceed $5,000; and

(d) second degree felony if the aggregate value of the livestock is more than $5,000.

(4) A material, device, or vehicle used in violation of Subsection (2) is subject to forfeiture under the procedures and substantive protections established in Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(5) A peace officer may seize a material, device, or vehicle used in violation of Subsection (2):

(a) upon notice and service of process issued by a court having jurisdiction over the property; or

(b) without notice and service of process if:

(i) the seizure is incident to an arrest under:

(A) a search warrant; or

(B) an inspection under an administrative inspection warrant;

(ii) the material, device, or vehicle has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(iii) the peace officer has probable cause to believe that the property has been used in violation of Subsection (2).

(6) (a) A material, device, or vehicle seized under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of a court or official having jurisdiction.

(b) A peace officer who seizes a material, device, or vehicle under this section may:

(i) place the property under seal;

(ii) remove the property to a place designated by the warrant under which it was seized; or

(iii) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Amended by Chapter 193, 2010 General Session

76-6-112. Agricultural operation interference -- Penalties.

(1) As used in this section, "agricultural operation" means private property used for the production of livestock, poultry, livestock products, or poultry products.

(2) A person is guilty of agricultural operation interference if the person:

(a) without consent from the owner of the agricultural operation, or the owner's agent, knowingly or intentionally records an image of, or sound from, the agricultural operation by leaving a recording device on the agricultural operation;

(b) obtains access to an agricultural operation under false pretenses;

(c) (i) applies for employment at an agricultural operation with the intent to record an image of, or sound from, the agricultural operation;

(ii) knows, at the time that the person accepts employment at the agricultural operation, that the owner of the agricultural operation prohibits the employee from recording an image of, or sound from, the agricultural operation; and

(iii) while employed at, and while present on, the agricultural operation, records an image of, or sound from, the agricultural operation; or

(d) without consent from the owner of the operation or the owner's agent, knowingly or intentionally records an image of, or sound from, an agricultural operation while the person is committing criminal trespass, as described in Section 76-6-206, on the agricultural operation.

(3) A person who commits agricultural operation interference described in Subsection (2)(a) is guilty of a class A misdemeanor.

(4) A person who commits agricultural operation interference described in Subsection (2)(b), (c), or (d) is guilty of a class B misdemeanor.

Enacted by Chapter 213, 2012 General Session

76-6-201. Definitions.

As used in this part:

(1) (a) "Building," in addition to its ordinary meaning, means any watercraft, aircraft, trailer, or other structure or vehicle adapted for overnight accommodation of persons or for carrying on business and includes:

(i) each separately secured or occupied portion of the structure or vehicle; and

(ii) each structure appurtenant to or connected with the structure or vehicle.

(b) "Building" does not include a railroad car.

(2) "Dwelling" means a building which is usually occupied by a person lodging in the building at night, whether or not a person is actually present.

(3) "Enter or remain unlawfully" means a person enters or remains in or on any premises when:

(a) at the time of the entry or remaining, the premises or any portion of the premises are not open to the public; and

(b) the actor is not otherwise licensed or privileged to enter or remain on the premises or any portion of the premises.

(4) "Enter" means:

(a) intrusion of any part of the body; or

(b) intrusion of any physical object under control of the actor.

(5) "Railroad car":

(a) in addition to its ordinary meaning, includes a sleeping car or any container or trailer that is on a railroad car; and

(b) includes only a railroad car that is operable and part of an ongoing railroad operation.

Amended by Chapter 366, 2008 General Session

76-6-202. Burglary.

(1) An actor is guilty of burglary who enters or remains unlawfully in a building or any portion of a building with intent to commit:

(a) a felony;

(b) theft;

(c) an assault on any person;

(d) lewdness, a violation of Section 76-9-702;

(e) sexual battery, a violation of Section 76-9-702.1;
(f) lewdness involving a child, in violation of Section 76-9-702.5; or
(g) voyeurism under Section 76-9-702.7.
(2) Burglary is a third degree felony unless it was committed in a dwelling, in which event it is a second degree felony.
(3) A violation of this section is a separate offense from any of the offenses listed in Subsections (1)(a) through (g), and which may be committed by the actor while in the building.

Amended by Chapter 303, 2012 General Session

76-6-203. Aggravated burglary.
(1) A person is guilty of aggravated burglary if in attempting, committing, or fleeing from a burglary the actor or another participant in the crime:
(a) causes bodily injury to any person who is not a participant in the crime;
(b) uses or threatens the immediate use of a dangerous weapon against any person who is not a participant in the crime; or
(c) possesses or attempts to use any explosive or dangerous weapon.
(2) Aggravated burglary is a first degree felony.
(3) As used in this section, "dangerous weapon" has the same definition as under Section 76-1-601.

Amended by Chapter 170, 1989 General Session

76-6-204. Burglary of a vehicle -- Charge of other offense.
(1) Any person who unlawfully enters any vehicle with intent to commit a felony or theft is guilty of a burglary of a vehicle.
(2) Burglary of a vehicle is a class A misdemeanor.
(3) A charge against any person for a violation of Subsection (1) shall not preclude a charge for a commission of any other offense.

Enacted by Chapter 196, 1973 General Session

76-6-204.5. Burglary of a railroad car -- Charge of other offenses.
(1) Any person commits burglary of a railroad car when the person breaks the lock or seal on any railroad car, with the intent to commit a felony or theft.
(2) Burglary of a railroad car is a third degree felony.
(3) Charging a person for a violation of Subsection (1) does not preclude charging the person for any other offense.

Enacted by Chapter 366, 2008 General Session

76-6-205. Manufacture or possession of instrument for burglary or theft.
Any person who manufactures or possesses any instrument, tool, device, article, or other thing adapted, designed, or commonly used in advancing or facilitating the

commission of any offense under circumstances manifesting an intent to use or knowledge that some person intends to use the same in the commission of a burglary or theft is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-6-206. Criminal trespass.

(1) As used in this section, "enter" means intrusion of the entire body.

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section 76-10-2402 regarding commercial obstruction:

(a) the person enters or remains unlawfully on property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Section 76-6-107;

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether his presence will cause fear for the safety of another;

(b) knowing the person's entry or presence is unlawful, the person enters or remains on property as to which notice against entering is given by:

(i) personal communication to the actor by the owner or someone with apparent authority to act for the owner;

(ii) fencing or other enclosure obviously designed to exclude intruders; or

(iii) posting of signs reasonably likely to come to the attention of intruders; or

(c) the person enters a condominium unit in violation of Subsection 57-8-7(8).

(3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless it was committed in a dwelling, in which event it is a class A misdemeanor.

(b) A violation of Subsection (2)(c) is an infraction.

(4) It is a defense to prosecution under this section that:

(a) the property was open to the public when the actor entered or remained; and

(b) the actor's conduct did not substantially interfere with the owner's use of the property.

Amended by Chapter 152, 2013 General Session

76-6-206.1. Criminal trespass of abandoned or inactive mines -- Penalty.

(1) For purposes of this section:

(a) "Abandoned or inactive mine" means an underground mine which is no longer open for access or no longer under excavation and has been clearly marked as closed or protected from entry.

(b) "Enter" means intrusion of the entire body.

(2) A person is guilty of criminal trespass of an abandoned or inactive mine if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204:

(a) the person intentionally enters and remains unlawfully in the underground workings of an abandoned or inactive mine; or

(b) intentionally and without authority removes, destroys, or tampers with any warning sign, covering, fencing, or other method of protection from entry placed on, around, or over any mine shaft, mine portal, or other abandoned or inactive mining excavation property.

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

(4) A violation of Subsection (2)(b) is a class A misdemeanor.

Enacted by Chapter 223, 1997 General Session

76-6-206.2. Criminal trespass on state park lands -- Penalties.

(1) For purposes of this section:

(a) "Authorization" means specific written permission by, or contractual agreement with, the Division of Parks and Recreation.

(b) "Criminal trespass" means the elements of the crime of criminal trespass, as set forth in Section 76-6-206.

(c) "Division" means the Division of Parks and Recreation, created in Section 79-4-201.

(d) "State park lands" means all lands administered by the division.

(2) A person is guilty of criminal trespass on state park lands and is liable for the civil damages prescribed in Subsection (5) if, under circumstances not amounting to a greater offense, and without authorization, the person:

(a) constructs improvements or structures on state park lands;

(b) uses or occupies state park lands for more than 30 days after the cancellation or expiration of authorization;

(c) knowingly or intentionally uses state park lands for commercial gain;

(d) intentionally or knowingly grazes livestock on state park lands, except as provided in Section 72-3-112; or

(e) remains, after being ordered to leave by someone with actual authority to act for the division, or by a law enforcement officer.

(3) A person is not guilty of criminal trespass if that person enters onto state park lands:

(a) without first paying the required fee; and

(b) for the sole purpose of pursuing recreational activity.

(4) A violation of Subsection (2) is a class B misdemeanor.

(5) In addition to restitution, as provided in Section 76-3-201, a person who commits any act described in Subsection (2) may also be liable for civil damages in the amount of three times the value of:

(a) damages resulting from a violation of Subsection (2);

(b) the water, mineral, vegetation, improvement, or structure on state park lands that is removed, destroyed, used, or consumed without authorization;

(c) the historical, prehistorical, archaeological, or paleontological resource on state park lands that is removed, destroyed, used, or consumed without authorization; or

(d) the consideration which would have been charged by the division for unauthorized use of the land and resources during the period of trespass.

(6) Civil damages under Subsection (5) may be collected in a separate action by the division, and shall be deposited in the State Parks Fees Restricted Account as established in Section 79-4-402.

Amended by Chapter 344, 2009 General Session

76-6-206.3. Criminal trespass on agricultural land or range land.

(1) As used in this section:

(a) "Agricultural or range land" and "land" mean land as defined under Subsections (1)(d) and (e).

(b) "Authorization" means specific written permission by, or contractual agreement with, the owner or manager of the property.

(c) "Criminal trespass" means the elements of the crime of criminal trespass under Section 76-6-206.

(d) "Land in agricultural use" has the same meaning as in Section 59-2-502.

(e) "Range land" means privately owned land that is not fenced or divided into lots and that is generally unimproved. This land includes land used for livestock.

(2) A person is guilty of the class B misdemeanor criminal offense of criminal trespass on agricultural or range land and is liable for the civil damages under Subsection (5) if, under circumstances not amounting to a greater offense, and without authorization or a right under state law, the person enters or remains on agricultural or range land regarding which notice prohibiting entry is given by:

(a) personal communication to the person by the owner of the land, an employee of the owner, or a person with apparent authority to act for the owner;

(b) fencing or other form of enclosure a reasonable person would recognize as intended to exclude intruders; or

(c) posted signs or markers that would reasonably be expected to be seen by persons in the area of the borders of the land.

(3) A person is guilty of the class B misdemeanor criminal offense of cutting, destroying, or rendering ineffective the fencing of agricultural or range land if the person willfully cuts, destroys, or renders ineffective any fencing as described under Subsection (2)(b).

(4) In addition to restitution, as provided in Section 76-3-201, a person who commits any violation of Subsection (2) or (3) may also be liable for:

(a) statutory damages in the amount of the value of damages resulting from the violation of Subsection (2) or $500, whichever is greater; and

(b) reasonable attorney fees not to exceed $250, and court costs.

(5) Civil damages under Subsection (4) may be collected in a separate action by the owner of the agricultural or range land or the owner's assignee.

Enacted by Chapter 270, 2009 General Session

76-6-301. Robbery.

(1) A person commits robbery if:

(a) the person unlawfully and intentionally takes or attempts to take personal

property in the possession of another from his person, or immediate presence, against his will, by means of force or fear, and with a purpose or intent to deprive the person permanently or temporarily of the personal property; or

(b) the person intentionally or knowingly uses force or fear of immediate force against another in the course of committing a theft or wrongful appropriation.

(2) An act is considered to be "in the course of committing a theft or wrongful appropriation" if it occurs:

(a) in the course of an attempt to commit theft or wrongful appropriation;

(b) in the commission of theft or wrongful appropriation; or

(c) in the immediate flight after the attempt or commission.

(3) Robbery is a felony of the second degree.

Amended by Chapter 112, 2004 General Session

76-6-302. Aggravated robbery.

(1) A person commits aggravated robbery if in the course of committing robbery, he:

(a) uses or threatens to use a dangerous weapon as defined in Section 76-1-601;

(b) causes serious bodily injury upon another; or

(c) takes or attempts to take an operable motor vehicle.

(2) Aggravated robbery is a first degree felony.

(3) For the purposes of this part, an act shall be considered to be "in the course of committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of a robbery.

Amended by Chapter 62, 2003 General Session

76-6-401. Definitions.

For the purposes of this part:

(1) "Property" means anything of value, including real estate, tangible and intangible personal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services, or otherwise containing anything of value to the owner, commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him.

(2) "Obtain" means, in relation to property, to bring about a transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another; in relation to labor or services, to secure performance thereof; and in relation to a trade secret, to make any facsimile, replica, photograph, or other reproduction.

(3) "Purpose to deprive" means to have the conscious object:

(a) To withhold property permanently or for so extended a period or to use

under such circumstances that a substantial portion of its economic value, or of the use and benefit thereof, would be lost; or

(b) To restore the property only upon payment of a reward or other compensation; or

(c) To dispose of the property under circumstances that make it unlikely that the owner will recover it.

(4) "Obtain or exercise unauthorized control" means, but is not necessarily limited to, conduct heretofore defined or known as common-law larceny by trespassory taking, larceny by conversion, larceny by bailee, and embezzlement.

(5) "Deception" occurs when a person intentionally:

(a) Creates or confirms by words or conduct an impression of law or fact that is false and that the actor does not believe to be true and that is likely to affect the judgment of another in the transaction; or

(b) Fails to correct a false impression of law or fact that the actor previously created or confirmed by words or conduct that is likely to affect the judgment of another and that the actor does not now believe to be true; or

(c) Prevents another from acquiring information likely to affect his judgment in the transaction; or

(d) Sells or otherwise transfers or encumbers property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest, claim, or impediment is or is not valid or is or is not a matter of official record; or

(e) Promises performance that is likely to affect the judgment of another in the transaction, which performance the actor does not intend to perform or knows will not be performed; provided, however, that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed.

Enacted by Chapter 196, 1973 General Session

76-6-402. Presumptions and defenses.

The following presumption shall be applicable to this part:

(1) Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

(2) It is no defense under this part that the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe, provided an interest in property for purposes of this subsection shall not include a security interest for the repayment of a debt or obligation.

(3) It is a defense under this part that the actor:

(a) Acted under an honest claim of right to the property or service involved; or

(b) Acted in the honest belief that he had the right to obtain or exercise control over the property or service as he did; or

(c) Obtained or exercised control over the property or service honestly believing that the owner, if present, would have consented.

Amended by Chapter 32, 1974 General Session

76-6-402.5. Defense regarding metal dealers.

It is a defense against a charge of theft under this part and a defense against a civil claim for conversion if any dealer as defined in Section 76-6-1402 has acted in compliance with Title 76, Chapter 6, Part 14, Regulation of Metal Dealers.

Amended by Chapter 187, 2013 General Session

76-6-403. Theft -- Evidence to support accusation.

Conduct denominated theft in this part constitutes a single offense embracing the separate offenses such as those heretofore known as larceny, larceny by trick, larceny by bailees, embezzlement, false pretense, extortion, blackmail, receiving stolen property. An accusation of theft may be supported by evidence that it was committed in any manner specified in Sections 76-6-404 through 76-6-410, subject to the power of the court to ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Amended by Chapter 32, 1974 General Session

76-6-404. Theft -- Elements.

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

Enacted by Chapter 196, 1973 General Session

76-6-404.5. Wrongful appropriation -- Penalties.

(1) A person commits wrongful appropriation if he obtains or exercises unauthorized control over the property of another, without the consent of the owner or legal custodian and with intent to temporarily appropriate, possess, or use the property or to temporarily deprive the owner or legal custodian of possession of the property.

(2) The consent of the owner or legal custodian of the property to its control by the actor is not presumed or implied because of the owner's or legal custodian's consent on a previous occasion to the control of the property by any person.

(3) Wrongful appropriation is punishable one degree lower than theft, as provided in Section 76-6-412, so that a violation which would have been:

(a) a second degree felony under Section 76-6-412 if it had been theft is a third degree felony if it is wrongful appropriation;

(b) a third degree felony under Section 76-6-412 if it had been theft is a class A misdemeanor if it is wrongful appropriation;

(c) a class A misdemeanor under Section 76-6-412 if it had been theft is a class B misdemeanor if it is wrongful appropriation; and

(d) a class B misdemeanor under Section 76-6-412 if it had been theft is a class

C misdemeanor if it is wrongful appropriation.

(4) Wrongful appropriation is a lesser included offense of the offense of theft under Section 76-6-404.

Amended by Chapter 48, 2001 General Session

76-6-404.7. Theft of motor vehicle fuel.

(1) As used in this section, "motor vehicle fuel" means any combustible gas, liquid, matter, or substance that is used in an internal combustion engine for the generation of power.

(2) A person is guilty of theft of motor vehicle fuel who:

(a) causes a motor vehicle to leave any premises where motor vehicle fuel is offered for retail sale when motor fuel has been dispensed into:

(i) the fuel tank of the motor vehicle; or

(ii) any other container that is then removed from the premises by means of the motor vehicle; and

(b) commits the act under Subsection (2)(a) with the intent to deprive the owner or operator of the premises of the motor fuel without making full payment for the fuel.

(3) In addition to the penalties for theft under Section 76-6-412, the sentencing court may order the suspension of the driver license of a person convicted of theft of motor vehicle fuel. The suspension may not be for more than 90 days as provided in Section 53-3-220.

Enacted by Chapter 328, 2009 General Session

76-6-405. Theft by deception.

(1) As used in this section, "puffing" means an exaggerated commendation of wares or worth in a communication addressed to an individual, group, or the public.

(2) (a) A person commits theft if the person obtains or exercises control over property of another person:

(i) by deception; and

(ii) with a purpose to deprive the other person of property.

(b) The deception described in Subsection (2)(a)(i) and the deprivation described in Subsection (2)(a)(ii) may occur at separate times.

(3) Theft by deception does not occur when there is only:

(a) falsity as to matters having no pecuniary significance; or

(b) puffing by statements unlikely to deceive an ordinary person in the group addressed.

Amended by Chapter 156, 2012 General Session

76-6-406. Theft by extortion.

(1) A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.

(2) As used in this section, extortion occurs when a person threatens to:

(a) Cause physical harm in the future to the person threatened or to any other person or to property at any time; or

(b) Subject the person threatened or any other person to physical confinement or restraint; or

(c) Engage in other conduct constituting a crime; or

(d) Accuse any person of a crime or expose him to hatred, contempt, or ridicule; or

(e) Reveal any information sought to be concealed by the person threatened; or

(f) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(g) Take action as an official against anyone or anything, or withhold official action, or cause such action or withholding; or

(h) Bring about or continue a strike, boycott, or other similar collective action to obtain property which is not demanded or received for the benefit of the group which the actor purports to represent; or

(i) Do any other act which would not in itself substantially benefit him but which would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

Enacted by Chapter 196, 1973 General Session

76-6-407. Theft of lost, mislaid, or mistakenly delivered property.

A person commits theft when:

(1) He obtains property of another which he knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, without taking reasonable measures to return it to the owner; and

(2) He has the purpose to deprive the owner of the property when he obtains the property or at any time prior to taking the measures designated in paragraph (1).

Enacted by Chapter 196, 1973 General Session

76-6-408. Receiving stolen property -- Duties of pawnbrokers, secondhand businesses, and coin dealers.

(1) A person commits theft if he receives, retains, or disposes of the property of another knowing that it has been stolen, or believing that it probably has been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding the property from the owner, knowing the property to be stolen, intending to deprive the owner of it.

(2) The knowledge or belief required for Subsection (1) is presumed in the case of an actor who:

(a) is found in possession or control of other property stolen on a separate occasion;

(b) has received other stolen property within the year preceding the receiving offense charged;

(c) is a pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, or an agent, employee, or representative of a pawnbroker or person who buys, receives, or obtains property and fails to require the seller or person delivering the property to:

(i) certify, in writing, that he has the legal rights to sell the property;

(ii) provide a legible print, preferably the right thumb, at the bottom of the certificate next to his signature; and

(iii) provide at least one positive form of identification; or

(d) is a coin dealer or an employee of the coin dealer as defined in Section 13-32a-102 who does not comply with the requirements of Section 13-32a-104.5.

(3) Every pawnbroker or person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, and every agent, employee, or representative of a pawnbroker or person who fails to comply with the requirements of Subsection (2)(c) is presumed to have bought, received, or obtained the property knowing it to have been stolen or unlawfully obtained. This presumption may be rebutted by proof.

(4) When, in a prosecution under this section, it appears from the evidence that the defendant was a pawnbroker or a person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property, or was an agent, employee, or representative of a pawnbroker or person, that the defendant bought, received, concealed, or withheld the property without obtaining the information required in Subsection (2)(c) or (2)(d), then the burden shall be upon the defendant to show that the property bought, received, or obtained was not stolen.

(5) Subsections (2)(c), (3), and (4) do not apply to scrap metal processors as defined in Section 76-6-1402.

(6) As used in this section:

(a) "Dealer" means a person in the business of buying or selling goods.

(b) "Pawnbroker" means a person who:

(i) loans money on deposit of personal property, or deals in the purchase, exchange, or possession of personal property on condition of selling the same property back again to the pledge or depositor;

(ii) loans or advances money on personal property by taking chattel mortgage security on the property and takes or receives the personal property into his possession and who sells the unredeemed pledges; or

(iii) receives personal property in exchange for money or in trade for other personal property.

(c) "Receives" means acquiring possession, control, or title or lending on the security of the property.

Amended by Chapter 187, 2013 General Session

76-6-409. Theft of services.

(1) A person commits theft if he obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment for them.

(2) A person commits theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts the services to his own benefit or to the benefit of another who he knows is not entitled to them.

(3) In this section "services" includes, but is not limited to, labor, professional service, public utility and transportation services, restaurant, hotel, motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, tools, vehicles, or trailers for temporary use, telephone or telegraph service, steam, admission to entertainment, exhibitions, sporting events, or other events for which a charge is made.

(4) Under this section "services" includes gas, electricity, water, sewer, or cable television services, only if the services are obtained by threat, force, or a form of deception not described in Section 76-6-409.3.

(5) Under this section "services" includes telephone services only if the services are obtained by threat, force, or a form of deception not described in Sections 76-6-409.5 through 76-6-409.9.

Amended by Chapter 215, 1994 General Session

76-6-409.1. Devices for theft of services -- Seizure and destruction -- Civil actions for damages.

(1) A person may not knowingly:

(a) make or possess any instrument, apparatus, equipment, or device for the use of, or for the purpose of, committing or attempting to commit theft under Section 76-6-409 or 76-6-409.3; or

(b) sell, offer to sell, advertise, give, transport, or otherwise transfer to another any information, instrument, apparatus, equipment, or device, or any information, plan, or instruction for obtaining, making, or assembling the same, with intent that it be used, or caused to be used, to commit or attempt to commit theft under Section 76-6-409 or 76-6-409.3.

(2) (a) Any information, instrument, apparatus, equipment, or device, or information, plan, or instruction referred to in Subsection (1) may be seized pursuant to a court order, lawful search and seizure, lawful arrest, or other lawful process.

(b) Upon the conviction of any person for a violation of any provision of this section, any information, instrument, apparatus, equipment, device, plan, or instruction shall be destroyed as contraband by the sheriff of the county in which the person was convicted.

(3) A person who violates any provision of Subsection (1) or (2) is guilty of a class A misdemeanor.

(4) Criminal prosecutions under this section do not affect any person's right of civil action for redress for damages suffered as a result of any violation of this section.

Amended by Chapter 38, 1987 General Session

76-6-409.3. Theft of utility or cable television services -- Restitution -- Civil action for damages.

(1) As used in this section:

(a) "Cable television service" means any audio, video, or data service provided by a cable television company over its cable system facilities for payment, but does not include the use of a satellite dish or antenna.

(b) "Owner" includes any part-owner, joint owner, tenant in common, joint tenant, or tenant by the entirety of the whole or a part of any building and the property on which it is located.

(c) "Person" means any individual, firm, partnership, corporation, company, association, or other legal entity.

(d) "Tenant or occupant" includes any person, including the owner, who occupies the whole or part of any building, whether alone or with others.

(e) "Utility" means any public utility, municipally-owned utility, or cooperative utility which provides electricity, gas, water, or sewer, or any combination of them, for sale to consumers.

(2) A person is guilty of theft of a utility or cable television service if the person commits any prohibited acts which make gas, electricity, water, sewer, or cable television available to a tenant or occupant, including himself, with intent to avoid due payment to the utility or cable television company. Any person aiding and abetting in these prohibited acts is a party to the offense under Section 76-2-202. Prohibited acts include:

(a) connecting any tube, pipe, wire, cable, or other instrument with any meter, device, or other instrument used for conducting gas, electricity, water, sewer, or cable television in a manner as permits the use of the gas, electricity, water, sewer, or cable television without its passing through a meter or other instrument recording the usage for billing;

(b) altering, injuring, or preventing the normal action of a meter, valve, stopcock, or other instrument used for measuring quantities of gas, electricity, water, or sewer service, or making or maintaining any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by the company which the person is not authorized by the company to receive;

(c) reconnecting gas, electricity, water, sewer, or cable television connections or otherwise restoring service when one or more of those utilities or cable service have been lawfully disconnected or turned off by the provider of the utility or cable service;

(d) intentionally breaking, defacing, or causing to be broken or defaced any seal, locking device, or other part of a metering device for recording usage of gas, electricity, water, or sewer service, or a security system for the recording device, or a cable television control device;

(e) removing a metering device designed to measure quantities of gas, electricity, water, or sewer service;

(f) transferring from one location to another a metering device for measuring quantities of public utility services of gas, electricity, water, or sewer service;

(g) changing the indicated consumption, jamming the measuring device, bypassing the meter or measuring device with a jumper so that it does not indicate use or registers use incorrectly, or otherwise obtaining quantities of gas, electricity, water, or sewer service from the utility without their passing through a metering device for

measuring quantities of consumption for billing purposes;

(h) using a metering device belonging to the utility that has not been assigned to the location and installed by the utility;

(i) fabricating or using a device to pick or otherwise tamper with the locks used to deter utility service diversion, meter tampering, meter thefts, and unauthorized cable television service;

(j) assisting or instructing any person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing the service;

(k) making or maintaining a connection or connections, whether physical, electrical, mechanical, acoustical, or by other means, with any cables, wires, components, or other devices used for the distribution of cable television services without authority from the cable television company; or

(l) possessing without authority any device or printed circuit board designed in whole or in part to receive any cable television programming or services offered for sale over a cable television system with the intent that the device or printed circuit be used for the reception of the cable television company's services without payment. For purposes of this subsection, device or printed circuit board does not include the use of a satellite dish or antenna.

(3) The presence on property in the possession of a person of any device or alteration which permits the diversion or use of utility or cable service to avoid the registration of the use by or on a meter installed by the utility or to otherwise avoid the recording of use of the service for payment or otherwise avoid payment gives rise to an inference that the person in possession of the property installed the device or caused the alteration if:

(a) the presence of the device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility or cable television service; and

(b) the person charged has received the direct benefit of the reduction of the cost of the utility or cable television service.

(4) A person who violates this section is guilty of the offense of theft of utility or cable television service.

(a) In the case of theft of utility services, if the value of the gas, electricity, water, or sewer service:

(i) is less than $500, the offense is a class B misdemeanor;

(ii) is or exceeds $500 but is not more than $1,500, the offense is a class A misdemeanor;

(iii) is or exceeds $1,500 but is not more than $5,000, the offense is a third degree felony; and

(iv) is or exceeds $5,000 or if the offender has previously been convicted of a violation of this section, the offense is a second degree felony.

(b) In the case of theft of cable television services, the penalties are prescribed in Section 76-6-412.

(5) A person who violates this section shall make restitution to the utility or cable television company for the value of the gas, electricity, water, sewer, or cable

television service consumed in violation of this section plus all reasonable expenses and costs incurred on account of the violation of this section. Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employee time, and equipment use.

(6) Criminal prosecution under this section does not affect the right of a utility or cable television company to bring a civil action for redress for damages suffered as a result of the commission of any of the acts prohibited by this section.

(7) This section does not abridge or alter any other right, action, or remedy otherwise available to a utility or cable television company.

Amended by Chapter 193, 2010 General Session

76-6-409.5. Definitions.

As used in this section and Sections 76-6-409.6 through 76-6-409.10:

(1) "Access device" means any telecommunication device including the telephone calling card number, electronic serial number, account number, mobile identification number, or personal identification number that can be used to obtain telephone service.

(2) "Clone cellular telephone" or "counterfeit cellular telephone" means a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer.

(3) "Cloning paraphernalia" means materials that, when possessed in combination, are capable of the creation of a cloned cellular telephone. These materials include scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the cloned telephone with a false electronic serial number and mobile identification number combination, a computer containing such software, and lists of electronic serial number and mobile identification number combinations.

(4) "Electronic serial number" means the unique number that:

(a) was programmed into a cellular telephone by its manufacturer;

(b) is transmitted by the cellular telephone; and

(c) is used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device.

(5) "EPROM" or "Erasable programmable read-only memory" means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultraviolet light.

(6) "Intercept" means to electronically capture, record, reveal, or otherwise access, the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver, by means of any instrument, device or equipment.

(7) "Manufacture of an unlawful telecommunication device" means to produce or assemble an unlawful telecommunication device, or to modify, alter, program, or reprogram a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication

service provider.

(8) "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.

(9) "Possess" means to have physical possession or otherwise to exercise control over tangible property.

(10) "Sell" means to offer to, agree to offer to, or to sell, exchange, give, or dispose of an unlawful telecommunications device to another.

(11) "Telecommunication device" means:

(a) any type of instrument, device, machine, or equipment which is capable of transmitting or receiving telephonic, electronic, or radio communications; or

(b) any part of an instrument, device, machine, or equipment, or other computer circuit, computer chip, electronic mechanism, or other component, which is capable of facilitating the transmission or reception of telephonic or electronic communications within the radio spectrum allocated to cellular radio telephony.

(12) "Telecommunication service" includes any service provided for a charge or compensation to facilitate the origination, transmission, emission, or reception of signs, signals, writings, images, and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, television optical or other electromagnetic system.

(13) "Telecommunication service provider" means any person or entity providing telecommunication service including a cellular telephone or paging company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office, or other equipment or telecommunication service.

(14) "Unlawful telecommunication device" means any telecommunication device that is capable of, or has been altered, modified, programmed, or reprogrammed, alone or in conjunction with another access device, so as to be capable of, acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. Unlawful devices include tumbler phones, counterfeit phones, tumbler microchips, counterfeit microchips, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider.

Amended by Chapter 78, 1997 General Session

76-6-409.6. Use of telecommunication device to avoid lawful charge for service -- Penalty.

(1) Any person who uses a telecommunication device with the intent to avoid the payment of any lawful charge for telecommunication service or with the knowledge that it was to avoid the payment of any lawful charge for telecommunication service is guilty of:

(a) a class B misdemeanor, if the value of the telecommunication service is less than $300 or cannot be ascertained;

(b) a class A misdemeanor, if the value of the telecommunication service charge is or exceeds $300 but is not more than $1,000;

(c) a third degree felony, if the value of the telecommunication service is or

exceeds $1,000 but is not more than $5,000;

(d) a second degree felony, if:

(i) the value of the telecommunication service is or exceeds $5,000; or

(ii) the cloned cellular telephone was used to facilitate the commission of a felony.

(2) Any person who has been convicted previously of an offense under this section is guilty of a second degree felony upon a second conviction and any subsequent conviction.

Amended by Chapter 78, 1997 General Session

76-6-409.7. Possession of any unlawful telecommunication device -- Penalty.

(1) Any person who knowingly possesses an unlawful telecommunication device is guilty of a class B misdemeanor.

(2) Any person who knowingly possesses five or more unlawful telecommunication devices in the same criminal episode is guilty of a third degree felony.

(3) Any person is guilty of a second degree felony who:

(a) knowingly and unlawfully possesses an instrument capable of intercepting electronic serial number and mobile identification number combinations under circumstances evidencing an intent to clone; or

(b) knowingly and unlawfully possesses cloning paraphernalia under circumstances evidencing an intent to clone.

Amended by Chapter 78, 1997 General Session

76-6-409.8. Sale of an unlawful telecommunication device -- Penalty.

(1) Any person is guilty of a third degree felony who intentionally sells an unlawful telecommunication device or material, including hardware, data, computer software, or other information or equipment, knowing that the purchaser or a third person intends to use such material in the manufacture of an unlawful telecommunication device.

(2) If the offense under this section involves the intentional sale of five or more unlawful telecommunication devices within a six-month period, the person committing the offense is guilty of a second degree felony.

Amended by Chapter 78, 1997 General Session

76-6-409.9. Manufacture of an unlawful telecommunication device -- Penalty.

(1) Any person who intentionally manufactures an unlawful telecommunication device is guilty of a third degree felony.

(2) If the offense under this section involves the intentional manufacture of five or more unlawful telecommunication devices within a six-month period, the person

committing the offense is guilty of a second degree felony.

Amended by Chapter 78, 1997 General Session

76-6-409.10. Payment of restitution -- Civil action -- Other remedies retained.

(1) A person who violates Sections 76-6-409.5 through 76-6-409.9 shall make restitution to the telecommunication service provider for the value of the telecommunication service consumed in violation of this section plus all reasonable expenses and costs incurred on account of the violation of this section. Reasonable expenses and costs include expenses and costs for investigation, service calls, employee time, and equipment use.

(2) Criminal prosecution under this section does not affect the right of a telecommunication service provider to bring a civil action for redress for damages suffered as a result of the commission of any of the acts prohibited by this section.

(3) This section does not abridge or alter any other right, action, or remedy otherwise available to a telecommunication service provider.

Amended by Chapter 79, 1996 General Session

76-6-410. Theft by person having custody of property pursuant to repair or rental agreement.

A person is guilty of theft if:

(1) Having custody of property pursuant to an agreement between himself or another and the owner thereof whereby the actor or another is to perform for compensation a specific service for the owner involving the maintenance, repair, or use of such property, he intentionally uses or operates it, without the consent of the owner, for his own purposes in a manner constituting a gross deviation from the agreed purpose; or

(2) Having custody of any property pursuant to a rental or lease agreement where it is to be returned in a specified manner or at a specified time, intentionally fails to comply with the terms of the agreement concerning return so as to render such failure a gross deviation from the agreement.

Enacted by Chapter 196, 1973 General Session

76-6-410.5. Theft of a rental vehicle.

(1) As used in this section:

(a) "Motor vehicle" means a self-propelled vehicle that is intended primarily for use and operation on the highways.

(b) "Rental agreement" means any written agreement stating the terms and conditions governing the use of a motor vehicle provided by a rental company.

(c) "Rental company" means any person or organization in the business of providing motor vehicles to the public.

(d) "Renter" means any person or organization obtaining the use of a motor

vehicle from a rental company under the terms of a rental agreement.

(2) A renter is guilty of theft of a rental vehicle if, without notice to and permission of the rental company, the renter knowingly fails without good cause to return the vehicle within 72 hours after the time established for the return in the rental agreement.

(3) If the motor vehicle is not rented on a periodic tenancy basis, the rental company shall include the following information, legibly written, as part of the terms of the rental agreement:

(a) the date and time the motor vehicle is required to be returned; and

(b) the maximum penalties under state law if the motor vehicle is not returned within 72 hours from the date and time stated in compliance with Subsection (3)(a).

Enacted by Chapter 112, 2001 General Session

76-6-412. Theft -- Classification of offenses -- Action for treble damages.

(1) Theft of property and services as provided in this chapter is punishable:

(a) as a second degree felony if the:

(i) value of the property or services is or exceeds $5,000;

(ii) property stolen is a firearm or an operable motor vehicle;

(iii) actor is armed with a dangerous weapon, as defined in Section 76-1-601, at the time of the theft; or

(iv) property is stolen from the person of another;

(b) as a third degree felony if:

(i) the value of the property or services is or exceeds $1,500 but is less than $5,000;

(ii) the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based and at least one of those convictions is for a class A misdemeanor:

(A) any theft, any robbery, or any burglary with intent to commit theft;

(B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);

(iii) in a case not amounting to a second degree felony, the property taken is a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes; or

(iv) (A) the value of property or services is or exceeds $500 but is less than $1,500;

(B) the theft occurs on a property where the offender has committed any theft within the past five years; and

(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108;

(v) the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the

current conviction is based and the value of the property stolen is or exceeds $500 but is less than $1,500; or

(vi) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C);

(c) as a class A misdemeanor if:

(i) the value of the property stolen is or exceeds $500 but is less than $1,500;

(ii) (A) the value of property or services is less than $500;

(B) the theft occurs on a property where the offender has committed any theft within the past five years; and

(C) the offender has received written notice from the merchant prohibiting the offender from entering the property pursuant to Section 78B-3-108; or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years of the date of the current conviction or the date of the offense upon which the current conviction is based; or

(d) as a class B misdemeanor if the value of the property stolen is less than $500 and the theft is not an offense under Subsection (1)(c).

(2) Any individual who violates Subsection 76-6-408(1) or Section 76-6-413, or commits theft of property described in Subsection 76-6-412(1)(b)(iii), is civilly liable for three times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees.

Amended by Chapter 255, 2014 General Session

76-6-412.5. Property damage caused in the course of committing a theft.

If a defendant who commits or attempts to commit theft as defined in Section 76-6-404 of regulated metal as defined in Section 76-6-1402 and in the course of committing or attempting to commit the theft causes damage to any person's real or personal property other than the regulated metal, the defendant is liable for restitution for all costs incurred due to the damage to the person's property.

Amended by Chapter 187, 2013 General Session

76-6-413. Release of fur-bearing animals -- Penalty -- Finding.

(1) In any case not amounting to a felony of the second degree, any person who intentionally and without permission of the owner releases any fur-bearing animal raised for commercial purposes is guilty of a felony of the third degree.

(2) The Legislature finds that the release of fur-bearing animals raised for commercial purposes subjects the animals to unnecessary suffering through deprivation of food and shelter and compromises their genetic integrity, thereby permanently depriving the owner of substantial value.

Enacted by Chapter 119, 1997 General Session

76-6-501. Forgery and producing false identification -- Elements of

offense -- Definitions.

(1) As used in this part:

(a) "Authentication feature" means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified.

(b) "Document-making implement" means any implement, impression, template, computer file, computer disc, electronic device, computer hardware or software, or scanning, printing, or laminating equipment that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement.

(c) "False authentication feature" means an authentication feature that:

(i) is genuine in origin but that, without the authorization of the issuing authority, has been tampered with or altered for purposes of deceit;

(ii) is genuine, but has been distributed, or is intended for distribution, without the authorization of the issuing authority and not in connection with a lawfully made identification document, document-making implement, or means of identification to which the authentication feature is intended to be affixed or embedded by the issuing authority; or

(iii) appears to be genuine, but is not.

(d) "False identification document" means a document of a type intended or commonly accepted for the purposes of identification of individuals, and that:

(i) is not issued by or under the authority of a governmental entity or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit; and

(ii) appears to be issued by or under the authority of a governmental entity.

(e) "Governmental entity" means the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization, or a quasi-governmental organization.

(f) "Identification document" means a document made or issued by or under the authority of a governmental entity, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

(g) "Issuing authority" means:

(i) any governmental entity that is authorized to issue identification documents, means of identification, or authentication features; or

(ii) a business organization or financial institution or its agent that issues a financial transaction card as defined in Section 76-6-506.

(h) "Means of identification" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including:

(i) name, Social Security number, date of birth, government issued driver license or identification number, alien registration number, government passport

number, or employer or taxpayer identification number;

(ii) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; or

(iii) unique electronic identification number, address, or routing code.

(i) "Personal identification card" means an identification document issued by a governmental entity solely for the purpose of identification of an individual.

(j) "Produce" includes altering, authenticating, or assembling.

(k) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States.

(l) "Traffic" means to:

(i) transport, transfer, or otherwise dispose of an item to another, as consideration for anything of value; or

(ii) make or obtain control of with intent to transport, transfer, or otherwise dispose of an item to another.

(m) "Writing" includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as:

(i) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification;

(ii) a security, revenue stamp, or any other instrument or writing issued by a government or any agency; or

(iii) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.

(2) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that the person is facilitating a fraud to be perpetrated by anyone, the person:

(a) alters any writing of another without his authority or utters the altered writing; or

(b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication, or utterance:

(i) purports to be the act of another, whether the person is existent or nonexistent;

(ii) purports to be an act on behalf of another party with the authority of that other party; or

(iii) purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when an original did not exist.

(3) It is not a defense to a charge of forgery under Subsection (2)(b)(ii) if an actor signs his own name to the writing if the actor does not have authority to make, complete, execute, authenticate, issue, transfer, publish, or utter the writing on behalf of the party for whom the actor purports to act.

(4) A person is guilty of producing or transferring any false identification document who:

(a) knowingly and without lawful authority produces, attempts, or conspires to produce an identification document, authentication feature, or a false identification document that is or appears to be issued by or under the authority of an issuing authority;

(b) transfers an identification document, authentication feature, or a false identification document knowing that the document or feature was stolen or produced without lawful authority;

(c) produces, transfers, or possesses a document-making implement or authentication feature with the intent that the document-making implement or the authentication feature be used in the production of a false identification document or another document-making implement or authentication feature; or

(d) traffics in false or actual authentication features for use in false identification documents, document-making implements, or means of identification.

(5) A person who violates:

(a) Subsection (2) is guilty of a third degree felony; and

(b) Subsection (4) is guilty of a second degree felony.

(6) This part may not be construed to impose criminal or civil liability on any law enforcement officer acting within the scope of a criminal investigation.

(7) The forfeiture of property under this part, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be conducted in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

(8) The court shall order, in addition to the penalty prescribed for any person convicted of a violation of this section, the forfeiture and destruction or other disposition of all illicit authentication features, identification documents, false transaction cards, document-making implements, or means of identification.

Amended by Chapter 324, 2011 General Session

76-6-502. Possession of forged writing or device for writing -- Penalty.

Any person who, with intent to defraud, knowingly possesses any writing that is a forgery as defined in Section 76-6-501, or who with intent to defraud knowingly possesses any device for making any writing that is a forgery as defined in Section 76-6-501, is guilty of a third degree felony.

Amended by Chapter 56, 2001 General Session

76-6-503.5. Wrongful liens and fraudulent handling of recordable writings -- Penalties.

(1) "Lien" means:

(a) an instrument or document filed pursuant to Section 70A-9a-516;

(b) a nonconsensual common law document as defined in Section 38-9-102;

(c) a wrongful lien as defined in Section 38-9-102; or

(d) any instrument or document that creates or purports to create a lien or encumbrance on an owner's interest in real or personal property or a claim on another's

assets.

(2) A person is guilty of the crime of wrongful lien if that person knowingly makes, utters, records, or files a lien:

(a) having no objectively reasonable basis to believe he has a present and lawful property interest in the property or a claim on the assets; or

(b) if the person files the lien in violation of a civil wrongful lien injunction pursuant to Title 38, Chapter 9a, Wrongful Lien Injunctions.

(3) A violation of this section is a third degree felony unless the person has been previously convicted of an offense under this section, in which case the violation is a second degree felony.

(4) (a) Any person who with intent to deceive or injure anyone falsifies, destroys, removes, records, or conceals any will, deed, mortgage, security instrument, lien, or other writing for which the law provides public recording is guilty of fraudulent handling of recordable writings.

(b) A violation of Subsection (4)(a) is a third degree felony unless the person has been previously convicted of an offense under this section, in which case the violation is a second degree felony.

(5) This section does not prohibit prosecution for any act in violation of Section 76-8-414 or for any offense greater than an offense under this section.

Amended by Chapter 114, 2014 General Session

76-6-504. Tampering with records -- Penalty.

(1) Any person who, having no privilege to do so, knowingly falsifies, destroys, removes, or conceals any writing, other than the writings enumerated in Section 76-6-503.5 for which the law provides public recording or any record, public or private, with intent to deceive or injure any person or to conceal any wrongdoing is guilty of tampering with records.

(2) Tampering with records is a class B misdemeanor.

Amended by Chapter 93, 2005 General Session

76-6-505. Issuing a bad check or draft -- Presumption.

(1) (a) Any person who issues or passes a check or draft for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, knowing it will not be paid by the drawee and payment is refused by the drawee, is guilty of issuing a bad check or draft.

(b) For purposes of this Subsection (1), a person who issues a check or draft for which payment is refused by the drawee is presumed to know the check or draft would not be paid if he had no account with the drawee at the time of issue.

(2) Any person who issues or passes a check or draft for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent, payment of which check or draft is legally refused by the drawee, is guilty

of issuing a bad check or draft if he fails to make good and actual payment to the payee in the amount of the refused check or draft within 14 days of his receiving actual notice of the check or draft's nonpayment.

(3) An offense of issuing a bad check or draft shall be punished as follows:

(a) If the check or draft or series of checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is less than $500, the offense is a class B misdemeanor.

(b) If the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is or exceeds $500 but is less than $1,500, the offense is a class A misdemeanor.

(c) If the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is or exceeds $1,500 but is less than $5,000, the offense is a felony of the third degree.

(d) If the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is or exceeds $5,000, the offense is a second degree felony.

Amended by Chapter 193, 2010 General Session

76-6-506. Financial transaction card offenses -- Definitions.

As used in this part:

(1) "Authorized credit card merchant" means a person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a financial transaction card by a card holder and to present valid credit card sales drafts to the issuer for payment.

(2) "Automated banking device" means any machine which, when properly activated by a financial transaction card or a personal identification code, may be used for any of the purposes for which a financial transaction card may be used.

(3) "Card holder" means any person or organization named on the face of a financial transaction card to whom or for whose benefit a financial transaction card is issued.

(4) "Credit card sales draft" means any sales slip, draft, or other written or electronic record of a sale of money, goods, services, or anything else of value made or purported to be made to or at the request of a card holder with a financial transaction card, financial transaction card credit number, or personal identification code, whether the record of the sale or purported sale is evidenced by a sales draft, voucher, or other similar document in writing or electronically recorded and transmitted.

(5) "Financial transaction card" means:

(a) any credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card, or any other card, issued by an issuer for the use of the card holder in obtaining money, goods, services, or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of the person or business; or

(b) any instrument or device used in providing the card holder access to a demand or time deposit account for the purpose of making deposits of money or checks in the account, or withdrawing funds from the account in the form of money, money orders, travelers' checks or other form representing value, or transferring funds from any demand or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing in the credit card account.

(6) "Issuer" means a business organization or financial institution or its agent that issues a financial transaction card.

(7) "Personal identification code" means any numerical or alphabetical code assigned to a card holder by the issuer to permit the authorized electronic use of the holder's financial transaction card.

Amended by Chapter 254, 2010 General Session

76-6-506.2. Financial transaction card offenses -- Unlawful use of card -- False application for card.

It is unlawful for any person to:

(1) knowingly use a false, fictitious, altered, counterfeit, revoked, expired, stolen, or fraudulently obtained financial transaction card to obtain or attempt to obtain credit, goods, property, or services;

(2) knowingly, with the intent to defraud, use a financial transaction card, credit number, personal identification code, or any other information contained on the card or in the account from which the card is issued, to obtain or attempt to obtain credit, goods, or services;

(3) knowingly, with the intent to defraud, use a financial transaction card to willfully exceed an authorized credit line by $500 or more, or by 50% or more of the line of credit, whichever is greater;

(4) (a) knowingly, with the intent to defraud, make application for a financial transaction card to an issuer and make or cause to be made a false statement or report of the person's name, occupation, financial condition, assets, or personal identifying information; or

(b) willfully and substantially undervalue or understate any indebtedness for the purposes of influencing the issuer to issue the financial transaction card; or

(5) knowingly, with the intent to defraud, present or cause to be presented to the issuer or an authorized credit card merchant, for payment or collection, any credit card sales draft, if:

(a) the draft is counterfeit or fictitious;

(b) the purported sales evidenced by any credit card sales draft did not take place;

(c) the purported sale was not authorized by the card holder; or

(d) the items or services purported to be sold as evidenced by the credit card sales drafts are not delivered or rendered to the card holder or person intended to receive them.

Amended by Chapter 166, 2009 General Session

76-6-506.3. Financial transaction card offenses -- Unlawful acquisition, possession, or transfer of card.

Any person is guilty of a third degree felony who:

(1) acquires a financial transaction card from another without the consent of the card holder or the issuer;

(2) receives a financial transaction card with intent to use it in violation of Section 76-6-506.2;

(3) sells or transfers a financial transaction card to another person with the knowledge that it will be used in violation of Section 76-6-506.2;

(4) (a) acquires a financial transaction card that the person knows was lost, mislaid, or delivered under a mistake as to the identity or address of the card holder; and

(b) (i) retains possession with intent to use it in violation of Section 76-6-506.2; or

(ii) sells or transfers a financial transaction card to another person with the knowledge that it will be used in violation of Section 76-6-506.2; or

(5) possesses, sells, or transfers any information necessary for the use of a financial transaction card, including the credit number of the card, the expiration date of the card, or the personal identification code related to the card:

(a) (i) without the consent of the card holder or the issuer; or

(ii) with the knowledge that the information has been acquired without consent of the card holder or the issuer; and

(b) with intent to use the information in violation of Section 76-6-506.2.

Amended by Chapter 166, 2009 General Session

76-6-506.5. Financial transaction card offenses -- Classification -- Multiple violations.

(1) Any person found guilty of unlawful conduct described in Section 76-6-506.2 or 76-6-506.6 is guilty of:

(a) a class B misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is less than $500;

(b) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is or exceeds $500 but is less than $1,500;

(c) a third degree felony when the value of the property, money, or thing obtained or attempted to be obtained is or exceeds $1,500 but is less than $5,000; and

(d) a second degree felony when the value of the property, money, or thing obtained or attempted to be obtained is or exceeds $5,000.

(2) Multiple violations of Subsection 76-6-506.2(1), Section 76-6-506.6, and this section may be aggregated into a single offense, and the degree of the offense is determined by the total value of all property, money, or things obtained or attempted to be obtained through the multiple violations.

(3) The court shall make appropriate findings in any prosecution under this section that the card holder did not commit the crime.

Amended by Chapter 193, 2010 General Session

76-6-506.6. Financial transaction card offenses -- Unauthorized factoring of credit card sales drafts.

It is unlawful for any person, knowingly, with intent to defraud, acting without the express authorization of the issuer, to employ, solicit, or otherwise cause an authorized credit card merchant, or for the authorized credit card merchant himself, to present any credit card sales draft to the issuer for payment pertaining to any sale or purported sale of goods or services which was not made by the authorized credit card merchant in the ordinary course of business.

Enacted by Chapter 60, 1991 General Session

76-6-506.7. Obtaining encoded information on a financial transaction card with the intent to defraud the issuer, holder, or merchant.

(1) As used in this section:

(a) "Financial transaction card" or "card" means any credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card, or any other card, issued by an issuer for the use of the card holder in:

(i) obtaining money, goods, services, or anything else of value on credit; or

(ii) certifying or guaranteeing to a merchant the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check as the instrument for obtaining, purchasing, or receiving goods, services, money, or any other thing of value from the merchant.

(b) (i) "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of the owner or operator.

(ii) "Merchant" also means a person:

(A) who receives from a card holder, or a third person the merchant believes to be the card holder, a financial transaction card or information from a financial transaction card, or what the merchant believes to be a financial transaction card or information from a card; and

(B) who accepts the financial transaction card or information from a card under Subsection (1)(a)(ii)(A) as the instrument for obtaining, purchasing, or receiving goods, services, money, or any other thing of value from the merchant.

(c) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a financial transaction card onto the magnetic strip or stripe of a different financial transaction card.

(d) "Scanning device" means a scanner, reader, or any other electronic device used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a financial transaction card.

(2) (a) A person is guilty of a third degree felony who uses:

(i) a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a financial transaction card without the permission of the card holder and with intent to defraud the

card holder, the issuer, or a merchant; or

(ii) a reencoder to place information encoded on the magnetic strip or stripe of a financial transaction card onto the magnetic strip or stripe of a different card without the permission of the authorized user of the card from which the information is being reencoded and with the intent to defraud the card holder, the issuer, or a merchant.

(b) Any person who has been convicted previously of an offense under Subsection (2)(a) is guilty of a second degree felony upon a second conviction and any subsequent conviction for the offense.

Enacted by Chapter 306, 2003 General Session

76-6-507. Deceptive business practices -- Definitions -- Defense.

(1) A person is guilty of a class B misdemeanor if, in the course of business, he:

(a) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;

(b) takes or attempts to take more than the represented quantity of any commodity or service when as buyer he furnishes the weight or measure; or

(c) sells, offers, or exposes for sale adulterated or mislabeled commodities.

(2) (a) "Adulterated" means varying from the standard of composition or quality prescribed, or pursuant to any statute providing criminal penalties for a variance, or set by established commercial usage.

(b) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for a variance, or set by established commercial usage.

(3) It is an affirmative defense to prosecution under this section that the defendant's conduct was not knowing or reckless.

Amended by Chapter 157, 1985 General Session

76-6-508. Bribery of or receiving bribe by person in the business of selection, appraisal, or criticism of goods or services.

(1) A person is guilty of a class A misdemeanor when, without the consent of the employer or principal, contrary to the interests of the employer or principal:

(a) he confers, offers, or agrees to confer upon the employee, agent, or fiduciary of an employer or principal any benefit with the purpose of influencing the conduct of the employee, agent, or fiduciary in relating to his employer's or principal's affairs; or

(b) he, as an employee, agent, or fiduciary of an employer or principal, solicits, accepts, or agrees to accept any benefit from another upon an agreement or understanding that such benefit will influence his conduct in relation to his employer's or principal's affairs; provided that this section does not apply to inducements made or accepted solely for the purpose of causing a change in employment by an employee, agent, or fiduciary.

(2) A person is guilty of violation of this section if he holds himself out to the public as being engaged in the business of making disinterested selection, appraisal,

or criticism of goods or services and he solicits, accepts, or agrees to accept any benefit to influence his selection, appraisal, or criticism.

Amended by Chapter 241, 1991 General Session

76-6-509. Bribery of a labor official.

(1) Any person who offers, confers, or agrees to confer upon a labor official any benefit with intent to influence him in respect to any of his acts, decisions, or duties as a labor official is guilty of bribery of a labor official.

(2) Bribery of a labor official is a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-6-510. Bribe receiving by a labor official.

(1) Any labor official who solicits, accepts, or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence him in any of his acts, decisions, or duties as a labor official is guilty of bribe receiving by a labor official.

(2) Bribe receiving by a labor official is a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-6-511. Defrauding creditors.

A person is guilty of a class A misdemeanor if:

(1) he destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with a purpose to hinder enforcement of that interest; or

(2) knowing that proceedings have been or are about to be instituted for the appointment of a person entitled to administer property for the benefit of creditors, he:

(a) destroys, removes, conceals, encumbers, transfers, or otherwise deals with any property with a purpose to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors; or

(b) presents to any creditor or to an assignee for the benefit of creditors, orally or in writing, any statement relating to the debtor's estate, knowing that a material part of such statement is false.

Amended by Chapter 241, 1991 General Session

76-6-512. Acceptance of deposit by insolvent financial institution.

A person is guilty of a felony of the third degree if:

(1) as an officer, manager, or other person participating in the direction of a financial institution, as defined in Section 7-1-103, he receives or permits receipt of a deposit or other investment knowing that the institution is or is about to become unable, from any cause, to pay its obligations in the ordinary course of business; and

(2) he knows that the person making the payment to the institution is unaware of such present or prospective inability.

Amended by Chapter 10, 1997 General Session

76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.

(1) As used in this section:

(a) "Fiduciary" is as defined in Section 22-1-1.

(b) "Financial institution" means "depository institution" and "trust company" as defined in Section 7-1-103.

(c) "Governmental entity" is as defined in Section 63G-7-102.

(d) "Person" does not include a financial institution whose fiduciary functions are supervised by the Department of Financial Institutions or a federal regulatory agency.

(e) "Property" is as defined in Section 76-6-401.

(f) "Public money" is as defined in Section 76-8-401.

(2) A person is guilty of unlawfully dealing with property by a fiduciary if the person deals with property that has been entrusted to him as a fiduciary, or property of a governmental entity, public money, or of a financial institution, in a manner which the person knows is a violation of the person's duty and which involves substantial risk of loss or detriment to the owner or to a person for whose benefit the property was entrusted. A violation of this Subsection (2) is punishable under Section 76-6-412.

(3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if, without permission of the owner of the property or some other person with authority to give permission, the person pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.

(b) An offense under Subsection (3)(a) is punishable as:

(i) a felony of the second degree if the value of the property wrongfully pledged is or exceeds $5,000;

(ii) a felony of the third degree if the value of the property wrongfully pledged is or exceeds $1,500 but is less than $5,000;

(iii) a class A misdemeanor if the value of the property is or exceeds $500, but is less than $1,500 or the actor has been twice before convicted of theft, robbery, burglary with intent to commit theft, or unlawful dealing with property by a fiduciary; or

(iv) a class B misdemeanor if the value of the property is less than $500.

Amended by Chapter 193, 2010 General Session

76-6-514. Bribery or threat to influence contest.

A person is guilty of a felony of the third degree if:

(1) With a purpose to influence any participant or prospective participant not to give his best efforts in a publicly exhibited contest, he confers or offers or agrees to confer any benefit upon or threatens any injury to a participant or prospective

participant; or

(2) With a purpose to influence an official in a publicly exhibited contest to perform his duties improperly, he confers or offers or agrees to confer any benefit upon or threatens any injury to such official; or

(3) With a purpose to influence the outcome of a publicly exhibited contest, he tampers with any person, animal, or thing contrary to the rules and usages purporting to govern the contest; or

(4) He knowingly solicits, accepts, or agrees to accept any benefit, the giving of which would be criminal under Subsection (1) or (2).

Enacted by Chapter 196, 1973 General Session

76-6-515. Using or making slugs.

(1) A person is guilty of a class B misdemeanor if:

(a) With a purpose to defraud the supplier of property or a service offered or sold by means of a coin machine, he inserts, deposits, or uses a slug in that machine; or

(b) He makes, possesses, or disposes of a slug with the purpose of enabling a person to use it fraudulently in a coin machine.

(2) As used in this section:

(a) "Coin machine" means any mechanical or electronic device or receptacle designed to receive a coin or bill of a certain denomination, or a token made for the purpose, and, in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition of property or a public or private service.

(b) "Slug" means any object which, by virtue of its size, shape, or other quality, is capable of being inserted, deposited, or otherwise used in a coin machine as an improper substitute for a genuine coin, bill, or token.

Enacted by Chapter 196, 1973 General Session

76-6-516. Conveyance of real estate by married man without wife's consent.

Any married man who falsely represents himself as unmarried and under such representation knowingly conveys or mortgages real estate situate in this state, without the assent or concurrence of his wife when such consent or concurrence is necessary to relinquish her inchoate statutory interest therein, is guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-6-517. Making a false credit report.

(1) Any person who knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another is guilty of making a false credit report.

(2) Making a false credit report is a class A misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-6-518. Criminal simulation.

(1) A person is guilty of criminal simulation if, with intent to defraud another:

(a) he makes or alters an object in whole or in part so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(b) he sells, passes, or otherwise utters an object so made or altered;

(c) he possesses an object so made or altered with intent to sell, pass, or otherwise utter it; or

(d) he authenticates or certifies an object so made or altered as genuine or as different from what it is.

(2) Criminal simulation is punishable as follows:

(a) If the value defrauded or intended to be defrauded is less than $500, the offense is a class B misdemeanor.

(b) If the value defrauded or intended to be defrauded is or exceeds $500 but is less than $1,500, the offense is a class A misdemeanor.

(c) If the value defrauded or intended to be defrauded is or exceeds $1,500 but is less than $5,000, the offense is a felony of the third degree.

(d) If the value defrauded or intended to be defrauded is or exceeds $5,000, the offense is a felony of the second degree.

Amended by Chapter 193, 2010 General Session

76-6-520. Criminal usury.

(1) A person is guilty of criminal usury when he knowingly engages in or directly or indirectly provides financing for the business of making loans at a higher rate of interest or consideration therefor than is authorized by law.

(2) Criminal usury is a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-6-521. Fraudulent insurance act.

(1) A person commits a fraudulent insurance act if that person with intent to defraud:

(a) presents or causes to be presented any oral or written statement or representation knowing that the statement or representation contains false or fraudulent information concerning any fact material to an application for the issuance or renewal of an insurance policy, certificate, or contract;

(b) presents, or causes to be presented, any oral or written statement or representation:

(i) (A) as part of or in support of a claim for payment or other benefit pursuant to an insurance policy, certificate, or contract; or

(B) in connection with any civil claim asserted for recovery of damages for

personal or bodily injuries or property damage; and

(ii) knowing that the statement or representation contains false or fraudulent information concerning any fact or thing material to the claim;

(c) knowingly accepts a benefit from proceeds derived from a fraudulent insurance act;

(d) intentionally, knowingly, or recklessly devises a scheme or artifice to obtain fees for professional services, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions;

(e) knowingly employs, uses, or acts as a runner, as defined in Section 31A-31-102, for the purpose of committing a fraudulent insurance act;

(f) knowingly assists, abets, solicits, or conspires with another to commit a fraudulent insurance act; or

(g) knowingly supplies false or fraudulent material information in any document or statement required by the Department of Insurance.

(2) (a) A violation of Subsection (1)(a) is a class B misdemeanor.

(b) A violation of Subsections (1)(b) through (1)(g) is punishable as in the manner prescribed by Section 76-10-1801 for communication fraud for property of like value.

(3) A corporation or association is guilty of the offense of insurance fraud under the same conditions as those set forth in Section 76-2-204.

(4) The determination of the degree of any offense under Subsections (1)(b) through (1)(g) shall be measured by the total value of all property, money, or other things obtained or sought to be obtained by the fraudulent insurance act or acts described in Subsections (1)(b) through (1)(g).

Amended by Chapter 104, 2004 General Session

76-6-522. Definitions -- Equity skimming of a vehicle -- Penalties.

(1) As used in this section:

(a) "Broker" means any person who, for compensation of any kind, arranges for the sale, lease, sublease, or transfer of a vehicle.

(b) "Dealer" means any person engaged in the business of selling, leasing, or exchanging vehicles for compensation of any kind.

(c) "Lease" means any grant of use or possession of a vehicle for consideration, with or without an option to buy.

(d) "Security interest" means an interest in a vehicle that secures payment or performance of an obligation.

(e) "Transfer" means any delivery or conveyance of a vehicle to another from one person to another.

(f) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, or through the air or water, or over land and includes a manufactured home or mobile home as defined in Section 41-1a-102.

(2) A dealer or broker or any other person in collusion with a dealer or broker is guilty of equity skimming of a vehicle if he transfers or arranges the transfer of a vehicle

for consideration or profit, when he knows or should have known the vehicle is subject to a lease or security interest, without first obtaining written authorization of the lessor or holder of the security interest.

(3) Equity skimming of a vehicle is a third degree felony.

(4) It is a defense to the crime of equity skimming of a vehicle if the accused proves by a preponderance of the evidence that the lease obligation or security interest has been satisfied within 30 days following the transfer of the vehicle.

Amended by Chapter 1, 1992 General Session

76-6-523. Obstruction of the leasing of real property for natural resource or agricultural production -- Criminal penalties.

(1) As used in this section:

(a) "Competitive process" includes public auction or other public competitive bidding process.

(b) "Natural resource or agricultural production" means:

(i) the extraction or production of oil, gas, hydrocarbons, or other minerals;

(ii) production for commercial purposes of crops, livestock, and livestock products, including grazing; or

(iii) activities similar in purpose to those listed in Subsections (1)(b)(i) and (ii).

(2) A person is guilty of obstruction of the leasing of real property for natural resource or agricultural production if the person:

(a) bids for a lease as part of a competitive process for the lease;

(b) does not intend to pay for the lease at the time the person makes the bid described in Subsection (2)(a); and

(c) does not pay the lessor in full for the lease as required by the lease agreement.

(3) The offense of obstruction of the leasing of real property for natural resource or agricultural production is:

(a) a third degree felony; and

(b) subject to a minimum fine of not less than $7,500.

Enacted by Chapter 306, 2009 General Session

76-6-524. Falsifying information for preconstruction lien purposes.

A person who knowingly falsifies information for the purpose of obtaining priority of a preconstruction lien under Title 38, Chapter 1a, Preconstruction and Construction Liens, is guilty of a class B misdemeanor.

Amended by Chapter 278, 2012 General Session

76-6-601. Definitions.

As used in this chapter:

(1) "Merchandise" means any personal property displayed, held or offered for sale by a merchant.

(2) "Merchant" means an owner or operator of any retail mercantile establishment where merchandise is displayed, held or offered for sale and includes the merchant's employees, servants or agents.

(3) "Minor" means any unmarried person under 18 years of age.

(4) "Peace officer" has the same meaning as provided in Title 53, Chapter 13, Peace Officer Classifications.

(5) "Premises of a retail mercantile establishment" includes, but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking lots or areas set aside for the benefit of those patrons of the retail mercantile establishment.

(6) "Retail mercantile establishment" means any place where merchandise is displayed, held, or offered for sale to the public.

(7) "Retail value" means the merchant's stated or advertised price of the merchandise.

(8) "Shopping cart" means those push carts of the types which are commonly provided by grocery stores, drug stores, or other mercantile establishments or markets for the use of the public in transporting commodities in stores and markets from the store to a place outside the store.

(9) "Under-ring" means to cause the cash register or other sales recording device to reflect less than the retail value of the merchandise.

Amended by Chapter 282, 1998 General Session

76-6-602. Retail theft, acts constituting.

A person commits the offense of retail theft when he knowingly:

(1) Takes possession of, conceals, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the retail value of such merchandise; or

(2) Alters, transfers, or removes any label, price tag, marking, indicia of value or any other markings which aid in determining value of any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the retail value with the intention of depriving the merchant of the retail value of such merchandise; or

(3) Transfers any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment from the container in or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the retail value of such merchandise; or

(4) Under-rings with the intention of depriving the merchant of the retail value of the merchandise; or

(5) Removes a shopping cart from the premises of a retail mercantile establishment with the intent of depriving the merchant of the possession, use or benefit of such cart.

Enacted by Chapter 78, 1979 General Session

76-6-603. Detention of suspected violator by merchant -- Purposes.

(1) Any merchant who has probable cause to believe that a person has committed retail theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(a) to make reasonable inquiry as to whether such person has in his possession unpurchased merchandise and to make reasonable investigation of the ownership of such merchandise;

(b) to request identification;

(c) to verify such identification;

(d) to make a reasonable request of such person to place or keep in full view any merchandise such individual may have removed, or which the merchant has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose;

(e) to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer;

(f) in the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of that minor immediately, if possible, of this detention and to surrender custody of such minor to such person.

(2) A merchant may make a detention as permitted herein off the premises of a retail mercantile establishment only if such detention is pursuant to an immediate pursuit of such person.

Amended by Chapter 306, 2007 General Session

76-6-604. Defense to action by person detained.

In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights brought by any person detained by the merchant, it shall be a defense to such action that the merchant detaining such person had probable cause to believe that the person had committed retail theft and that the merchant acted reasonably under all circumstances.

Enacted by Chapter 78, 1979 General Session

76-6-606. Penalty.

An act of theft committed in violation of this part shall be punished in accordance with Subsection 76-6-412(1).

Amended by Chapter 236, 2000 General Session

76-6-607. Report of arrest to division.

Any arrest made for a violation of this part shall be reported by the appropriate jurisdiction to the Criminal Investigations and Technical Services Division of the

Department of Public Safety, established in Section 53-10-103, which shall keep a record of the arrest together with the disposition of the arrest for purposes of inquiry by any law enforcement agency.

Amended by Chapter 263, 1998 General Session

76-6-608. Theft detection shielding devices prohibited -- Penalties.

(1) A person may not knowingly:

(a) make or possess any container or device used for, intended for use for, or represented as having the purpose of shielding merchandise from any electronic or magnetic theft alarm sensor, with the intent to commit a theft of merchandise;

(b) sell, offer to sell, advertise, give, transport, or otherwise transfer to another any container or device intended for use for or represented as having the purpose of shielding merchandise from any electronic or magnetic theft alarm sensor;

(c) possess any tool or instrument designed to remove any theft detection device from any merchandise, with the intent to use the tool or instrument to remove any theft detection device from any merchandise without the permission of the merchant or the person owning or in possession of the merchandise; or

(d) intentionally remove a theft detection device from merchandise prior to purchase and without the permission of the merchant.

(2) (a) A violation of Subsection (1)(a), (b), or (c) is a class A misdemeanor.

(b) A violation of Subsection (1)(d) is a:

(i) class B misdemeanor if the value of the merchandise from which the theft detection device is removed is less than $500; or

(ii) class A misdemeanor if the value of the merchandise from which the theft detection device is removed is or exceeds $500.

(3) A violation of Subsection (1) is a separate offense from any offense listed in Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail Theft.

(4) Criminal prosecutions under this section do not affect any person's right of civil action for redress for damages suffered as a result of any violation of this section.

Amended by Chapter 193, 2010 General Session

76-6-701. Computer Crimes Act -- Short title.

This part is known as the "Utah Computer Crimes Act."

Amended by Chapter 123, 1986 General Session

76-6-702. Definitions.

As used in this part:

(1) "Access" means to directly or indirectly use, attempt to use, instruct, communicate with, cause input to, cause output from, or otherwise make use of any resources of a computer, computer system, computer network, or any means of communication with any of them.

(2) "Authorization" means having the express or implied consent or permission

of the owner, or of the person authorized by the owner to give consent or permission to access a computer, computer system, or computer network in a manner not exceeding the consent or permission.

(3) "Computer" means any electronic device or communication facility that stores, retrieves, processes, or transmits data.

(4) "Computer system" means a set of related, connected or unconnected, devices, software, or other related computer equipment.

(5) "Computer network" means:

(a) the interconnection of communication or telecommunication lines between:

(i) computers; or

(ii) computers and remote terminals; or

(b) the interconnection by wireless technology between:

(i) computers; or

(ii) computers and remote terminals.

(6) "Computer property" includes electronic impulses, electronically produced data, information, financial instruments, software, or programs, in either machine or human readable form, any other tangible or intangible item relating to a computer, computer system, computer network, and copies of any of them.

(7) "Confidential" means data, text, or computer property that is protected by a security system that clearly evidences that the owner or custodian intends that it not be available to others without the owner's or custodian's permission.

(8) "Information" does not include information obtained:

(a) through use of:

(i) an electronic product identification or tracking system; or

(ii) other technology used by a retailer to identify, track, or price goods; and

(b) by a retailer through the use of equipment designed to read the electronic product identification or tracking system data located within the retailer's location.

(9) "License or entitlement" includes:

(a) licenses, certificates, and permits granted by governments;

(b) degrees, diplomas, and grades awarded by educational institutions;

(c) military ranks, grades, decorations, and awards;

(d) membership and standing in organizations and religious institutions;

(e) certification as a peace officer;

(f) credit reports; and

(g) another record or datum upon which a person may be reasonably expected to rely in making decisions that will have a direct benefit or detriment to another.

(10) "Security system" means a computer, computer system, network, or computer property that has some form of access control technology implemented, such as encryption, password protection, other forced authentication, or access control designed to keep out unauthorized persons.

(11) "Services" include computer time, data manipulation, and storage functions.

(12) "Financial instrument" includes any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, electronic fund transfer, automated clearing house transaction, credit card, or marketable security.

(13) "Software" or "program" means a series of instructions or statements in a form acceptable to a computer, relating to the operations of the computer, or permitting the functioning of a computer system in a manner designed to provide results including system control programs, application programs, or copies of any of them.

Amended by Chapter 72, 2005 General Session

76-6-703. Computer crimes and penalties.

(1) A person who without authorization gains or attempts to gain access to and alters, damages, destroys, discloses, or modifies any computer, computer network, computer property, computer system, computer program, computer data or software, and thereby causes damage to another, or obtains money, property, information, or a benefit for any person without legal right, is guilty of:

(a) a class B misdemeanor when:

(i) the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is less than $500; or

(ii) the information obtained is not confidential;

(b) a class A misdemeanor when the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds $500 but is less than $1,500;

(c) a third degree felony when the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds $1,500 but is less than $5,000;

(d) a second degree felony when the damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds $5,000; or

(e) a third degree felony when:

(i) the property or benefit obtained or sought to be obtained is a license or entitlement;

(ii) the damage is to the license or entitlement of another person; or

(iii) the information obtained is confidential; or

(iv) in gaining access the person breaches or breaks through a security system.

(2) (a) Except as provided in Subsection (2)(b), a person who intentionally or knowingly and without authorization gains or attempts to gain access to a computer, computer network, computer property, or computer system under circumstances not otherwise constituting an offense under this section is guilty of a class B misdemeanor.

(b) Notwithstanding Subsection (2)(a), a retailer that uses an electronic product identification or tracking system, or other technology to identify, track, or price goods is not guilty of a violation of Subsection (2)(a) if the equipment designed to read the electronic product identification or tracking system data and used by the retailer to identify, track, or price goods is located within the retailer's location.

(3) A person who uses or knowingly allows another person to use any computer, computer network, computer property, or computer system, program, or software to devise or execute any artifice or scheme to defraud or to obtain money, property, services, or other things of value by false pretenses, promises, or representations, is guilty of an offense based on the value of the money, property, services, or things of

value, in the degree set forth in Subsection 76-10-1801(1).

(4) A person who intentionally or knowingly and without authorization, interferes with or interrupts computer services to another authorized to receive the services is guilty of a class A misdemeanor.

(5) It is an affirmative defense to Subsections (1) and (2) that a person obtained access or attempted to obtain access in response to, and for the purpose of protecting against or investigating, a prior attempted or successful breach of security of a computer, computer network, computer property, computer system whose security the person is authorized or entitled to protect, and the access attempted or obtained was no greater than reasonably necessary for that purpose.

Amended by Chapter 193, 2010 General Session

76-6-704. Attorney general, county attorney, or district attorney to prosecute -- Conduct violating other statutes.

(1) The attorney general, district attorney, or the county attorney shall prosecute suspected criminal violations of this part.

(2) Prosecution under this part does not prevent any prosecutions under any other law.

Amended by Chapter 38, 1993 General Session

76-6-705. Reporting violations.

Every person, except those to whom a statutory or common law privilege applies, who has reason to believe that the provisions of Section 76-6-703 are being or have been violated shall report the suspected violation to the attorney general, or county attorney, or, if within a prosecution district, the district attorney of the county or prosecution district in which part or all of the violations occurred.

Amended by Chapter 38, 1993 General Session

76-6-801. Acts constituting library theft.

A person is guilty of the crime of library theft when he willfully, for the purpose of converting to personal use, and depriving the owner, conceals on his person or among his belongings library materials while on the premises of the library or willfully and without authority removes library materials from the library building with the intention of converting them to his own use.

Amended by Chapter 245, 1987 General Session

76-6-802. Presumption of intent.

A person who willfully conceals library materials on his person or among his belongings while on the premises of the library or in its immediate vicinity is prima facie presumed to have concealed library materials with the intention of converting them to his own use. If library materials are found concealed upon his person or among his

belongings, or electronic security devices are activated by the person's presence, it is prima facie evidence of willful concealment.

Amended by Chapter 245, 1987 General Session

76-6-803. Mutilation or damaging of library material as library theft.

A person is guilty of the crime of library theft when he intentionally or recklessly writes upon, injures, defaces, tears, cuts, mutilates, destroys, or otherwise damages library materials.

Amended by Chapter 245, 1987 General Session

76-6-803.30. Failure to return library material as library theft -- Notice -- Failure to pay replacement value -- Written notice.

(1) A person is guilty of library theft when, having possession or having been in possession of library materials, he:

(a) fails to return the materials within 30 days after receiving written notice demanding return of the materials; or

(b) if the materials are lost or destroyed, fails to pay the replacement value of the materials within 30 days after being notified.

(2) Written notice is considered received upon the sworn affidavit of the person delivering the notice with a statement as to the date, place, and manner of delivery, or upon proof that the notice was mailed postage prepaid, via the United States Postal Service, to the current address listed for the person in the library records.

Enacted by Chapter 245, 1987 General Session

76-6-803.60. Detention of theft suspect by library employee -- Purposes.

(1) Any employee of the library who has probable cause to believe that a person has committed library theft may detain the person, on or off the premises of a library, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(a) to make reasonable inquiry as to whether the person has in his possession concealed library materials;

(b) to request identification;

(c) to verify identification;

(d) to make a reasonable request of the person to place or keep in full view any library materials the individual may have removed, or which the employee has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, or for any other reasonable purpose;

(e) to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer; or

(f) in the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of the minor as soon as possible of this detention and to surrender custody of the minor to this person.

(2) An employee may make a detention under this section off the library premises only if the detention is pursuant to an immediate pursuit of the person.

Enacted by Chapter 245, 1987 General Session

76-6-803.90. Liability -- Defense -- Probable cause -- Reasonableness.

In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights brought by any person detained by an employee of the library, it is a defense to the action that the employee of the library detaining the person had probable cause to believe that the person had committed library theft and that the employee acted reasonably under all circumstances.

Enacted by Chapter 245, 1987 General Session

76-6-804. "Book or other library materials" defined.

The terms "book or other library materials" as used in this act include any book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microfilm, sound recording, audiovisual materials in any format, electronic data processing records, artifacts, or other documentary, written or printed materials regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of the following:

(1) any public library;
(2) any library of an educational or historical society;
(3) any museum; or
(4) any repository of public records.

Enacted by Chapter 168, 1981 General Session

76-6-805. Penalty.

Any person violating the provisions of this act shall be subject to provisions of Section 76-6-412.

Enacted by Chapter 168, 1981 General Session

76-6-901. Definitions.

As used in this part:

(1) "Antiquities" means:

(a) all material remains and their associations, recoverable through excavation or surface collection, that provide information pertaining to the historic or prehistoric peoples in the state; and

(b) vertebrate fossils and other exceptional fossils and fossil sites designated as state landmarks.

(2) "Landowner" includes the School and Institutional Trust Lands Administration with respect to lands sold by the School and Institutional Trust Lands

Administration and upon which a restrictive deed covenant has been imposed by the School and Institutional Trust Lands Administration.

(3) "Persons" means an individual, corporation, partnership, trust, institution, association, or any other private entity or any officer, employee, agent, department, or instrumentality of the United States, of any Native American tribe, or of any state or political subdivision of any state.

(4) "State lands" means all lands owned by:

(a) Utah, including school and institutional trust lands and lands sold by the School and Institutional Trust Lands Administration subject to a restrictive deed covenant for the protection of antiquities; and

(b) political subdivisions.

Amended by Chapter 111, 2006 General Session

76-6-902. Prohibitions.

(1) It is unlawful for any person to intentionally alter, remove, injure, or destroy antiquities from state lands or private lands without the landowner's consent.

(2) It is unlawful to intentionally reproduce, rework, or forge any antiquities or make any object, whether copies or not, or falsely label, describe, identify, or offer for sale or exchange any object with the intent to represent the object as original and genuine, nor may any person offer any object for sale or exchange that was collected or excavated in violation of this chapter.

Amended by Chapter 111, 2006 General Session

76-6-903. Penalties.

(1) A person is guilty of a class B misdemeanor if that person:

(a) violates this part; or

(b) counsels, procures, solicits, or employs any other person to violate this part.

(2) A person is guilty of a third degree felony if:

(a) that person commits a second or subsequent violation described in Subsection (1); or

(b) the amount calculated under Subsection (3) for a violation described in Subsection (1) exceeds $500.

(3) The amount described in Subsection (2)(b) is calculated by adding the:

(a) commercial or archaeological value of the antiquities involved in the violation; and

(b) cost of the restoration and repair of the antiquities involved in the violation.

(4) All articles and material discovered, collected, excavated, or offered for sale or exchange shall be surrendered to the landowner.

Amended by Chapter 394, 2013 General Session

76-6-1001. Definitions.

As used in this part:

(1) "Key" means any instrument used by the postal service and postal customer, and which is designed to operate the lock on a mail receptacle.

(2) "Mail" means any letter, card, parcel, or other material, along with its contents, that:

(a) has postage affixed by the postal customer or postal service;

(b) has been accepted for delivery by the postal service;

(c) the postal customer leaves for collection by the postal service; or

(d) the postal service delivers to the postal customer.

(3) "Mail receptacle" means a mail box, post office box, rural box, or any place intended or used by postal customers or the postal service for the collection or delivery of mail.

(4) "Postage" means a postal service stamp, permit imprint, meter strip, or other indication of either prepayment for postal service provided or authorization by the postal service for collection and delivery of mail.

(5) "Postal service" means the United States Postal Service and any motor carrier engaged in the business of collecting, transporting, and delivering mail.

Enacted by Chapter 87, 1998 General Session

76-6-1002. Damage to mail receptacle -- Penalties -- Greater offenses.

(1) A person commits the crime of damage to a mail receptacle if the person knowingly damages the condition of a mail receptacle, including:

(a) taking, concealing, damaging, or destroying a key; or

(b) breaking open, tearing down, taking, damaging, or destroying a mail receptacle.

(2) (a) In determining the degree of an offense committed under Subsection (1), the penalty levels in Subsection 76-6-106(3)(b) apply.

(b) If the act committed amounts to an offense subject to a greater penalty, this subsection does not prohibit prosecution and sentencing for the more serious offense.

Amended by Chapter 166, 2002 General Session

76-6-1003. Mail theft -- Penalties.

(1) A person commits the crime of mail theft if the person:

(a) knowingly, and with the intent to deprive another:

(i) takes, destroys, hides, or embezzles mail; or

(ii) obtains any mail by fraud or deception; or

(b) buys, receives, conceals, or possesses mail and knows or reasonably should have known that the mail was unlawfully taken or obtained.

(2) Mail theft is a:

(a) felony of the second degree if the value of the mail is or exceeds $5,000;

(b) felony of the third degree if the value of the mail is or exceeds $1,000, but is less than $5,000 in value; and

(c) class A misdemeanor if the value of the mail is less than $1,000 in value or the value cannot be ascertained.

Amended by Chapter 340, 2004 General Session

76-6-1004. Presumptions and defenses.

(1) The presumptions and defenses regarding the theft of property in Section 76-6-402 apply to this part, in addition to the provisions of this section.

(2) It is a defense to a charge of mail theft that:

(a) the defendant was unaware that the mail belonged to another person;

(b) the defendant reasonably believed he was entitled to the mail or had a right to acquire or dispose of the mail as he did; or

(c) the mail belonged to the defendant's spouse, unless the parties were either legally separated or living in separate residences at the time of the alleged mail theft.

Enacted by Chapter 87, 1998 General Session

76-6-1101. Identity fraud.

This part is known as the "Identity Fraud Act."

Enacted by Chapter 57, 2000 General Session

76-6-1102. Identity fraud crime.

(1) As used in this part, "personal identifying information" may include:

(a) name;

(b) birth date;

(c) address;

(d) telephone number;

(e) drivers license number;

(f) Social Security number;

(g) place of employment;

(h) employee identification numbers or other personal identification numbers;

(i) mother's maiden name;

(j) electronic identification numbers;

(k) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions Act;

(l) any other numbers or information that can be used to access a person's financial resources or medical information, except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through 76-6-506.6; or

(m) a photograph or any other realistic likeness.

(2) (a) A person is guilty of identity fraud when that person knowingly or intentionally uses, or attempts to use, the personal identifying information of another person, whether that person is alive or deceased, with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information.

(b) It is not a defense to a violation of Subsection (2)(a) that the person did not

know that the personal information belonged to another person.

(3) Identity fraud is:

(a) except as provided in Subsection (3)(b)(ii), a third degree felony if the value of the credit, goods, services, employment, or any other thing of value is less than $5,000; or

(b) a second degree felony if:

(i) the value of the credit, goods, services, employment, or any other thing of value is or exceeds $5,000; or

(ii) the use described in Subsection (2)(a)(ii) of personal identifying information results, directly or indirectly, in bodily injury to another person.

(4) Multiple violations may be aggregated into a single offense, and the degree of the offense is determined by the total value of all credit, goods, services, or any other thing of value used, or attempted to be used, through the multiple violations.

(5) When a defendant is convicted of a violation of this section, the court shall order the defendant to make restitution to any victim of the offense or state on the record the reason the court does not find ordering restitution to be appropriate.

(6) Restitution under Subsection (5) may include:

(a) payment for any costs incurred, including attorney fees, lost wages, and replacement of checks; and

(b) the value of the victim's time incurred due to the offense:

(i) in clearing the victim's credit history or credit rating;

(ii) in any civil or administrative proceedings necessary to satisfy or resolve any debt, lien, or other obligation of the victim or imputed to the victim and arising from the offense; and

(iii) in attempting to remedy any other intended or actual harm to the victim incurred as a result of the offense.

Amended by Chapter 77, 2013 General Session
Amended by Chapter 119, 2013 General Session
Amended by Chapter 278, 2013 General Session

76-6-1103. Investigation of violation.

In addition to investigations conducted by law enforcement agencies, the Office of the Attorney General also has responsibility for investigating violations of this part where identity fraud is the primary violation that is alleged to have been committed.

Amended by Chapter 227, 2004 General Session

76-6-1104. Court records.

In any case in which a person commits identify fraud and uses the personal identifying information obtained to commit a crime in addition to the identity fraud, the court shall make appropriate findings in any prosecution of such a crime that the person whose identity was falsely used to commit the crime did not commit the crime.

Enacted by Chapter 57, 2000 General Session

76-6-1105. Unlawful possession of another's identification documents.

(1) For purposes of this section "identifying document" means:

(a) a government issued identifying document;

(b) a vehicle registration certificate; or

(c) any other document containing personal identifying information as defined in Subsections 76-6-1102(1)(d) through (k).

(2) (a) Notwithstanding the provisions of Subsection 76-6-1102(3), a person is guilty of a class A misdemeanor if he:

(i) obtains or possesses an identifying document with knowledge that he is not entitled to obtain or possess the identifying document; or

(ii) assists another person in obtaining or possessing an identifying document with knowledge that the person is not entitled to obtain or possess the identifying document.

(b) A person is guilty of a third degree felony if he:

(i) obtains or possesses multiple identifying documents with knowledge that he is not entitled to obtain or possess the multiple identifying documents; or

(ii) assists another person in obtaining or possessing multiple identifying documents with knowledge that the person is not entitled to obtain or possess the multiple identifying documents.

(c) For purposes of Subsection (2)(b), "multiple identifying documents" means identifying documents of two or more people.

Enacted by Chapter 227, 2004 General Session

76-6-1201. Title.

This part is known as the "Utah Mortgage Fraud Act."

Enacted by Chapter 370, 2008 General Session

76-6-1202. Definitions.

As used in this part:

(1) "Mortgage lending process" means the process through which a person seeks or obtains a mortgage loan, including solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan.

(2) "Mortgage loan":

(a) means a loan or agreement made to extend credit to a person when the loan is secured by a deed, security deed, mortgage, security interest, deed of trust, or other document representing a security interest or lien upon any interest in one-to-four family residential property; and

(b) includes the renewal or refinancing of any loan.

(3) "Pattern of unlawful activity" has the same definition as in Section 76-10-1602.

(4) "Sensitive personal identifying information" includes:

(a) the following information regarding an individual's:

(i) Social Security number;
(ii) driver license number or other government issued identification number;
(iii) financial account number or credit or debit card number;
(iv) password or personal identification number or other identification required to gain access to a financial account or a secure website;
(v) automated or electronic signature; and
(vi) unique biometric data; and
(b) any other information that can be used to gain access to an individual's financial accounts or to obtain goods or services.
(5) "Value" means the value of the property, money, or thing obtained or sought to be obtained.

Enacted by Chapter 370, 2008 General Session

76-6-1203. Mortgage fraud.

A person commits the offense of mortgage fraud if the person does any of the following with the intent to defraud:
(1) knowingly makes any material misstatement, misrepresentation, or omission during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, or any other party to the mortgage lending process;
(2) knowingly uses or facilitates the use of any material misstatement, misrepresentation, or omission, during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, or any other party to the mortgage lending process;
(3) files or causes to be filed with any county recorder in Utah any document that the person knows contains a material misstatement, misrepresentation, or omission; or
(4) receives any proceeds or any compensation in connection with a mortgage loan that the person knows resulted from a violation of this section.

Enacted by Chapter 370, 2008 General Session

76-6-1204. Classification of offense.

(1) Notwithstanding any other administrative, civil, or criminal penalties, a person who violates Section 76-6-1203 is guilty of a:
(a) class A misdemeanor when the value is or exceeds $500 but is less than $1,500;
(b) third degree felony when the value is or exceeds $1,500 but is less than $5,000;
(c) second degree felony when the value is or exceeds $5,000; and
(d) second degree felony when the object or purpose of the commission of an act of mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the value.
(2) The determination of the degree of any offense under Subsection (1) is measured by the total value of all property, money, or things obtained or sought to be

obtained by a violation of Section 76-6-1203, except as provided in Subsection (1)(d).

(3) Each residential or commercial property transaction offense under this part constitutes a separate violation.

Amended by Chapter 193, 2010 General Session

76-6-1301. Title.

This part is known as the "Utah Automated Sales Suppression Device Act."

Enacted by Chapter 32, 2012 General Session

76-6-1302. Definitions.

As used in this part:

(1) "Automated sales suppression device" means:

(a) a software program that falsifies the electronic records of electronic cash registers or any other point-of-sale systems, including transaction data and transaction reports; or

(b) a general reference to a device that allows for, creates, or supports an automated sales suppression system or any kind of phantomware.

(2) "Electronic cash register" means any device, wherever located, that maintains a transaction register or supporting documents by means of an electronic device or computer system designed to record transaction data for the purpose of computing, compiling, or processing retail, wholesale, or any other sales transaction data.

(3) "Person" means an individual, business, or entity.

(4) "Phantomware" means a programming option that:

(a) is pre-installed, installed at a later time, or otherwise embedded in the operating system of an electronic cash register or hardwired into the electronic cash register; and

(b) can be used to create a virtual alternate register or to eliminate or manipulate transaction records that may or may not be preserved in digital formats in order to represent a manipulated record or records of transactions in the electronic cash register.

(5) "Transaction data" includes items purchased by a customer, the price for each item, a taxability determination for each item, a segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net amount returned to the customer in change or in a refund, the date and time of the purchase, the name, address, and identification number of the vendor, and the receipt or invoice number of the transaction.

(6) "Transaction report" means a report that includes the sales, taxes collected, media totals, and discount voids at an electronic cash register and that is generated at the end of a day or shift. The report is printed on cash register tape or is stored electronically.

Enacted by Chapter 32, 2012 General Session

76-6-1303. Possession, sale, or use of automated sales suppression device unlawful -- Penalties.

(1) It is a third degree felony to willfully or knowingly sell, purchase, install, transfer, use, or possess in this state any automated sales suppression device or phantomware with the intent to defraud, except that any second or subsequent violation of this Subsection (1) is a second degree felony.

(2) Notwithstanding Section 76-3-301, any person convicted of violating Subsection (1) may be fined not more than twice the amount of the applicable taxes that would otherwise be due, but for the use of the automated sales suppression device or phantomware.

(3) Any person convicted of a violation of Subsection (1):

(a) is liable for all applicable taxes, penalties under Section 59-1-401, and interest under Section 59-1-402 that would otherwise be due, but for the use of the automated sales suppression device or phantomware to evade the payment of taxes; and

(b) shall disgorge all profits associated with the sale or use of an automated sales suppression device or phantomware.

(4) An automated sales suppression device and any device containing an automated sales suppression device is contraband and subject to forfeiture under Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

Enacted by Chapter 32, 2012 General Session

76-6-1401. Title.

This part is known as "Regulation of Metal Dealers."

Renumbered and Amended by Chapter 187, 2013 General Session

76-6-1402. Definitions.

As used in this part:

(1) "Catalytic converter" means a motor vehicle exhaust system component that reduces vehicle emissions by breaking down harmful exhaust emissions.

(2) "Dealer" means:

(a) a scrap metal processor or secondary metals dealer or recycler, but does not include junk dealers or solid waste management facilities as defined in Section 19-6-502; or

(b) a metals refiner.

(3) "Ferrous metal" means a metal that contains significant quantities of iron or steel.

(4) "Identification" means a form of positive identification issued by a state of the United States or the United States federal government that:

(a) contains a numerical identifier and a photograph of the person identified;

(b) provides the date of birth of the person identified; and

(c) includes a state identification card, a state driver license, a United States military identification card, or a United States passport.

(5) "Junk dealer" means all persons, firms, or corporations engaged in the business of purchasing or selling secondhand or castoff material, including ropes, cordage, bottles, bagging, rags, rubber, paper, and other like materials, but not including regulated metal.

(6) "Local law enforcement agency" means the law enforcement agency that has jurisdiction over the area where the dealer's business is located.

(7) "Metals refiner" means an individual or business that refines or melts any regulated metal, but does not include an individual or business that primarily uses ore, concentrate, or other primary materials in refining, melting, or producing any regulated metal.

(8) "Nonferrous metal":

(a) means a metal that does not contain significant quantities of iron or steel; and

(b) includes copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys.

(9) (a) "Regulated metal" means any item composed primarily of nonferrous metal, except as provided in Subsection (9)(c).

(b) "Regulated metal" includes:

(i) aluminum, brass, copper, lead, chromium, tin, nickel, or alloys of these metals, except under Subsection (9)(c);

(ii) property owned by, and also identified by marking or other means as the property of:

(A) a telephone, cable, electric, water, or other utility; or

(B) a railroad company;

(iii) unused and undamaged building construction materials made of metal or alloy, including:

(A) copper pipe, tubing, or wiring; and

(B) aluminum wire, siding, downspouts, or gutters;

(iv) oil well rigs, including any part of the rig;

(v) nonferrous materials, stainless steel, and nickel; and

(vi) irrigation pipe.

(c) "Regulated metal" does not include:

(i) ferrous metal, except as provided in Subsection (9)(b)(ii) or (iv);

(ii) household-generated recyclable materials;

(iii) items composed wholly of light iron or sheet steel;

(iv) aluminum beverage containers; or

(v) containers used solely for containing food.

(10) "Secondary metals dealer or recycler" means any person who:

(a) is engaged in the business of purchasing, collecting, or soliciting regulated metal; or

(b) operates or maintains a facility where regulated metal is purchased or kept for shipment, sale, transfer, or salvage.

(11) "Scrap metal processor" means any person:

(a) who, from a fixed location, utilizes machinery and equipment for processing and manufacturing iron, steel, or nonferrous scrap into prepared grades; and

(b) whose principal product is scrap iron, scrap steel, or nonferrous metallic scrap, not including precious metals, for sale for remelting purposes.

(12) "Suspect metal items" are the following items made of regulated metal:

(a) manhole covers and sewer grates;

(b) gas meters and water meters;

(c) traffic signs, street signs, aluminum street light poles, communications transmission towers, and guard rails;

(d) grave site monument vases and monument plaques;

(e) any monument plaque;

(f) brass or bronze bar stock and bar ends;

(g) ingots;

(h) nickel and nickel alloys containing greater than 50% nickel;

(i) #1 and #2 copper as defined by the most recent institute of Scrap Recycling Industries, Inc., Scrap Specifications Circular;

(j) unused and undamaged building materials, including:

(i) greenline copper;

(ii) copper pipe, tubing, or wiring; and

(iii) aluminum wire, siding, downspouts, or gutters;

(k) catalytic converters; and

(l) wire that has been burned or that has the appearance of having been burned.

Amended by Chapter 261, 2014 General Session

76-6-1403. Records of sales and purchases -- Identification required.

(1) Every dealer shall:

(a) require the information under Subsection (2) for each transaction of regulated metal, except under Subsection 76-6-1406(4); and

(b) maintain for each purchase of regulated metal the information required by this part in a written or electronic log, in the English language.

(2) The dealer shall require the following information of the seller and shall record the information as required under Subsection (1) for each purchase of regulated metal:

(a) a complete description of the regulated metal, including weight and metallic description, in accordance with scrap metal recycling industry standards;

(b) the full name and residence of each person selling the regulated metal;

(c) the vehicle type and license plate number, if applicable, of the vehicle transporting the regulated metal to the dealer;

(d) the price per pound and the amount paid for each type of regulated metal purchased by the dealer;

(e) the date, time, and place of the purchase;

(f) the type and the identifying number of the identification provided in Subsection (2)(g);

(g) a form of identification that is a valid United States federal or state-issued photo ID, which includes a driver license, a United States passport, a United States

passport card, or a United States military identification card;

(h) the seller's signature on a certificate stating that he has the legal right to sell the scrap metal or junk; and

(i) a digital photograph or still video of the seller, taken at the time of the sale, or a clearly legible photocopy of the seller's identification.

(3) No entry in the log may be erased, deleted, mutilated, or changed.

(4) The log and entries shall be open to inspection by the following officials having jurisdiction over the area in which the dealer does business during regular business hours:

(a) the county sheriff or deputies;

(b) any law enforcement agency; and

(c) any constable or other state, municipal, or county official in the county in which the dealer does business.

(5) A dealer shall make these records available for inspection by any law enforcement agency, upon request, at the dealer's place of business during the dealer's regular business hours.

(6) Log entries made under this section shall be maintained for not less than three years from date of entry.

(7) (a) The dealer may maintain the information required by Subsection (2) for repeat sellers who use the same vehicle to bring regulated metal for each transaction in a relational database that allows the dealer to enter an initial record of the seller's information and then relate subsequent transaction records to that initial information, except under Subsection (7)(b).

(b) The dealer shall obtain regarding each transaction with repeat sellers:

(i) a photograph of the seller; and

(ii) a signature from the seller.

Amended by Chapter 261, 2014 General Session

76-6-1404. Notice to sellers of identification requirements.

A dealer shall at all times maintain in a prominent place at the dealer's place of business, in open view to a seller of regulated metal, a clearly legible notice in not less than two-inch high lettering that contains the following language: "A PERSON ATTEMPTING TO SELL ANY REGULATED METAL MUST PROVIDE IDENTIFICATION AS REQUIRED BY STATE LAW".

Renumbered and Amended by Chapter 187, 2013 General Session

76-6-1405. Qualifications to sell to dealer.

(1) A dealer may not purchase regulated metal from a person younger than 18 years of age.

(2) If the person is unable to comply with all the identification requirements of Subsection 76-6-1403(2), the dealer may not conduct a transaction of regulated metal with that person.

Renumbered and Amended by Chapter 187, 2013 General Session

76-6-1406. Restrictions on the purchase of regulated metal -- Exemption.

(1) A dealer may conduct purchase transactions involving regulated metal only between the hours of 6 a.m. and 7 p.m.

(2) Except when the dealer pays a government entity by check for regulated metal, the dealer may not purchase any of the following regulated metal without obtaining and keeping on file reasonable documentation that the seller is an employee, agent, or contractor of a governmental entity who is authorized to sell the item of regulated metal property on behalf of the governmental entity:

(a) a manhole cover or sewer grate;

(b) an electric light pole; or

(c) a guard rail.

(3) (a) A dealer may not purchase suspect metal without obtaining the information under Subsection (3)(b) identifying the owner of the suspect metal.

(b) The owner of the suspect metal shall provide in writing:

(i) the owner's telephone number;

(ii) the owner's business or residential address, which may not be a post box;

(iii) a copy of the owner's driver license; and

(iv) a signed statement that the person is the lawful owner of the suspect metal and authorizes the seller, identified by name, to sell the suspect metal.

(c) The dealer shall keep the identifying information provided in Subsection (3)(b) on file for not less than one year.

(4) Transactions with businesses that have an established account with the dealer are exempt from the requirements of Subsections (2) and (3) if the business holds a valid business license, and:

(a) (i) the dealer has on file a statement from the business identifying those employees authorized to sell all metals to the dealer; and

(ii) the dealer conducts regulated metal transactions only with those identified employees of the business and records the name of the employee when recording the transaction;

(b) the dealer has on file reasonable documentation from the business that any person verified as representing the business as an employee, and whom the dealer has verified is an employee, may sell regulated metal; or

(c) the dealer makes payment for regulated metal purchased from a person by issuing a check to the business employing the seller.

Renumbered and Amended by Chapter 187, 2013 General Session

76-6-1407. Violation by dealer -- Penalty -- Local regulation not less stringent.

(1) (a) Any dealer who violates any of the provisions of this part is guilty of a class C misdemeanor.

(b) A violation of Subsection (1)(a) that occurs after the defendant has been convicted of a violation of Subsection (1)(a) is a class A misdemeanor.

(2) This section does not impair the authority of a county or municipality in this state to license, tax, and regulate any junk dealer or metal dealer, except that local regulations may not be any less stringent than the provisions in this part.

(3) This section does not impair the authority of a county or municipality to revoke or deny any business license or permit required by that county or municipality regulating the authority to sell, purchase, or possess metal, including the revocation or denial of a business license or permit based on a violation of this part.

(4) This section does not prohibit the charging of a seller or dealer with any other criminal offense related to the obtaining, possession, or selling of stolen regulated metals.

Renumbered and Amended by Chapter 187, 2013 General Session

76-6-1408. Falsification of seller's statement to dealer.

(1) Any seller who, in providing any information as required by this part in selling, offering, or attempting to sell regulated metal willfully makes a false statement or provides any untrue information, is guilty of a class B misdemeanor.

(2) A violation of Subsection (1) that occurs after the defendant has been convicted of a violation of Subsection (1) is a class A misdemeanor.

Renumbered and Amended by Chapter 187, 2013 General Session

76-6-1409. Hold on stolen regulated metal property -- Hold notice.

(1) If a law enforcement agency has reasonable cause to believe that items of regulated metal in the possession of a dealer are stolen, the law enforcement agency may issue a written hold notice. The hold notice shall:

(a) identify those items of regulated metal alleged to be stolen and subject to hold; and

(b) inform the dealer of the restrictions imposed on the regulated metal property under Subsection (2).

(2) For 60 days after the date of receiving a hold notice, a dealer may not process or remove from the dealer's place of business any regulated metal identified in the hold notice, unless the property is released earlier by the law enforcement agency or by order of a court of competent jurisdiction.

(3) On the expiration of the hold notice period, the hold is automatically released, and the dealer may dispose of the regulated metal, unless otherwise directed by a court of competent jurisdiction.

Renumbered and Amended by Chapter 187, 2013 General Session

76-6a-1. Short title.

This act shall be known and may be cited as the "Pyramid Scheme Act."

Enacted by Chapter 89, 1983 General Session

76-6a-2. Definitions.

As used in this chapter:

(1) (a) "Compensation" means money, money bonuses, overrides, prizes, or other real or personal property, tangible or intangible.

(b) "Compensation" does not include payment based on the sale of goods or services to anyone purchasing the goods or services for actual personal use or consumption.

(2) "Consideration" does not include payment for sales demonstration equipment and materials furnished at cost for use in making sales and not for resale, or time or effort spent in selling or recruiting activities.

(3) "Person" includes a business trust, estate, trust, joint venture, or any other legal or commercial entity.

(4) "Pyramid scheme" means any sales device or plan under which a person gives consideration to another person in exchange for compensation or the right to receive compensation which is derived primarily from the introduction of other persons into the sales device or plan rather than from the sale of goods, services, or other property.

Amended by Chapter 247, 2006 General Session

76-6a-3. Schemes prohibited -- Violation as deceptive consumer sales practice -- Prosecution of civil violations.

(1) A person may not participate in, organize, establish, promote, or administer any pyramid scheme.

(2) A criminal conviction under this chapter is prima facie evidence of a violation of Section 13-11-4, the Utah Consumer Sales Practices Act.

(3) Any violation of this chapter constitutes a violation of Section 13-11-4, the Utah Consumer Sales Practices Act.

(4) All civil violations of this chapter shall be investigated and prosecuted as prescribed by the Utah Consumer Sales Practices Act.

Amended by Chapter 247, 2006 General Session

76-6a-4. Operation as felony -- Participation as misdemeanor -- Investigation -- Prosecution.

(1) Any person who knowingly organizes, establishes, promotes, or administers a pyramid scheme is guilty of a third degree felony.

(2) Any person who participates in a pyramid scheme only by receiving compensation for the introduction of other persons into the pyramid scheme rather than from the sale of goods, services, or other property is guilty of a class B misdemeanor.

(3) The appropriate county attorney or district attorney has primary responsibility for investigating and prosecuting criminal violations of this chapter.

Amended by Chapter 247, 2006 General Session

76-6a-5. Plan provisions not constituting defenses.

It is not a defense to an action brought under this chapter if:

(1) The sales device or plan limits the number of persons who may be introduced into it;

(2) The sales device or plan includes additional conditions affecting eligibility for introduction into it or when compensation is received from it; or

(3) A person receives property or services in addition to the compensation or right to receive compensation in connection with a pyramid scheme.

Enacted by Chapter 89, 1983 General Session

76-6a-6. Rights of persons giving consideration in scheme.

(1) Any person giving consideration in connection with a pyramid scheme may, notwithstanding any agreement to the contrary, declare his giving of consideration and the related sale or contract for sale void, and may bring a court action to recover the consideration. In the action, the court shall, in addition to any judgment awarded to the plaintiff, require the defendant to pay to the plaintiff interest as provided in Section 15-1-4, reasonable attorneys' fees, and the costs of the action reduced by any compensation paid by the defendant to the plaintiff in connection with the pyramid scheme.

(2) The rights, remedies, and penalties provided in this chapter are independent of and supplemental to each other and to any other right, remedy or penalty available in law or equity. Nothing contained in this chapter shall be construed to diminish or abrogate any other right, remedy or penalty.

Enacted by Chapter 89, 1983 General Session

76-7-101. Bigamy -- Defense.

(1) A person is guilty of bigamy when, knowing he has a husband or wife or knowing the other person has a husband or wife, the person purports to marry another person or cohabits with another person.

(2) Bigamy is a felony of the third degree.

(3) It shall be a defense to bigamy that the accused reasonably believed he and the other person were legally eligible to remarry.

Amended by Chapter 296, 1997 General Session

76-7-101.5. Child bigamy -- Penalty.

(1) An actor 18 years of age or older is guilty of child bigamy when, knowing he or she has a wife or husband, or knowing that a person under 18 years of age has a wife or husband, the actor carries out the following with the person who is under 18 years of age:

(a) purports to marry the person who is under 18 years of age; or

(b) cohabits with the person who is under 18 years of age.

(2) A violation of Subsection (1) is a second degree felony.

Enacted by Chapter 6, 2003 General Session

76-7-102. Incest -- Definitions -- Penalty.

(1) As used in this section:

(a) "Provider" means a person who provides or makes available his seminal fluid or her human egg.

(b) "Related person" means a person related to the provider or actor as an ancestor, descendant, brother, sister, uncle, aunt, nephew, niece, or first cousin, and includes:

(i) blood relationships of the whole or half blood without regard to legitimacy;

(ii) the relationship of parent and child by adoption; and

(iii) the relationship of stepparent and stepchild while the marriage creating the relationship of a stepparent and stepchild exists.

(2) (a) An actor is guilty of incest when, under circumstances not amounting to rape, rape of a child, or aggravated sexual assault, the actor knowingly and intentionally:

(i) engages in conduct under Subsection (2)(b)(i), (ii), (iii), or (iv); or

(ii) provides a human egg or seminal fluid under Subsection (2)(b)(v).

(b) Conduct referred to under Subsection (2)(a) is:

(i) sexual intercourse between the actor and a person the actor knows has kinship to the actor as a related person;

(ii) the insertion or placement of the provider's seminal fluid into the vagina, cervix, or uterus of a related person by means other than sexual intercourse;

(iii) providing or making available his seminal fluid for the purpose of insertion or placement of the fluid into the vagina, cervix, or uterus of a related person by means other than sexual intercourse;

(iv) a woman 18 years of age or older who:

(A) knowingly allows the insertion of the seminal fluid of a provider into her vagina, cervix, or uterus by means other than sexual intercourse; and

(B) knows that the seminal fluid is that of a person with whom she has kinship as a related person; or

(v) providing the actor's sperm or human egg that is used to conduct in vitro fertilization, or any other means of fertilization, with the human egg or sperm of a person who is a related person.

(c) This Subsection (2) does not prohibit providing a fertilized human egg if the provider of the fertilizing sperm is not a related person regarding the person providing the egg.

(3) Incest is a third degree felony.

(4) A provider under this section is not a donor under Section 78B-15-702.

Amended by Chapter 84, 2009 General Session

76-7-103. Adultery.

(1) A married person commits adultery when he voluntarily has sexual

intercourse with a person other than his spouse.

(2) Adultery is a class B misdemeanor.

Amended by Chapter 241, 1991 General Session

76-7-104. Fornication.

(1) Any unmarried person who shall voluntarily engage in sexual intercourse with another is guilty of fornication.

(2) Fornication is a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-7-201. Criminal nonsupport.

(1) A person commits criminal nonsupport if, having a spouse, a child, or children under the age of 18 years, he knowingly fails to provide for the support of the spouse, child, or children when any one of them:

(a) is in needy circumstances; or

(b) would be in needy circumstances but for support received from a source other than the defendant or paid on the defendant's behalf.

(2) Except as provided in Subsection (3), criminal nonsupport is a class A misdemeanor.

(3) Criminal nonsupport is a felony of the third degree if the actor:

(a) has been convicted one or more times of nonsupport, whether in this state, any other state, or any court of the United States;

(b) committed the offense while residing outside of Utah; or

(c) commits the crime of nonsupport in each of 18 individual months within any 24-month period, or the total arrearage is in excess of $10,000.

(4) For purposes of this section "child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.

(5) (a) In a prosecution for criminal nonsupport under this section, it is an affirmative defense that the accused is unable to provide support. Voluntary unemployment or underemployment by the defendant does not give rise to that defense.

(b) Not less than 20 days before trial the defendant shall file and serve on the prosecuting attorney a notice, in writing, of his intention to claim the affirmative defense of inability to provide support. The notice shall specifically identify the factual basis for the defense and the names and addresses of the witnesses who the defendant proposes to examine in order to establish the defense.

(c) Not more than 10 days after receipt of the notice described in Subsection (5)(b), or at such other time as the court may direct, the prosecuting attorney shall file and serve the defendant with a notice containing the names and addresses of the witnesses who the state proposes to examine in order to contradict or rebut the defendant's claim.

(d) Failure to comply with the requirements of Subsection (5)(b) or (5)(c) entitles the opposing party to a continuance to allow for preparation. If the court finds that a

party's failure to comply is the result of bad faith, it may impose appropriate sanctions.

Amended by Chapter 89, 1999 General Session

76-7-202. Orders for support in criminal nonsupport proceedings.

(1) In any proceeding under Section 76-7-201, the court may, instead of imposing the punishments otherwise prescribed, issue an order directing the defendant to periodically pay a sum to the Office of Recovery Services, or otherwise as the court may direct, to be used for the support of the dependents who are the subject of the proceeding under Section 76-7-201.

(2) The order to periodically pay a sum for the support of the dependents:

(a) may be issued with the consent of the defendant prior to trial, or after conviction, having regard to the circumstances, financial ability, and earning capacity of the defendant;

(b) shall be subject to change from time to time as circumstances may require;

(c) may not require payments for a period exceeding the term of probation provided for the offense with which the defendant is charged, or of which he is found guilty; and

(d) shall be conditioned upon the defendant either entering a recognizance in accordance with Subsection (3), or providing security in a sum as the court directs.

(3) The condition of recognizance shall require the defendant to:

(a) make personal appearance in court whenever ordered to do so within the period of probation; and

(b) comply with the terms of the order and any subsequent modifications of the order.

(4) If the court is satisfied by information and due proof under oath that at any time during the period of probation the defendant has violated the terms of the order, it may proceed with the trial of defendant under the original charge or sentence him under the original conviction or enforce the original sentence as the case may be. In the case of forfeiture of bail or bond in any proceeding under Section 76-7-201, the sum recovered may, in the discretion of the court, be paid in whole or in part to the Office of Recovery Services, or otherwise as the court may direct, to be used for the support of the dependents involved.

Amended by Chapter 289, 1995 General Session

76-7-203. Sale of child -- Felony -- Payment of adoption related expenses.

(1) For purposes of this section:

(a) "Adoption related expenses" means expenses that:

(i) are reasonably related to the adoption of a child;

(ii) are incurred for a reasonable amount; and

(iii) may include expenses:

(A) of the mother or father of the child being adopted, including:

(I) legal expenses;

(II) maternity expenses;

(III) medical expenses;
(IV) hospital expenses;
(V) counseling expenses;
(VI) temporary living expenses during the pregnancy or confinement of the mother; or
(VII) expenses for travel between the mother's or father's home and the location where the child will be born or placed for adoption;
(B) of a directly affected person for:
(I) travel between the directly affected person's home and the location where the child will be born or placed for adoption; or
(II) temporary living expenses during the pregnancy or confinement of the mother; or
(C) other than those included in Subsection (1)(a)(iii)(A) or (B), that are not made for the purpose of inducing the mother, parent, or legal guardian of a child to:
(I) place the child for adoption;
(II) consent to an adoption; or
(III) cooperate in the completion of an adoption.
(b) "Directly affected person" means a person who is:
(i) a parent or guardian of a minor when the minor is the mother or father of the child being adopted;
(ii) a dependant of:
(A) the mother or father of the child being adopted; or
(B) the parent or guardian described in Subsection (1)(b)(i); or
(iii) the spouse of the mother or father of the child being adopted.
(2) Except as provided in Subsection (3), a person is guilty of a third degree felony if the person:
(a) while having custody, care, control, or possession of a child, sells, or disposes of the child, or attempts or offers to sell or dispose of the child, for and in consideration of the payment of money or another thing of value; or
(b) offers, gives, or attempts to give money or another thing of value to a person, with the intent to induce or encourage a person to violate Subsection (2)(a).
(3) A person does not violate this section by paying or receiving payment for adoption related expenses, if:
(a) the expenses are paid as an act of charity; and
(b) the payment is not made for the purpose of inducing the mother, parent, or legal guardian of a child to:
(i) place the child for adoption;
(ii) consent to an adoption; or
(iii) cooperate in the completion of an adoption.

Amended by Chapter 137, 2008 General Session

76-7-301. Definitions.
As used in this part:
(1) (a) "Abortion" means:

(i) the intentional termination or attempted termination of human pregnancy after implantation of a fertilized ovum through a medical procedure carried out by a physician or through a substance used under the direction of a physician;

(ii) the intentional killing or attempted killing of a live unborn child through a medical procedure carried out by a physician or through a substance used under the direction of a physician; or

(iii) the intentional causing or attempted causing of a miscarriage through a medical procedure carried out by a physician or through a substance used under the direction of a physician.

(b) "Abortion" does not include:

(i) removal of a dead unborn child;

(ii) removal of an ectopic pregnancy; or

(iii) the killing or attempted killing of an unborn child without the consent of the pregnant woman, unless:

(A) the killing or attempted killing is done through a medical procedure carried out by a physician or through a substance used under the direction of a physician; and

(B) the physician is unable to obtain the consent due to a medical emergency.

(2) "Medical emergency" means that condition which, on the basis of the physician's good faith clinical judgment, so threatens the life of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death, or for which a delay will create serious risk of substantial and irreversible impairment of major bodily function.

(3) (a) "Partial birth abortion" means an abortion in which the person performing the abortion:

(i) deliberately and intentionally vaginally delivers a living fetus until, in the case of a head first presentation, the entire fetal head is outside the body of the mother, or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother, for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(ii) performs the overt act, other than completion of delivery, that kills the partially living fetus.

(b) "Partial birth abortion" does not include the dilation and evacuation procedure involving dismemberment prior to removal, the suction curettage procedure, or the suction aspiration procedure for abortion.

(4) "Physician" means:

(a) a medical doctor licensed to practice medicine and surgery under Title 58, Chapter 67, Utah Medical Practice Act;

(b) an osteopathic physician licensed to practice osteopathic medicine under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; or

(c) a physician employed by the federal government who has qualifications similar to a person described in Subsection (4)(a) or (b).

(5) "Hospital" means:

(a) a general hospital licensed by the Department of Health according to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; and

(b) a clinic or other medical facility to the extent that such clinic or other medical

facility is certified by the Department of Health as providing equipment and personnel sufficient in quantity and quality to provide the same degree of safety to the pregnant woman and the unborn child as would be provided for the particular medical procedures undertaken by a general hospital licensed by the Department of Health.

Amended by Chapter 13, 2010 General Session

76-7-301.1. Preamble -- Findings and policies of Legislature.

(1) It is the finding and policy of the Legislature, reflecting and reasserting the provisions of Article I, Sections 1 and 7, Utah Constitution, which recognize that life founded on inherent and inalienable rights is entitled to protection of law and due process; and that unborn children have inherent and inalienable rights that are entitled to protection by the state of Utah pursuant to the provisions of the Utah Constitution.

(2) The state of Utah has a compelling interest in the protection of the lives of unborn children.

(3) It is the intent of the Legislature to protect and guarantee to unborn children their inherent and inalienable right to life as required by Article I, Sections 1 and 7, Utah Constitution.

(4) It is also the policy of the Legislature and of the state that, in connection with abortion, a woman's liberty interest, in limited circumstances, may outweigh the unborn child's right to protection. These limited circumstances arise when the abortion is necessary to save the pregnant woman's life or prevent grave damage to her medical health, and when pregnancy occurs as a result of rape or incest. It is further the finding and policy of the Legislature and of the state that a woman may terminate the pregnancy if the unborn child would be born with grave defects.

Amended by Chapter 2, 1991 Special Session 1

76-7-301.5. Relationship to criminal homicide.

(1) This part does not apply to the killing or attempted killing of a live unborn child in any manner that is not an abortion.

(2) The killing or attempted killing of a live unborn child in a manner that is not an abortion shall be punished as provided in Title 76, Chapter 5, Part 2, Criminal Homicide.

Enacted by Chapter 13, 2010 General Session

76-7-302. Circumstances under which abortion authorized.

(1) As used in this section, "viable" means that the unborn child has reached a stage of fetal development when the unborn child is potentially able to live outside the womb, as determined by the attending physician to a reasonable degree of medical certainty.

(2) An abortion may be performed in this state only by a physician.

(3) An abortion may be performed in this state only under the following circumstances:

(a) the unborn child is not viable; or
(b) the unborn child is viable, if:
(i) the abortion is necessary to avert:
(A) the death of the woman on whom the abortion is performed; or
(B) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;
(ii) two physicians who practice maternal fetal medicine concur, in writing, in the patient's medical record that the fetus has a defect that is uniformly diagnosable and uniformly lethal; or
(iii) (A) the woman is pregnant as a result of:
(I) rape, as described in Section 76-5-402;
(II) rape of a child, as described in Section 76-5-402.1; or
(III) incest, as described in Subsection 76-5-406(10) or Section 76-7-102; and
(B) before the abortion is performed, the physician who performs the abortion:
(I) verifies that the incident described in Subsection (3)(b)(iii)(A) has been reported to law enforcement; and
(II) complies with the requirements of Section 62A-4a-403.

Amended by Chapter 13, 2010 General Session

76-7-303. Concurrence of attending physician based on medical judgment.
No abortion may be performed in this state without the concurrence of the attending physician, based on his best medical judgment.

Enacted by Chapter 33, 1974 General Session

76-7-304. Considerations by physician -- Notice to a parent or guardian -- Exceptions.
(1) As used in this section:
(a) "abuse" is as defined in Section 78A-6-105; and
(b) "minor" means a person who is:
(i) under 18 years of age;
(ii) unmarried; and
(iii) not emancipated.
(2) To enable the physician to exercise the physician's best medical judgment, the physician shall consider all factors relevant to the well-being of the woman upon whom the abortion is to be performed including:
(a) her physical, emotional and psychological health and safety;
(b) her age; and
(c) her familial situation.
(3) Subject to Subsection (4), at least 24 hours before a physician performs an abortion on a minor, the physician shall notify a parent or guardian of the minor that the minor intends to have an abortion.
(4) A physician is not required to comply with Subsection (3) if:
(a) subject to Subsection (5)(a):

(i) a medical condition exists that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate the abortion of her pregnancy to avert:

(A) the minor's death; or

(B) a serious risk of substantial and irreversible impairment of a major bodily function of the minor; and

(ii) there is not sufficient time to give the notice required under Subsection (3) before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or impairment described in Subsection (4)(a)(i);

(b) subject to Subsection (5)(b):

(i) the physician complies with Subsection (6); and

(ii) (A) the minor is pregnant as a result of incest to which the parent or guardian was a party; or

(B) the parent or guardian has abused the minor; or

(c) subject to Subsection (5)(b), the parent or guardian has not assumed responsibility for the minor's care and upbringing.

(5) (a) If, for the reason described in Subsection (4)(a), a physician does not give the 24-hour notice described in Subsection (3), the physician shall give the required notice as early as possible before the abortion, unless it is necessary to perform the abortion immediately in order to avert the minor's death or impairment described in Subsection (4)(a)(i).

(b) If, for a reason described in Subsection (4)(b) or (c), a parent or guardian of a minor is not notified that the minor intends to have an abortion, the physician shall notify another parent or guardian of the minor, if the minor has another parent or guardian that is not exempt from notification under Subsection (4)(b) or (c).

(6) If, for a reason described in Subsection (4)(b)(ii)(A) or (B), a physician does not notify a parent or guardian of a minor that the minor intends to have an abortion, the physician shall report the incest or abuse to the Division of Child and Family Services within the Department of Human Services.

Amended by Chapter 299, 2008 General Session

76-7-304.5. Consent required for abortions performed on minors -- Hearing to allow a minor to self-consent -- Appeals.

(1) As used in this section, "minor" is as defined in Subsection 76-7-304(1).

(2) In addition to the other requirements of this part, a physician may not perform an abortion on a minor unless:

(a) the physician obtains the informed written consent of a parent or guardian of the minor, consistent with Sections 76-7-305, 76-7-305.5, and 76-7-305.6;

(b) the minor is granted the right, by court order under Subsection (5)(b), to consent to the abortion without obtaining consent from a parent or guardian; or

(c) (i) a medical condition exists that, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant minor as to necessitate the abortion of her pregnancy to avert:

(A) the minor's death; or

(B) a serious risk of substantial and irreversible impairment of a major bodily function of the minor; and

(ii) there is not sufficient time to obtain the consent in the manner chosen by the minor under Subsection (3) before it is necessary to terminate the minor's pregnancy in order to avert the minor's death or impairment described in Subsection (2)(c)(i).

(3) A pregnant minor who wants to have an abortion may choose:

(a) to seek consent from a parent or guardian under Subsection (2)(a); or

(b) to seek a court order under Subsection (2)(b).

(4) If a pregnant minor fails to obtain the consent of a parent or guardian of the minor to the performance of an abortion, or if the minor chooses not to seek the consent of a parent or guardian, the minor may file a petition with the juvenile court to obtain a court order under Subsection (2)(b).

(5) (a) A hearing on a petition described in Subsection (4) shall be closed to the public.

(b) After considering the evidence presented at the hearing, the court shall order that the minor may obtain an abortion without the consent of a parent or guardian of the minor if the court finds by a preponderance of the evidence that:

(i) the minor:

(A) has given her informed consent to the abortion; and

(B) is mature and capable of giving informed consent to the abortion; or

(ii) an abortion would be in the minor's best interest.

(6) The Judicial Council shall make rules that:

(a) provide for the administration of the proceedings described in this section;

(b) provide for the appeal of a court's decision under this section;

(c) ensure the confidentiality of the proceedings described in this section and the records related to the proceedings; and

(d) establish procedures to expedite the hearing and appeal proceedings described in this section.

Amended by Chapter 314, 2010 General Session

76-7-305. Informed consent requirements for abortion -- 72-hour wait mandatory -- Exceptions.

(1) A person may not perform an abortion, unless, before performing the abortion, the physician who will perform the abortion obtains a voluntary and informed written consent from the woman on whom the abortion is performed, that is consistent with:

(a) Section 8.08 of the American Medical Association's Code of Medical Ethics, Current Opinions; and

(b) the provisions of this section.

(2) Except as provided in Subsection (9), consent to an abortion is voluntary and informed only if:

(a) at least 72 hours before the abortion, the physician who is to perform the abortion, the referring physician, a physician, a registered nurse, nurse practitioner, advanced practice registered nurse, certified nurse midwife, genetic counselor, or

physician's assistant, in a face-to-face consultation in any location in the state, orally informs the woman:

(i) consistent with Subsection (3)(a), of:

(A) the nature of the proposed abortion procedure;

(B) specifically how the procedure described in Subsection (2)(a)(i)(A) will affect the fetus; and

(C) the risks and alternatives to an abortion procedure or treatment;

(ii) of the probable gestational age and a description of the development of the unborn child at the time the abortion would be performed;

(iii) of the medical risks associated with carrying her child to term; and

(iv) except as provided in Subsection (3)(b), if the abortion is to be performed on an unborn child who is at least 20 weeks gestational age:

(A) that, upon the woman's request, an anesthetic or analgesic will be administered to the unborn child, through the woman, to eliminate or alleviate organic pain to the unborn child that may be caused by the particular method of abortion to be employed; and

(B) of any medical risks to the woman that are associated with administering the anesthetic or analgesic described in Subsection (2)(a)(iv)(A);

(b) at least 72 hours prior to the abortion the physician who is to perform the abortion, the referring physician, or, as specifically delegated by either of those physicians, a physician, a registered nurse, licensed practical nurse, certified nurse-midwife, advanced practice registered nurse, clinical laboratory technologist, psychologist, marriage and family therapist, clinical social worker, genetic counselor, or certified social worker orally, in a face-to-face consultation in any location in the state, informs the pregnant woman that:

(i) the Department of Health, in accordance with Section 76-7-305.5, publishes printed material and an informational video that:

(A) provides medically accurate information regarding all abortion procedures that may be used;

(B) describes the gestational stages of an unborn child; and

(C) includes information regarding public and private services and agencies available to assist her through pregnancy, at childbirth, and while the child is dependent, including private and agency adoption alternatives;

(ii) the printed material and a viewing of or a copy of the informational video shall be made available to her, free of charge, on the Department of Health's website;

(iii) medical assistance benefits may be available for prenatal care, childbirth, and neonatal care, and that more detailed information on the availability of that assistance is contained in the printed materials and the informational video published by the Department of Health;

(iv) except as provided in Subsection (3)(b):

(A) the father of the unborn child is legally required to assist in the support of her child, even if he has offered to pay for the abortion; and

(B) the Office of Recovery Services within the Department of Human Services will assist her in collecting child support; and

(v) she has the right to view an ultrasound of the unborn child, at no expense to

her, upon her request;

(c) the information required to be provided to the pregnant woman under Subsection (2)(a) is also provided by the physician who is to perform the abortion, in a face-to-face consultation, prior to performance of the abortion, unless the attending or referring physician is the individual who provides the information required under Subsection (2)(a);

(d) a copy of the printed materials published by the Department of Health has been provided to the pregnant woman;

(e) the informational video, published by the Department of Health, has been provided to the pregnant woman in accordance with Subsection (4); and

(f) the pregnant woman has certified in writing, prior to the abortion, that the information required to be provided under Subsections (2)(a) through (e) was provided, in accordance with the requirements of those subsections.

(3) (a) The alternatives required to be provided under Subsection (2)(a)(i) include:

(i) a description of adoption services, including private and agency adoption methods; and

(ii) a statement that it is legal for adoptive parents to financially assist in pregnancy and birth expenses.

(b) The information described in Subsection (2)(b)(iv) may be omitted from the information required to be provided to a pregnant woman under this section if the woman is pregnant as the result of rape.

(c) Nothing in this section shall be construed to prohibit a person described in Subsection (2)(a) from, when providing the information described in Subsection (2)(a)(iv), informing a woman of the person's own opinion regarding:

(i) the capacity of an unborn child to experience pain;

(ii) the advisability of administering an anesthetic or analgesic to an unborn child; or

(iii) any other matter related to fetal pain.

(4) When the informational video described in Section 76-7-305.5 is provided to a pregnant woman, the person providing the information shall:

(a) request that the woman view the video at that time or at another specifically designated time and location; or

(b) if the woman chooses not to view the video at a time described in Subsection (4)(a), inform the woman that she can access the video on the Department of Health's website.

(5) When a serious medical emergency compels the performance of an abortion, the physician shall inform the woman prior to the abortion, if possible, of the medical indications supporting the physician's judgment that an abortion is necessary.

(6) If an ultrasound is performed on a woman before an abortion is performed, the person who performs the ultrasound, or another qualified person, shall:

(a) inform the woman that the ultrasound images will be simultaneously displayed in a manner to permit her to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(b) simultaneously display the ultrasound images in order to permit the woman to:

(i) view the images, if she chooses to view the images; or

(ii) not view the images, if she chooses not to view the images;

(c) inform the woman that, if she desires, the person performing the ultrasound, or another qualified person shall provide a detailed description of the ultrasound images, including:

(i) the dimensions of the unborn child;

(ii) the presence of cardiac activity in the unborn child, if present and viewable; and

(iii) the presence of external body parts or internal organs, if present and viewable; and

(d) provide the detailed description described in Subsection (6)(c), if the woman requests it.

(7) The information described in Subsections (2), (3), (4), and (6) is not required to be provided to a pregnant woman under this section if the abortion is performed for a reason described in:

(a) Subsection 76-7-302(3)(b)(i), if the treating physician and one other physician concur, in writing, that the abortion is necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed; or

(b) Subsection 76-7-302(3)(b)(ii).

(8) In addition to the criminal penalties described in this part, a physician who violates the provisions of this section:

(a) is guilty of unprofessional conduct as defined in Section 58-67-102 or 58-68-102; and

(b) shall be subject to:

(i) suspension or revocation of the physician's license for the practice of medicine and surgery in accordance with Section 58-67-401 or 58-68-401; and

(ii) administrative penalties in accordance with Section 58-67-402 or 58-68-402.

(9) A physician is not guilty of violating this section for failure to furnish any of the information described in Subsection (2), or for failing to comply with Subsection (6), if:

(a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;

(b) in the physician's professional judgment, the abortion was necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(c) the pregnancy was the result of rape or rape of a child, as defined in Sections 76-5-402 and 76-5-402.1;

(d) the pregnancy was the result of incest, as defined in Subsection

76-5-406(10) and Section 76-7-102; or

(e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

(10) A physician who complies with the provisions of this section and Section 76-7-304.5 may not be held civilly liable to the physician's patient for failure to obtain informed consent under Section 78B-3-406.

(11) (a) The Department of Health shall provide an ultrasound, in accordance with the provisions of Subsection (2)(b), at no expense to the pregnant woman.

(b) A local health department shall refer a person who requests an ultrasound described in Subsection (11)(a) to the Department of Health.

(12) A physician is not guilty of violating this section if:

(a) the physician provides the information described in Subsection (2) less than 72 hours before performing the abortion; and

(b) in the physician's professional judgment, the abortion was necessary in a case where:

(i) a ruptured membrane, documented by the attending or referring physician, will cause a serious infection; or

(ii) a serious infection, documented by the attending or referring physician, will cause a ruptured membrane.

Amended by Chapter 187, 2014 General Session

76-7-305.5. Requirements for printed materials and informational video.

(1) In order to ensure that a woman's consent to an abortion is truly an informed consent, the Department of Health shall, in accordance with the requirements of this section:

(a) publish printed materials; and

(b) produce an informational video.

(2) The printed materials and the informational video described in Subsection (1) shall:

(a) be scientifically accurate, comprehensible, and presented in a truthful, nonmisleading manner;

(b) present adoption as a preferred and positive choice and alternative to abortion;

(c) be printed and produced in a manner that conveys the state's preference for childbirth over abortion;

(d) state that the state prefers childbirth over abortion;

(e) state that it is unlawful for any person to coerce a woman to undergo an abortion;

(f) state that any physician who performs an abortion without obtaining the woman's informed consent or without providing her a private medical consultation in accordance with the requirements of this section, may be liable to her for damages in a civil action at law;

(g) provide information on resources and public and private services available to assist a pregnant woman, financially or otherwise, during pregnancy, at childbirth,

and while the child is dependent, including:

(i) medical assistance benefits for prenatal care, childbirth, and neonatal care;

(ii) services and supports available under Section 35A-3-308;

(iii) other financial aid that may be available during an adoption; and

(iv) services available from public adoption agencies, private adoption agencies, and private attorneys whose practice includes adoption;

(h) describe the adoption-related expenses that may be paid under Section 76-7-203;

(i) describe the persons who may pay the adoption related expenses described in Subsection (2)(h);

(j) describe the legal responsibility of the father of a child to assist in child support, even if the father has agreed to pay for an abortion;

(k) describe the services available through the Office of Recovery Services, within the Department of Human Services, to establish and collect the support described in Subsection (2)(j);

(l) state that private adoption is legal;

(m) in accordance with Subsection (3), describe the probable anatomical and physiological characteristics of an unborn child at two-week gestational increments from fertilization to full term, including:

(i) brain and heart function; and

(ii) the presence and development of external members and internal organs;

(n) describe abortion procedures used in current medical practice at the various stages of growth of the unborn child, including:

(i) the medical risks associated with each procedure;

(ii) the risk related to subsequent childbearing that are associated with each procedure; and

(iii) the consequences of each procedure to the unborn child at various stages of fetal development;

(o) describe the possible detrimental psychological effects of abortion;

(p) describe the medical risks associated with carrying a child to term; and

(q) include relevant information on the possibility of an unborn child's survival at the two-week gestational increments described in Subsection (2)(m).

(3) The information described in Subsection (2)(m) shall be accompanied by the following for each gestational increment described in Subsection (2)(m):

(a) pictures or video segments that accurately represent the normal development of an unborn child at that stage of development; and

(b) the dimensions of the fetus at that stage of development.

(4) The printed material and video described in Subsection (1) may include a toll-free 24-hour telephone number that may be called in order to obtain, orally, a list and description of services, agencies, and adoption attorneys in the locality of the caller.

(5) In addition to the requirements described in Subsection (2), the printed material described in Subsection (1)(a) shall:

(a) be printed in a typeface large enough to be clearly legible;

(b) in accordance with Subsection (6), include a geographically indexed list of

public and private services and agencies available to assist a woman, financially or otherwise, through pregnancy, at childbirth, and while the child is dependent;

(c) except as provided in Subsection (7), include a separate brochure that contains truthful, nonmisleading information regarding:

(i) the ability of an unborn child to experience pain during an abortion procedure;

(ii) the measures that may be taken, including the administration of an anesthetic or analgesic to an unborn child, to alleviate or eliminate pain to an unborn child during an abortion procedure;

(iii) the effectiveness and advisability of taking the measures described in Subsection (5)(c)(ii); and

(iv) potential medical risks to a pregnant woman that are associated with the administration of an anesthetic or analgesic to an unborn child during an abortion procedure.

(6) The list described in Subsection (5)(b) shall include:

(a) private attorneys whose practice includes adoption; and

(b) the names, addresses, and telephone numbers of each person listed under Subsection (5)(b) or (6)(a).

(7) A person or facility is not required to provide the information described in Subsection (5)(c) to a patient or potential patient, if the abortion is to be performed:

(a) on an unborn child who is less than 20 weeks gestational age at the time of the abortion; or

(b) on an unborn child who is at least 20 weeks gestational age at the time of the abortion, if:

(i) the abortion is being performed for a reason described in Subsection 76-7-302(3)(b)(i); and

(ii) due to a serious medical emergency, time does not permit compliance with the requirement to provide the information described in Subsection (5)(c).

(8) In addition to the requirements described in Subsection (2), the video described in Subsection (1)(b) shall:

(a) make reference to the list described in Subsection (5)(b); and

(b) show an ultrasound of the heartbeat of an unborn child at:

(i) four weeks from conception;

(ii) six to eight weeks from conception; and

(iii) each month after 10 weeks gestational age, up to 14 weeks gestational age.

Amended by Chapter 278, 2013 General Session

76-7-305.6. Abortion facilities required to provide printed materials and informational video -- Department of Health to make printed materials and informational video available.

(1) Except as provided in Subsection 76-7-305.5(7), every facility in which abortions are performed shall provide the printed materials and a viewing or a copy of the video described in Section 76-7-305.5 to each patient or potential patient at least 24 hours before the abortion is performed, unless:

(a) the physician can demonstrate by a preponderance of the evidence that the physician reasonably believed that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the pregnant woman;

(b) in the physician's professional judgment, the abortion was necessary to avert:

(i) the death of the woman on whom the abortion is performed; or

(ii) a serious risk of substantial and irreversible impairment of a major bodily function of the woman on whom the abortion is performed;

(c) the pregnancy was the result of rape or rape of a child, as defined in Sections 76-5-402 and 76-5-402.1;

(d) the pregnancy was the result of incest, as defined in Subsection 76-5-406(10) and Section 76-7-102; or

(e) at the time of the abortion, the pregnant woman was 14 years of age or younger.

(2) The Department of Health and each local health department shall make the printed materials and the video described in Section 76-7-305.5 available at no cost to any person.

(3) The Department of Health shall make the printed materials and the video described in Section 76-7-305.5 available for viewing on the Department of Health's website by clicking on a conspicuous link on the home page of the website.

(4) If the printed materials or a viewing of the video are not provided to a pregnant woman under Subsection (1), the physician who performs the abortion on the woman shall, within 10 days after the day on which the abortion is performed, provide to the Department of Health an affidavit that:

(a) specifies the information that was not provided to the woman; and

(b) states the reason that the information was not provided to the woman.

Enacted by Chapter 314, 2010 General Session

76-7-305.7. Statistical report by the Department of Health.

(1) In accordance with Subsection (2), the Department of Health shall, on an annual basis, after December 31 of each year, compile and report the following information, relating to the preceding calendar year, to the Health and Human Services Interim Committee:

(a) the total number of abortions that were performed in the state;

(b) the reported reasons, if any, the women sought the abortions described in Subjection (1)(a);

(c) the stage of pregnancy in which the abortions described in Subsection (1)(a) were performed, including:

(i) the trimester; and

(ii) estimated week of pregnancy;

(d) the races and ethnicities of the women who obtained the abortions described in Subsection (1)(a), including:

(i) Alaska Native;

(ii) American Indian;

(iii) Asian;
(iv) Black or African American;
(v) Hispanic or Latino;
(vi) Native Hawaiian or Pacific Islander;
(vii) White, not Hispanic or Latino; and
(viii) some other race;
(e) the total amount of informed consent material described in this section that was distributed or accessed;
(f) the number of women who obtained abortions in this state without receiving the informed consent materials described in this section;
(g) the number of statements signed by attending physicians under Subsection 76-7-305.6(4); and
(h) any other information pertaining to obtaining informed consent from a woman who seeks an abortion.
(2) The report described in Subsection (1) shall be prepared and presented in a manner that preserves physician and patient anonymity.

Amended by Chapter 61, 2013 General Session

76-7-306. Refusal to participate, admit, or treat for abortion based on religious or moral grounds -- Cause of action.
(1) As used in this section:
(a) "Health care facility" is as defined in Section 26-21-2.
(b) "Health care provider" means an individual who is an employee of, has practice privileges at, or is otherwise associated with a health care facility.
(2) A health care provider may, on religious or moral grounds, refuse to perform or participate in any way, in:
(a) an abortion; or
(b) a procedure that is intended to, or likely to, result in the termination of a pregnancy.
(3) Except as otherwise required by law, a health care facility may refuse, on religious or moral grounds, to:
(a) admit a patient for an abortion procedure or another procedure that is intended to, or likely to, result in the termination of a pregnancy; or
(b) perform for a patient an abortion procedure or another procedure that is intended to, or likely to, result in the termination of a pregnancy.
(4) A health care provider's refusal under Subsection (2) and a health care facility's refusal under Subsection (3) may not be the basis for civil liability or other recriminatory action.
(5) A health care facility, employer, or other person may not take an adverse action against a health care provider for exercising the health care provider's right of refusal described in Subsection (2), or for bringing or threatening to bring an action described in Subsection (6), including:
(a) dismissal;
(b) demotion;

(c) suspension;
(d) discipline;
(e) discrimination;
(f) harassment;
(g) retaliation;
(h) adverse change in status;
(i) termination of, adverse alteration of, or refusal to renew an association or agreement; or
(j) refusal to provide a benefit, privilege, raise, promotion, tenure, or increased status that the health care provider would have otherwise received.
(6) A person who is adversely impacted by conduct prohibited in Subsection (5) may bring a civil action for equitable relief, including reinstatement, and for damages. A person who brings an action under this section must commence the action within three years after the day on which the cause of action arises.

Repealed and Re-enacted by Chapter 277, 2011 General Session

76-7-307. Medical procedure required to save life of unborn child.

If an abortion is performed when the unborn child is sufficiently developed to have any reasonable possibility of survival outside its mother's womb, the medical procedure used must be that which, in the best medical judgment of the physician will give the unborn child the best chance of survival. No medical procedure designed to kill or injure that unborn child may be used unless necessary, in the opinion of the woman's physician, to prevent grave damage to her medical health.

Amended by Chapter 2, 1991 Special Session 1

76-7-308. Medical skills required to preserve life of unborn child.

Consistent with the purpose of saving the life of the woman or preventing grave damage to the woman's medical health, the physician performing the abortion must use all of his medical skills to attempt to promote, preserve and maintain the life of any unborn child sufficiently developed to have any reasonable possibility of survival outside of the mother's womb.

Amended by Chapter 2, 1991 Special Session 1

76-7-308.5. Administration of anesthetic or analgesic to an unborn child.

A physician who performs an abortion of an unborn child who is at least 20 weeks gestational age shall administer an anesthetic or analgesic to eliminate or alleviate organic pain to the unborn child that may be caused by the particular method of abortion to be employed, if the woman having the abortion consents to the administration of an anesthetic or analgesic to the unborn child, unless the physician is prevented from administering the anesthetic or analgesic by a medical emergency.

Enacted by Chapter 57, 2009 General Session

76-7-309. Pathologist's report.

Any human tissue removed during an abortion shall be submitted to a pathologist who shall make a report, including, but not limited to whether there was a pregnancy, and if possible, whether the pregnancy was aborted by evacuating the uterus.

Enacted by Chapter 33, 1974 General Session

76-7-310. Experimentation with unborn children prohibited -- Testing for genetic defects.

Live unborn children may not be used for experimentation, but when advisable, in the best medical judgment of the physician, may be tested for genetic defects.

Enacted by Chapter 33, 1974 General Session

76-7-310.5. Prohibition of specified abortion procedures -- Viability defined.

(1) As used in this section, "saline abortion procedure" means performance of amniocentesis and injection of saline into the amniotic sac within the uterine cavity.

(2) (a) After viability has been determined in accordance with Subsection (2)(b), no person may knowingly perform a saline abortion procedure unless all other available abortion procedures would pose a risk to the life or the health of the pregnant woman.

(b) For purposes of this section determination of viability shall be made by the physician, based upon his own best clinical judgment. The physician shall determine whether, based on the particular facts of a woman's pregnancy that are known to him, and in light of medical technology and information reasonably available to him, there is a realistic possibility of maintaining and nourishing a life outside of the womb, with or without temporary, artificial life-sustaining support.

(3) Intentional, knowing, and willful violation of this section is a third degree felony.

Amended by Chapter 272, 2004 General Session

76-7-311. Selling and buying unborn children prohibited.

Selling, buying, offering to sell and offering to buy unborn children is prohibited.

Enacted by Chapter 33, 1974 General Session

76-7-312. Intimidation or coercion to obtain abortion prohibited.

No person shall intimidate or coerce in any way any person to obtain an abortion.

Enacted by Chapter 33, 1974 General Session

76-7-313. Physician's report to Department of Health.

(1) In order for the state Department of Health to maintain necessary statistical information and ensure enforcement of the provisions of this part, any physician performing an abortion must obtain and record in writing:

(a) the age, marital status, and county of residence of the woman on whom the abortion was performed;

(b) the number of previous abortions performed on the woman described in Subsection (1)(a);

(c) the hospital or other facility where the abortion was performed;

(d) the weight in grams of the unborn child aborted, if it is possible to ascertain;

(e) the pathological description of the unborn child;

(f) the given menstrual age of the unborn child;

(g) the measurements of the unborn child, if possible to ascertain; and

(h) the medical procedure used to abort the unborn child.

(2) Each physician who performs an abortion shall provide the following to the Department of Health within 30 days after the day on which the abortion is performed:

(a) the information described in Subsection (1);

(b) a copy of the pathologist's report described in Section 76-7-309;

(c) an affidavit:

(i) that the required consent was obtained pursuant to Sections 76-7-305, 76-7-305.5, and 76-7-305.6; and

(ii) described in Subsection 76-7-305.6(4), if applicable; and

(d) a certificate indicating:

(i) whether the unborn child was or was not viable, as defined in Subsection 76-7-302(1), at the time of the abortion; and

(ii) if the unborn child was viable, as defined in Subsection 76-7-302(1), at the time of the abortion, the reason for the abortion.

(3) All information supplied to the Department of Health shall be confidential and privileged pursuant to Title 26, Chapter 25, Confidential Information Release.

Amended by Chapter 314, 2010 General Session

76-7-314. Violations of abortion laws -- Classifications.

(1) A willful violation of Section 76-7-307, 76-7-308, 76-7-310, 76-7-310.5, 76-7-311, or 76-7-312 is a felony of the third degree.

(2) A violation of Section 76-7-326 is a felony of the third degree.

(3) A violation of Section 76-7-314.5 is a felony of the second degree.

(4) A violation of any other provision of this part is a class A misdemeanor.

Amended by Chapter 13, 2010 General Session

76-7-314.5. Killing an unborn child.

(1) A person is guilty of killing an unborn child if the person causes the death of an unborn child by performing an abortion of the unborn child in violation of the provisions of Subsection 76-7-302(3).

(2) A woman is not criminally liable for:

(a) seeking to obtain, or obtaining, an abortion that is permitted by this part; or
(b) a physician's failure to comply with Subsection 76-7-302(3)(b)(ii) or Section 76-7-305.

Amended by Chapter 13, 2010 General Session

76-7-315. Exceptions to certain requirements in serious medical emergencies.

When due to a serious medical emergency, time does not permit compliance with Section 76-7-302, 76-7-305, 76-7-305.5, 76-7-308.5, or 76-7-310.5 the provisions of those sections do not apply.

Amended by Chapter 57, 2009 General Session

76-7-316. Actions not precluded.

Nothing in this part shall preclude any person believing himself aggrieved by another under this part, from bringing any other action at common law or other statutory provision.

Amended by Chapter 20, 1995 General Session

76-7-317. Separability clause.

If any one or more provision, section, subsection, sentence, clause, phrase or word of this part or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this part shall remain effective notwithstanding such unconstitutionality. The legislature hereby declares that it would have passed this part, and each provision, section, subsection, sentence, clause, phrase or word thereof, irrespective of the fact that any one or more provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

Enacted by Chapter 33, 1974 General Session

76-7-317.1. Abortion Litigation Account.

(1) As used in this section, "account" means the Abortion Litigation Account created in this section.
(2) There is created a restricted account within the General Fund known as the "Abortion Litigation Account."
(3) The Division of Finance may accept, for deposit in the restricted account, grants, gifts, bequests, or any money made available from any private sources for the purpose described in Subsection (4).
(4) Except as provided in Subsection (9), money deposited into the restricted account on or after May 12, 2009, shall be retained in the account for the purpose of paying litigation and appellate expenses of the Office of the Attorney General, including any court-ordered payment of plaintiff's attorney fees, to defend any law passed by the

Legislature on or after January 1, 2009, that:

(a) challenges the legal concept that a woman has a constitutional right to an abortion; or

(b) places a restriction on the right to an abortion.

(5) Money shall be appropriated by the Legislature from the account to the Office of the Attorney General under Title 63J, Chapter 1, Budgetary Procedures Act.

(6) The restricted account may be used only for costs, expenses, and attorney fees connected with the defense of an abortion law described in Subsection (4).

(7) Any funds in the restricted account on May 11, 2009, shall be first used to offset money expended by the state in connection with litigation regarding Senate Bill 23, passed in the 1991 General Session.

(8) Any funds described in Subsection (7) that are not needed to offset the money expended by the state in connection with litigation regarding Senate Bill 23, passed in the 1991 General Session, shall be retained in the account for the purpose described in Subsection (4).

(9) (a) If the Legislature does not pass a law described in Subsection (4) on or before July 1, 2014, the funds in the restricted account shall be used by the Division of Child and Family Services, within the Department of Human Services, for adoption assistance.

(b) If, on or before July 1, 2014, the Legislature passes a law described in Subsection (4), any funds remaining in the restricted account after the litigation and appellate expenses to defend the law are paid shall be used by the Division of Child and Family Services, within the Department of Human Services, for adoption assistance.

Amended by Chapter 278, 2010 General Session

76-7-321. Contraceptive and abortion services -- Funds -- Minor -- Definitions.

As used in Sections 76-7-321 through 76-7-325:

(1) "Abortion services" means any material, program, plan, or undertaking which seeks to promote abortion, encourages individuals to obtain an abortion, or provides abortions.

(2) "Contraceptive services" means any material, program, plan, or undertaking that is used for instruction on the use of birth control devices and substances, encourages individuals to use birth control methods, or provides birth control devices.

(3) "Funds" means any money, supply, material, building, or project provided by this state or its political subdivisions.

(4) "Minor" means any person under the age of 18 who is not otherwise emancipated, married, or a member of the armed forces of the United States.

Amended by Chapter 20, 1995 General Session

76-7-322. Public funds for provision of contraceptive or abortion services restricted.

No funds of the state or its political subdivisions shall be used to provide contraceptive or abortion services to an unmarried minor without the prior written consent of the minor's parent or guardian.

Amended by Chapter 50, 1988 General Session

76-7-323. Public funds for support entities providing contraceptive or abortion services restricted.

No agency of the state or its political subdivisions shall approve any application for funds of the state or its political subdivisions to support, directly or indirectly, any organization or health care provider that provides contraceptive or abortion services to an unmarried minor without the prior written consent of the minor's parent or guardian. No institution shall be denied state or federal funds under relevant provisions of law on the ground that a person on its staff provides contraceptive or abortion services in that person's private practice outside of such institution.

Amended by Chapter 50, 1988 General Session

76-7-324. Violation of restrictions on public funds for contraceptive or abortion services as misdemeanor.

Any agent of a state agency or political subdivision, acting alone or in concert with others, who violates Section 76-7-322, 76-7-323, or 76-7-331 is guilty of a class B misdemeanor.

Amended by Chapter 271, 2004 General Session

76-7-325. Notice to parent or guardian of minor requesting contraceptive -- Definition of contraceptives -- Penalty for violation.

(1) Any person before providing contraceptives to a minor shall notify, whenever possible, the minor's parents or guardian of the service requested to be provided to such minor. Contraceptives shall be defined as appliances (including but not limited to intrauterine devices), drugs, or medicinal preparations intended or having special utility for prevention of conception.

(2) Any person in violation of this section shall be guilty of a class C misdemeanor.

Enacted by Chapter 94, 1983 General Session

76-7-326. Partial birth abortions prohibited.

Any physician who knowingly performs a partial birth abortion and thereby kills a human fetus shall be fined or imprisoned, or both, as provided under this part. This section does not apply to a partial birth abortion that is necessary to save the life of a mother whose life is endangered by a physical disorder, physical illness, or physical injury, including a life endangering physical condition caused by or arising from the pregnancy itself.

Enacted by Chapter 272, 2004 General Session

76-7-327. Remedies for father or maternal grandparents.

(1) The father, if married to the mother at the time she receives a partial birth abortion, and if the mother has not attained the age of 18 years at the time of the abortion, the maternal grandparents of the fetus, may in a civil action obtain appropriate relief, unless the pregnancy resulted from the plaintiff's criminal conduct or the plaintiff consented to the abortion.

(2) Such relief shall include:

(a) money damages for all injuries, psychological and physical, occasioned by the violation of Section 76-7-326; and

(b) statutory damages equal to three times the cost of the partial birth abortion.

Amended by Chapter 13, 2010 General Session

76-7-328. Hearing to determine necessity of physician's conduct.

(1) A physician accused of an offense under Section 76-7-326 may seek a hearing before the Physicians Licensing Board created in Section 58-67-201, or the Osteopathic Physician and Surgeon's Licensing Board created in Section 58-68-201 on whether the physician's conduct was necessary to save the life of the mother whose life was endangered by a physical disorder, physical illness, or physical injury, including a life endangering physical condition caused by or arising from the pregnancy itself.

(2) The findings on that issue are admissible on that issue at the trial of the physician. Upon a motion from the physician, the court shall delay the beginning of the trial for not more than 30 days to permit such a hearing to take place.

Enacted by Chapter 272, 2004 General Session

76-7-330. Contingent continuance of prior law.

(1) If the implementation of Section 76-7-326 enacted by this bill is stayed or otherwise ordered by a court of competent jurisdiction to not be implemented, beginning on the day on which the implementation of Section 76-7-326 is stayed or otherwise ordered not to be implemented the statutes listed in Subsection (2) shall:

(a) be given effect as if this bill did not amend those statutes; and

(b) remain in effect as if not amended by this bill until the day on which a court orders that Section 76-7-326 may be implemented.

(2) Subsection (1) applies to:

(a) Section 76-7-301;

(b) Section 76-7-310.5; and

(c) Section 76-7-314.

(3) Nothing in this section prevents the Legislature from amending, repealing, or taking any other action regarding the sections listed in Subsection (2) in this or a subsequent session.

Enacted by Chapter 272, 2004 General Session

76-7-331. Public funding of abortion forbidden.

(1) As used in this section, "damage to a major bodily function" refers only to injury or impairment of a physical nature and may not be interpreted to mean mental, psychological, or emotional harm, illness, or distress.

(2) Public funds of the state, its institutions, or its political subdivisions may not be used to pay or otherwise reimburse, either directly or indirectly, any person, agency, or facility for the performance of any induced abortion services unless:

(a) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to save the pregnant woman's life;

(b) the pregnancy is the result of rape or incest reported to law enforcement agencies, unless the woman was unable to report the crime for physical reasons or fear of retaliation; or

(c) in the professional judgment of the pregnant woman's attending physician, the abortion is necessary to prevent permanent, irreparable, and grave damage to a major bodily function of the pregnant woman provided that a caesarian procedure or other medical procedure that could also save the life of the child is not a viable option.

(3) Any officer or employee of the state who knowingly authorizes the use of funds prohibited by this section shall be dismissed from that person's office or position and the person's employment shall be immediately terminated.

Enacted by Chapter 271, 2004 General Session

76-8-101. Definitions.

For the purposes of this chapter:

(1) "Candidate for electoral office" means a person who has filed as a candidate for office under the laws of the state.

(2) "Party official" means any person holding any post in a political party whether by election, appointment, or otherwise.

(3) "Peace officer" means any employee of a police or law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose duties consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(4) (a) "Pecuniary benefit" means any advantage in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain.

(b) "Pecuniary benefit" does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

(5) (a) "Public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, and persons otherwise performing a governmental function.

(b) A person is considered a public servant upon his election, appointment, or other designation as such, although he may not yet officially occupy that position.

Amended by Chapter 42, 1993 General Session

76-8-102. Campaign contributions not prohibited.

Nothing in this chapter shall be construed to prohibit the giving or receiving of campaign contributions made for the purpose of defraying the costs of a political campaign. No person shall be convicted of an offense solely on the evidence that a campaign contribution was made and that an appointment or nomination was subsequently made by the person to whose campaign or political party the contribution was made.

Enacted by Chapter 196, 1973 General Session

76-8-103. Bribery or offering a bribe.

(1) A person is guilty of bribery or offering a bribe if that person promises, offers, or agrees to give or gives, directly or indirectly, any benefit to another with the purpose or intent to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion of a public servant, party official, or voter.

(2) It is not a defense to a prosecution under this statute that:

(a) the person sought to be influenced was not qualified to act in the desired way, whether because the person had not assumed office, lacked jurisdiction, or for any other reason;

(b) the person sought to be influenced did not act in the desired way; or

(c) the benefit is not conferred, solicited, or accepted until after:

(i) the action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, has occurred; or

(ii) the public servant ceases to be a public servant.

(3) Bribery or offering a bribe is:

(a) a third degree felony when the value of the benefit asked for, solicited, accepted, or conferred is less than $1,000; and

(b) a second degree felony when the value of the benefit asked for, solicited, accepted, or conferred is $1,000 or more.

Amended by Chapter 92, 1998 General Session

76-8-104. Threats to influence official or political action.

(1) A person is guilty of a class A misdemeanor if he threatens any harm to a public servant, party official, or voter with a purpose of influencing his action, decision, opinion, recommendation, nomination, vote, or other exercise of discretion.

(2) As used in this section:

(a) "Harm" means any disadvantage or injury, pecuniary or otherwise, including disadvantage or injury to any other person or entity in whose welfare the public servant, party official, or voter is interested.

(b) "Public servant" does not include jurors.

Amended by Chapter 215, 1991 General Session

76-8-105. Receiving or soliciting bribe or bribery by public servant.

(1) A person is guilty of receiving or soliciting a bribe if that person asks for, solicits, accepts, or receives, directly or indirectly, any benefit with the understanding or agreement that the purpose or intent is to influence an action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, of a public servant, party official, or voter.

(2) It is not a defense to a prosecution under this statute that:

(a) the person sought to be influenced was not qualified to act in the desired way, whether because the person had not assumed office, lacked jurisdiction, or for any other reason;

(b) the person sought to be influenced did not act in the desired way; or

(c) the benefit is not asked for, conferred, solicited, or accepted until after:

(i) the action, decision, opinion, recommendation, judgment, vote, nomination, or exercise of discretion, has occurred; or

(ii) the public servant ceases to be a public servant.

(3) Receiving or soliciting a bribe is:

(a) a third degree felony when the value of the benefit asked for, solicited, accepted, or conferred is $1,000 or less; and

(b) a second degree felony when the value of the benefit asked for, solicited, accepted, or conferred exceeds $1,000.

Repealed and Re-enacted by Chapter 92, 1998 General Session

76-8-106. Receiving bribe or bribery for endorsement of person as public servant.

A person is guilty of a class B misdemeanor if:

(1) He solicits, accepts, agrees to accept for himself, another person, or a political party, money or any other pecuniary benefit as compensation for his endorsement, nomination, appointment, approval, or disapproval of any person for a position as a public servant or for the advancement of any public servant; or

(2) He knowingly gives, offers, or promises any pecuniary benefit prohibited by paragraph (1).

Enacted by Chapter 196, 1973 General Session

76-8-107. Alteration of proposed legislative bill or resolution.

Every person who fraudulently alters the draft of any bill or resolution which has been presented to either of the houses composing the Legislature to be passed or adopted, with intent to procure its being passed or adopted by either house, or certified by the presiding officer of either house in language different from that intended by such house, is guilty of a felony of the third degree.

Amended by Chapter 32, 1974 General Session

76-8-108. Alteration of enrolled legislative bill or resolution.

Every person who fraudulently alters the enrolled copy of any bill or resolution which has been passed or adopted by the Legislature with intent to procure it to be approved by the governor or certified by the Division of Archives, or printed or published by the printer of statutes in language different from that in which it was passed or adopted by the Legislature, is guilty of a felony of the third degree.

Amended by Chapter 21, 1985 General Session

76-8-110. Peace officer prohibited from acting as compensated collection agent for collection agencies or creditors.

(1) A peace officer may not have any interest in any collection agency or act as a compensated collection agent for any creditor or collection agency.

(2) A person that violates this section is guilty of a class C misdemeanor.

Amended by Chapter 128, 1992 General Session

76-8-201. Official misconduct -- Unauthorized acts or failure of duty.

A public servant is guilty of a class B misdemeanor if, with an intent to benefit himself or another or to harm another, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a duty imposed on him by law or clearly inherent in the nature of his office.

Enacted by Chapter 196, 1973 General Session

76-8-202. Official misconduct -- Unlawful acts based on "inside" information.

A public servant is guilty of a class A misdemeanor if, knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public servant, which information has not been made public, he:

(1) acquires or divests himself of a pecuniary interest in any property, transaction, or enterprise which may be affected by such action or information;

(2) speculates or wagers on the basis of such action or information; or

(3) knowingly aids another to do any of the foregoing.

Amended by Chapter 241, 1991 General Session

76-8-203. Unofficial misconduct.

(1) A person is guilty of unofficial misconduct if the person exercises or attempts to exercise any of the functions of a public office when the person:

(a) has not taken and filed the required oath of office;

(b) has failed to execute and file a required bond;

(c) has not been elected or appointed to office;

(d) exercises any of the functions of his office after his term has expired and the successor has been elected or appointed and has qualified, or after his office has been legally removed; or

(e) knowingly withholds or retains from his successor in office or other person entitled to the official seal or any records, papers, documents, or other writings appertaining or belonging to his office or mutilates or destroys or takes away the same.

(2) Unofficial misconduct is a class B misdemeanor.

Amended by Chapter 336, 2011 General Session

76-8-301. Interference with public servant.

(1) A person is guilty of interference with a public servant if he:

(a) uses force, violence, intimidation, or engages in any other unlawful act with a purpose to interfere with a public servant performing or purporting to perform an official function; or

(b) knowingly or intentionally interferes with the lawful service of process by a public servant.

(2) Interference with a public servant is a class B misdemeanor.

(3) For purposes of this section, "public servant" does not include jurors.

Amended by Chapter 72, 1998 General Session

76-8-301.5. Failure to disclose identity.

(1) A person is guilty of failure to disclose identity if during the period of time that the person is lawfully subjected to a stop as described in Section 77-7-15:

(a) a peace officer demands that the person disclose the person's name;

(b) the demand described in Subsection (1)(a) is reasonably related to the circumstances justifying the stop;

(c) the disclosure of the person's name by the person does not present a reasonable danger of self-incrimination in the commission of a crime; and

(d) the person fails to disclose the person's name.

(2) Failure to disclose identity is a class B misdemeanor.

Enacted by Chapter 293, 2008 General Session

76-8-302. Picketing or parading in or near court.

A person is guilty of a class B misdemeanor if he pickets or parades in or near a building which houses a court of this state with intent to obstruct access to that court or to affect the outcome of a case pending before that court.

Enacted by Chapter 196, 1973 General Session

76-8-303. Prevention of Legislature or public servants from meeting or organizing.

A person is guilty of a felony of the third degree if he intentionally and by force or fraud:

(1) Prevents the Legislature, or either of the houses composing it, or any of the members thereof, from meeting or organizing; or

(2) Prevents any other public servant from meeting or organizing to perform a lawful governmental function.

Enacted by Chapter 196, 1973 General Session

76-8-304. Disturbing Legislature or official meeting.

(1) A person is guilty of a class B misdemeanor if he intentionally:

(a) disturbs the Legislature, or either of the houses composing it, while in session;

(b) commits any disorderly conduct in the immediate view and presence of either house of the Legislature, tending to interrupt its proceedings or impair the respect of its authority; or

(c) disturbs an official meeting or commits any disorderly conduct in immediate view and presence of participants in an official meeting tending to interrupt its proceedings.

(2) "Official meeting," as used in this section, means any lawful meeting of public servants for the purposes of carrying on governmental functions.

Amended by Chapter 30, 1992 General Session

76-8-305. Interference with arresting officer.

A person is guilty of a class B misdemeanor if he has knowledge, or by the exercise of reasonable care should have knowledge, that a peace officer is seeking to effect a lawful arrest or detention of that person or another and interferes with the arrest or detention by:

(1) use of force or any weapon;

(2) the arrested person's refusal to perform any act required by lawful order:

(a) necessary to effect the arrest or detention; and

(b) made by a peace officer involved in the arrest or detention; or

(3) the arrested person's or another person's refusal to refrain from performing any act that would impede the arrest or detention.

Amended by Chapter 274, 1990 General Session

76-8-305.5. Failure to stop at the command of a law enforcement officer.

A person is guilty of a class A misdemeanor who flees from or otherwise attempts to elude a law enforcement officer:

(1) after the officer has issued a verbal or visual command to stop;

(2) for the purpose of avoiding arrest; and

(3) by any means other than a violation of Section 41-6a-210 regarding failure to stop a vehicle at the command of a law enforcement officer.

Enacted by Chapter 288, 2005 General Session

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

-- Elements -- Penalties -- Exceptions.

(1) 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 regarding conduct that constitutes a criminal offense:

(a) provides any person with a weapon;

(b) prevents by force, intimidation, or deception, any person from performing any act that might aid in the discovery, apprehension, prosecution, conviction, or punishment of any person;

(c) alters, destroys, conceals, or removes any item or other thing;

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

(e) harbors or conceals a person;

(f) provides a person with transportation, disguise, or other means of avoiding discovery or apprehension;

(g) warns any person of impending discovery or apprehension;

(h) warns any person 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 violation of a criminal statute that is committed in another state, or any district, possession, or territory of the United States, is a:

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

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

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

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

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

(3) 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)(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)(a);

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

(iv) a violation of Subsection (1)(h); or

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

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

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

(6) Subsection (1)(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 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) Notwithstanding Subsection (1), (2), or (3), 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.

Amended by Chapter 213, 2009 General Session

76-8-306.5. Obstructing service of a Board of Pardons' warrant or a probationer order to show cause.

A person is guilty of a third degree felony who:

(1) knows that the Board of Pardons and Parole has issued a warrant for a parolee or that a court has issued an order to show cause regarding a defendant's violation of the terms of probation; and

(2) (a) harbors or conceals the parolee or probationer;

(b) provides the parolee or probationer with transportation, disguise, or other means or assistance to avoid discovery; or

(c) warns the parolee or probationer of his impending discovery.

Enacted by Chapter 155, 2007 General Session

76-8-307. Failure to aid peace officer.

A person is guilty of a class B misdemeanor if, upon command by a peace officer identifiable or identified by him as such, he unreasonably fails or refuses to aid the peace officer in effecting an arrest or in preventing the commission of any offense by another person.

Enacted by Chapter 196, 1973 General Session

76-8-308. Acceptance of bribe or bribery to prevent criminal prosecution -- Defense.

(1) A person is guilty of a class A misdemeanor if he:

(a) solicits, accepts, or agrees to accept any benefit as consideration for his refraining from initiating or aiding in a criminal prosecution; or

(b) confers, offers, or agrees to confer any benefit upon another as consideration for the person refraining from initiating or aiding in a criminal prosecution.

(2) It is an affirmative defense that the value of the benefit did not exceed an amount which the actor believed to be due as restitution or indemnification for the loss caused or to be caused by the offense.

Amended by Chapter 241, 1991 General Session

76-8-309. Escape and aggravated escape -- Consecutive sentences -- Definitions.

(1) (a) (i) A prisoner is guilty of escape if he leaves official custody without lawful authorization.

(ii) If a prisoner obtains authorization to leave official custody by means of deceit, fraud, or other artifice, the prisoner has not received lawful authorization.

(b) Escape under this Subsection (1) is a third degree felony except as provided under Subsection (1)(c).

(c) Escape under this Subsection (1) is a second degree felony if:

(i) the actor escapes from a state prison; or

(ii) (A) the actor is convicted as a party to the offense, as defined in Section 76-2-202; and

(B) the actor is an employee at or a volunteer of a law enforcement agency, the Department of Corrections, a county or district attorney's office, the office of the state attorney general, the Board of Pardons and Parole, or the courts, the Judicial Council, the Office of the Court Administrator, or similar administrative units in the judicial branch of government.

(2) (a) A prisoner is guilty of aggravated escape if in the commission of an escape he uses a dangerous weapon, as defined in Section 76-1-601, or causes serious bodily injury to another.

(b) Aggravated escape is a first degree felony.

(3) Any prison term imposed upon a prisoner for escape under this section shall run consecutively with any other sentence.

(4) For the purposes of this section:

(a) "Confinement" means the prisoner is:

(i) housed in a state prison or any other facility pursuant to a contract with the Utah Department of Corrections after being sentenced and committed and the sentence has not been terminated or voided or the prisoner is not on parole;

(ii) lawfully detained in a county jail prior to trial or sentencing or housed in a

county jail after sentencing and commitment and the sentence has not been terminated or voided or the prisoner is not on parole; or

(iii) lawfully detained following arrest.

(b) "Escape" is considered to be a continuing activity commencing with the conception of the design to escape and continuing until the escaping prisoner is returned to official custody or the prisoner's attempt to escape is thwarted or abandoned.

(c) "Official custody" means arrest, whether with or without warrant, or confinement in a state prison, jail, institution for secure confinement of juvenile offenders, or any confinement pursuant to an order of the court or sentenced and committed and the sentence has not been terminated or voided or the prisoner is not on parole. A person is considered confined in the state prison if he:

(i) without authority fails to return to his place of confinement from work release or home visit by the time designated for return;

(ii) is in prehearing custody after arrest for parole violation;

(iii) is being housed in a county jail, after felony commitment, pursuant to a contract with the Department of Corrections; or

(iv) is being transported as a prisoner in the state prison by correctional officers.

(d) "Prisoner" means any person who is in official custody and includes persons under trusty status.

(e) "Volunteer" means any person who donates service without pay or other compensation except expenses actually and reasonably incurred as approved by the supervising agency.

Amended by Chapter 274, 2004 General Session

76-8-311.1. Secure areas -- Items prohibited -- Penalty.

(1) In addition to the definitions in Section 76-10-501, as used in this section:

(a) "Correctional facility" has the same meaning as defined in Section 76-8-311.3.

(b) "Explosive" has the same meaning as defined for "explosive, chemical, or incendiary device" defined in Section 76-10-306.

(c) "Law enforcement facility" means a facility which is owned, leased, or operated by a law enforcement agency.

(d) "Mental health facility" has the same meaning as defined in Section 62A-15-602.

(e) (i) "Secure area" means any area into which certain persons are restricted from transporting any firearm, ammunition, dangerous weapon, or explosive.

(ii) A "secure area" may not include any area normally accessible to the public.

(2) (a) A person in charge of a correctional, law enforcement, or mental health facility may establish secure areas within the facility and may prohibit or control by rule any firearm, ammunition, dangerous weapon, or explosive.

(b) Subsections (2)(a), (3), (4), (5), and (6) apply to higher education secure area hearing rooms referred to in Subsections 53B-3-103(2)(a)(ii) and (b).

(3) At least one notice shall be prominently displayed at each entrance to an

area in which a firearm, ammunition, dangerous weapon, or explosive is restricted.

(4) (a) Provisions shall be made to provide a secure weapons storage area so that persons entering the secure area may store their weapons prior to entering the secure area.

(b) The entity operating the facility shall be responsible for weapons while they are stored in the storage area.

(5) It is a defense to any prosecution under this section that the accused, in committing the act made criminal by this section, acted in conformity with the facility's rule or policy established pursuant to this section.

(6) (a) Any person who knowingly or intentionally transports into a secure area of a facility any firearm, ammunition, or dangerous weapon is guilty of a third degree felony.

(b) Any person violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a secure area of a facility.

Amended by Chapter 8, 2002 Special Session 5

76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.

(1) As used in this section:

(a) "Contraband" means any item not specifically prohibited for possession by offenders under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

(b) "Controlled substance" means any substance defined as a controlled substance under Title 58, Chapter 37, Utah Controlled Substances Act.

(c) "Correctional facility" means:

(i) any facility operated by or contracting with the Department of Corrections to house offenders in either a secure or nonsecure setting;

(ii) any facility operated by a municipality or a county to house or detain criminal offenders;

(iii) any juvenile detention facility; and

(iv) any building or grounds appurtenant to the facility or lands granted to the state, municipality, or county for use as a correctional facility.

(d) "Electronic cigarette" is as defined in Section 76-10-101.

(e) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b, Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37, Utah Controlled Substances Act.

(f) "Mental health facility" is as defined in Section 62A-15-602.

(g) "Offender" means a person in custody at a correctional facility.

(h) "Secure area" is as defined in Section 76-8-311.1.

(2) Notwithstanding Section 76-10-500, a correctional or mental health facility may provide by rule that no firearm, ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:

(a) transported to or upon a correctional or mental health facility;

(b) sold or given away at any correctional or mental health facility;

(c) given to or used by any offender at a correctional or mental health facility; or

(d) knowingly or intentionally possessed at a correctional or mental health facility.

(3) It is a defense to any prosecution under this section if the accused in committing the act made criminal by this section with respect to:

(a) a correctional facility operated by the Department of Corrections, acted in conformity with departmental rule or policy;

(b) a correctional facility operated by a municipality, acted in conformity with the policy of the municipality;

(c) a correctional facility operated by a county, acted in conformity with the policy of the county; or

(d) a mental health facility, acted in conformity with the policy of the mental health facility.

(4) (a) Any person who transports to or upon a correctional facility, or into a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

(b) Any person who provides or sells to any offender at a correctional facility, or any detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

(c) Any offender who possesses at a correctional facility, or any detainee who possesses at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a second degree felony.

(d) Any person who, without the permission of the authority operating the correctional facility or the secure area of a mental health facility, knowingly possesses at a correctional facility or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, or implement of escape is guilty of a third degree felony.

(e) Any person violates Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

(5) (a) A person is guilty of a third degree felony who, without the permission of the authority operating the correctional facility or secure area of a mental health facility, knowingly transports to or upon a correctional facility or into a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(b) A person is guilty of a third degree felony who knowingly violates correctional or mental health facility policy or rule by providing or selling to any offender at a correctional facility or detainee within a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, whether or not lawfully prescribed for the offender; or

(iii) poison in any quantity.

(c) An inmate is guilty of a third degree felony who, in violation of correctional or

mental health facility policy or rule, possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine, other than medicine provided by the facility's health care providers in compliance with facility policy; or

(iii) poison in any quantity.

(d) A person is guilty of a class A misdemeanor who, with the intent to directly or indirectly provide or sell any tobacco product or electronic cigarette to an offender, directly or indirectly:

(i) transports, delivers, or distributes any tobacco product or electronic cigarette to an offender or on the grounds of any correctional facility;

(ii) solicits, requests, commands, coerces, encourages, or intentionally aids another person to transport any tobacco product or electronic cigarette to an offender or on any correctional facility, if the person is acting with the mental state required for the commission of an offense; or

(iii) facilitates, arranges, or causes the transport of any tobacco product or electronic cigarette in violation of this section to an offender or on the grounds of any correctional facility.

(e) A person is guilty of a class A misdemeanor who, without the permission of the authority operating the correctional or mental health facility, fails to declare or knowingly possesses at a correctional facility or in a secure area of a mental health facility any:

(i) spirituous or fermented liquor;

(ii) medicine; or

(iii) poison in any quantity.

(f) A person is guilty of a class B misdemeanor who, without the permission of the authority operating the correctional facility, knowingly engages in any activity that would facilitate the possession of any contraband by an offender in a correctional facility. The provisions of Subsection (5)(d) regarding any tobacco product or electronic cigarette take precedence over this Subsection (5)(f).

(g) Exemptions may be granted for worship for Native American inmates pursuant to Section 64-13-40.

(6) The possession, distribution, or use of a controlled substance at a correctional facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58, Chapter 37, Utah Controlled Substances Act.

(7) The department shall make rules under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish guidelines for providing written notice to visitors that providing any tobacco product or electronic cigarette to offenders is a class A misdemeanor.

Amended by Chapter 114, 2010 General Session

76-8-312. Bail-jumping.

(1) A person is guilty of an offense when having been released on bail or on his own recognizance by court order or by other lawful authority upon condition that he

subsequently appear personally upon a charge of an offense, he fails without just cause to appear at the time and place which have been lawfully designated for his appearance.

(2) An offense under this section is a felony of the third degree when the offense charged is a felony, a class B misdemeanor when the offense charged is a misdemeanor, and an infraction when the offense charged is an infraction.

Amended by Chapter 32, 1974 General Session

76-8-313. Threatening elected officials -- Assault.

A person commits assault on an elected official when he attempts or threatens, irrespective of a showing of immediate force or violence, to inflict bodily injury to the elected official with the intent to impede, intimidate, or interfere with the elected official in the performance of his official duties or with the intent to retaliate against the elected official because of the performance of his official duties.

Amended by Chapter 45, 1996 General Session

76-8-314. Threatening elected officials -- "Elected official" defined.

As used in this section, "elected official" means:

(1) any elected official of the state, county, or city and includes the members of the official's immediate family;

(2) any temporary judge appointed to fill a vacant judicial position;

(3) any judge not yet retained by a retention election;

(4) any member of a school board; and

(5) any person appointed to fill a vacant position of an elected official as defined in Subsection (1).

Amended by Chapter 45, 1996 General Session

76-8-315. Threatening elected officials -- Penalties for assault.

Assault on an elected official is a felony of the third degree if bodily injury is attempted or occurs, otherwise the assault is a class B misdemeanor.

Enacted by Chapter 330, 1983 General Session

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) "Family member" means parents, spouse, surviving spouse, children, and siblings of a judge or board member.

(c) "Judge" means judges of all courts of record and courts not of record and

court commissioners.

(2) A person is guilty of a third degree felony if the person threatens to assault, kidnap, or murder a judge, a family member of a judge, a board member, or a family member of a board member with the intent to impede, intimidate, or interfere with the judge or board member while engaged in the performance of the judge's or board member's official duties or with the intent to retaliate against the judge or board member on account of the performance of those official duties.

(3) A person is guilty of a second degree felony if the person commits an assault on a judge, a family member of a judge, a board member, or a family member of a board member with the intent to impede, intimidate, or interfere with the judge or board member while engaged in the performance of the judge's or board member's official duties, or with the intent to retaliate against the judge or board member on account of the performance of those official duties.

(4) A person is guilty of a first degree felony if the person commits aggravated assault on a judge, a family member of a judge, a board member, or a family member of a board member with the intent to impede, intimidate, or interfere with the judge or board member while engaged in the performance of the judge's or board member's official duties or with the intent to retaliate against the judge or board member on account of the performance of those official duties.

(5) A person is guilty of a first degree felony if the person commits attempted murder on a family member of a judge or a family member of a board member with the intent to impede, intimidate, or interfere with the judge or board member while engaged in the performance of the judge's or board member's official duties or with the intent to retaliate against the judge or board member 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).

Amended by Chapter 432, 2013 General Session

76-8-317. Refusal to comply with order to evacuate or other orders issued in a local or state emergency -- Penalties.

(1) A person may not refuse to comply with an order to evacuate issued under this chapter or refuse to comply with any other order issued by the governor in a state of an emergency under Section 53-2a-204 or by a chief executive officer in a local emergency under Section 53-2a-205, if notice of the order has been given to that person.

(2) A person who violates this section is guilty of a class B misdemeanor.

Amended by Chapter 295, 2013 General Session

76-8-401. "Public funds," "public money," and "public officer" defined.

As used in this title:

(1) "Public funds" or "public money" means funds, money, and accounts, regardless of the source from which they are derived, that are owned, held, or

administered by the state or any of its boards, commissions, institutions, departments, divisions, agencies, bureaus, laboratories, or other similar instrumentalities, or any county, city, school district, political subdivision, or other public body. "Public money" also includes money, funds, or accounts that have been transferred by any of those public entities to a private contract provider of programs or services. The money, funds, or accounts maintain the nature of public money while in the possession of the private entity that has contracted with a public entity to provide programs or services.

(2) "Public officer" means:

(a) all elected officials of the state, a political subdivision of the state, a county, town, city, precinct, or district;

(b) a person appointed to or serving an unexpired term of an elected office;

(c) a judge of a court of record and not of record including justice court judges; and

(d) a member of the Board of Pardons and Parole.

Amended by Chapter 369, 2012 General Session

76-8-402. Misusing public money.

(1) Every public officer of this state or a political subdivision, or of any county, city, town, precinct, or district of this state, and every other person charged, either by law or under contract, with the receipt, safekeeping, transfer, disbursement, or use of public money commits an offense if the officer or other charged person:

(a) appropriates the money or any portion of it to his own use or benefit or to the use or benefit of another without authority of law;

(b) loans or transfers the money or any portion of it without authority of law;

(c) fails to keep the money in his possession until disbursed or paid out by authority of law;

(d) unlawfully deposits the money or any portion in any bank or with any other person;

(e) knowingly keeps any false account or makes any false entry or erasure in any account of or relating to the money;

(f) fraudulently alters, falsifies, conceals, destroys, or obliterates any such account;

(g) willfully refuses or omits to pay over, on demand, any public money in his hands, upon the presentation of a draft, order, or warrant drawn upon such money by competent authority;

(h) willfully omits to transfer the money when the transfer is required by law; or

(i) willfully omits or refuses to pay over, to any officer or person authorized by law to receive it, any money received by him under any duty imposed by law so to pay over the same.

(2) A violation of Subsection (1) is a felony of the third degree, except it is a felony of the second degree if:

(a) the value of the money exceeds $5,000;

(b) the amount of the false account exceeds $5,000;

(c) the amount falsely entered exceeds $5,000;

(d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds $5,000; or

(e) the amount falsely erased, fraudulently concealed, destroyed, obliterated, or falsified in the account exceeds $5,000.

(3) In addition to the penalty described in Subsection (2), a public officer who violates Subsection (1) is subject to the penalties described in Section 76-8-404.

Amended by Chapter 106, 1999 General Session

76-8-403. Failure to keep and pay over public money.

Every person who receives, safekeeps, transfers, or disburses public money who neglects or fails to keep and pay over the money in the manner prescribed by law is guilty of a felony of the third degree.

Amended by Chapter 232, 1995 General Session

76-8-404. Making profit from or misusing public money -- Disqualification from office -- Criminal penalty.

A public officer, regardless of whether or not the officer receives, safekeeps, transfers, disburses, or has a fiduciary relationship with public money, who makes a profit from or out of public money, or who uses public money in a manner or for a purpose not authorized by law, is guilty of a felony as provided in Section 76-8-402 and shall, in addition to the punishment provided by law, be disqualified to hold public office.

Amended by Chapter 106, 1999 General Session

76-8-405. Failure to pay over fine, forfeiture, or fee.

Every public officer who receives any fine, forfeiture, or fee and refuses or neglects to pay it over within the time prescribed by law is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-406. Obstructing collection of revenue.

Every person who willfully obstructs or hinders any public officer from collecting any revenue, taxes, or other sums of money in which the people of this state are interested, and which such officer is by law empowered to collect, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-407. Refusing to give tax assessment information, or giving false information.

Every person who unlawfully refuses, upon demand, to give to any county

assessor or deputy county assessor a list of his property subject to taxation, or to swear to such list, or who gives a false name, or fraudulently refuses to give his true name when demanded by the assessor in the discharge of his official duties, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-408. Giving false tax receipt or failing to give receipt.

Every person who uses or gives any receipt, except that prescribed by law, as evidence of the payment for any tax or license of any kind, or who receives payment for the tax or license without delivering the receipt prescribed by law, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-409. Refusing to give tax assessor or tax or license collector list of, or denying access to, employees.

Every person who, when requested by the assessor or collector of taxes or license fees, refuses to give to the assessor or collector the name and residence of each person in his employ, or to give the assessor or collector access to the building or place of employment, is guilty of a class B misdemeanor.

Amended by Chapter 5, 1991 General Session

76-8-410. Doing business without license.

Every person who commences or carries on any business, trade, profession, or calling, for the transaction or carrying on of which a license is required by any law, or by any county, city, or town ordinance, without taking out the license required by law or ordinance is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-411. Trafficking in warrants.

No state, county, city, town, or district officer shall, either directly or indirectly, contract for or purchase any warrant or order issued by the state, county, city, town, or district of which he is an officer, at any discount whatever upon the sum due on the warrant or order, and, if any state, county, city, town, or district officer shall so contract for or purchase any such order or warrant on a discount, he is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-412. Stealing, destroying or mutilating public records by custodian.

Every officer having the custody of any record, map, or book, or of any paper or proceedings of any court, filed or deposited in any public office, or placed in his hands

for any purpose, who is guilty of stealing, willfully destroying, mutilating, defacing, altering, falsifying, removing, or secreting the whole or any part thereof, or who permits any other person so to do, is guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-8-413. Stealing, destroying or mutilating public records by one not custodian.

Every person, not an officer such as is referred to in the preceding section, who is guilty of any of the acts specified in that section is guilty of a class A misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-414. Recording false or forged instruments.

Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed or registered or recorded under any law of this state or of the United States, is guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-8-415. Damaging or removing monuments of official surveys.

Every person who willfully injures, defaces, or removes any signal, monument, building, or appurtenance thereto, placed, erected, or used by persons engaged in the United States or state survey is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-416. Taking toll or maintaining road, bridge, or ferry without authority -- Refusal to pay lawful toll.

Any person who demands or receives compensation for the use of any bridge or ferry, or who sets up or keeps any road, bridge, or ferry, or constructed ford, for the purpose of receiving remuneration for its use without authority of law; and any person who refuses to pay on demand the compensation or fee authorized to be collected for use of a licensed toll road, bridge, ferry, or constructed ford after having used it is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-417. Tampering with official notice or proclamation.

Every person who intentionally defaces, obliterates, tears down, or destroys any copy or transcript or extract from or of any law of the United States or of this state, or any proclamation, advertisement, or notice, set up at any place in this state by authority of any law of the United States or of this state, or by order of any court or of any public officer, before the expiration of the time for which the same was to remain set up, is

guilty of an infraction.

Enacted by Chapter 196, 1973 General Session

76-8-418. Damaging jails.

A person who willfully and intentionally breaks down, pulls down, destroys, floods, or otherwise damages any public jail or other place of confinement, including a detention, shelter, or secure confinement facility for juveniles, is guilty of a felony of the third degree.

Amended by Chapter 13, 2005 General Session

76-8-419. Damaging highways or bridges.

(1) Every person who intentionally, knowingly, or recklessly digs up, removes, displaces, breaks, or otherwise damages or destroys any public highway, or any private way laid out by authority of law, or any bridge upon the highway or private way is guilty of a class A misdemeanor.

(2) If the violation of this section constitutes an offense subject to a greater penalty under another provision of Title 76, Utah Criminal Code, than is provided under this section, this section does not prohibit the prosecution and sentencing for the offense subject to a greater penalty.

Amended by Chapter 166, 2002 General Session

76-8-420. Removing or damaging road signs.

Every person who intentionally or knowingly removes or injures any milepost or milestone or guidepost or any inscription on them, erected upon any highway, is guilty of a class B misdemeanor.

Amended by Chapter 229, 2007 General Session

76-8-501. Definitions.

As used in this part:

(1) "Material" means capable of affecting the course or outcome of an official proceeding, unless the person who made the statement or provided the information retracts the statement or information before the earlier of:

(a) the end of the official proceeding in which the statement was made or the information was provided;

(b) when it becomes manifest that the false or misleading nature of the statement or information has been or will be exposed; or

(c) when the statement or information substantially affects the proceeding.

(2) "Official proceeding" means:

(a) any proceeding before:

(i) a legislative, judicial, administrative, or other governmental body or official authorized by law to take evidence under oath or affirmation;

(ii) a notary; or

(iii) a person that takes evidence in connection with a proceeding described in Subsection (2)(a)(i);

(b) any civil or administrative action, trial, examination under oath, administrative proceeding, or other civil or administrative adjudicative process; or

(c) an investigation or audit conducted by:

(i) the Legislature, or a house, committee, subcommittee, or task force of the Legislature; or

(ii) an employee or independent contractor of an entity described in Subsection (1)(c)(i), at or under the direction of an entity described in Subsection (2)(c)(i).

Amended by Chapter 167, 2014 General Session

76-8-502. False or inconsistent material statements.

A person is guilty of a felony of the second degree if in any official proceeding:

(1) He makes a false material statement under oath or affirmation or swears or affirms the truth of a material statement previously made and he does not believe the statement to be true; or

(2) He makes inconsistent material statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by him to be true.

Amended by Chapter 324, 1997 General Session

76-8-503. False or inconsistent statements.

(1) Except as provided in Subsection (2), a person is guilty of a class B misdemeanor if:

(a) the person makes a false statement under oath or affirmation or swears or affirms the truth of the statement previously made and the person does not believe the statement to be true if:

(i) the falsification occurs in an official proceeding, or is made with a purpose to mislead a public servant in performing the public servant's official functions; or

(ii) the statement is one that is authorized by law to be sworn or affirmed before a notary or other person authorized to administer oaths; or

(b) the person makes inconsistent statements under oath or affirmation, both within the period of limitations, one of which is false and not believed by the person to be true.

(2) Subsection (1) does not include obstructing a legislative proceeding, as described in Section 36-12-9.5.

(3) A person is not guilty under this section if the person retracts the falsification before it becomes manifest that the falsification has been or will be exposed.

Amended by Chapter 167, 2014 General Session

76-8-504. Written false statement.

A person is guilty of a class B misdemeanor if:

(1) He makes a written false statement which he does not believe to be true on or pursuant to a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

(2) With intent to deceive a public servant in the performance of his official function, he:

(a) Makes any written false statement which he does not believe to be true; or

(b) Knowingly creates a false impression in a written application for any pecuniary or other benefit by omitting information necessary to prevent statements therein from being misleading; or

(c) Submits or invites reliance on any writing which he knows to be lacking in authenticity; or

(d) Submits or invites reliance on any sample, specimen, map, boundary mark, or other object which he knows to be false.

(3) No person shall be guilty under this section if he retracts the falsification before it becomes manifest that the falsification was or would be exposed.

Enacted by Chapter 196, 1973 General Session

76-8-504.5. False statements -- Preliminary hearing.

(1) A person is guilty of a class A misdemeanor if the person makes a false statement:

(a) which the person does not believe to be true;

(b) that the person has reason to believe will be used in a preliminary hearing; and

(c) after having been notified either verbally or in writing that:

(i) the statement may be used in a preliminary hearing before a magistrate or a judge; and

(ii) if the person makes a false statement after having received this notification, he is subject to a criminal penalty.

(2) Notification under Subsection (1) is sufficient if it is verbal or written and is in substantially the following form: "You are notified that statements you are about to make may be presented to a magistrate or a judge in lieu of your sworn testimony at a preliminary examination. Any false statement you make and that you do not believe to be true may subject you to criminal punishment as a class A misdemeanor."

Enacted by Chapter 215, 1999 General Session

76-8-504.6. False or misleading information.

(1) A person is guilty of a class B misdemeanor if the person, not under oath or affirmation, intentionally or knowingly provides false or misleading material information to:

(a) an officer of the court for the purpose of influencing a criminal proceeding; or

(b) the Bureau of Criminal Identification for the purpose of obtaining a certificate of eligibility for expungement.

(2) For the purposes of this section "officer of the court" means:

(a) prosecutor;
(b) judge;
(c) court clerk;
(d) interpreter;
(e) presentence investigator;
(f) probation officer;
(g) parole officer; and
(h) any other person reasonably believed to be gathering information for a criminal proceeding.
(3) This section does not apply under circumstances amounting to Section 76-8-306 or any other provision of this code carrying a greater penalty.

Amended by Chapter 283, 2010 General Session

76-8-505. False or inconsistent statements -- Proof of falsity of statements -- Irregularities no defense.

(1) On any prosecution for a violation of Subsection 76-8-502(1) or 76-8-503(1)(a), falsity of a statement may not be established solely through contradiction by the testimony of a single witness.
(2) In prosecutions for violation of Subsection 76-8-502(2) or 76-8-503(1)(b), it need not be alleged or proved which of the statements are false but only that one or the other is false and not believed by the defendant to be true.
(3) It is not a defense to a charge under this part that the oath or affirmation was administered or taken in an irregular manner.

Amended by Chapter 324, 1997 General Session

76-8-506. Providing false information to law enforcement officers, government agencies, or specified professionals.

A person is guilty of a class B misdemeanor if he:
(1) knowingly gives or causes to be given false information to any peace officer or any state or local government agency or personnel with a purpose of inducing the recipient of the information to believe that another has committed an offense;
(2) knowingly gives or causes to be given to any peace officer, any state or local government agency or personnel, or to any person licensed in this state to practice social work, psychology, or marriage and family therapy, information concerning the commission of an offense, knowing that the offense did not occur or knowing that he has no information relating to the offense or danger; or
(3) knowingly gives or causes to be given false information to any state or local government agency or personnel with a purpose of inducing a change in the person's licensing or certification status or the licensing or certification status of another.

Amended by Chapter 92, 2005 General Session

76-8-507. False personal information to peace officer.

(1) A person commits a class C misdemeanor if, with intent of misleading a peace officer as to the person's identity, birth date, or place of residence, the person knowingly gives a false name, birth date, or address to a peace officer in the lawful discharge of the peace officer's official duties.

(2) A person commits a class A misdemeanor if, with the intent of leading a peace officer to believe that the person is another actual person, he gives the name, birth date, or address of another person to a peace officer acting in the lawful discharge of the peace officer's official duties.

Amended by Chapter 42, 2002 General Session

76-8-508. Tampering with witness -- Receiving or soliciting a bribe.

(1) A person is guilty of the third degree felony of tampering with a witness if, believing that an official proceeding or investigation is pending or about to be instituted, or with the intent to prevent an official proceeding or investigation, he attempts to induce or otherwise cause another person to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or item;

(c) elude legal process summoning him to provide evidence; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person is guilty of the third degree felony of soliciting or receiving a bribe as a witness if he solicits, accepts, or agrees to accept any benefit in consideration of his doing any of the acts specified under Subsection (1).

(3) The offense of tampering with a witness or soliciting or receiving a bribe under this section does not merge with any other substantive offense committed in the course of committing any offense under this section.

Amended by Chapter 140, 2004 General Session

76-8-508.3. Retaliation against a witness, victim, or informant.

(1) As used in this section:

(a) A person is "closely associated" with a witness, victim, or informant if the person is a member of the witness', victim's, or informant's family, has a close personal or business relationship with the witness or victim, or resides in the same household with the witness, victim, or informant.

(b) "Harm" means physical, emotional, or economic injury or damage to a person or to his property, reputation, or business interests.

(2) A person is guilty of the third degree felony of retaliation against a witness, victim, or informant if, believing that an official proceeding or investigation is pending, is about to be instituted, or has been concluded, he:

(a) (i) makes a threat of harm; or

(ii) causes harm; and

(b) directs the threat or action:

(i) against a witness or an informant regarding any official proceeding, a victim

of any crime, or any person closely associated with a witness, victim, or informant; and

(ii) as retaliation or retribution against the witness, victim, or informant.

(3) This section does not prohibit any person from seeking any legal redress to which the person is otherwise entitled.

(4) The offense of retaliation against a witness, victim, or informant under this section does not merge with any other substantive offense committed in the course of committing any offense under this section.

Enacted by Chapter 140, 2004 General Session

76-8-508.5. Tampering with juror -- Retaliation against juror -- Penalty.

(1) As used in this section "juror" means a person:

(a) summoned for jury duty; or

(b) 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.

(2) A person is guilty of tampering with a juror if he attempts to or actually influences a juror in the discharge of the juror's service by:

(a) communicating with the juror by any means, directly or indirectly, except for attorneys in lawful discharge of their duties in open court;

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

(c) communicating to the juror a threat that a reasonable person would believe to be a threat to injure:

(i) the juror's person or property; or

(ii) the person or property of any other person in whose welfare the juror is interested.

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

(a) to the juror's person or property; or

(b) to the person or property of any other person in whose welfare the juror is interested.

(4) Tampering with a juror is a third degree felony.

Amended by Chapter 219, 1992 General Session

76-8-509. Extortion or bribery to dismiss criminal proceeding.

(1) A person is guilty of a felony of the second degree if by the use of force or by any threat which would constitute a means of committing the crime of theft by extortion under this code, if the threat were employed to obtain property, or by promise of any reward or pecuniary benefits, he attempts to induce an alleged victim of a crime to secure the dismissal of or to prevent the filing of a criminal complaint, indictment, or information.

(2) "Victim," as used in this section, includes a child or other person under the care or custody of a parent or guardian.

Enacted by Chapter 196, 1973 General Session

76-8-510.5. Tampering with evidence -- Definitions -- Elements -- Penalties.

(1) As used in this section, "thing or item" includes any document, record book, paper, file, electronic compilation, or other evidence.

(2) A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, or with the intent to prevent an official proceeding or investigation or to prevent the production of any thing or item which reasonably would be anticipated to be evidence in the official proceeding or investigation, the person knowingly or intentionally:

(a) alters, destroys, conceals, or removes any thing or item with the purpose of impairing the veracity or availability of the thing or item in the proceeding or investigation; or

(b) makes, presents, or uses any thing or item which the person knows to be false with the purpose of deceiving a public servant or any other party who is or may be engaged in the proceeding or investigation.

(3) Subsection (2) does not apply to any offense that amounts to a violation of Section 76-8-306.

(4) (a) Tampering with evidence is a third degree felony if the offense is committed in conjunction with an official proceeding.

(b) Any violation of this section except under Subsection (4)(a) is a class A misdemeanor.

Amended by Chapter 167, 2014 General Session

76-8-511. Falsification or alteration of government record -- Penalty.

A person is guilty of a class B misdemeanor if under circumstances not amounting to an offense subject to a greater penalty under Title 76, Chapter 6, Part 5, Fraud, the person:

(1) knowingly makes a false entry in or false alteration of anything belonging to, received, or kept by the government for information or record, or required by law to be kept for information of the government;

(2) presents or uses anything knowing it to be false and with a purpose that it be taken as a genuine part of information or records referred to in Subsection (1); or

(3) intentionally destroys, conceals, or otherwise impairs the verity or availability of the information or records, knowing that the destruction, concealment, or impairment is unlawful.

Amended by Chapter 238, 2003 General Session

76-8-512. Impersonation of officer.

A person is guilty of a class B misdemeanor who:

(1) impersonates a public servant or a peace officer with intent to deceive another or with intent to induce another to submit to his pretended official authority or to rely upon his pretended official act;

(2) falsely states he is a public servant or a peace officer with intent to deceive another or to induce another to submit to his pretended official authority or to rely upon

his pretended official act; or

(3) displays or possesses without authority any badge, identification card, other form of identification, any restraint device, or the uniform of any state or local governmental entity, or a reasonable facsimile of any of these items, with the intent to deceive another or with the intent to induce another to submit to his pretended official authority or to rely upon his pretended official act.

Amended by Chapter 4, 2013 Special Session 1

76-8-513. False judicial or official notice.

A person is guilty of a class B misdemeanor who, with a purpose to procure the compliance of another with a request made by the person, knowingly sends, mails, or delivers to the person a notice or other writing which has no judicial or other sanction but which in its format or appearance simulates a summons, complaint, court order, or process, or an insignia, seal, or printed form of a federal, state, or local government or an instrumentality thereof, or is otherwise calculated to induce a belief that it does have a judicial or other official sanction.

Enacted by Chapter 196, 1973 General Session

76-8-601. Wrongful commencement of action in justice court.

Any party to any suit or proceeding, and any attorney or agent for the party, who knowingly commences, prosecutes, or maintains any action, suit, or proceeding in any justice court other than as provided in Sections 78A-7-105 and 78A-7-106, is guilty of a class B misdemeanor.

Amended by Chapter 3, 2008 General Session

76-8-602. Assuming liability for conferring jurisdiction upon justice court judge.

Any person who binds himself, or voluntarily becomes liable jointly or jointly and severally with any other person, for the purpose of conferring jurisdiction of any cause upon any justice court judge in any precinct or city that would be without jurisdiction except for the liability of the joint obligor, and any person who induces a person to assume the liability for the purpose of conferring jurisdiction upon the justice court judge, is guilty of a class B misdemeanor.

Amended by Chapter 59, 1990 General Session

76-8-603. Wrongful attachment by justice court judge -- Liability.

It is unlawful for any justice court judge to issue any writ of attachment, and for any party, agent, or attorney of the party, to advise, induce, or procure the issuance thereof, in any action, suit, or proceeding before the affidavit is filed, or where the affidavit filed does not conform substantially with the requirements of Rule 64C of the Utah Rules of Civil Procedure. Any person violating any of the provisions of this

section is guilty of a class B misdemeanor and shall be liable to the person whose property, credits, money, or earnings are attached for double the value of the attached property, together with all costs paid by him, and all damages incurred in the attachment proceedings.

Amended by Chapter 59, 1990 General Session

76-8-701. Definitions.

For the purposes of this part:

(1) "Chief administrative officer" means the president of an institution of higher education or a person designated by the president.

(2) "Enter" means intrusion of the entire body.

(3) "Institution" or "institution of higher education" means:

(a) a state institution of higher education as defined in Section 53B-3-102; or

(b) a private institution of higher education in the state accredited by a regional or national accrediting agency recognized by the United States Department of Education.

Amended by Chapter 10, 2013 General Session
Amended by Chapter 257, 2013 General Session

76-8-702. Purpose.

It is the purpose of this part to:

(1) supplement and clarify the power vested in the governing board of each institution of higher education; and

(2) regulate, conduct, and enforce law and order on property owned, operated, or controlled by each institution of higher education.

Amended by Chapter 257, 2013 General Session

76-8-703. Criminal trespass upon an institution of higher education.

(1) (a) A chief administrative officer may order a person to leave property that is owned, operated, or controlled by an institution of higher education if the person:

(i) acts or if the chief administrative officer has reasonable cause to believe that the person intends to act to:

(A) cause injury to a person;

(B) cause damage to property;

(C) commit a crime;

(D) interfere with the peaceful conduct of the activities of the institution;

(E) violate any rule or regulation of the institution if that rule or regulation is not in conflict with state law; or

(F) disrupt the institution, its pupils, or the institution's activities; or

(ii) is reckless as to whether the person's actions will cause fear for the safety of another.

(b) A person is guilty of criminal trespass upon an institution of higher education

if the person enters or remains on property that is owned, operated, or controlled by an institution of higher education after being ordered to leave under Subsection (1)(a).

(c) The mere carrying or possession of a firearm on the campus of a state institution of higher education, as defined in Section 53B-3-102, does not warrant an order to leave under Subsection (1)(a) if the person carrying or possessing the firearm is otherwise complying with all state laws regulating the possession and use of a firearm.

(2) A person is guilty of criminal trespass upon an institution of higher education if the person enters or remains without authorization upon property that is owned, operated, or controlled by an institution of higher education if notice against entry or remaining has been given by:

(a) personal communication to the person by the chief administrative officer or a person with apparent authority to act for the institution;

(b) the posting of signs reasonably likely to come to the attention of trespassers;

(c) fencing or other enclosure obviously designed to exclude trespassers; or

(d) a current order of suspension or expulsion.

(3) If an employee or student of an institution of higher education is ordered to leave under Subsection (1) or receives a notice against entry or remaining under Subsection (2), the institution of higher education shall afford the employee or student the process required by the institution of higher education's rules and regulations.

(4) A person who violates this section shall be punished as provided in Section 76-8-717.

Repealed and Re-enacted by Chapter 257, 2013 General Session

76-8-705. Willful interference with lawful activities of students or faculty.

A person is guilty of a class C misdemeanor if, on property that is owned, operated, or controlled by an institution of higher education, the person willfully:

(1) denies to a student, school official, employee, or invitee lawful:

(a) freedom of movement;

(b) use of the property or facilities; or

(c) ingress or egress to the institution's physical facilities;

(2) impedes a faculty or staff member of the institution in the lawful performance of the member's duties; or

(3) impedes a student of the institution in the lawful pursuit of the student's educational activities.

Amended by Chapter 257, 2013 General Session

76-8-707. Assistance by local authorities.

(1) If, in the judgment of the chief administrative officer of any institution of higher education, or in the judgment of any officer or employee designated by him to maintain order on a campus or related facility, the law enforcement agency or security department of that institution lacks sufficient manpower to deal effectively with any condition of unrest existing or developing on a campus or related facility of the

institution, he may call for assistance from the county sheriff of the county or any city law enforcement agency or from the Department of Public Safety.

(2) Upon receipt of the request, the county sheriff, city law enforcement agency, or Department of Public Safety must render all necessary assistance without expense to the institution of higher education.

(3) All personnel while rendering assistance shall serve under the general direction of the chief administrative officer of the institution or the officer or employee designated by him to maintain order on the campus or related facility.

Amended by Chapter 234, 1993 General Session

76-8-709. Enforcement of laws by local agencies not limited.

Nothing in this part shall limit:

(1) the right or duty of any local law enforcement agency to enforce the law which it had prior to this enactment; or

(2) the right of any state or local law enforcement agency to enforce the laws of this state.

Amended by Chapter 257, 2013 General Session

76-8-716. Request for assistance from state and local law enforcement authorities.

If, in the judgment of the chief administrative officer of any school or institution of higher education, his agent, or representative, the police or security department of that institution lacks sufficient manpower to deal effectively with any condition of unrest existing or developing on a campus or facility of the institution, he may request assistance from state and local law enforcement authorities. All state and local law enforcement officers while rendering assistance shall serve in co-operation with the chief administrative officer of the institution or his agent or representative and without expense to the institution.

Enacted by Chapter 196, 1973 General Session

76-8-717. Violations -- Classifications of offenses.

Except as otherwise provided, a person found guilty of a violation of this part shall be punished as follows:

(1) upon the first and second conviction, the person is guilty of a class B misdemeanor; or

(2) if the person has previously been convicted two or more times of a violation of this part, the person is guilty of a class A misdemeanor.

Amended by Chapter 257, 2013 General Session

76-8-801. Definitions.

For the purpose of this part:

(1) "Highway" includes any private or public street, way, or other place used for travel to or from property.

(2) "Highway commissioners" means any individual, board, or other body having authority under then existing law to discontinue the use of the highway which it is desired to restrict or close to public use and travel.

(3) "Public utility" includes any pipeline, gas, electric, heat, water, oil, sewer, telephone, telegraph, radio, railway, railroad, airplane, transportation communication or other system by whomsoever owned or operated for public use.

Enacted by Chapter 196, 1973 General Session

76-8-802. Destruction of property to interfere with preparation for defense or war.

Whoever intentionally destroys, impairs, injures, interferes, or tampers with real or personal property with reasonable grounds to believe that the act will hinder, delay, or interfere with the preparation of the United States or of any of the states for defense or for war, or with the prosecution of war by the United States, shall be guilty of a felony of the second degree.

Enacted by Chapter 196, 1973 General Session

76-8-803. Causing or omitting to note defects in articles used in preparation for defense or war.

Whoever intentionally makes or causes to be made or omits to note on inspection any defect in any article or thing with reasonable grounds to believe that the article or thing is intended to be used in connection with the preparation of the United States or any of the states for defense or for war, or for the prosecution of war by the United States, or that the article or thing is one of a number of similar articles or things, some of which are intended so to be used, shall be guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-8-804. Attempts to commit crimes of sabotage.

Whoever attempts to commit any of the crimes defined by this part shall be punishable for the attempt as prescribed in Section 76-4-102. In addition to the acts which constitute an attempt to commit crime under the law of this state, the solicitation or incitement of another to commit any of the crimes defined by this part not allowed by the commission of the crime, the collection or assemblage of any materials with the intent that they are to be used then or at a later time in the commission of the crime, or the entry, with or without permission, of a building, enclosure or other premises of another with the intent to commit any such crime therein or thereon shall constitute an attempt to commit the crime.

Enacted by Chapter 196, 1973 General Session

76-8-805. Conspiracy to commit crimes of sabotage.

If two or more persons conspire to commit any crime defined by this part each of the persons is guilty of conspiracy and subject to the same punishment as if he had committed the crime which he conspired to commit, whether or not any act be done in furtherance of the conspiracy. It shall not constitute any defense or ground of suspension of judgment, sentence, or punishment on behalf of any person prosecuted under this section that any of his fellow conspirators has been acquitted, has not been arrested or convicted, or is amenable to justice or has been pardoned or otherwise discharged before or after conviction.

Enacted by Chapter 196, 1973 General Session

76-8-806. Facts kept secret until complaint filed.

A person may not make public any evidence of fact or the name of the person accused of violating the provisions of Sections 76-8-802, 76-8-803, 76-8-804, and 76-8-805 prior to the filing of a formal complaint by the prosecuting attorney or committing magistrate charged with the performance of that duty.

Amended by Chapter 296, 1997 General Session

76-8-807. Posting of signs at war or defense facilities -- Entering posted premises without permission.

(1) Any individual, partnership, association, corporation, municipal corporation, or state or any political subdivision thereof engaged in, or preparing to engage in, the manufacture, transportation or storage of any product to be used in the preparation of the United States or of any of the states for defense or for war or in the prosecution of war by the United States, or the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any natural or artificial persons operating any public utility, whose property, except where it fronts on water or where there are entrances for railway cars, vehicles, persons, or things, is surrounded by a fence or wall, or a fence or wall and buildings, may post around his or its property at each gate, entrance, dock, or railway entrance and every one hundred feet of water front a sign reading "No Entry Without Permission." The sign shall also designate a point of entrance or place where application may be made for permission to enter, and permission shall not be denied to any loyal citizen who has a valid right to enter.

(2) Any person willfully entering property enumerated in Subsection (1), without permission of the owner, shall be guilty of a class C misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-808. Detention and arrest without warrant of unauthorized persons on posted premises.

Any peace officer or any person employed as watchman, guard, or in a supervisory capacity on premises posted as provided in Section 76-8-807 may stop any person found on any premises to which entry without permission is forbidden by

Section 76-8-807 and may detain him for the purpose of demanding, and may demand, of him, his name, address, and business in such place. If the peace officer or employee has reason to believe that the person has no right to be in the place, he shall release the person or he may arrest him without a warrant on the charge of violating the provisions of Section 76-8-807; and the employee shall release him or turn him over to the peace officer, or may arrest him without a warrant on the charge of violating the provisions of Section 76-8-807.

Enacted by Chapter 196, 1973 General Session

76-8-809. Closing or restricting use of highways abutting defense or war facilities -- Posting of notices.

Any individual, partnership, association, corporation, municipal corporation or state or any political subdivision thereof engaged in or preparing to engage in the manufacture, transportation or storage of any product to be used in the preparation of the United States or any of the states for defense or for war or in the prosecution of war by the United States, or in the manufacture, transportation, distribution or storage of gas, oil, coal, electricity or water, or any of said natural or artificial persons operating any public utility who has property so used which he or it believes will be endangered if public use and travel is not restricted or prohibited on one or more highways or parts thereof upon which the property abuts, may petition the highway commissioners of any city, town, or county to close one or more of the highways or parts thereof to public use and travel or to restrict by order the use and travel upon one or more of the highways or parts thereof.

Upon receipt of the petition, the highway commissioners shall set a day for hearing and give notice thereof by publication in a newspaper having general circulation in the city, town, or county in which the property is located and as required in Section 45-1-101, the publication shall be made at least seven days prior to the date set for hearing. If, after hearing, the highway commissioners determine that the public safety and the safety of the property of the petitioner so require, they shall by suitable order close to public use and travel or reasonably restrict the use of and travel upon one or more of the highways or parts thereof; provided the highway commissioners may issue written permits to travel over the highway so closed or restricted to responsible and reputable persons for a term, under conditions and in a form as the commissioners may prescribe. Appropriate notices in letters at least three inches high shall be posted conspicuously at each end of any highway so closed or restricted by an order. The highway commissioners may at any time revoke or modify any order so made.

Amended by Chapter 388, 2009 General Session

76-8-810. Violation of order relating to use of highways -- Classification of offense.

Whoever violates any order made under the immediate preceding section shall be guilty of a class C misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-811. Bargaining rights of employees not impaired by sabotage prevention laws.

Nothing in this part shall be construed to impair, curtail, or destroy the rights of employees and their representatives to self organize, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection as provided by state or federal laws.

Amended by Chapter 20, 1995 General Session

76-8-901. "Criminal syndicalism" and "sabotage" defined.

For the purpose of this part:

(1) "Criminal syndicalism" is the doctrine which advocates crime, violence, force, arson, destruction of property, sabotage, or other unlawful acts or methods, as a means of accomplishing or effecting industrial or political ends, or as a means of effecting industrial or political revolution.

(2) "Sabotage" means the unlawful and intentional damage or injury to, or destruction of, real or personal property, in any form whatsoever, of any employer or owner by his employees, or by any employer, or by any person at the instance of any employer, or at the instance, request, or instigation of employees, or any other person.

Enacted by Chapter 196, 1973 General Session

76-8-902. Advocating criminal syndicalism or sabotage.

Any person who by word of mouth or writing advocates, suggests, or teaches the duty, necessity, propriety, or expediency of crime, criminal syndicalism or sabotage, or who advocates, suggests or teaches the duty, necessity, propriety, or expediency or doing any act of violence, the destruction of or damage to any property, the bodily injury to any person, or the commission of any crime or unlawful act as a means of accomplishing or effecting any industrial or political ends, change or revolution, or who prints, publishes, edits, or issues, or knowingly circulates, sells, or distributes, or publicly displays, any books, pamphlets, paper, handbill, poster, document, or written or printed matter in any form whatsoever, containing, advocating, advising, suggesting, or teaching crime, criminal syndicalism, sabotage, the doing of any act of violence, the destruction of or damage to any property, the injury to any person, or the commission of any crime or unlawful act, as a means of accomplishing, effecting, or bringing about any industrial or political ends or change, or as a means of accomplishing, effecting, or bringing about any industrial or political revolution, or who openly or at all attempts to justify by word of mouth or writing the commission or the attempt to commit sabotage, any act of violence, the destruction of or damage to any property, the injury of any person, or the commission of any crime or unlawful act, with the intent to exemplify, spread, or teach or suggest criminal syndicalism, or organizes, or helps to organize, or becomes a member of, or voluntarily assembles with, any society or assemblage of

persons formed to teach or advocate, or which teaches, advocates, or suggests the doctrine of criminal syndicalism or sabotage, or the necessity, propriety, or expediency of doing any act of violence or the commission of any crime or unlawful act as a means of accomplishing or effecting any industrial or political ends, change or revolution, is guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-8-903. Assembly for advocating criminal syndicalism or sabotage.

The assembly or consorting of two or more persons for the purpose of advocating, teaching, or suggesting the doctrine of criminal syndicalism, or to advocate, teach, suggest or encourage sabotage, or the duty, necessity, propriety or expediency of doing any act of violence, the destruction of or damage to any property, the bodily injury to any person, or the commission of any crime or unlawful act as a means of accomplishing or effecting any industrial or political ends, change or revolution, is hereby declared unlawful, and every person voluntarily participating therein, or by his presence aiding and instigating the same is guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-8-904. Permitting use of property for assembly advocating criminal syndicalism or sabotage.

The owner, lessee, agent, superintendent, or person in charge or occupation of any place, building, room, or structure, who knowingly permits therein any assembly or consorting of persons prohibited by the provisions of Section 76-8-903, or who after notification that the place or premises, or any part thereof, is so used, permits such use to be continued, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-8-1101. Criminal offenses and penalties relating to revenue and taxation -- Rulemaking authority -- Statute of limitations.

(1) (a) As provided in Section 59-1-401, criminal offenses and penalties are as provided in Subsections (1)(b) through (e).

(b) (i) Any person who is required by Title 59, Revenue and Taxation, or any laws the State Tax Commission administers or regulates to register with or obtain a license or permit from the State Tax Commission, who operates without having registered or secured a license or permit, or who operates when the registration, license, or permit is expired or not current, is guilty of a class B misdemeanor.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(b)(i), the penalty may not:

(A) be less than $500; or

(B) exceed $1,000.

(c) (i) With respect to a tax, fee, or charge as defined in Section 59-1-401, any

person who knowingly and intentionally, and without a reasonable good faith basis, fails to make, render, sign, or verify any return within the time required by law or to supply any information within the time required by law, or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who supplies any false or fraudulent information, is guilty of a third degree felony.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty may not:

(A) be less than $1,000; or

(B) exceed $5,000.

(d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax, fee, or charge as defined in Section 59-1-401 or the payment of a tax, fee, or charge as defined in Section 59-1-401 is, in addition to other penalties provided by law, guilty of a second degree felony.

(ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty may not:

(A) be less than $1,500; or

(B) exceed $25,000.

(e) (i) A person is guilty of a second degree felony if that person commits an act:

(A) described in Subsection (1)(e)(ii) with respect to one or more of the following documents:

(I) a return;

(II) an affidavit;

(III) a claim; or

(IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and

(B) subject to Subsection (1)(e)(iii), with knowledge that the document described in Subsection (1)(e)(i)(A):

(I) is false or fraudulent as to any material matter; and

(II) could be used in connection with any material matter administered by the State Tax Commission.

(ii) The following acts apply to Subsection (1)(e)(i):

(A) preparing any portion of a document described in Subsection (1)(e)(i)(A);

(B) presenting any portion of a document described in Subsection (1)(e)(i)(A);

(C) procuring any portion of a document described in Subsection (1)(e)(i)(A);

(D) advising in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A);

(E) aiding in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A);

(F) assisting in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A); or

(G) counseling in the preparation or presentation of any portion of a document described in Subsection (1)(e)(i)(A).

(iii) This Subsection (1)(e) applies:

(A) regardless of whether the person for which the document described in Subsection (1)(e)(i)(A) is prepared or presented:

(I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or

(II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and

(B) in addition to any other penalty provided by law.

(iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (1)(e), the penalty may not:

(A) be less than $1,500; or

(B) exceed $25,000.

(v) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the State Tax Commission may make rules prescribing the documents that are similar to Subsections (1)(e)(i)(A)(I) through (III).

(2) The statute of limitations for prosecution for a violation of this section is the later of six years:

(a) from the date the tax should have been remitted; or

(b) after the day on which the person commits the criminal offense.

Amended by Chapter 52, 2014 General Session

76-8-1201. Definitions.

As used in this part:

(1) "Client" means a person who receives or has received public assistance.

(2) "Overpayment" means the same as that term is defined in Section 35A-3-602.

(3) "Provider" means the same as that term is defined in Section 62A-11-103.

(4) "Public assistance" means the same as that term is defined in Section 35A-1-102.

Amended by Chapter 90, 2003 General Session

76-8-1202. Application of part.

(1) This part does not apply to offenses by providers under the state's Medicaid program that are actionable under Title 26, Chapter 20, False Claims Act.

(2) (a) Section 35A-1-503 applies to criminal actions taken under this part.

(b) The repayment of funds or other benefits obtained in violation of the provisions of this chapter shall not constitute a defense or grounds for dismissal of a criminal action.

Amended by Chapter 174, 1997 General Session

76-8-1203. Disclosure required -- Penalty.

(1) Each person who applies for public assistance shall disclose to the state agency administering the public assistance each fact that may materially affect the determination of the person's eligibility to receive public assistance, including the person's current:

(a) marital status;

(b) household composition;

(c) employment;
(d) earned and unearned income, as defined by rule;
(e) receipt of monetary and in-kind gifts that may affect the person's eligibility;
(f) assets that may affect the person's eligibility; and
(g) any other material fact or change in circumstance that may affect the determination of that person's eligibility to receive public assistance benefits, or may affect the amount of benefits for which the person is eligible.

(2) A person applying for public assistance who intentionally, knowingly, or recklessly fails to disclose a material fact required to be disclosed under Subsection (1) is guilty of public assistance fraud as provided in Section 76-8-1206.

(3) With the exception of a client receiving public assistance from the Department of Workforce Services or the Department of Health, a client who intentionally, knowingly, or recklessly fails to disclose to the state agency administering the public assistance a change in a material fact required to be disclosed under Subsection (1), within 10 days after the date of the change, is guilty of public assistance fraud as provided in Section 76-8-1206.

(4) A client who intentionally, knowingly, or recklessly fails to disclose to the Department of Workforce Services or the Department of Health at the time of a review or recertification, whichever comes first, a change in a material fact required to be disclosed under Subsection (1) is guilty of public assistance fraud as provided in Section 76-8-1206.

Amended by Chapter 94, 2010 General Session

76-8-1204. Disclosure by provider required -- Penalty.

(1) (a) Any provider who solicits, requests, or receives, actually or constructively, any payment or contribution through a payment, assessment, gift, devise, bequest, or other means, directly or indirectly, from a client or client's family shall notify the state agency administering the public assistance the client is receiving of the amount of payment or contribution in writing within 10 days after receiving that payment or contribution.

(b) If the payment or contribution is to be made under an agreement, written or oral, the provider shall notify the state agency administering the public assistance the client is receiving of the payment or contribution within 10 days after entering into the agreement.

(2) Any person who intentionally, knowingly, or recklessly fails to notify the state agency administering the public assistance the client is receiving as required by this section is guilty of public assistance fraud as provided in Section 76-8-1206.

Amended by Chapter 48, 2000 General Session

76-8-1205. Public assistance fraud defined.

Each of the following persons, who intentionally, knowingly, or recklessly commits any of the following acts, is guilty of public assistance fraud:

(1) any person who uses, transfers, acquires, traffics in, falsifies, or possesses

any SNAP benefits as defined in Section 35A-1-102, SNAP identification card, certificate of eligibility for medical services, Medicaid identification card, fund transfer instrument, payment instrument, or public assistance warrant in a manner not allowed by law;

(2) any person who fraudulently misappropriates any funds exchanged for SNAP benefits as defined in Section 35A-1-102, or any identification card, certificate of eligibility for medical services, Medicaid identification card, or other public assistance with which he has been entrusted or that has come into his possession in connection with his duties in administering any state or federally funded public assistance program;

(3) any person who receives an unauthorized payment as a result of acts described in this section;

(4) any provider who receives payment or any client who receives benefits after failing to comply with any applicable requirement in Sections 76-8-1203 and 76-8-1204;

(5) any provider who files a claim for payment under any state or federally funded public assistance program for goods or services not provided to or for a client of that program;

(6) any provider who files or falsifies a claim, report, or document required by state or federal law, rule, or provider agreement for goods or services not authorized under the state or federally funded public assistance program for which the goods or services were provided;

(7) any provider who fails to credit the state for payments received from other sources;

(8) any provider who bills a client or a client's family for goods or services not provided, or bills in an amount greater than allowed by law or rule;

(9) any client who, while receiving public assistance, acquires income or resources in excess of the amount he previously reported to the state agency administering the public assistance, and fails to notify the state agency to which the client previously reported within 10 days after acquiring the excess income or resources;

(10) any person who fails to act as required under Section 76-8-1203 or 76-8-1204 with intent to obtain or help another obtain an "overpayment" as defined in Section 35A-3-602; and

(11) any person who obtains an overpayment by violation of Section 76-8-1203 or 76-8-1204.

Amended by Chapter 41, 2012 General Session

76-8-1206. Penalties for public assistance fraud.

(1) The severity of the offense of public assistance fraud is classified in accordance with the value of payments, assistance, or other benefits received, misappropriated, claimed, or applied for as follows:

(a) second degree felony if the value is or exceeds $5,000;

(b) third degree felony if the value is or exceeds $1,500 but is less than $5,000;

(c) class A misdemeanor if the value is or exceeds $500 but is less than $1,500; and

(d) class B misdemeanor if the value is less than $500.

(2) For purposes of Subsection (1), the value of an offense is calculated by aggregating the values of each instance of public assistance fraud committed by the defendant as part of the same facts and circumstances or a related series of facts and circumstances.

(3) Incidents of trafficking in SNAP benefits as defined in Section 35A-1-102 that occur within a six-month period, committed by an individual or coconspirators, are deemed to be a related series of facts and circumstances regardless of whether the transactions are conducted with a variety of unrelated parties.

Amended by Chapter 41, 2012 General Session

76-8-1207. Legal actions -- Evidence -- Value of benefits -- Repayment no defense to criminal action.

In any criminal action pursuant to this part:

(1) a paid state warrant made to the order of a party or a payment made through an electronic benefit card issued to a party constitutes prima facie evidence that the party received financial assistance from the state;

(2) all of the records in the custody of the department relating to the application for, verification of, issuance of, receipt of, and use of public assistance constitute records of regularly conducted activity within the meaning of the exceptions to the hearsay rule of evidence;

(3) the value of the benefits received shall be based on the ordinary or usual charge for similar benefits in the private sector; and

(4) the repayment of funds or other benefits obtained in violation of the provisions of this part constitutes no defense to, or ground for dismissal of, that action.

Amended by Chapter 48, 2000 General Session

76-8-1301. False statements regarding unemployment compensation -- Penalties.

(1) (a) A person who makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase a benefit or other payment under Title 35A, Chapter 4, Employment Security Act, or under the Unemployment Compensation Law of any state or of the federal government for any person is guilty of unemployment insurance fraud.

(b) A violation of Subsection (1)(a) is:

(i) a class B misdemeanor when the value of the money obtained or sought to be obtained is less than $500;

(ii) a class A misdemeanor when the value of the money obtained or sought to be obtained is or exceeds $500 but is less than $1,500;

(iii) a third degree felony when the value of the money obtained or sought to be obtained is or exceeds $1,500 but is less than $5,000; or

(iv) a second degree felony when the value of the money obtained or sought to be obtained is or exceeds $5,000.

(c) The determination of the degree of an offense under Subsection (1)(b) shall be measured by the total value of all money obtained or sought to be obtained by the unlawful conduct.

(2) (a) An officer or agent of an employing unit as defined in Section 35A-4-202 or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of unemployment compensation benefits to an individual entitled to those benefits, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under Title 35A, Chapter 4, Employment Security Act, or under the Unemployment Compensation Law of any state or of the federal government, or who willfully fails or refuses to make a contribution or other payment or to furnish any report required in Title 35A, Chapter 4, Employment Security Act, or to produce or permit the inspection or copying of records as required under that chapter is guilty of unemployment insurance fraud.

(b) A violation of Subsection (2)(a) is:

(i) a class B misdemeanor when the value of the money obtained or sought to be obtained is less than $500;

(ii) a class A misdemeanor when the value of the money obtained or sought to be obtained is or exceeds $500 but is less than $1,500;

(iii) a third degree felony when the value of the money obtained or sought to be obtained is or exceeds $1,500 but is less than $5,000; or

(iv) a second degree felony when the value of the money obtained or sought to be obtained is or exceeds $5,000.

(3) (a) A person who willfully violates any provision of Title 35A, Chapter 4, Employment Security Act, or any order made under that chapter, the violation of which is made unlawful or the observance of which is required under the terms of that chapter, and for which a penalty is neither prescribed in that chapter nor provided by any other applicable statute is guilty of a class A misdemeanor.

(b) Each day a violation of Subsection (3)(a) continues shall be a separate offense.

(4) A person is guilty of a class C misdemeanor if:

(a) as an employee of the Department of Workforce Services, in willful violation of Section 35A-4-312, the employee makes a disclosure of information obtained from an employing unit or individual in the administration of Title 35A, Chapter 4, Employment Security Act; or

(b) the person has obtained a list of applicants for work or of claimants or recipients of benefits under Title 35A, Chapter 4, Employment Security Act, and uses or permits the use of the list for any political purpose.

Amended by Chapter 193, 2010 General Session

76-8-1401. Definitions.

As used in this part:

(1) "Chief administrator" means the principal of a school or the chief administrator of a school that does not have a principal, and includes the

administrator's designee or representative.

(2) "School" means an elementary school or a secondary school that:

(a) is a public or private school; and

(b) provides instruction for one or more of the grades kindergarten through 12.

Enacted by Chapter 107, 2004 General Session

76-8-1402. Disruption of activities in or near school building -- Failure to leave -- Reentry -- Penalties.

(1) In the absence of a local ordinance or other controlling law governing the conduct described in this Subsection (1), a person is guilty of an offense under Subsection (2) who, while on a street, sidewalk, or public way adjacent to any school building or ground:

(a) by his or her presence or acts, materially disrupts the peaceful conduct of school activities; and

(b) remains upon the place under Subsection (1)(a) after being asked to leave by the chief administrator of that school.

(2) (a) A violation of Subsection (1) is subject to the penalties under Subsection (2)(b) unless the violation constitutes another offense subject to a greater penalty.

(b) (i) The first and second violation of Subsection (1) are class B misdemeanors.

(ii) A third and any subsequent violations of Subsection (1) are class A misdemeanors.

Enacted by Chapter 107, 2004 General Session

76-8-1403. Evading law enforcement by going on to school property -- Penalty -- Restitution.

(1) As used in this section:

(a) "School" means any public or private kindergarten, elementary, or secondary school through grade 12, including all buildings and property of the school.

(b) "School property" means real property:

(i) that is owned or occupied by a public or private school; or

(ii) (A) that is temporarily occupied by students for a school-related activity or program; and

(B) regarding which, during the time the activity or program is being conducted, the main use of the real property is allocated to participants in the activity or program.

(2) A person is guilty of the class A misdemeanor of evading law enforcement while on school property, if the person enters onto school property when:

(a) students are attending the school or students are participating in any school-related activity or program on school property; and

(b) the person is in the act of fleeing or evading, or attempting to flee or evade, pursuit or apprehension by any peace officer.

(3) It is not a defense that the person did not know that the person had entered onto school property.

(4) As a part of the sentence for violation of this section, the court shall order the defendant to reimburse the school for costs incurred by the school in responding to the defendant's presence on the school property.

(5) The offense under this section of evading law enforcement while on school property is a separate offense from a violation of:

(a) Section 41-6a-210, regarding failure to respond to an officer's signal to stop; or

(b) Section 76-8-305.5, regarding failure to stop at the command of a law enforcement officer.

Enacted by Chapter 284, 2009 General Session

76-9-101. Riot -- Penalties.

(1) A person is guilty of riot if:

(a) simultaneously with two or more other persons he engages in tumultuous or violent conduct and thereby knowingly or recklessly creates a substantial risk of causing public alarm; or

(b) he assembles with two or more other persons with the purpose of engaging, soon thereafter, in tumultuous or violent conduct, knowing, that two or more other persons in the assembly have the same purpose; or

(c) he assembles with two or more other persons with the purpose of committing an offense against a person or property of another who he supposes to be guilty of a violation of law, believing that two or more other persons in the assembly have the same purpose.

(2) Any person who refuses to comply with a lawful order to withdraw given to him immediately prior to, during, or immediately following a violation of Subsection (1) is guilty of riot. It is no defense to a prosecution under this Subsection (2) that withdrawal must take place over private property; provided, however, that no persons so withdrawing shall incur criminal or civil liability by virtue of acts reasonably necessary to accomplish the withdrawal.

(3) Riot is a felony of the third degree if, in the course of and as a result of the conduct, any person suffers bodily injury, or substantial property damage, arson occurs or the defendant was armed with a dangerous weapon, as defined in Section 76-1-601; otherwise it is a class B misdemeanor.

Amended by Chapter 289, 1997 General Session

76-9-102. Disorderly conduct.

(1) A person is guilty of disorderly conduct if:

(a) the person refuses to comply with the lawful order of a law enforcement officer to move from a public place, or knowingly creates a hazardous or physically offensive condition, by any act which serves no legitimate purpose; or

(b) intending to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, the person:

(i) engages in fighting or in violent, tumultuous, or threatening behavior;

(ii) makes unreasonable noises in a public place;

(iii) makes unreasonable noises in a private place which can be heard in a public place; or

(iv) obstructs vehicular or pedestrian traffic.

(2) "Public place," for the purpose of this section, means any place to which the public or a substantial group of the public has access and includes but is not limited to streets, highways, and the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and shops.

(3) The mere carrying or possession of a holstered or encased firearm, whether visible or concealed, without additional behavior or circumstances that would cause a reasonable person to believe the holstered or encased firearm was carried or possessed with criminal intent, does not constitute a violation of this section. Nothing in this Subsection (3) may limit or prohibit a law enforcement officer from approaching or engaging any person in a voluntary conversation.

(4) Disorderly conduct is a class C misdemeanor if the offense continues after a request by a person to desist. Otherwise it is an infraction.

Amended by Chapter 143, 2014 General Session

76-9-103. Disrupting a meeting or procession.

(1) A person is guilty of disrupting a meeting or procession if, intending to prevent or disrupt a lawful meeting, procession, or gathering, he obstructs or interferes with the meeting, procession, or gathering by physical action, verbal utterance, or any other means.

(2) Disrupting a meeting or procession is a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-9-104. Failure to disperse.

(1) A person is guilty of failure to disperse when he remains at the scene of a riot, disorderly conduct, or an unlawful assembly after having been ordered to disperse by a peace officer.

(2) This section shall not apply to a person who attempted to but was unable to leave the scene of the riot or unlawful assembly.

(3) Failure to disperse is a class C misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-9-105. Making a false alarm -- Penalties.

(1) A person is guilty of making a false alarm if he initiates or circulates a report or warning of any fire, impending bombing, or other crime or catastrophe, knowing that the report or warning is false or baseless and is likely to cause evacuation of any building, place of assembly, or facility of public transport, to cause public inconvenience or alarm or action of any sort by any official or volunteer agency organized to deal with emergencies.

(2) (a) Making a false alarm relating to a weapon of mass destruction as defined in Section 76-10-401 is a second degree felony.

(b) Making a false alarm other than under Subsection (2)(a) is a class B misdemeanor.

(3) In addition to any other penalty authorized by law, a court shall order any person convicted of a felony 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.

Amended by Chapter 166, 2002 General Session

76-9-106. Disrupting the operation of a school.

(1) A person is guilty of disrupting the operation of a school if the person, after being asked to leave by a school official, remains on school property for the purpose of encouraging or creating an unreasonable and substantial disruption or risk of disruption of a class, activity, program, or other function of a public or private school.

(2) For purposes of this section, "school property" includes property being used by a public or private school for a school function.

(3) Disrupting the operation of a school is a class B misdemeanor.

Enacted by Chapter 163, 1992 General Session

76-9-107. Unauthorized entry of school bus -- Posting of warning on school buses.

(1) As used in this section:

(a) "Driver" means the driver of the school bus.

(b) "School bus" means every publicly or privately owned motor vehicle designed for transporting 10 or more passengers and operated for the transportation of children to or from school or school activities.

(2) A person is guilty of a class B misdemeanor if the person:

(a) enters a school bus with the intent to commit a criminal offense;

(b) enters a school bus and disrupts or interferes with the driver; or

(c) enters a school bus and refuses to leave the bus after being ordered to leave by the driver and the person:

(i) is not a peace officer acting within the scope of his or her authority as a peace officer;

(ii) is not authorized by the school district to board the bus as a student or as an individual employed by the school district or volunteering as a participant in a school activity;

(iii) causes or attempts to cause a disruption or an annoyance to any passenger on the bus; or

(iv) is reckless as to whether the person's presence or behavior will cause fear on the part of any passenger on the bus.

(3) Each school district shall ensure that clearly legible signs be placed on each

school bus, next to each entrance to the bus, warning that unauthorized entry of a school bus is a violation of state law.

Enacted by Chapter 186, 2003 General Session

76-9-108. Disrupting a funeral or memorial service.

(1) As used in this section:

(a) "Funeral procession" means a procession of two or more motor vehicles where:

(i) the operators of the vehicles identify themselves as being part of the procession by having the lamps or lights of the vehicle on and by keeping in close formation with the other vehicles in the procession;

(ii) at least one vehicle contains the body or remains of a deceased person being memorialized; and

(iii) the vehicles are going to or from a memorial service.

(b) "Memorial service" means a wake, funeral, graveside service, burial, or other ceremony or rite held in connection with the burial or cremation of an individual.

(c) "Memorial site" means a church, synagogue, mosque, funeral home, mortuary, cemetery, grave site, mausoleum, or other place at which a memorial service is conducted.

(d) "Disruptive activity" means:

(i) a loud or disruptive oration or speech that is not part of the memorial service;

(ii) the display of a placard, banner, poster, flag, or other item that is not part of the memorial service; or

(iii) the distribution of any handbill, pamphlet, leaflet, or other written material or other item that is not part of the memorial service.

(2) A person is guilty of a class B misdemeanor if the person, with intent to disrupt the memorial service, does any of the following during the period beginning 60 minutes immediately before the scheduled commencement of a memorial service and ending 60 minutes after the conclusion of a memorial service:

(a) obstructs, hinders, impedes, or blocks another person's entry to or exit from the memorial site;

(b) obstructs, hinders, impedes, or blocks a funeral procession;

(c) makes unreasonable noise; or

(d) engages in a disruptive activity within 200 feet of the memorial service.

Enacted by Chapter 46, 2007 General Session

76-9-201. Electronic communication harassment -- Definitions -- Penalties.

(1) As used in this section:

(a) "Adult" means a person 18 years of age or older.

(b) "Electronic communication" means any communication by electronic, electro-mechanical, or electro-optical communication device for the transmission and reception of audio, image, or text but does not include broadcast transmissions or similar communications that are not targeted at any specific individual.

(c) "Electronic communication device" includes telephone, facsimile, electronic mail, or pager.

(d) "Minor" means a person who is younger than 18 years of age.

(2) A person is guilty of electronic communication harassment and subject to prosecution in the jurisdiction where the communication originated or was received if with intent to annoy, alarm, intimidate, offend, abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person:

(a) (i) makes repeated contact by means of electronic communications, whether or not a conversation ensues; or

(ii) after the recipient has requested or informed the person not to contact the recipient, and the person repeatedly or continuously:

(A) contacts the electronic communication device of the recipient; or

(B) causes an electronic communication device of the recipient to ring or to receive other notification of attempted contact by means of electronic communication;

(b) makes contact by means of electronic communication and insults, taunts, or challenges the recipient of the communication or any person at the receiving location in a manner likely to provoke a violent or disorderly response;

(c) makes contact by means of electronic communication and threatens to inflict injury, physical harm, or damage to any person or the property of any person; or

(d) causes disruption, jamming, or overload of an electronic communication system through excessive message traffic or other means utilizing an electronic communication device.

(3) (a) (i) Electronic communication harassment committed against an adult is a class B misdemeanor, except under Subsection (3)(a)(ii).

(ii) A second or subsequent offense under Subsection (3)(a)(i) is a:

(A) class A misdemeanor if all prior violations of this section were committed against adults; and

(B) a third degree felony if any prior violation of this section was committed against a minor.

(b) (i) Electronic communication harassment committed against a minor is a class A misdemeanor, except under Subsection (3)(b)(ii).

(ii) A second or subsequent offense under Subsection (3)(b)(i) is a third degree felony, regardless of whether any prior violation of this section was committed against a minor or an adult.

(4) (a) Except under Subsection (4)(b), criminal prosecution under this section does not affect an individual's right to bring a civil action for damages suffered as a result of the commission of any of the offenses under this section.

(b) This section does not create any civil cause of action based on electronic communications made for legitimate business purposes.

Amended by Chapter 326, 2009 General Session

76-9-202. Emergency reporting -- Interference -- False report.

(1) As used in this section:

(a) "Emergency" means a situation in which property or human life is in jeopardy

and the prompt summoning of aid is essential to the preservation of human life or property.

(b) "Party line" means a subscriber's line or telephone circuit consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

(2) A person is guilty of emergency reporting abuse if he:

(a) intentionally refuses to yield or surrender the use of a party line or a public pay telephone to another person upon being informed that the telephone is needed to report a fire or summon police, medical, or other aid in case of emergency, unless the telephone is likewise being used for an emergency call;

(b) asks for or requests the use of a party line or a public pay telephone on the pretext that an emergency exists, knowing that no emergency exists; or

(c) reports an emergency or causes an emergency to be reported to any public, private, or volunteer entity whose purpose is to respond to fire, police, or medical emergencies, when the actor knows the reported emergency does not exist.

(3) (a) A violation of Subsection (2)(a) or (b) is a class C misdemeanor.

(b) A violation of Subsection (2)(c) is a class B misdemeanor, except as provided under Subsection (3)(c).

(c) A violation of Subsection (2)(c) is a second degree felony if the report is regarding a weapon of mass destruction, as defined in Section 76-10-401.

(4) In addition to any other penalty authorized by law, a court shall order any person 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.

Amended by Chapter 166, 2002 General Session

76-9-301. Cruelty to animals.

(1) As used in this section:

(a) (i) "Abandon" means to intentionally deposit, leave, or drop off any live animal:

(A) without providing for the care of that animal, in accordance with accepted animal husbandry practices or customary farming practices; or

(B) in a situation where conditions present an immediate, direct, and serious threat to the life, safety, or health of the animal.

(ii) "Abandon" does not include returning wildlife to its natural habitat.

(b) (i) "Animal" means, except as provided in Subsection (1)(b)(ii), a live, nonhuman vertebrate creature.

(ii) "Animal" does not include:

(A) a live, nonhuman vertebrate creature, if:

(I) the conduct toward the creature, and the care provided to the creature, is in accordance with accepted animal husbandry practices; and

(II) the creature is:

(Aa) owned or kept by a zoological park that is accredited by, or a member of,

the American Zoo and Aquarium Association;

(Bb) kept, owned, or used for the purpose of training hunting dogs or raptors; or

(Cc) temporarily in the state as part of a circus or traveling exhibitor licensed by the United States Department of Agriculture under 7 U.S.C. 2133;

(B) a live, nonhuman vertebrate creature that is owned, kept, or used for rodeo purposes, if the conduct toward the creature, and the care provided to the creature, is in accordance with accepted rodeo practices;

(C) livestock, if the conduct toward the creature, and the care provided to the creature, is in accordance with accepted animal husbandry practices or customary farming practices; or

(D) wildlife, as defined in Section 23-13-2, including protected and unprotected wildlife, if the conduct toward the wildlife is in accordance with lawful hunting, fishing, or trapping practices or other lawful practices.

(c) "Companion animal" means an animal that is a domestic dog or a domestic cat.

(d) "Custody" means ownership, possession, or control over an animal.

(e) "Legal privilege" means an act that:

(i) is authorized by state law, including Division of Wildlife Resources rules; and

(ii) is not in violation of a local ordinance.

(f) "Livestock" means:

(i) domesticated:

(A) cattle;

(B) sheep;

(C) goats;

(D) turkeys;

(E) swine;

(F) equines;

(G) camelidae;

(H) ratites; or

(I) bison;

(ii) domesticated elk, as defined in Section 4-39-102; or

(iii) any domesticated nonhuman vertebrate creature, domestic furbearer, or domestic poultry, raised, kept, or used for agricultural purposes.

(g) "Necessary food, water, care, or shelter" means the following, taking into account the species, age, and physical condition of the animal:

(i) appropriate and essential food and water;

(ii) adequate protection, including appropriate shelter, against extreme weather conditions; and

(iii) other essential care.

(h) "Torture" means intentionally or knowingly causing or inflicting extreme physical pain to an animal in an especially heinous, atrocious, cruel, or exceptionally depraved manner.

(2) Except as provided in Subsection (4) or (6), a person is guilty of cruelty to an animal if the person, without legal privilege to do so, intentionally, knowingly, recklessly, or with criminal negligence:

(a) fails to provide necessary food, water, care, or shelter for an animal in the person's custody;

(b) abandons an animal in the person's custody;

(c) injures an animal;

(d) causes any animal, not including a dog, to fight with another animal of like kind for amusement or gain; or

(e) causes any animal, including a dog, to fight with a different kind of animal or creature for amusement or gain.

(3) Except as provided in Section 76-9-301.7, a violation of Subsection (2) is:

(a) a class B misdemeanor if committed intentionally or knowingly; and

(b) a class C misdemeanor if committed recklessly or with criminal negligence.

(4) A person is guilty of aggravated cruelty to an animal if the person:

(a) tortures an animal;

(b) administers, or causes to be administered, poison or a poisonous substance to an animal; or

(c) kills an animal or causes an animal to be killed without having a legal privilege to do so.

(5) Except as provided in Subsection (6) or Section 76-9-301.7, a violation of Subsection (4) is:

(a) a class A misdemeanor if committed intentionally or knowingly;

(b) a class B misdemeanor if committed recklessly; and

(c) a class C misdemeanor if committed with criminal negligence.

(6) A person is guilty of a third degree felony if the person intentionally or knowingly tortures a companion animal.

(7) It is a defense to prosecution under this section that the conduct of the actor towards the animal was:

(a) by a licensed veterinarian using accepted veterinary practice;

(b) directly related to bona fide experimentation for scientific research, provided that if the animal is to be destroyed, the manner employed will not be unnecessarily cruel unless directly necessary to the veterinary purpose or scientific research involved;

(c) permitted under Section 18-1-3;

(d) by a person who humanely destroys any animal found suffering past recovery for any useful purpose; or

(e) by a person who humanely destroys any apparently abandoned animal found on the person's property.

(8) For purposes of Subsection (7)(d), before destroying the suffering animal, the person who is not the owner of the animal shall obtain:

(a) the judgment of a veterinarian of the animal's nonrecoverable condition;

(b) the judgment of two other persons called by the person to view the unrecoverable condition of the animal in the person's presence;

(c) the consent from the owner of the animal to the destruction of the animal; or

(d) a reasonable conclusion that the animal's suffering is beyond recovery, through the person's own observation, if the person is in a location or circumstance where the person is unable to contact another person.

(9) This section does not affect or prohibit:

(a) the training, instruction, and grooming of animals, if the methods used are in accordance with accepted animal husbandry practices or customary farming practices;

(b) the use of an electronic locating or training collar by the owner of an animal for the purpose of lawful animal training, lawful hunting practices, or protecting against loss of that animal; or

(c) the lawful hunting of, fishing for, or trapping of, wildlife.

(10) County and municipal governments may not prohibit the use of an electronic locating or training collar.

(11) Upon conviction under this section, the court may in its discretion, in addition to other penalties:

(a) order the defendant to be evaluated to determine the need for psychiatric or psychological counseling, to receive counseling as the court determines to be appropriate, and to pay the costs of the evaluation and counseling;

(b) require the defendant to forfeit any rights the defendant has to the animal subjected to a violation of this section and to repay the reasonable costs incurred by any person or agency in caring for each animal subjected to violation of this section;

(c) order the defendant to no longer possess or retain custody of any animal, as specified by the court, during the period of the defendant's probation or parole or other period as designated by the court; and

(d) order the animal to be placed for the purpose of adoption or care in the custody of a county and municipal animal control agency, an animal welfare agency registered with the state, sold at public auction, or humanely destroyed.

(12) This section does not prohibit the use of animals in lawful training.

(13) A veterinarian who, acting in good faith, reports a violation of this section to law enforcement may not be held civilly liable for making the report.

Amended by Chapter 292, 2008 General Session

76-9-301.1. Dog fighting -- Training dogs for fighting -- Dog fighting exhibitions.

(1) It is unlawful for any person to:

(a) own, possess, keep, or train a dog with the intent to engage it in an exhibition of fighting with another dog;

(b) cause a dog to fight with another dog or cause a dog to injure another dog for amusement or gain;

(c) tie, attach, or fasten any live animal to a machine or device propelled by any power, for the purpose of causing the animal to be pursued by a dog; or

(d) permit or allow any act which violates Subsection (1)(a), (b), or (c) on any premises under his charge; or to control, aid, or abet any such act.

(2) Possession of any breaking stick, treadmill, wheel, hot walker, cat mill, cat walker, jenni, or other paraphernalia together with evidence that the paraphernalia is being used or is intended for use in the unlawful training of a dog to fight with another dog, together with the possession of any such dog, is prima facie evidence of violation of Subsections (1)(b) and (c).

(3) A person who violates Subsection (1) is guilty of a third degree felony, and any fine imposed may not exceed $25,000.

(4) It is unlawful for a person to knowingly and intentionally be present as a spectator at any place, building, or tenement where preparations are being made for an exhibition of dog fighting, or to knowingly and intentionally be present at a dog fighting exhibition or any other occurrence of fighting or injury described in this section. A person who violates this subsection is guilty of a class B misdemeanor.

(5) Nothing in this section prohibits any of the following:

(a) the use of dogs for management of livestock by the owner, his employees or agents, or any other person in the lawful custody of livestock;

(b) the use of dogs for hunting; or

(c) the training of dogs or the possession or use of equipment in the training of dogs for any purpose not prohibited by law.

Amended by Chapter 324, 2010 General Session

76-9-301.5. Spectator at organized animal fighting exhibitions.

It is unlawful for a person to knowingly be present as a spectator at any place, building, or tenement where preparations are being made for an exhibition of the fighting of animals, as prohibited by Subsections 76-9-301(2)(d) and (e), or to be present at such exhibition, regardless of whether any entrance fee has been charged. A person who violates this section is guilty of a class B misdemeanor.

Amended by Chapter 292, 2008 General Session

76-9-301.6. Dog fighting exhibition -- Authority to arrest and take possession of dogs and property.

(1) A peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications, may enter any place, building, or tenement where an exhibition of dog fighting is occurring, or where preparations are being made for such an exhibition and, without a warrant, arrest all persons present.

(2) (a) Notwithstanding the provisions of Section 76-9-305, any authorized officer who makes an arrest under Subsection (1) may lawfully take possession of all dogs, paraphernalia, implements, or other property or things used or employed, or to be employed, in an exhibition of dog fighting prohibited by Subsection 76-9-301(2)(e) or Section 76-9-301.1.

(b) The officer, at the time of the taking of property pursuant to Subsection (2)(a), shall state his name and provide other identifying information to the person in charge of the dogs or property taken.

(3) (a) After taking possession of dogs, paraphernalia, implements, or other property or things under Subsection (2), the officer shall file an affidavit with the judge or magistrate before whom a complaint has been made against any person arrested under this section.

(b) The affidavit shall include:

(i) the name of the person charged in the complaint;

(ii) a description of all property taken;
(iii) the time and place of the taking of the property;
(iv) the name of the person from whom the property was taken;
(v) the name of the person who claims to own the property, if known; and
(vi) a statement that the officer has reason to believe and believes that the property taken was used or employed, or was to be used or employed, in violation of Section 76-9-301 or 76-9-301.1, and the grounds for the belief.

(4) (a) The officer shall deliver the confiscated property to the judge or magistrate who shall, by order, place the property in the custody of the officer or any other person designated in the order, and that person shall keep the property until conviction or final discharge of the person against whom the complaint was made.

(b) The person designated in Subsection (4)(a) shall assume immediate custody of the property, and retain the property until further order of the court.

(c) Upon conviction of the person charged, all confiscated property shall be forfeited and destroyed or otherwise disposed of, as the court may order.

(d) If the person charged is acquitted or discharged without conviction, the court shall, on demand, order the property to be returned to its owner.

Amended by Chapter 292, 2008 General Session

76-9-301.7. Cruelty to animals -- Enhanced penalties.

(1) As used in this section, "conviction" means a conviction by plea or by verdict, including a plea of guilty or no contest that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge was, or is, subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(2) Except as provided in Subsection (4), a person who commits any violation of Section 76-9-301, Section 76-9-301.5, or Subsection 76-9-301.1(4) within the state and on at least one previous occasion has been convicted of violating Section 76-9-301, Section 76-9-301.5, or Subsection 76-9-301.1(4) shall be subject to an enhanced penalty as provided in Subsection (3).

(3) The enhanced degree of offense for offenses committed under this section are:

(a) if the offense is a class C misdemeanor, it is a class B misdemeanor; and

(b) if the offense is a class B misdemeanor, it is a class A misdemeanor.

(4) The penalty enhancements described in this section do not apply to a conviction for the offense described in Subsection 76-9-301(6).

Amended by Chapter 292, 2008 General Session

76-9-301.8. Bestiality -- Definitions -- Penalty.

(1) A person commits the crime of bestiality if the actor engages in any sexual activity with an animal with the intent of sexual gratification of the actor.

(2) For purposes of this section only:

(a) "Animal" means any live, nonhuman vertebrate creature, including fowl.

(b) "Sexual activity" means physical sexual contact:

(i) between the actor and the animal involving the genitals of the actor and the genitals of the animal;

(ii) the genitals of the actor or the animal and the mouth or anus of the actor or the animal; or

(iii) through the actor's use of an object in contact with the genitals or anus of the animal.

(3) A crime of bestiality is a class B misdemeanor.

Amended by Chapter 302, 1999 General Session

76-9-304. Allowing vicious animal to go at large.

Any owner of a vicious animal, knowing its propensities, who willfully allows it to go at large or who keeps it without ordinary care, and any animal, while at large, or while not kept with ordinary care, causes injury to another animal or to any human being who has taken reasonable precaution which the circumstances permitted, is guilty of a class B misdemeanor unless the animal causes the death of a human being, whereupon the owner is guilty of a felony of the third degree.

Amended by Chapter 87, 1977 General Session

76-9-305. Officer's authority to take possession of animals -- Lien for care.

(1) Any law enforcement officer may take possession of any animals being treated cruelly and, after reasonable efforts to notify the owner, may provide shelter and care for them or upon permission from the owner may destroy them.

(2) Officers caring for animals pursuant to this section have a lien for the reasonable value of the care and/or destruction. Any court upon proof that the owner has been notified of the lien and amount due, at least five days prior, shall order the animal sold at public auction or destroyed.

(3) Any law enforcement officer may humanely destroy any animal found suffering past recovery for any useful purpose. Before destroying the animal the officer shall obtain the judgment to the effect of a veterinarian, or of two reputable citizens called by him to view the animal in his presence, or shall obtain consent to the destruction from the owner of the animal.

Amended by Chapter 87, 1977 General Session

76-9-306. Police service animals -- Causing injury or interfering with handler -- Penalties.

(1) As used in this section:

(a) "Handler" means a law enforcement officer who is specially trained, and uses a police service animal during the course of the performance of his law enforcement duties.

(b) "Police service animal" means any dog or horse used by a law enforcement agency, which is specially trained for law enforcement work, or any animal contracted

to assist a law enforcement agency in the performance of law enforcement duties.

(2) It is a third degree felony for a person to intentionally:

(a) cause bodily injury or death to a police service animal;

(b) engage in conduct likely to cause bodily injury or death to a police service animal;

(c) lay out, place, or administer any poison, trap, substance, or object which is likely to produce bodily injury or death to a police service animal; or

(d) offer or agree with one or more persons to engage in or cause the performance of an act which constitutes a violation of this section.

(3) It is a class A misdemeanor for a person to intentionally or knowingly:

(a) taunt, torment, strike, or otherwise assault a police service animal;

(b) throw any object or substance at, or in the path of, a police service animal;

(c) interfere with or obstruct a police service animal, or attempt to, or interfere with the handler of the animal in a manner that inhibits, restricts, or deprives the handler of his control of the animal;

(d) release a police service animal from its area of control, such as a vehicle, kennel, or pen, or trespass in that area; or

(e) place any food, object, or substance into a police service animal's area of control without the permission of the handler.

(4) A police service animal is exempt from quarantine or other animal control ordinances if it bites any person while under proper police supervision or routine veterinary care. The law enforcement agency and the animal's handler shall make the animal available for examination at any reasonable time and shall notify the local health officer if the animal exhibits any abnormal behavior.

(5) In addition to any other penalty, a person convicted of a violation of this section is liable for restitution to the owning or employing law enforcement agency or individual owner of the police service animal for the replacement, training, and veterinary costs incurred as a result of the violation of this section.

Amended by Chapter 192, 2000 General Session

76-9-307. Injury to service animals -- Penalties.

(1) As used in this section:

(a) "Disability" has the same meaning as defined in Section 62A-5b-102.

(b) "Search and rescue dog" means a dog:

(i) with documented training to locate persons who are:

(A) lost, missing, or injured; or

(B) trapped under debris as the result of a natural or man-made event; and

(ii) affiliated with an established search and rescue dog organization.

(c) "Service animal" means:

(i) a service animal as defined in Section 62A-5b-102; or

(ii) a search and rescue dog.

(2) It is a class A misdemeanor for a person to knowingly, intentionally, or recklessly cause substantial bodily injury or death to a service animal.

(3) It is a class A misdemeanor for a person who owns, keeps, harbors, or

exercises control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient control over the animal to prevent it from causing:

(a) any substantial bodily injury or the death of a service animal; or

(b) the service animal's subsequent inability to function as a service animal as a result of the animal's attacking, chasing, or harassing the service animal.

(4) It is a class B misdemeanor for a person to chase or harass a service animal.

(5) It is a class B misdemeanor for a person who owns, keeps, harbors, or exercises control over an animal to knowingly, intentionally, or recklessly fail to exercise sufficient control over the animal to prevent it from chasing or harassing a service animal while it is carrying out its functions as a service animal, to the extent that the animal temporarily interferes with the service animal's ability to carry out its functions.

(6) (a) A service animal is exempt from quarantine or other animal control ordinances if it bites any person while it is subject to an offense under Subsection (2), (3), (4), or (5).

(b) The owner of the service animal or the person with a disability whom the service animal serves shall make the animal available for examination at any reasonable time and shall notify the local health officer if the animal exhibits any abnormal behavior.

(7) In addition to any other penalty, a person convicted of any violation of this section is liable for restitution to the owner of the service animal or the person with a disability whom the service animal serves for the replacement, training, and veterinary costs incurred as a result of the violation of this section.

(8) If the act committed under this section amounts to an offense subject to a greater penalty under another provision of Title 76, Utah Criminal Code, than is provided under this section, this section does not prohibit prosecution and sentencing for the more serious offense.

Amended by Chapter 110, 2009 General Session

76-9-401. Definitions.

For purposes of this part:

(1) "Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance.

(2) "Eavesdrop" means to overhear, record, amplify, or transmit any part of a wire or oral communication of others without the consent of at least one party thereto by means of any electronic, mechanical, or other device.

(3) "Public" includes any professional or social group of which the victim of a defamation is a member.

Enacted by Chapter 196, 1973 General Session

76-9-402. Privacy violation.

(1) A person is guilty of privacy violation if, except as authorized by law, he:

(a) Trespasses on property with intent to subject anyone to eavesdropping or other surveillance in a private place; or

(b) Installs in any private place, without the consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying, or broadcasting sounds or events in the place or uses any such unauthorized installation; or

(c) Installs or uses outside of a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in the place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there.

(2) Privacy violation is a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-9-403. Communication Abuse.

(1) A person commits communication abuse if, except as authorized by law, he:

(a) Intercepts, without the consent of the sender or receiver, a message by telephone, telegraph, letter, or other means of communicating privately; this paragraph does not extend to:

(i) Overhearing of messages through a regularly installed instrument on a telephone party line or on an extension; or

(ii) Interception by the telephone company or subscriber incident to enforcement of regulations limiting use of the facilities or to other normal operation and use; or

(b) Divulges without consent of the sender or receiver the existence or contents of any such message if the actor knows that the message was illegally intercepted or if he learned of the message in the course of employment with an agency engaged in transmitting it.

(2) Communication abuse is a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-9-404. Criminal defamation.

(1) A person is guilty of criminal defamation if he knowingly communicates to any person orally or in writing any information which he knows to be false and knows will tend to expose any other living person to public hatred, contempt, or ridicule.

(2) Criminal defamation is a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-9-406. Injunctive relief against privacy offenses -- Damages.

Any person, or the heirs of any deceased person, who has been injured by a violation of this part may bring an action against the person who committed the violation. If in the action the court finds the defendant is violating or has violated any of the provisions of this part, it shall enjoin the defendant from a continuance thereof. It shall not be necessary that actual damages to the plaintiffs be alleged or proved, but if

damages are alleged and proved, the plaintiff in the action shall be entitled to recover from the defendant the actual damages, if any, sustained in addition to injunctive relief. A finding that the defendant is in violation of this part shall entitle the plaintiff to reasonable attorney's fees. Exemplary damages may be awarded where the violation is found to be malicious.

Enacted by Chapter 196, 1973 General Session

76-9-407. Crime of abuse of personal identity -- Penalty -- Defense -- Permitting civil action.

(1) The definitions in Section 45-3-2 apply to this section.

(2) Any person is guilty of a class B misdemeanor who knowingly or intentionally causes the publication of an advertisement in which the personal identity of an individual is used in a manner which expresses or implies that the individual approves, endorses, has endorsed, or will endorse the specific subject matter of the advertisement without the consent for such use by the individual.

(3) It is an affirmative defense that the person causing the publication of the advertisement reasonably believed that the person whose personal identity was to be used had consented to its use.

(4) Upon conviction of an offense under this section, unless waived by the victim, the court shall order that, within 30 days of the conviction, the person convicted shall issue a public apology or retraction to whomever received the advertisement. The apology or retraction shall be of similar size and placement as the original advertisement.

(5) Nothing in this section prohibits a civil action under Title 45, Chapter 3, Abuse of Personal Identity.

Enacted by Chapter 146, 1999 General Session

76-9-504. Fair reporting privilege of newspaper or broadcasting station personnel as to public official proceedings -- Privilege as to defamatory matter not subject to censorship.

No reporter, editor, or proprietor of any newspaper, and no owner, licensee, or operator of a visual or sound radio broadcasting station, or network of stations, nor the agents or employees of a newspaper or broadcasting station, is liable to any prosecution for a fair and true report or broadcast of any judicial, legislative, or other public official proceedings, or of any statement, speech, argument, or debate in course of the same, except upon proof of malice in making the report, which shall not be implied from the mere fact of publication. In no event shall any owner, licensee, or operator of a visual or sound radio broadcasting station or network of stations, or the agents or employees thereof, be liable for prosecution for any defamatory matter or statement published or uttered in such radio or television broadcast where the publication cannot be censored by reason of the provisions of federal statute or the regulations of the federal communications commission.

Enacted by Chapter 196, 1973 General Session

76-9-505. Libelous matter not privileged.

Libelous remarks or comments connected with matter privileged by the next preceding section receive no privilege by reason of their being so connected.

Enacted by Chapter 196, 1973 General Session

76-9-506. Privilege as to communications between interested persons.

A communication made to a person interested in the communication by one who is also interested, or who stands in a relation to the former as to afford a reasonable ground for supposing his motive innocent, is not presumed to be malicious, and is a privileged communication.

Enacted by Chapter 196, 1973 General Session

76-9-509. Conveying false or libelous material to newspaper or broadcasting stations.

Any person who willfully states, conveys, delivers, or transmits, by any means whatsoever, to the manager, editor, publisher, reporter, or agent of any radio station, television station, newspaper, magazine, periodical, or serial for publication therein, any false or libelous statement concerning any person, and thereby secures actual publication of the same, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-9-601. Abuse of a flag.

(1) A person is guilty of abuse of a flag if he:

(a) Intentionally places any unauthorized inscription or other thing upon any flag of the United States or of any state of the United States; or

(b) Knowingly exhibits any such flag, knowing the inscription or other thing to be unauthorized; or

(c) For purposes of advertising a product or service for sale or for distribution, affixes a representation of the flag of the United States or of a state of the United States to the product or on any display whereon the product or service is advertised; or

(d) Knowingly casts contempt upon the flag of the United States or of any state of the United States by publicly mutilating, defacing, defiling, burning, or trampling upon it.

(2) Abuse of a flag is a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-9-701. Intoxication -- Release of arrested person or placement in detoxification center.

(1) A person is guilty of intoxication if the person is under the influence of

alcohol, a controlled substance, or any substance having the property of releasing toxic vapors, to a degree that the person may endanger the person or another, in a public place or in a private place where the person unreasonably disturbs other persons.

(2) (a) A peace officer or a magistrate may release from custody a person arrested under this section if the peace officer or magistrate believes imprisonment is unnecessary for the protection of the person or another.

(b) A peace officer may take the arrested person to a detoxification center or other special facility as an alternative to incarceration or release from custody.

(3) If a minor is found by a court to have violated this section and the violation is the minor's second or subsequent violation of this section, the court:

(a) shall order the minor to participate in an educational series as defined in Section 41-6a-501; and

(b) may order the minor to participate in a screening as defined in Section 41-6a-501.

(4) (a) When a minor who is at least 18 years old, but younger than 21 years old, is found by a court to have violated this section, the court hearing the case shall suspend the minor's driving privileges under Section 53-3-219.

(b) Notwithstanding the requirement in Subsection (4)(a), the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's first violation of this section; and

(ii) the minor completes an educational series as defined in Section 41-6a-501.

(c) Notwithstanding the requirement in Subsection (4)(a) and in accordance with the requirements of Section 53-3-219, the court may reduce the suspension period required under Section 53-3-219 if:

(i) the violation is the minor's second or subsequent violation of this section; and

(ii) (A) the person is 18 years of age or older and provides a sworn statement to the court that the person has not unlawfully consumed alcohol for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a); or

(B) the person is under 18 years of age and has the person's parent or legal guardian provide an affidavit or sworn statement to the court certifying that to the parent or legal guardian's knowledge the person has not unlawfully consumed alcohol for at least a one-year consecutive period during the suspension period imposed under Subsection (4)(a).

(5) When a person who is at least 13 years old, but younger than 18 years old, is found by a court to have violated this section, the provisions regarding suspension of the driver's license under Section 78A-6-606 apply to the violation.

(6) When the court issues an order suspending a person's driving privileges for a violation of this section, the person's driver license shall be suspended under Section 53-3-219.

(7) An offense under this section is a class C misdemeanor.

Amended by Chapter 314, 2014 General Session

76-9-702. Lewdness.

(1) A person is guilty of lewdness if the person under circumstances not

amounting to rape, object rape, forcible sodomy, forcible sexual abuse, aggravated sexual assault, or an attempt to commit any of these offenses, performs any of the following acts in a public place or under circumstances which the person should know will likely cause affront or alarm to, on, or in the presence of another who is 14 years of age or older:

(a) an act of sexual intercourse or sodomy;

(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area;

(c) masturbates; or

(d) any other act of lewdness.

(2) (a) A person convicted the first or second time of a violation of Subsection (1) is guilty of a class B misdemeanor, except under Subsection (2)(b).

(b) A person convicted of a violation of Subsection (1) is guilty of a third degree felony if at the time of the violation:

(i) the person is a sex offender as defined in Section 77-27-21.7;

(ii) the person has been previously convicted two or more times of violating Subsection (1); or

(iii) the person has previously been convicted of a violation of Subsection (1) and has also previously been convicted of a violation of Section 76-9-702.5.

(c) (i) For purposes of this Subsection (2) and Subsection 77-41-102(16), a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction.

(ii) This Subsection (2)(c) also applies if the charge under this Subsection (2) has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(3) A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a lewd act, irrespective of whether or not the breast is covered during or incidental to feeding.

Amended by Chapter 278, 2013 General Session

76-9-702.1. Sexual battery.

(1) A person is guilty of sexual battery if the person, under circumstances not amounting to an offense under Subsection (2), intentionally touches, whether or not through clothing, the anus, buttocks, or any part of the genitals of another person, or the breast of a female person, and the actor's conduct is under circumstances the actor knows or should know will likely cause affront or alarm to the person touched.

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

(a) rape, Section 76-5-402;

(b) rape of a child, Section 76-5-402.1;

(c) object rape, Section 76-5-402.2;

(d) object rape of a child, Section 76-5-402.3;

(e) forcible sodomy, Subsection 76-5-403(2);

(f) sodomy on a child, Section 76-5-403.1;

(g) forcible sexual abuse, Section 76-5-404;

(h) sexual abuse of a child, Subsection 76-5-404.1(2);
(i) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);
(j) aggravated sexual assault, Section 76-5-405; and
(k) an attempt to commit any offense under this Subsection (2).
(3) Sexual battery is a class A misdemeanor.
(4) For purposes of Subsection 77-41-102(16) only, a plea of guilty or nolo contendere to a charge under this section that is held in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, is the equivalent of a conviction. This Subsection (4) also applies if the charge under this section has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

Amended by Chapter 278, 2013 General Session

76-9-702.3. Public urination.
(1) A person is guilty of public urination if the person urinates or defecates:
(a) in a public place, other than a public rest room; and
(b) under circumstances which the person should know will likely cause affront or alarm to another.
(2) Public urination is a class C misdemeanor.

Enacted by Chapter 303, 2012 General Session

76-9-702.5. Lewdness involving a child.
(1) A person is guilty of lewdness involving a child if the person under circumstances not amounting to rape of a child, object rape of a child, sodomy upon a child, sexual abuse of a child, aggravated sexual abuse of a child, or an attempt to commit any of those offenses, intentionally or knowingly does any of the following to, or in the presence of, a child who is under 14 years of age:
(a) performs an act of sexual intercourse or sodomy;
(b) exposes his or her genitals, the female breast below the top of the areola, the buttocks, the anus, or the pubic area:
(i) in a public place; or
(ii) in a private place:
(A) under circumstances the person should know will likely cause affront or alarm; or
(B) with the intent to arouse or gratify the sexual desire of the actor or the child;
(c) masturbates;
(d) under circumstances not amounting to sexual exploitation of a child under Section 76-5b-201, causes a child under the age of 14 years to expose his or her genitals, anus, or breast, if female, to the actor, with the intent to arouse or gratify the sexual desire of the actor or the child; or
(e) performs any other act of lewdness.
(2) (a) Lewdness involving a child is a class A misdemeanor, except under Subsection (2)(b).
(b) Lewdness involving a child is a third degree felony if at the time of the

violation:

(i) the person is a sex offender as defined in Section 77-27-21.7; or

(ii) the person has previously been convicted of a violation of this section.

Amended by Chapter 278, 2013 General Session

76-9-702.7. Voyeurism offenses -- Penalties.

(1) A person is guilty of voyeurism who intentionally uses a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means an individual:

(a) for the purpose of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(2) A violation of Subsection (1) is a class A misdemeanor, except that a violation of Subsection (1) committed against a child under 14 years of age is a third degree felony.

(3) Distribution or sale of any images, including in print, electronic, magnetic, or digital format, obtained under Subsection (1) by transmission, display, or dissemination is a third degree felony, except that if the violation of this Subsection (3) includes images of a child under 14 years of age, the violation is a second degree felony.

(4) A person is guilty of voyeurism who, under circumstances not amounting to a violation of Subsection (1), views or attempts to view an individual, with or without the use of any instrumentality:

(a) with the intent of viewing any portion of the individual's body regarding which the individual has a reasonable expectation of privacy, whether or not that portion of the body is covered with clothing;

(b) without the knowledge or consent of the individual; and

(c) under circumstances in which the individual has a reasonable expectation of privacy.

(5) A violation of Subsection (4) is a class B misdemeanor, except that a violation of Subsection (4) committed against a child under 14 years of age is a class A misdemeanor.

Amended by Chapter 52, 2004 General Session

76-9-704. Abuse or desecration of a dead human body -- Penalties.

(1) For purposes of this section, "dead human body" includes any part of a human body in any stage of decomposition, including ancient human remains as defined in Section 9-8-302.

(2) A person is guilty of abuse or desecration of a dead human body if the person intentionally and unlawfully:

(a) fails to report the finding of a dead human body to a local law enforcement agency;

(b) disturbs, moves, removes, conceals, or destroys a dead human body or any part of it;

(c) disinters a buried or otherwise interred dead human body, without authority of a court order;

(d) dismembers a dead human body to any extent, or damages or detaches any part or portion of a dead human body; or

(e) (i) commits or attempts to commit upon any dead human body any act of sexual penetration, regardless of the sex of the actor and of the dead human body; and

(ii) as used in Subsection (2)(e)(i), "sexual penetration" means penetration, however slight, of the genital or anal opening by any object, substance, instrument, or device, including a part of the human body, or penetration involving the genitals of the actor and the mouth of the dead human body.

(3) A person does not violate this section if when that person directs or carries out procedures regarding a dead human body, that person complies with:

(a) Title 9, Chapter 8, Part 3, Antiquities;

(b) Title 26, Chapter 4, Utah Medical Examiner Act;

(c) Title 26, Chapter 28, Revised Uniform Anatomical Gift Act;

(d) Title 53B, Chapter 17, Part 3, Use of Dead Bodies for Medical Purposes;

(e) Title 58, Chapter 9, Funeral Services Licensing Act; or

(f) Title 58, Chapter 67, Utah Medical Practice Act, which concerns licensing to practice medicine.

(4) (a) Failure to report the finding of a dead human body as required under Subsection (2)(a) is a class B misdemeanor.

(b) Abuse or desecration of a dead human body as described in Subsections (2)(b) through (e) is a third degree felony.

Amended by Chapter 60, 2007 General Session
Amended by Chapter 231, 2007 General Session

76-9-705. Participation in an ultimate fighting match.

(1) For purposes of this section, "ultimate fighting match" means a live match in which:

(a) an admission fee is charged;

(b) match rules permit professional contestants to use a combination of boxing, kicking, wrestling, hitting, punching, or other combative, contact techniques; and

(c) match rules do not:

(i) incorporate a formalized system of combative techniques against which a contestant's performance is judged to determine the prevailing contestant;

(ii) divide a match into two or more equal and specified time periods for a match total of no more than 50 minutes; or

(iii) prohibit contestants from:

(A) using anything that is not part of the human body, except for boxing gloves, to intentionally inflict serious bodily injury upon an opponent through direct contact or

the expulsion of a projectile;

(B) striking a person who demonstrates an inability to protect himself from the advances of an opponent;

(C) biting; or

(D) direct, intentional, and forceful strikes to the eyes, groin area, adam's apple area of the neck, and temple area of the head.

(2) Any person who publicizes, promotes, conducts, or engages in an ultimate fighting match is guilty of a class A misdemeanor.

Enacted by Chapter 83, 1997 General Session

76-9-706. False representation of military award -- False wearing or use of medal, name, title, insignia, ritual, or ceremony of a military related organization.

(1) As used in this section:

(a) "Military related organization" means a public or private society, order, or organization that:

(i) only accepts as a member, a person, or the relative of a person, who is:

(A) a member of the military; or

(B) an honorably discharged member of the military; and

(ii) is organized for the purpose of:

(A) recognizing or honoring a person for military service;

(B) assisting a person described in Subsection (1)(a)(i) to lawfully associate with, or provide service with, other people described in Subsection (1)(a)(i); or

(C) provide support for, or assistance to, a person described in Subsection (1)(a)(i).

(b) "Service medal" means:

(i) a congressional medal of honor, as defined in 18 U.S.C. 704(c)(2);

(ii) a distinguished service cross, as defined in 10 U.S.C 3742;

(iii) a Navy cross, as defined in 10 U.S.C. 6242;

(iv) an Air Force cross, as defined in 10 U.S.C. 8742;

(v) a silver star, as defined in 10 U.S.C. 3746, 6244, or 8746;

(vi) a bronze star, as defined in 10 U.S.C. 1133;

(vii) a purple heart, as defined in 10 U.S.C. 1129;

(viii) any decoration or medal authorized by the Congress of the United States for the armed forces of the United States;

(ix) any service medal or badge awarded to members of the armed forces of the United States;

(x) any of the following Utah National Guard medals or ribbons:

(A) medal of valor;

(B) Utah cross;

(C) joint medal of merit;

(D) Utah medal of merit;

(E) joint commendation medal;

(F) commendation medal;

(G) achievement ribbon;

(H) joint staff service ribbon;
(I) state partnership service ribbon;
(J) service ribbon;
(K) military funeral honors service ribbon;
(L) emergency service ribbon; or
(M) recruiting ribbon;
(xi) any ribbon, button, or rosette for a decoration, medal, or badge described in Subsections (1)(b)(i) through (x); or
(xii) an imitation of a decoration, medal, badge, ribbon, button, or rosette described in Subsections (1)(b)(i) through (xi).
(2) Any person who intentionally makes a false representation, verbally or in writing, that the person has been awarded a service medal is guilty of a class C misdemeanor.
(3) Any person who wears, purchases, attempts to purchase, solicits for purchase, mails, ships, imports, exports, produces blank certificates of receipt for, manufactures, sells, attempts to sell, advertises for sale, trades, barters, or exchanges for anything of value a service medal, or any colorable imitation thereof, except when authorized by federal law, or under regulations made pursuant to federal law, with the intent to defraud, or with the intent to falsely represent that the person or another person has been awarded a service medal, is guilty of a class C misdemeanor.
(4) A person is guilty of a class C misdemeanor if the person wears or uses a medal of a military related organization:
(a) that the person is not entitled to wear or use; and
(b) with the intent to defraud or with the intent to falsely represent that the person or another person has been awarded the medal.
(5) A person is guilty of a class C misdemeanor if the person uses the name, an officer title, an insignia, a ritual, or a ceremony of a military related organization:
(a) that the person is not entitled to use; and
(b) with the intent to defraud, or with the intent to falsely represent that the person or another person was or is a member, representative, or officer of the military related organization.

Amended by Chapter 186, 2008 General Session

76-9-801. Title.
This part is known as "Criminal Street Gang Penalties."

Enacted by Chapter 15, 2008 General Session

76-9-802. Definitions.
As used in this part:
(1) "Criminal street gang" means an organization, association in fact, or group of three or more persons, whether operated formally or informally:
(a) that is currently in operation;
(b) that has as one of its primary activities the commission of one or more

predicate gang crimes;

(c) that has, as a group, an identifying name or identifying sign or symbol, or both; and

(d) whose members, acting individually or in concert with other members, engage in or have engaged in a pattern of criminal gang activity.

(2) "Intimidate" means the use of force, duress, violence, coercion, menace, or threat of harm for the purpose of causing an individual to act or refrain from acting.

(3) "Minor" means a person younger than 18 years of age.

(4) "Pattern of criminal gang activity" means:

(a) committing, attempting to commit, conspiring to commit, or soliciting the commission of two or more predicate gang crimes within five years;

(b) the predicate gang crimes are:

(i) committed by two or more persons; or

(ii) committed by an individual at the direction of, or in association with a criminal street gang; and

(c) the criminal activity was committed with the specific intent to promote, further, or assist in any criminal conduct by members of the criminal street gang.

(5) (a) "Predicate gang crime" means any of the following offenses:

(i) Title 41, Chapter 1a, Motor Vehicle Act:

(A) Section 41-1a-1313, regarding possession of a motor vehicle without an identification number;

(B) Section 41-1a-1315, regarding false evidence of title and registration;

(C) Section 41-1a-1316, regarding receiving or transferring stolen vehicles;

(D) Section 41-1a-1317, regarding selling or buying a motor vehicle without an identification number; or

(E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number;

(ii) any criminal violation of the following provisions:

(A) Title 58, Chapter 37, Utah Controlled Substances Act;

(B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(C) Title 58, Chapter 37b, Imitation Controlled Substances Act; or

(D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;

(iii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;

(iv) Title 76, Chapter 5, Part 2, Criminal Homicide;

(v) Sections 76-5-301 through 76-5-304, which address kidnapping and related offenses;

(vi) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;

(vii) Title 76, Chapter 6, Part 1, Property Destruction;

(viii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;

(ix) Title 76, Chapter 6, Part 3, Robbery;

(x) any felony offense under Title 76, Chapter 6, Part 4, Theft, or under Title 76, Chapter 6, Part 6, Retail Theft, except Sections 76-6-404.5, 76-6-405, 76-6-407, 76-6-408, 76-6-409, 76-6-409.1, 76-6-409.3, 76-6-409.6, 76-6-409.7, 76-6-409.8, 76-6-409.9, 76-6-410, and 76-6-410.5;

(xi) Title 76, Chapter 6, Part 5, Fraud, except Sections 76-6-504, 76-6-505,

76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;

(xii) Title 76, Chapter 6, Part 11, Identity Fraud Act;

(xiii) Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;

(xiv) Section 76-8-508, which includes tampering with a witness;

(xv) Section 76-8-508.3, which includes retaliation against a witness or victim;

(xvi) Section 76-8-509, which includes extortion or bribery to dismiss a criminal proceeding;

(xvii) Title 76, Chapter 10, Part 3, Explosives;

(xviii) Title 76, Chapter 10, Part 5, Weapons;

(xix) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;

(xx) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;

(xxi) Section 76-10-1801, which addresses communications fraud;

(xxii) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act; or

(xxiii) Section 76-10-2002, which addresses burglary of a research facility.

(b) "Predicate gang crime" also includes:

(i) any state or federal criminal offense that by its nature involves a substantial risk that physical force may be used against another in the course of committing the offense; and

(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 violation of any offense in Subsection (4)(a) if committed in this state.

Amended by Chapter 157, 2009 General Session
Amended by Chapter 356, 2009 General Session

76-9-803. Penalties regarding criminal street gang activities.

(1) It is a class B misdemeanor to:

(a) solicit, recruit, entice, or intimidate a minor to join a criminal street gang, whether or not the minor actually joins the criminal street gang;

(b) conspire to commit any act under Subsection (1)(a) with the intent to cause a minor to join a criminal street gang; or

(c) use intimidation to prevent or attempt to prevent a minor from leaving a criminal street gang or ending the minor's affiliation with a criminal street gang.

(2) It is a class A misdemeanor for any person who is a member of or actively involved with a criminal street gang to:

(a) intimidate or otherwise cause a minor to commit or attempt to commit any misdemeanor criminal offense; or

(b) commit a violation of Subsection (1)(a):

(i) more than once;

(ii) regarding the same minor; and

(iii) within a period of 180 days.

(3) Prosecution for any offense under this section does not prohibit prosecution

for any other criminal offense.

Enacted by Chapter 15, 2008 General Session

76-9-804. Convicted criminal gang offender -- Prohibition.

(1) A person who has been convicted of a crime for which the penalty was enhanced under Section 76-3-203.1 may not, except where a greater penalty is applicable under this title, possess a dangerous weapon as defined in either Section 76-1-601 or 76-10-501, ammunition, or a facsimile of a firearm within five years after the conviction.

(2) A violation of Subsection (1) is a class A misdemeanor.

Enacted by Chapter 313, 2009 General Session

76-9-901. Title.

This part is known as "Prohibition of Gang Activity."

Enacted by Chapter 86, 2009 General Session

76-9-902. Definitions.

As used in this part:

(1) "Criminal street gang" means an organization, association in fact, or group of three or more persons, whether operated formally or informally:

(a) that is currently in operation;

(b) that has as one of its substantial activities the commission of one or more predicate gang crimes;

(c) that has, as a group, an identifying name or an identifying sign or symbol, or both; and

(d) whose members, acting individually or in concert with other members, engage in or have engaged in a pattern of criminal gang activity.

(2) "Gang loitering" means a person remains in one place under circumstances that would cause a reasonable person to believe that the purpose or effect of that behavior is to enable or facilitate a criminal street gang to:

(a) establish control over one or more identifiable areas;

(b) intimidate others from entering those areas; or

(c) conceal illegal activities.

(3) "Pattern of criminal gang activity" means committing, attempting to commit, conspiring to commit, or soliciting the commission of two or more predicate gang crimes within five years, if the predicate gang crimes are committed:

(a) (i) by two or more persons; or

(ii) by an individual at the direction of or in association with a criminal street gang; and

(b) with the specific intent to promote, further, or assist in any criminal conduct by members of a criminal street gang.

(4) (a) "Predicate gang crime" means any of the following offenses:

(i) any criminal violation of:
(A) Title 58, Chapter 37, Utah Controlled Substances Act;
(B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
(C) Title 58, Chapter 37b, Imitation Controlled Substances Act; or
(D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act;
(ii) Sections 76-5-102 through 76-5-103.5, which address assault offenses;
(iii) Title 76, Chapter 5, Part 2, Criminal Homicide;
(iv) Sections 76-5-301 through 76-5-304, which address kidnapping and related offenses;
(v) any felony offense under Title 76, Chapter 5, Part 4, Sexual Offenses;
(vi) Title 76, Chapter 6, Part 1, Property Destruction;
(vii) Title 76, Chapter 6, Part 2, Burglary and Criminal Trespass;
(viii) Title 76, Chapter 6, Part 3, Robbery;
(ix) any felony offense under Title 76, Chapter 6, Part 4, Theft, except Sections 76-6-404.5, 76-6-405, 76-6-407, 76-6-408, 76-6-409, 76-6-409.1, 76-6-409.3, 76-6-409.6, 76-6-409.7, 76-6-409.8, 76-6-409.9, 76-6-410, and 76-6-410.5;
(x) Title 76, Chapter 6, Part 5, Fraud, except Sections 76-6-504, 76-6-505, 76-6-507, 76-6-508, 76-6-509, 76-6-510, 76-6-511, 76-6-512, 76-6-513, 76-6-514, 76-6-516, 76-6-517, 76-6-518, and 76-6-520;
(xi) Title 76, Chapter 6, Part 11, Identity Fraud Act;
(xii) Title 76, Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-304, 76-8-307, 76-8-308, and 76-8-312;
(xiii) Section 76-8-508, which includes tampering with a witness;
(xiv) Section 76-8-508.3, which includes retaliation against a witness or victim;
(xv) Section 76-8-509, which includes extortion or bribery to dismiss a criminal proceeding;
(xvi) Title 76, Chapter 10, Part 3, Explosives;
(xvii) Title 76, Chapter 10, Part 5, Weapons;
(xviii) Title 76, Chapter 10, Part 15, Bus Passenger Safety Act;
(xix) Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act;
(xx) Section 76-10-1801, which addresses communications fraud;
(xxi) Title 76, Chapter 10, Part 19, Money Laundering and Currency Transaction Reporting Act;
(xxii) Section 76-10-2002, which addresses burglary of a research facility; and
(xxiii) Title 41, Chapter 1a, Motor Vehicle Act:
(A) Section 41-1a-1313, regarding possession of a motor vehicle without an identification number;
(B) Section 41-1a-1315, regarding false evidence of title and registration;
(C) Section 41-1a-1316, regarding receiving or transferring stolen vehicles;
(D) Section 41-1a-1317, regarding selling or buying a vehicle without an identification number; and
(E) Section 41-1a-1318, regarding the fraudulent alteration of an identification number.
(b) "Predicate gang crime" also includes:
(i) any state or federal criminal offense that by its nature involves a substantial

risk that physical force may be used against another in the course of committing the offense; and

(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 any offense in Subsection (4)(a) if committed in this state.

(5) (a) "Public place" means any location or structure to which the public or a substantial group of the public has access, and includes:

(i) a sidewalk, street, or highway;

(ii) a public park, public recreation facility, or any other area open to the public;

(iii) a shopping mall, sports facility, stadium, arena, theater, movie house, or playhouse, or the parking lot or structure adjacent to any of these; and

(iv) the common areas of schools, hospitals, apartment houses, office buildings, transport facilities, and businesses.

(b) "Public place" includes the lobbies, hallways, elevators, restaurants and other dining areas, and restrooms of any of the locations or structures under Subsection (5)(a).

Enacted by Chapter 86, 2009 General Session

76-9-903. Gang loitering -- Failure to disperse -- Penalties.

(1) When a law enforcement officer observes a person whom the officer reasonably believes to be a member of a criminal street gang engaging in gang loitering in the presence of one or more other persons in any public place where gang loitering is prohibited under Section 76-9-905, the police officer shall:

(a) inform all the persons that they are within an area in which loitering by a group containing one or more criminal street gang members is prohibited;

(b) order all the persons in the group to disperse and remove themselves from within sight and hearing of the location where the officer issues the order to disperse; and

(c) inform the persons that any person in the group will be subject to being charged with a criminal offense and will also be subject to arrest if the person fails to promptly obey the order to disperse.

(2) The officer under Subsection (1) shall also advise the persons the officer is directing to disperse that each of the persons directed to disperse is subject to being charged with a criminal offense and will also be subject to arrest if the person is again, within eight hours after the current order to disperse is made:

(a) present in a public place with a group that includes one or more persons a peace officer reasonably believes to be a member of a criminal street gang; and

(b) within sight or hearing of the location where the law enforcement officer is currently issuing the order to disperse.

Enacted by Chapter 86, 2009 General Session

76-9-904. Failure to disperse -- Penalties.

(1) (a) Failure to comply with an order issued under Subsection 76-9-903(1)(b)

to disperse is a class B misdemeanor of failure to disperse.

(b) Any second and subsequent violation of Subsection (1)(a) is a class B misdemeanor of failure to disperse and is subject to a fine of not less than $100, unless the court finds mitigating circumstances justifying a lesser punishment and makes that finding a part of the court record.

(2) (a) A person is guilty of a class B misdemeanor of subsequent failure to disperse who:

(i) is present in a public place with or as part of a group of two or more persons, and that group includes one or more persons a peace officer reasonably believes to be a member of a criminal street gang; and

(ii) is within sight or hearing of a location where a law enforcement officer issued an order to the person to disperse under Section 76-9-903 within the prior eight hours.

(b) A violation of Subsection (2)(a) is subject to a fine of not less than $100, unless the court finds mitigating circumstances justifying a lesser punishment and makes that finding a part of the court record.

Enacted by Chapter 86, 2009 General Session

76-9-905. Designation of areas where orders to disperse are authorized and gang loitering is prohibited.

(1) Municipal and county legislative bodies shall, within their respective jurisdictions, designate the areas within their jurisdictions that they have determined are subject to the enforcement of Section 76-9-903 because criminal street gangs have been able to or are attempting to:

(a) establish control over these identifiable areas;

(b) intimidate others from entering those areas; or

(c) conceal illegal activities conducted in those areas.

(2) (a) Prior to designating areas subject to enforcement under Section 76-9-903, the legislative body shall consult, as appropriate, with persons who are knowledgeable about the effects of gang activity in areas where Section 76-9-903 may be enforced.

(b) Persons consulted under Subsection (2)(a) may include:

(i) members of local law enforcement agencies who have training or experience related to criminal street gangs;

(ii) other agency personnel with particular knowledge of gang activities in the proposed designated area;

(iii) elected and appointed officials of the area where the proposed designated area is located; and

(iv) representatives of community-based organizations.

(3) The municipal or county legislative body shall develop and implement procedures for periodic review and update of area designations it makes under Subsection (1).

Enacted by Chapter 86, 2009 General Session

76-9-906. Protection of constitutional rights.

(1) This section does not affect or limit any individual's constitutional right to engage in collective advocacy activities that are protected by the constitution or laws of this state or by the constitution or laws of the United States.

(2) The sheriff or chief of police shall issue a written directive to all agency employees that provides information on preventing the enforcement of Section 76-9-903 against persons who are engaged in constitutionally protected collective advocacy activities.

Enacted by Chapter 86, 2009 General Session

76-9-907. Training for participating law enforcement officers.

The sheriff or chief of police implementing this part shall ensure that all officers charged with enforcing this part successfully complete appropriate training on identification of gang members and criminal street gangs.

Enacted by Chapter 86, 2009 General Session

76-9-1001. Title.

This part is known as "The Illegal Immigration Enforcement Act."

Enacted by Chapter 21, 2011 General Session

76-9-1002. Definitions.

As used in this part:

(1) "Alien" means a person who is not a citizen or national of the United States.

(2) "ICE" means the federal Immigration and Customs Enforcement agency of the United States Department of Homeland Security.

(3) "Law enforcement officer" has the same meaning as in Section 53-13-103.

(4) "SAVE program" means the federal Systematic Alien Verification for Entitlements program operated by the federal Department of Homeland Security.

(5) "State or local governmental agency" includes any private contractor or vendor that contracts with the agency to provide the agency's functions or services.

(6) "Verify immigration status" or "verification of immigration status" means the determination of a person's immigration status by:

(a) a law enforcement officer who is authorized by a federal agency to determine an alien's immigration status; or

(b) the United States Department of Homeland Security, ICE, or other federal agency authorized to provide immigration status as provided by 8 U.S.C. Sec. 1373(c).

Enacted by Chapter 21, 2011 General Session

76-9-1003. Detention or arrest -- Determination of immigration status.

(1) (a) Except as provided in Subsection (1)(b), (c), or (d), any law enforcement officer who, acting in the enforcement of any state law or local ordinance, conducts any

lawful stop, detention, or arrest of a person as specified in Subsection (1)(a)(i) or (ii), and the person is unable to provide to the law enforcement officer a document listed in Subsection 76-9-1004(1) and the officer is otherwise unable to verify the identity of the person, the officer:

(i) shall request verification of the citizenship or the immigration status of the person under 8 U.S.C. Sec. 1373(c), except as allowed under Subsection (1)(b), (c), or (d), if the person is arrested for an alleged offense that is a class A misdemeanor or a felony; and

(ii) may attempt to verify the immigration status of the person, except as exempted under Subsection (1)(b), (c), or (d), if the alleged offense is a class B or C misdemeanor, except that if the person is arrested and booked for a class B or C misdemeanor, the arresting law enforcement officer or the law enforcement agency booking the person shall attempt to verify the immigration status of the person.

(b) In individual cases, the law enforcement officer may forego the verification of immigration status under Subsection (1)(a) if the determination could hinder or obstruct a criminal investigation.

(c) Subsection (1)(a) does not apply to a law enforcement officer who is acting as a school resource officer for any elementary or secondary school.

(d) Subsection (1)(a) does not apply to a county or municipality when it has only one law enforcement officer on duty and response support from another law enforcement agency is not available.

(2) When a law enforcement officer makes a lawful stop, detention, or arrest under Subsection (1) of the operator of a vehicle, and while investigating or processing the primary offense, the officer makes observations that give the officer reasonable suspicion that the operator or any of the passengers in the vehicle are violating Section 76-5-308, 76-5-310, or 76-10-2901, which concern smuggling and transporting illegal aliens, the officer shall, to the extent possible within a reasonable period of time:

(a) detain the occupants of the vehicle to investigate the suspected violations; and

(b) inquire regarding the immigration status of the occupants of the vehicle.

(3) When a person under Subsection (1) is arrested or booked into a jail, juvenile detention facility, or correctional facility, the arresting officer or the booking officer shall ensure that a request for verification of immigration status of the arrested or booked person is submitted as promptly as is reasonably possible.

(4) The law enforcement agency that has custody of a person verified to be an illegal alien shall request that the United States Department of Homeland Security issue a detainer requesting transfer of the illegal alien into federal custody.

(5) A law enforcement officer may not consider race, color, or national origin in implementing this section, except to the extent permitted by the constitutions of the United States and this state.

Amended by Chapter 196, 2013 General Session

76-9-1004. Grounds for presumption of lawful presence in United States -- Statement to officer.

(1) A person is presumed to be lawfully present in the United States for the purposes of this part if the person provides one of the following documents to the law enforcement officer, unless the law enforcement officer has a reasonable suspicion that the document is false or identifies a person other than the person providing the document:

(a) a valid Utah driver license issued on or after January 1, 2010;

(b) a valid Utah identification card issued under Section 53-3-804 and issued on or after January 1, 2010;

(c) a valid tribal enrollment card or other valid form of tribal membership identification that includes photo identification;

(d) a valid identification document that:

(i) includes a photo or biometric identifier of the holder of the document; and

(ii) is issued by a federal, state, or local governmental agency that requires proof or verification of legal presence in the United States as a condition of issuance of the document; or

(e) a valid resident immigrant permit issued under Section 63G-14-204.

(2) A person is presumed to be a citizen or national of the United States for purposes of this part if the person makes a statement or affirmation to the law enforcement officer that the person is a United States citizen or national, unless the officer has a reasonable suspicion that the statement or affirmation is false.

Amended by Chapter 20, 2011 General Session, (Coordination Clause)
Enacted by Chapter 21, 2011 General Session

76-9-1005. Illegal alien -- Notification of federal government -- Transportation to federal facility.

A state or local law enforcement agency may securely transport an alien who is in the agency's custody and whom the agency has verified is unlawfully present in the United States to a federal detention facility in this state or, with the concurrence of the receiving federal agency, to a federal facility or other point of transfer to federal custody that is outside this state.

Enacted by Chapter 21, 2011 General Session

76-9-1006. Enforcement of federal immigration laws.

A state or local governmental agency of this state, or any representative of the agency, may not:

(1) limit or restrict by ordinance, regulation, or policy the authority of any law enforcement agency or other governmental agency to assist the federal government in the enforcement of any federal law or regulation governing immigration; or

(2) limit or restrict by ordinance, regulation, or policy the authority of any law enforcement agency to investigate or enforce any violation of the federal misdemeanor offenses of willful failure to register as an alien or willful failure to personally possess an alien registration document as required by 8 U.S.C. Sec. 1304(e) or 1306(a).

Enacted by Chapter 21, 2011 General Session

76-9-1007. Determining an alien's immigration status -- Transfer or maintenance of information.

(1) Except as limited by federal law, any state or local governmental agency is not restricted or prohibited in any way from sending, receiving, or maintaining information related to the lawful or unlawful immigration status of any person by communicating with any federal, state, or local governmental entity for any lawful purpose, including:

(a) determining a person's eligibility for any public benefit, service, or license provided by any federal agency, by this state, or by any political subdivision of this state;

(b) confirming a person's claim of residence or domicile if determination is required by state law or a judicial order issued pursuant to a civil or criminal proceeding in this state;

(c) if the person is an alien, determining if the person is in compliance with the federal registration laws of Title II, Part 7, Immigration and Nationality Act; or

(d) a valid request for verification of the citizenship or immigration status of any person pursuant to 8 U.S.C. Sec. 1373.

(2) This section does not implement, authorize, or establish the federal REAL ID Act of 2005, P.L. 109-13, Division B; 119 Stat. 302, except as provided by Section 53-3-104.5, regarding limitations on the state implementation of the federal REAL ID Act.

Enacted by Chapter 21, 2011 General Session

76-9-1008. Proof of immigration status required to receive public benefits.

(1) (a) An agency that provides state or local public benefits as defined in 8 U.S.C. Sec. 1621 shall comply with Section 63G-12-402 and shall also comply with this section, except:

(i) as provided in Subsection 63G-12-402(3)(g) or (k); or

(ii) when compliance is exempted by federal law or when compliance could reasonably be expected to be grounds for the federal government to withhold federal Medicaid funding.

(b) The agency shall verify a person's lawful presence in the United States by requiring that the applicant under this section sign a certificate under penalty of perjury, stating that the applicant:

(i) is a United States citizen; or

(ii) is a qualified alien as defined by 8 U.S.C. Sec. 1641.

(c) The certificate under Subsection (1)(b) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.

(d) The signature under this Subsection (1) may be executed in person or electronically.

(e) When an applicant who is a qualified alien has executed the certificate under this section, the applicant's eligibility for benefits shall be verified by the agency

through the federal SAVE program or an equivalent program designated by the United States Department of Homeland Security.

(2) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in a certificate executed under this section is guilty of public assistance fraud under Section 76-8-1205.

(3) If the certificate constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, the agency requiring the certificate shall file a complaint with the United States Attorney for the applicable federal judicial district based upon the venue in which the certificate was executed.

(4) Agencies may, with the concurrence of the Utah Attorney General, adopt variations to the requirements of the provisions of this section that provide for adjudication of unique individual circumstances where the verification procedures in this section would impose unusual hardship on a legal resident of this state.

(5) If an agency under Subsection (1) receives verification that a person making an application for any benefit, service, or license is not a qualified alien, the agency shall provide the information to the local law enforcement agency for enforcement of Section 76-8-1205 unless prohibited by federal mandate.

Amended by Chapter 278, 2013 General Session

76-9-1009. Implementation to be consistent with federal law and civil rights.

All state and local agencies shall implement this part in a manner that is consistent with federal laws that regulate immigration, protect the civil rights of all persons, and establish the privileges and immunities of United States citizens.

Enacted by Chapter 21, 2011 General Session

76-10-101. Definitions.

As used in this part:

(1) "Cigar" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of any roll of tobacco wrapped in leaf tobacco, or in any substance containing tobacco, other than any roll of tobacco that is a cigarette as described in Subsection (2).

(2) "Cigarette" means a product that contains nicotine, is intended to be burned under ordinary conditions of use, and consists of:

(a) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or

(b) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in Subsection (2)(a).

(3) "Electronic cigarette" means any device, other than a cigarette or cigar, intended to deliver vapor containing nicotine into a person's respiratory system.

(4) "Place of business" includes:

(a) a shop;
(b) a store;
(c) a factory;
(d) a public garage;
(e) an office;
(f) a theater;
(g) a recreation hall;
(h) a dance hall;
(i) a poolroom;
(j) a café;
(k) a cafeteria;
(l) a cabaret;
(m) a restaurant;
(n) a hotel;
(o) a lodging house;
(p) a streetcar;
(q) a bus;
(r) an interurban or railway passenger coach;
(s) a waiting room; and
(t) any other place of business.

(5) "Smoking" means the possession of any lighted cigar, cigarette, pipe, or other lighted smoking equipment.

Amended by Chapter 114, 2010 General Session

76-10-102. Cigarettes and tobacco -- Advertising restrictions -- Warnings in smokeless tobacco advertisements.

(1) It is a class B misdemeanor for any person to display on any billboard, streetcar sign, streetcar, bus, placard, or on any other object or place of display, any advertisement of cigarettes, cigarette papers, cigars, chewing tobacco, or smoking tobacco or any disguise or substitute of either, except that a dealer in cigarettes, cigarette papers, tobacco or cigars, or their substitutes, may have a sign on the front of his place of business stating that he is a dealer in the articles; provided that nothing herein shall be construed to prohibit the advertising of cigarettes, cigarette papers, chewing tobacco or smoking tobacco, or any substitute of either, in any newspaper, magazine or periodical printed or circulating in this state.

(2) Any advertisement for smokeless tobacco placed in a newspaper, magazine, or periodical published in this state must bear a warning which states: "Use of smokeless tobacco may cause oral cancer and other mouth disorders and is addictive." This warning must be in a conspicuous location and in conspicuous and legible type, in contrast with the typography, layout, and color of all other printed material in the advertisement. For purposes of this subsection, "smokeless tobacco" means any finely cut, ground, powdered, or leaf tobacco that is intended to be placed in the oral cavity or nasal passage. In the event the United States Congress passes legislation which requires warnings in advertisements of smokeless tobacco, the specific language

required to be placed in advertisements by that legislation shall take precedence over this subsection.

Amended by Chapter 66, 1986 General Session

76-10-103. Permitting minors to use tobacco in place of business.

It is a class C misdemeanor for the proprietor of any place of business to knowingly permit persons under age 19 to frequent a place of business while they are using tobacco.

Enacted by Chapter 196, 1973 General Session

76-10-104. Providing a cigar, cigarette, electronic cigarette, or tobacco to a minor -- Penalties.

(1) Any person who knowingly, intentionally, recklessly, or with criminal negligence provides any cigar, cigarette, electronic cigarette, or tobacco in any form, to any person under 19 years of age, is guilty of a class C misdemeanor on the first offense, a class B misdemeanor on the second offense, and a class A misdemeanor on subsequent offenses.

(2) For purposes of this section "provides":

(a) includes selling, giving, furnishing, sending, or causing to be sent; and

(b) does not include the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others or the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's content.

Amended by Chapter 114, 2010 General Session

76-10-104.1. Providing tobacco paraphernalia to minors -- Penalties.

(1) For purposes of this section:

(a) "Provides":

(i) includes selling, giving, furnishing, sending, or causing to be sent; and

(ii) does not include the acts of the United States Postal Service or other common carrier when engaged in the business of transporting and delivering packages for others or the acts of a person, whether compensated or not, who transports or delivers a package for another person without any reason to know of the package's content.

(b) "Tobacco paraphernalia":

(i) means any equipment, product, or material of any kind which is used, intended for use, or designed for use to package, repackage, store, contain, conceal, ingest, inhale, or otherwise introduce a cigar, cigarette, or tobacco in any form into the human body, including:

(A) metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(B) water pipes;
(C) carburetion tubes and devices;
(D) smoking and carburetion masks;
(E) roach clips: meaning objects used to hold burning material, such as a cigarette, that has become too small or too short to be held in the hand;
(F) chamber pipes;
(G) carburetor pipes;
(H) electric pipes;
(I) air-driven pipes;
(J) chillums;
(K) bongs; and
(L) ice pipes or chillers; and
(ii) does not include matches or lighters.
(2) (a) It is unlawful for a person to knowingly, intentionally, recklessly, or with criminal negligence provide any tobacco paraphernalia to any person under 19 years of age.
(b) A person who violates this section is guilty of a class C misdemeanor on the first offense and a class B misdemeanor on subsequent offenses.

Amended by Chapter 278, 2013 General Session

76-10-105. Buying or possessing a cigar, cigarette, electronic cigarette, or tobacco by a minor -- Penalty -- Compliance officer authority -- Juvenile court jurisdiction.
(1) Any 18 year old person who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is guilty of a class C misdemeanor and subject to:
(a) a minimum fine or penalty of $60; and
(b) participation in a court-approved tobacco education program, which may include a participation fee.
(2) Any person under the age of 18 who buys or attempts to buy, accepts, or has in the person's possession any cigar, cigarette, electronic cigarette, or tobacco in any form is subject to the jurisdiction of the Juvenile Court and:
(a) a minimum fine or penalty of $60; and
(b) participation in a court-approved tobacco education program, which may include a participation fee.
(3) A compliance officer appointed by a board of education under Section 53A-3-402 may issue citations for violations of this section committed on school property. Cited violations shall be reported to the appropriate juvenile court.

Amended by Chapter 114, 2010 General Session

76-10-105.1. Requirement of direct, face-to-face sale of tobacco products and electronic cigarettes -- Supremacy clause -- Penalties.
(1) As used in this section:

(a) "Cigarette tobacco" means a product that consists of loose tobacco that contains or delivers nicotine and is intended for use by a consumer in a cigarette.

(b) "Pipe tobacco" means a product that consists of loose tobacco that contains or delivers nicotine and is intended to be smoked by a consumer in a pipe.

(c) "Retailer" means a person who sells cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco to individuals for personal consumption or who operates a facility where a vending machine or a self-service display is permitted under Subsection (3)(b).

(d) "Self-service display" means a display of cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco products to which the public has access without the intervention of a retail employee.

(e) "Smokeless tobacco" means a product that consists of cut, ground, powdered, or leaf tobacco that contains nicotine and that is intended to be placed in the oral cavity.

(2) (a) Except as provided in Subsection (3), a retailer may sell cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, and smokeless tobacco only in a direct, face-to-face exchange between:

(i) an employee of the retailer; and

(ii) the purchaser.

(b) Examples of methods that are not permitted include vending machines and self-service displays.

(c) Subsections (2)(a) and (b) do not prohibit the use or display of locked cabinets containing cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco if the locked cabinets are accessible only to the retailer or the retailer's employees.

(3) The following sales are permitted as exceptions to Subsection (2):

(a) mail-order sales, if the provisions of Section 59-14-509 are met;

(b) sales from vending machines, including vending machines that sell packaged, single cigarettes or cigars, and self-service displays that are located in a separate and defined area within a facility where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter, at any time, unless accompanied by a parent or legal guardian; and

(c) sales by a retailer from a retail store which derives at least 80% of its revenue from tobacco and tobacco related products and where the retailer ensures that no person younger than 19 years of age is present, or permitted to enter at any time, unless accompanied by a parent or legal guardian.

(4) Any ordinance, regulation, or rule adopted by the governing body of a political subdivision of the state or by a state agency that affects the sale, placement, or display of cigarettes, electronic cigarettes, cigars, cigarette tobacco, pipe tobacco, or smokeless tobacco that is not essentially identical to the provisions of this section and Section 76-10-102 is superseded.

(5) (a) A parent or legal guardian who accompanies a person younger than 19 years of age into an area described in Subsection (3)(b) or into a retail store as described in Subsection (3)(c) and permits the person younger than 19 years of age to purchase or otherwise take a cigar, cigarette, electronic cigarette, or tobacco in any

form is guilty of providing tobacco as provided for in Section 76-10-104 and the penalties provided for in that section.

(b) Nothing in this section may be construed as permitting a person to provide tobacco to a minor in violation of Section 76-10-104.

(6) Violation of Subsection (2) or (3) is a:

(a) class C misdemeanor on the first offense;

(b) class B misdemeanor on the second offense; and

(c) class A misdemeanor on the third and all subsequent offenses.

Amended by Chapter 114, 2010 General Session

76-10-105.3. Prohibition of sale or gift of clove cigarettes.

It is unlawful for any person to knowingly sell, offer for sale, give or furnish any clove cigarette in this state. For purposes of this section "clove cigarette" means any cigarette which contains more than 10%, by weight, of raw eugenia caryophyllata or caryophyllus, commonly known as clove. Any person who violates this section is guilty of a class B misdemeanor.

Enacted by Chapter 188, 1986 General Session

76-10-107. Abuse of psychotoxic chemical solvents.

(1) A person is guilty of abuse of psychotoxic chemical solvents if:

(a) for the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of his brain or nervous system, he intentionally:

(i) smells or inhales the fumes of any psychotoxic chemical solvent; or

(ii) possesses, purchases, or attempts to possess or purchase any psychotoxic chemical solvent; or

(b) the person offers, sells, or provides a psychotoxic chemical solvent to another person, knowing that other person or a third party intends to possess or use that psychotoxic chemical solvent in violation of Subsection (1)(a).

(2) This section does not apply to the prescribed use, distribution, or sale of those substances for medical or dental purposes.

(3) Abuse of psychotoxic chemical solvents is a class B misdemeanor.

(4) As used in this section, psychotoxic chemical solvent includes any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, amyl nitrite or amyl nitrate or their isomers, benzene, butyl alcohol, butyl nitrite, butyl nitrate, or their isomers, ethyl alcohol, ethyl nitrite or ethyl nitrate, ethylene dichloride, isobutyl alcohol, methyl alcohol, methyl ethyl ketone, n-propyl alcohol, pentachlorophenol, petroleum ether, propyl nitrite or propyl nitrate or their isomers, toluene or xylene, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. Nothing in this section shall be construed to include any controlled substance regulated by the provisions of Title 58, Chapter 37, Utah Controlled Substances Act.

Amended by Chapter 23, 2002 General Session

76-10-107.5. Abuse of nitrous oxide -- Penalty.

(1) As used in this section, "nitrous oxide" means:

(a) N2O, a colorless gas or liquid that is also referred to as dinitrogen monoxide, nitrogen oxide, or laughing gas; and

(b) any substance containing nitrous oxide.

(2) A person is guilty of abuse of nitrous oxide who:

(a) possesses nitrous oxide with the intent to breathe, inhale, or ingest it for the purpose of:

(i) causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses;

(ii) in any manner changing, distorting, or disturbing the audio, visual, or mental processes;

(b) knowingly and intentionally is under the influence of nitrous oxide; or

(c) offers, sells, or provides nitrous oxide to another person, knowing that other person or a third party intends to possess or use the nitrous oxide in violation of Subsection (2)(a) or (b).

(3) Subsection (2)(b) does not apply to any person who is under the influence of nitrous oxide pursuant to an administration for the purpose of medical, surgical, or dental care by a person holding a license under state law that authorizes the administration of nitrous oxide.

(4) Subsection (2)(c) does not apply to any person who administers nitrous oxide for the purpose of medical, surgical, or dental care and who holds a license under state law that authorizes the administration of nitrous oxide.

(5) A violation of this section is a class A misdemeanor.

Enacted by Chapter 23, 2002 General Session

76-10-111. Prohibition of gift or free distribution of smokeless tobacco or electronic cigarettes -- Exceptions.

(1) The Legislature finds that:

(a) smokeless tobacco, or chewing tobacco, is harmful to the health of individuals who use those products because research indicates that they may cause mouth or oral cancers;

(b) the use of smokeless tobacco among juveniles in this state is increasing rapidly;

(c) the use of electronic cigarettes may lead to unhealthy behavior such as the use of tobacco products; and

(d) it is necessary to restrict the gift of the products described in this Subsection (1) in the interest of the health of the citizens of this state.

(2) Except as provided in Subsection (3), it is unlawful for a manufacturer, wholesaler, and retailer to give or distribute without charge any smokeless tobacco, chewing tobacco, or electronic cigarette in this state. Any person who violates this

section is guilty of a class C misdemeanor for the first offense, and is guilty of a class B misdemeanor for any subsequent offense.

(3) (a) Smokeless tobacco, chewing tobacco, or an electronic cigarette may be distributed to adults without charge at professional conventions where the general public is excluded.

(b) Subsection (2) does not apply to a retailer, manufacturer, or distributor who gives smokeless tobacco, chewing tobacco, or an electronic cigarette to a person of legal age upon the person's purchase of another tobacco product or electronic cigarette.

Amended by Chapter 114, 2010 General Session

76-10-112. Prohibition of distribution of cigarettes or other tobacco products -- Exceptions.

(1) Except as provided in Subsection (2), it is unlawful for a manufacturer, wholesaler, or retailer to give or distribute cigarettes or other tobacco products in this state without charge. Any person who violates this subsection is guilty of a class C misdemeanor for the first offense and a class B misdemeanor for any subsequent offense.

(2) Cigarettes and other tobacco products may be distributed to adults without charge at professional conventions where the general public is excluded.

(3) The prohibition described in Subsection (1) does not apply to retailers, manufacturers, or distributors who give cigarettes or other tobacco products to persons of legal age upon their purchase of cigarettes or other tobacco products.

Enacted by Chapter 193, 1989 General Session

76-10-201. Interference with water flow.

Every person who knowingly or intentionally interferes with or alters the flow of water in any stream, ditch, or lateral while under the control or management of any water commissioner is guilty of a crime punishable under Section 73-2-27.

Amended by Chapter 215, 2005 General Session

76-10-202. Taking water out of turn or excess amount -- Damaging facilities.

(1) No person may, in violation of any right of any other person knowingly or intentionally:

(a) turn or use the water, or any part thereof, of any canal, ditch, pipeline, or reservoir, except at a time when the use of the water has been duly distributed to the person;

(b) use any greater quantity of the water than has been duly distributed to him;

(c) in any way change the flow of water when lawfully distributed for irrigation or other useful purposes, except when duly authorized to make the change; or

(d) break or injure any dam, canal, pipeline, watergate, ditch, or other means of

diverting or conveying water for irrigation or other useful purposes.

(2) Subsection (1) applies to violations of any right to the use of water, including:

(a) a water right; or

(b) authorization of a person's use of water by:

(i) a water company, as defined in Subsection 73-3-3.5(1)(b); or

(ii) an entity having a valid water right under Utah law.

(3) Any person who violates this section is guilty of a crime punishable under Section 73-2-27.

Amended by Chapter 215, 2005 General Session

76-10-203. Obstruction of watergates.

Every person who rafts or floats logs, timber, or wood down any river or stream and allows the logs, timber, or wood to accumulate at or obstruct the watergates owned by any person or irrigation company taking or diverting the water of the river or stream for irrigation or manufacturing purposes is guilty of a crime punishable under Section 73-2-27.

Amended by Chapter 215, 2005 General Session

76-10-204. Damaging bridge, dam, canal or other water-related structure.

(1) A person is guilty of a third degree felony who intentionally, knowingly, or recklessly commits an offense under Subsection (2) that does not amount to a violation of Subsection 76-6-106(2)(b)(ii).

(2) Offenses referred to in Subsection (1) are when a person:

(a) cuts, breaks, damages, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, to drain or reclaim any swamp and overflowed or marsh land, to conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town;

(b) makes or causes to be made any aperture in any dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure with intent to injure or destroy it; or

(c) draws up, cuts, or injures any piles fixed in the ground and used for securing any lake or river bank or walls or any dock, quay, jetty, or lock.

Amended by Chapter 166, 2002 General Session

76-10-302. Marking of containers of explosives before transportation or storage.

Every person who knowingly leaves with or delivers to another, or to any express or railway company or other common carrier, or to any warehouse or storehouse, any package containing nitroglycerin, dynamite, guncotton, gunpowder, or other highly explosive compound, or any benzine, gasoline, phosphorus, or other highly

inflammable substance, or any vitriol, sulphuric, nitric, carbolic, muriatic, or other dangerous acid, chemical or compound, to be handled, stored, shipped, or transported, without plainly marking and indicating on such package the name and nature of the contents thereof, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-303. Powder houses.

Every person who builds, constructs, or uses within 300 feet of any residence or traveled county road any powder house, magazine, or building in which powder, dynamite, or other explosive is kept in quantities exceeding 500 pounds is guilty of a class B misdemeanor; provided that this section shall not apply to any magazine maintained at any mine or stone quarry.

Enacted by Chapter 196, 1973 General Session

76-10-304. Marking of containers of explosives held for sale or use.

It shall be a class A misdemeanor to sell or offer for sale or take or solicit orders of sale, or purchase or use, or have on hand or in store for the purpose of sale or use, any giant, hercules, atlas, venture or any other high explosive containing nitroglycerin, unless on each box or package and wrapper containing any such high explosive there shall be plainly stamped or printed the name and place of business of the person, partnership, or corporation by whom or by which it was manufactured, and the exact and true date of its manufacture, and the percentage of nitroglycerin or other high explosive contained therein.

Enacted by Chapter 196, 1973 General Session

76-10-305. Different dates on containers of explosives prohibited -- Reuse of containers prohibited.

It shall be unlawful for any person or persons, partnership, or corporation to have two or more different dates on any box or package containing giant, hercules, atlas, or venture, or any other high explosive containing nitroglycerin. It shall further be unlawful to use any box, package, or wrapper formerly used by any other person or persons, partnership, or corporation in the packing of such giant, hercules, atlas, venture, or other high explosive containing nitroglycerin, and the name and date on the box or package shall be the same as on the wrapper containing the giant, hercules, atlas, venture, or other explosive containing nitroglycerin.

Enacted by Chapter 196, 1973 General Session

76-10-306. Explosive, chemical, or incendiary device and parts -- Definitions -- Persons exempted -- Penalties.

(1) As used in this section:

(a) "Explosive, chemical, or incendiary device" means:

(i) dynamite and all other forms of high explosives, including water gel, slurry, military C-4 (plastic explosives), blasting agents to include nitro-carbon-nitrate, ammonium nitrate, fuel oil mixtures, cast primers and boosters, R.D.X., P.E.T.N., electric and nonelectric blasting caps, exploding cords commonly called detonating cord, detcord, or primacord, picric acid explosives, T.N.T. and T.N.T. mixtures, nitroglycerin and nitroglycerin mixtures, or any other chemical mixture intended to explode with fire or force;

(ii) any explosive bomb, grenade, missile, or similar device; and

(iii) any incendiary bomb, grenade, fire bomb, chemical bomb, or similar device, including any device, except kerosene lamps, if criminal intent has not been established, which consists of or includes a breakable container including a flammable liquid or compound and a wick composed of any material which, when ignited, is capable of igniting the flammable liquid or compound or any breakable container which consists of, or includes a chemical mixture that explodes with fire or force and can be carried, thrown, or placed.

(b) "Explosive, chemical, or incendiary device" does not include rifle, pistol, or shotgun ammunition, reloading components, or muzzleloading equipment.

(c) "Explosive, chemical, or incendiary parts" means any substances or materials or combinations which have been prepared or altered for use in the creation of an explosive, chemical, or incendiary device. These substances or materials include:

(i) timing device, clock, or watch which has been altered in such a manner as to be used as the arming device in an explosive;

(ii) pipe, end caps, or metal tubing which has been prepared for a pipe bomb; and

(iii) mechanical timers, mechanical triggers, chemical time delays, electronic time delays, or commercially made or improvised items which, when used singly or in combination, may be used in the construction of a timing delay mechanism, booby trap, or activating mechanism for any explosive, chemical, or incendiary device.

(d) "Explosive, chemical, or incendiary parts" does not include rifle, pistol, or shotgun ammunition, or any signaling device customarily used in operation of railroad equipment.

(2) The provisions in Subsections (3) and (6) do not apply to:

(a) any public safety officer while acting in an official capacity transporting or otherwise handling explosives, chemical, or incendiary devices;

(b) any member of the armed forces of the United States or Utah National Guard while acting in an official capacity;

(c) any person possessing a valid permit issued under the provisions of Uniform Fire Code, Article 77, or any employee of the permittee acting within the scope of employment;

(d) any person possessing a valid license as an importer, wholesaler, display operator, special effects operator, or flame effects operator under the provisions of Sections 11-3-3.5 and 53-7-223; and

(e) any person or entity possessing or controlling an explosive, chemical, or incendiary device as part of its lawful business operations.

(3) Any person is guilty of a second degree felony who, under circumstances not amounting to a violation of Title 76, Chapter 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly possesses or controls an explosive, chemical, or incendiary device.

(4) Any person is guilty of a first degree felony who, under circumstances not amounting to a violation of Title 76, Chapter 10, Part 4, Weapons of Mass Destruction, knowingly or intentionally:

(a) uses or causes to be used an explosive, chemical, or incendiary device in the commission of or an attempt to commit a felony;

(b) injures another or attempts to injure another person or another person's property through the use of an explosive, chemical, or incendiary device; or

(c) transports, possesses, distributes, or sells any explosive, chemical, or incendiary device in a secure area established pursuant to Section 76-8-311.1, 76-8-311.3, 76-10-529, or 78A-2-203.

(5) Any person who, under circumstances not amounting to a violation of Title 76, Chapter 10, Part 4, Weapons of Mass Destruction, knowingly, intentionally, or recklessly removes or causes to be removed or carries away any explosive, chemical, or incendiary device from the premises where the explosive, chemical, or incendiary device is kept by the lawful user, vendor, transporter, or manufacturer without the consent or direction of the lawful possessor is guilty of a second degree felony.

(6) Any person who, under circumstances not amounting to a violation of Title 76, Chapter 10, Part 4,Weapons of Mass Destruction, knowingly, intentionally, or recklessly possesses any explosive, chemical, or incendiary parts is guilty of a third degree felony.

Amended by Chapter 61, 2010 General Session

76-10-307. Explosive, chemical, or incendiary device -- Delivery to common carrier or mailing.

Any person is guilty of a felony of the second degree who delivers or causes to be delivered to any express or railway company or other common carrier, or to any person, any explosive, chemical, or incendiary device, knowing it to be the device, without informing the common carrier or person of its nature or sends it through the mail.

Amended by Chapter 97, 1999 General Session

76-10-308. Explosive, chemical, or incendiary device -- Venue of prosecution for shipping.

Any person who knowingly, intentionally, or recklessly delivers any explosive, chemical, or incendiary device to any person for transmission without the consent or direction of the lawful possessor may be prosecuted in the county in which he delivers it or in the county to which it is transmitted.

Repealed and Re-enacted by Chapter 75, 1993 General Session

76-10-401. Definitions.

As used in this part:

(1) "Biological agent" means any microorganism, virus, infectious substance, or biological product that may be engineered as a result of biotechnology, or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance, or biological product, that is capable of causing:

(a) death, disease, or other biological malfunction in a human, an animal, a plant, or another living organism;

(b) deterioration of food, water, equipment, supplies, or material of any kind; or

(c) deleterious alteration of the environment.

(2) "Delivery system" means:

(a) any apparatus, equipment, device, or means of delivery specifically designed to deliver or disseminate a biological agent, toxin, or vector; or

(b) any vector.

(3) "Hoax weapon of mass destruction" means any device or object that by its design, construction, content, or characteristics appears to be or to contain, or is represented to be, constitute, or contain, a weapon of mass destruction as defined in this section, but which is, in fact, an inoperative facsimile, imitation, counterfeit, or representation of a weapon of mass destruction which does not:

(a) meet the definition of a weapon of mass destruction; or

(b) actually contain or constitute a weapon, biological agent, toxin, vector, or delivery system prohibited by this section.

(4) "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi, or infectious substances, or a recombinant molecule, whatever its origin or method of production, including:

(a) any poisonous substance or biological product that may be engineered as a result of biotechnology produced by a living organism; or

(b) any poisonous isomer or biological product, homolog, or derivative of the substance under Subsection (4)(a).

(5) "Vector" means a living organism, or molecule, including a recombinant molecule, or biological product that may be engineered as a result of biotechnology, capable of carrying a biological agent or toxin to a host.

(6) (a) "Weapon of mass destruction" means:

(i) any item or instrumentality that is designed or intended to cause widespread death or serious bodily injury to multiple victims;

(ii) any item or instrumentality that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

(iii) any disease organism, including any biological agent, toxin, or vector which is used or intended to be used as a weapon;

(iv) any item or instrumentality that is designed to release radiation or radioactivity at a level dangerous to human life and that is used or intended to be used as a weapon; or

(v) any substance or material or combination which has been prepared or altered for use in the creation of a weapon described in Subsections (6)(a)(i) through

(iv).

(b) "Weapon of mass destruction" does not include firearms or rifle, pistol, or shotgun ammunition, reloading components, or muzzleloading equipment.

Repealed and Re-enacted by Chapter 166, 2002 General Session

76-10-402. Manufacture, possession, sale, use, or attempted use of a weapon of mass destruction prohibited -- Penalties.

A person who without lawful authority intentionally or knowingly manufactures, possesses, sells, delivers, displays, uses, attempts to use, solicits the use of, or conspires to use a weapon of mass destruction or a delivery system for a weapon of mass destruction, including any biological agent, toxin, vector, or delivery system as those terms are defined in this section, is guilty of a first degree felony.

Enacted by Chapter 166, 2002 General Session

76-10-403. Manufacture, possession, sale, use, or attempted use of a hoax weapon of mass destruction prohibited -- Penalty.

Any person who without lawful authority intentionally or knowingly manufactures, possesses, sells, delivers, displays, uses, attempts to use, solicits the use of, or conspires to use a hoax weapon of mass destruction with the intent to deceive or otherwise mislead another person into believing that the hoax weapon of mass destruction is a weapon of mass destruction is guilty of a second degree felony.

Enacted by Chapter 166, 2002 General Session

76-10-404. Exemptions.

This part does not apply to any member or employee of the Armed Forces of the United States, allied armed forces personnel, a federal or state governmental agency, or a private entity, who is engaged in lawful activity within the scope of his or her employment, if the person is authorized or licensed to manufacture, possess, sell, deliver, display, or otherwise engage in activity relative to this section and if the person is in compliance with applicable federal and state law.

Enacted by Chapter 166, 2002 General Session

76-10-405. Reimbursement of government response expenses.

In addition to any other penalty authorized by law, a court shall order any person convicted of any violation of this part 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.

Enacted by Chapter 166, 2002 General Session

76-10-500. Uniform law.

(1) The individual right to keep and bear arms being a constitutionally protected right, the Legislature finds the need to provide uniform laws throughout the state. Except as specifically provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

(a) prohibited from owning, possessing, purchasing, selling, transferring, transporting, or keeping any firearm at his place of residence, property, business, or in any vehicle lawfully in his possession or lawfully under his control; or

(b) required to have a permit or license to purchase, own, possess, transport, or keep a firearm.

(2) This part is uniformly applicable throughout this state and in all its political subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state except where the Legislature specifically delegates responsibility to local authorities or state entities. Unless specifically authorized by the Legislature by statute, a local authority or state entity may not enact or enforce any ordinance, regulation, or rule pertaining to firearms.

Enacted by Chapter 5, 1999 General Session

76-10-501. Definitions.

As used in this part:

(1) (a) "Antique firearm" means:

(i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; or

(ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the replica:

(A) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) uses rimfire or centerfire fixed ammunition which is:

(I) no longer manufactured in the United States; and

(II) is not readily available in ordinary channels of commercial trade; or

(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

(B) is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

(b) "Antique firearm" does not include:

(i) a weapon that incorporates a firearm frame or receiver;

(ii) a firearm that is converted into a muzzle loading weapon; or

(iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

(2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public Safety.

(3) (a) "Concealed dangerous weapon" means a dangerous weapon that is:

(i) covered, hidden, or secreted in a manner that the public would not be aware of its presence; and

(ii) readily accessible for immediate use.

(b) A dangerous weapon is not a concealed dangerous weapon if it is a firearm which is unloaded and is securely encased.

(4) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal Firearms Licensee, through the bureau or the local law enforcement agency where the firearms dealer conducts business.

(5) "Curio or relic firearm" means a firearm that:

(a) is of special interest to a collector because of a quality that is not associated with firearms intended for:

(i) sporting use;

(ii) use as an offensive weapon; or

(iii) use as a defensive weapon;

(b) (i) was manufactured at least 50 years before the current date; and

(ii) is not a replica of a firearm described in Subsection (5)(b)(i);

(c) is certified by the curator of a municipal, state, or federal museum that exhibits firearms to be a curio or relic of museum interest;

(d) derives a substantial part of its monetary value:

(i) from the fact that the firearm is:

(A) novel;

(B) rare; or

(C) bizarre; or

(ii) because of the firearm's association with an historical:

(A) figure;

(B) period; or

(C) event; and

(e) has been designated as a curio or relic firearm by the director of the United States Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.

(6) (a) "Dangerous weapon" means:

(i) a firearm; or

(ii) an object that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(b) The following factors are used in determining whether any object, other than a firearm, is a dangerous weapon:

(i) the location and circumstances in which the object was used or possessed;

(ii) the primary purpose for which the object was made;

(iii) the character of the wound, if any, produced by the object's unlawful use;

(iv) the manner in which the object was unlawfully used;

(v) whether the manner in which the object is used or possessed constitutes a potential imminent threat to public safety; and

(vi) the lawful purposes for which the object may be used.

(d) "Dangerous weapon" does not include an explosive, chemical, or incendiary device as defined by Section 76-10-306.

(7) "Dealer" means a person who is:

(a) licensed under 18 U.S.C. Sec. 923; and

(b) engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

(8) "Enter" means intrusion of the entire body.

(9) "Federal Firearms Licensee" means a person who:

(a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

(b) is engaged in the activities authorized by the specific category of license held.

(10) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle or short barreled rifle, or a device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

(b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an antique firearm.

(11) "Firearms transaction record form" means a form created by the bureau to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

(12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

(13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

(b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol or revolver" do not include an antique firearm.

(14) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.

(15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

(16) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.

(17) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

(18) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.

(19) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or a dangerous weapon made from a

rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

(20) "State entity" means a department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(21) "Violent felony" has the same meaning as defined in Section 76-3-203.5.

Amended by Chapter 428, 2014 General Session

76-10-502. When weapon deemed loaded.

(1) For the purpose of this chapter, any pistol, revolver, shotgun, rifle, or other weapon described in this part shall be deemed to be loaded when there is an unexpended cartridge, shell, or projectile in the firing position.

(2) Pistols and revolvers shall also be deemed to be loaded when an unexpended cartridge, shell, or projectile is in a position whereby the manual operation of any mechanism once would cause the unexpended cartridge, shell, or projectile to be fired.

(3) A muzzle loading firearm shall be deemed to be loaded when it is capped or primed and has a powder charge and ball or shot in the barrel or cylinders.

Amended by Chapter 328, 1990 General Session

76-10-503. Restrictions on possession, purchase, transfer, and ownership of dangerous weapons by certain persons -- Exceptions.

(1) For purposes of this section:

(a) A Category I restricted person is a person who:

(i) has been convicted of any violent felony as defined in Section 76-3-203.5;

(ii) is on probation or parole for any felony;

(iii) is on parole from a secure facility as defined in Section 62A-7-101;

(iv) within the last 10 years has been adjudicated delinquent for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5; or

(v) is an alien who is illegally or unlawfully in the United States.

(b) A Category II restricted person is a person who:

(i) has been convicted of any felony;

(ii) within the last seven years has been adjudicated delinquent for an offense which if committed by an adult would have been a felony;

(iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

(iv) is in possession of a dangerous weapon and is knowingly and intentionally in unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

(v) has been found not guilty by reason of insanity for a felony offense;

(vi) has been found mentally incompetent to stand trial for a felony offense;

(vii) has been adjudicated as mentally defective as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has

been committed to a mental institution;

(viii) has been dishonorably discharged from the armed forces; or

(ix) has renounced his citizenship after having been a citizen of the United States.

(c) As used in this section, a conviction of a felony or adjudication of delinquency for an offense which would be a felony if committed by an adult does not include:

(i) a conviction or adjudication of delinquency for an offense pertaining to antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to the regulation of business practices not involving theft or fraud; or

(ii) a conviction or adjudication of delinquency which, according to the law of the jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by court order, pardoned or regarding which the person's civil rights have been restored unless the pardon, reduction, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(d) It is the burden of the defendant in a criminal case to provide evidence that a conviction or adjudication of delinquency is subject to an exception provided in Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the conviction or adjudication of delinquency is not subject to that exception.

(2) A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a second degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a third degree felony.

(3) A Category II restricted person who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a third degree felony; or

(b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

(4) A person may be subject to the restrictions of both categories at the same time.

(5) If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control any dangerous weapon, the penalties of that section control.

(6) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of a member of the person's household or for administration to an animal owned by the person or a member of the person's household; or

(b) otherwise authorized by law to possess the substance.

(7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

(i) was possessed by the person or was under the person's custody or control before the person became a restricted person;

(ii) was not used in or possessed during the commission of a crime or subject to disposition under Section 24-3-103;

(iii) is not being held as evidence by a court or law enforcement agency;

(iv) was transferred to a person not legally prohibited from possessing the weapon; and

(v) unless a different time is ordered by the court, was transferred within 10 days of the person becoming a restricted person.

(b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person of a firearm or other dangerous weapon by a restricted person.

(8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or dangerous weapon to any person, knowing that the recipient is a person described in Subsection (1)(a) or (b).

(b) A person who violates Subsection (8)(a) when the recipient is:

(i) a person described in Subsection (1)(a) and the transaction involves a firearm, is guilty of a second degree felony;

(ii) a person described in Subsection (1)(a) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a third degree felony;

(iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is guilty of a third degree felony; or

(iv) a person described in Subsection (1)(b) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

(9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under circumstances which the person knows would be a violation of the law.

(b) A person may not provide to a dealer or other person any information that the person knows to be materially false information with intent to deceive the dealer or other person about the legality of a sale, transfer or other disposition of a firearm or dangerous weapon.

(c) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

(d) A person who violates this Subsection (9) is guilty of:

(i) a third degree felony if the transaction involved a firearm; or

(ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a firearm.

Amended by Chapter 299, 2014 General Session
Amended by Chapter 428, 2014 General Session

76-10-504. Carrying concealed dangerous weapon -- Penalties.

(1) Except as provided in Section 76-10-503 and in Subsections (2), (3), and (4), a person who carries a concealed dangerous weapon, as defined in Section 76-10-501, including an unloaded firearm on his or her person or one that is readily accessible for immediate use which is not securely encased, as defined in this part, in or on a place other than the person's residence, property, a vehicle in the person's lawful possession, or a vehicle, with the consent of the individual who is lawfully in possession of the vehicle, or business under the person's control is guilty of a class B misdemeanor.

(2) A person who carries a concealed dangerous weapon which is a loaded firearm in violation of Subsection (1) is guilty of a class A misdemeanor.

(3) A person who carries concealed an unlawfully possessed short barreled shotgun or a short barreled rifle is guilty of a second degree felony.

(4) If the concealed firearm is used in the commission of a violent felony as defined in Section 76-3-203.5, and the person is a party to the offense, the person is guilty of a second degree felony.

(5) Nothing in Subsection (1) or (2) shall prohibit a person engaged in the lawful taking of protected or unprotected wildlife as defined in Title 23, Wildlife Resources Code of Utah, from carrying a concealed weapon or a concealed firearm as long as the taking of wildlife does not occur:

(a) within the limits of a municipality in violation of that municipality's ordinances; or

(b) upon the highways of the state as defined in Section 41-6a-102.

Amended by Chapter 301, 2013 General Session

76-10-505. Carrying loaded firearm in vehicle or on street.

(1) Unless otherwise authorized by law, a person may not carry a loaded firearm:

(a) in or on a vehicle, unless:

(i) the vehicle is in the person's lawful possession; or

(ii) the person is carrying the loaded firearm in a vehicle with the consent of the person lawfully in possession of the vehicle;

(b) on a public street; or

(c) in a posted prohibited area.

(2) Subsection (1)(a) does not apply to a minor under 18 years of age, since a minor under 18 years of age may not carry a loaded firearm in or on a vehicle.

(3) Notwithstanding Subsection (1)(a)(i) and (ii), a person may not possess a loaded rifle, shotgun, or muzzle-loading rifle in a vehicle.

(4) A violation of this section is a class B misdemeanor.

Amended by Chapter 362, 2009 General Session

76-10-505.5. Possession of a dangerous weapon, firearm, or short barreled shotgun on or about school premises -- Penalties.

(1) As used in this section, "on or about school premises" means:

(a) (i) in a public or private elementary or secondary school; or

(ii) on the grounds of any of those schools;

(b) (i) in a public or private institution of higher education; or

(ii) on the grounds of a public or private institution of higher education; and

(iii) (A) inside the building where a preschool or child care is being held, if the entire building is being used for the operation of the preschool or child care; or

(B) if only a portion of a building is being used to operate a preschool or child care, in that room or rooms where the preschool or child care operation is being held.

(2) A person may not possess any dangerous weapon, firearm, or short barreled shotgun, as those terms are defined in Section 76-10-501, at a place that the person knows, or has reasonable cause to believe, is on or about school premises as defined in this section.

(3) (a) Possession of a dangerous weapon on or about school premises is a class B misdemeanor.

(b) Possession of a firearm or short barreled shotgun on or about school premises is a class A misdemeanor.

(4) This section does not apply if:

(a) the person is authorized to possess a firearm as provided under Section 53-5-704, 53-5-705, 76-10-511, or 76-10-523, or as otherwise authorized by law;

(b) the possession is approved by the responsible school administrator;

(c) the item is present or to be used in connection with a lawful, approved activity and is in the possession or under the control of the person responsible for its possession or use; or

(d) the possession is:

(i) at the person's place of residence or on the person's property; or

(ii) in any vehicle lawfully under the person's control, other than a vehicle owned by the school or used by the school to transport students.

(5) This section does not prohibit prosecution of a more serious weapons offense that may occur on or about school premises.

Amended by Chapter 301, 2013 General Session

76-10-506. Threatening with or using dangerous weapon in fight or quarrel.

(1) As used in this section:

(a) "Dangerous weapon" means an item that in the manner of its use or intended use is capable of causing death or serious bodily injury. The following factors shall be used in determining whether an item, object, or thing is a dangerous weapon:

(i) the character of the instrument, object, or thing;

(ii) the character of the wound produced, if any; and

(iii) the manner in which the instrument, object, or thing was exhibited or used.

(b) "Threatening manner" does not include:

(i) the possession of a dangerous weapon, whether visible or concealed, without additional behavior which is threatening; or

(ii) informing another of the actor's possession of a deadly weapon in order to

prevent what the actor reasonably perceives as a possible use of unlawful force by the other and the actor is not engaged in any activity described in Subsection 76-2-402(2)(a).

(2) Except as otherwise provided in Section 76-2-402 and for those persons described in Section 76-10-503, a person who, in the presence of two or more persons, and not amounting to a violation of Section 76-5-103, draws or exhibits a dangerous weapon in an angry and threatening manner or unlawfully uses a dangerous weapon in a fight or quarrel is guilty of a class A misdemeanor.

(3) This section does not apply to a person who, reasonably believing the action to be necessary in compliance with Section 76-2-402, with purpose to prevent another's use of unlawful force:

(a) threatens the use of a dangerous weapon; or

(b) draws or exhibits a dangerous weapon.

(4) This section does not apply to a person listed in Subsections 76-10-523(1)(a) through (e) in performance of the person's duties.

Amended by Chapter 248, 2014 General Session

76-10-507. Possession of deadly weapon with intent to assault.

Every person having upon his person any dangerous weapon with intent to unlawfully assault another is guilty of a class A misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-508. Discharge of firearm from a vehicle, near a highway, or in direction of any person, building, or vehicle -- Penalties.

(1) (a) A person may not discharge any kind of dangerous weapon or firearm:

(i) from an automobile or other vehicle;

(ii) from, upon, or across any highway;

(iii) at any road signs placed upon any highways of the state;

(iv) at any communications equipment or property of public utilities including facilities, lines, poles, or devices of transmission or distribution;

(v) at railroad equipment or facilities including any sign or signal;

(vi) within Utah State Park buildings, designated camp or picnic sites, overlooks, golf courses, boat ramps, and developed beaches; or

(vii) without written permission to discharge the dangerous weapon from the owner or person in charge of the property within 600 feet of:

(A) a house, dwelling, or any other building; or

(B) any structure in which a domestic animal is kept or fed, including a barn, poultry yard, corral, feeding pen, or stockyard.

(b) It is a defense to any charge for violating this section that the person being accused had actual permission of the owner or person in charge of the property at the time in question.

(2) A violation of any provision of Subsection (1) is a class B misdemeanor.

(3) In addition to any other penalties, the court shall:

(a) notify the Driver License Division of the conviction for purposes of any revocation, denial, suspension, or disqualification of a driver license under Subsection 53-3-220(1)(a)(xi); and

(b) specify in court at the time of sentencing the length of the revocation under Subsection 53-3-225(1)(c).

(4) This section does not apply to a person who:

(a) discharges any kind of firearm when that person is in lawful defense of self or others;

(b) is performing official duties as provided in Section 23-20-1.5 and Subsections 76-10-523(1)(a) through (e) and as otherwise provided by law; or

(c) discharges a dangerous weapon or firearm from an automobile or other vehicle, if:

(i) the discharge occurs at a firing range or training ground;

(ii) at no time after the discharge does the projectile that is discharged cross over or stop at a location other than within the boundaries of the firing range or training ground described in Subsection (4)(c)(i);

(iii) the discharge is made as practice or training for a lawful purpose;

(iv) the discharge and the location, time, and manner of the discharge are approved by the owner or operator of the firing range or training ground prior to the discharge; and

(v) the discharge is not made in violation of Subsection (1).

Amended by Chapter 248, 2014 General Session

76-10-508.1. Felony discharge of a firearm -- Penalties.

(1) Except as provided under Subsection (2) or (3), a person who discharges a firearm is guilty of a third degree felony punishable by imprisonment for a term of not less than three years nor more than five years if:

(a) the actor discharges a firearm in the direction of any person or persons, knowing or having reason to believe that any person may be endangered by the discharge of the firearm;

(b) the actor, with intent to intimidate or harass another or with intent to damage a habitable structure as defined in Section 76-6-101, discharges a firearm in the direction of any person or habitable structure; or

(c) the actor, with intent to intimidate or harass another, discharges a firearm in the direction of any vehicle.

(2) A violation of Subsection (1) which causes bodily injury to any person is a second degree felony punishable by imprisonment for a term of not less than three years nor more than 15 years.

(3) A violation of Subsection (1) which causes serious bodily injury to any person is a first degree felony.

(4) In addition to any other penalties for a violation of this section, the court shall:

(a) notify the Driver License Division of the conviction for purposes of any revocation, denial, suspension, or disqualification of a driver license under Subsection

53-3-220(1)(a)(xi); and

(b) specify in court at the time of sentencing the length of the revocation under Subsection 53-3-225(1)(c).

(5) This section does not apply to a person:

(a) who discharges any kind of firearm when that person is in lawful defense of self or others;

(b) who is performing official duties as provided in Section 23-20-1.5 or Subsections 76-10-523(1)(a) through (e) or as otherwise authorized by law; or

(c) who discharges a dangerous weapon or firearm from an automobile or other vehicle, if:

(i) the discharge occurs at a firing range or training ground;

(ii) at no time after the discharge does the projectile that is discharged cross over or stop at a location other than within the boundaries of the firing range or training ground described in Subsection (5)(c)(i);

(iii) the discharge is made as practice or training for a lawful purpose;

(iv) the discharge and the location, time, and manner of the discharge are approved by the owner or operator of the firing range or training ground prior to the discharge; and

(v) the discharge is not made in violation of Subsection (1).

Amended by Chapter 248, 2014 General Session

76-10-509. Possession of dangerous weapon by minor.

(1) A minor under 18 years of age may not possess a dangerous weapon unless he:

(a) has the permission of his parent or guardian to have the weapon; or

(b) is accompanied by a parent or guardian while he has the weapon in his possession.

(2) Any minor under 14 years of age in possession of a dangerous weapon shall be accompanied by a responsible adult.

(3) Any person who violates this section is guilty of:

(a) a class B misdemeanor upon the first offense; and

(b) a class A misdemeanor for each subsequent offense.

Amended by Chapter 10, 1993 Special Session 2

76-10-509.4. Prohibition of possession of certain weapons by minors.

(1) A minor under 18 years of age may not possess a handgun.

(2) Except as provided by federal law, a minor under 18 years of age may not possess the following:

(a) a short barreled rifle or short barreled shotgun; or

(b) a fully automatic weapon.

(3) Any person who violates Subsection (1) is guilty of:

(a) a class B misdemeanor upon the first offense; and

(b) a class A misdemeanor for each subsequent offense.

(4) Any person who violates Subsection (2) is guilty of a third degree felony.

Amended by Chapter 301, 2013 General Session

76-10-509.5. Penalties for providing certain weapons to a minor.

(1) Any person who provides a handgun to a minor when the possession of the handgun by the minor is a violation of Section 76-10-509.4 is guilty of:

(a) a class B misdemeanor upon the first offense; and

(b) a class A misdemeanor for each subsequent offense.

(2) Any person who transfers in violation of applicable state or federal law a short barreled rifle, short barreled shotgun, or fully automatic weapon to a minor is guilty of a third degree felony.

Amended by Chapter 301, 2013 General Session

76-10-509.6. Parent or guardian providing firearm to violent minor.

(1) A parent or guardian may not intentionally or knowingly provide a firearm to, or permit the possession of a firearm by, any minor who has been convicted of a violent felony as defined in Section 76-3-203.5 or any minor who has been adjudicated in juvenile court for an offense which would constitute a violent felony if the minor were an adult.

(2) Any person who violates this section is guilty of:

(a) a class A misdemeanor upon the first offense; and

(b) a third degree felony for each subsequent offense.

Amended by Chapter 303, 2000 General Session

76-10-509.7. Parent or guardian knowing of minor's possession of dangerous weapon.

Any parent or guardian of a minor who knows that the minor is in possession of a dangerous weapon in violation of Section 76-10-509 or a firearm in violation of Section 76-10-509.4 and fails to make reasonable efforts to remove the dangerous weapon or firearm from the minor's possession is guilty of a class B misdemeanor.

Amended by Chapter 428, 2014 General Session

76-10-509.9. Sales of firearms to juveniles.

(1) A person may not sell any firearm to a minor under 18 years of age unless the minor is accompanied by a parent or guardian.

(2) Any person who violates this section is guilty of a third degree felony.

Enacted by Chapter 13, 1993 Special Session 2

76-10-511. Possession of loaded firearm at residence or on real property authorized.

Except for persons described in Section 76-10-503 and 18 U.S.C. Sec. 922(g) and as otherwise prescribed in this part, a person may have a loaded firearm:

(1) at the person's place of residence, including any temporary residence or camp; or

(2) on the person's real property.

Amended by Chapter 362, 2009 General Session

76-10-512. Target concessions, shooting ranges, competitions, and hunting excepted from prohibitions.

(1) The provisions of Section 76-10-509 and Subsection 76-10-509.4(1) regarding possession of handguns by minors do not apply to any of the following:

(a) patrons firing at lawfully operated target concessions at amusement parks, piers, and similar locations provided that the firearms to be used are firmly chained or affixed to the counters;

(b) any person in attendance at a hunter's safety course or a firearms safety course;

(c) any person engaging in practice or any other lawful use of a firearm at an established range or any other area where the discharge of a firearm is not prohibited by state or local law;

(d) any person engaging in an organized competition involving the use of a firearm, or participating in or practicing for such competition;

(e) any minor under 18 years of age who is on real property with the permission of the owner, licensee, or lessee of the property and who has the permission of a parent or legal guardian or the owner, licensee, or lessee to possess a firearm not otherwise in violation of law;

(f) any resident or nonresident hunters with a valid hunting license or other persons who are lawfully engaged in hunting; or

(g) any person traveling to or from any activity described in Subsection (1)(b), (c), (d), (e), or (f) with an unloaded firearm in the person's possession.

(2) It is not a violation of Subsection 76-10-503(2) or (3) for a restricted person defined in Subsection 76-10-503(1) to own, possess, or have under the person's custody or control, archery equipment, including crossbows, for the purpose of lawful hunting and lawful target shooting.

(3) Notwithstanding Subsection (2), the possession of archery equipment, including crossbows, by a restricted person defined in Subsection 76-10-503(1) may be prohibited by:

(a) a court, as a condition of pre-trial release or probation; or

(b) the Board of Pardons and Parole, as a condition of parole.

Amended by Chapter 428, 2014 General Session

76-10-520. Number or mark assigned to pistol or revolver by Department of Public Safety.

The Department of Public Safety upon request may assign a distinguishing

number or mark of identification to any pistol or revolver whenever it is without a manufacturer's number, or other mark of identification or whenever the manufacturer's number or other mark of identification or the distinguishing number or mark assigned by the Department of Public Safety has been destroyed or obliterated.

Amended by Chapter 234, 1993 General Session

76-10-521. Unlawful marking of pistol or revolver.

(1) Any person who places or stamps on any pistol or revolver any number except one assigned to it by the Department of Public Safety is guilty of a class A misdemeanor.

(2) This section does not prohibit restoration by the owner of the name of the maker, model, or of the original manufacturer's number or other mark of identification when the restoration is authorized by the Department of Public Safety, nor prevent any manufacturer from placing in the ordinary course of business the name of the make, model, manufacturer's number, or other mark of identification upon a new pistol or revolver.

Amended by Chapter 234, 1993 General Session

76-10-522. Alteration of number or mark on pistol or revolver.

Any person who changes, alters, removes, or obliterates the name of the maker, the model, manufacturer's number, or other mark of identification, including any distinguishing number or mark assigned by the Department of Public Safety, on any pistol or revolver, without first having secured written permission from the Department of Public Safety to make the change, alteration, or removal, is guilty of a class A misdemeanor.

Amended by Chapter 234, 1993 General Session

76-10-523. Persons exempt from weapons laws.

(1) Except for Sections 76-10-506, 76-10-508, and 76-10-508.1, this part and Title 53, Chapter 5, Part 7, Concealed Firearm Act, do not apply to any of the following:

(a) a United States marshal;

(b) a federal official required to carry a firearm;

(c) a peace officer of this or any other jurisdiction;

(d) a law enforcement official as defined and qualified under Section 53-5-711;

(e) a judge as defined and qualified under Section 53-5-711; or

(f) a common carrier while engaged in the regular and ordinary transport of firearms as merchandise.

(2) The provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not apply to any person to whom a permit to carry a concealed firearm has been issued:

(a) pursuant to Section 53-5-704; or

(b) by another state or county.

(3) Except for Sections 76-10-503, 76-10-506, 76-10-508, and 76-10-508.1, this part and Title 53, Chapter 5, Part 7, Concealed Firearm Act, do not apply to a nonresident traveling in or though the state, provided that any firearm is:

(a) unloaded; and

(b) securely encased as defined in Section 76-10-501.

Amended by Chapter 248, 2014 General Session

76-10-523.5. Compliance with rules for secure facilities.

Any person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapons, shall comply with any rule established for secure facilities pursuant to Sections 53B-3-103, 76-8-311.1, 76-8-311.3, and 78A-2-203 and shall be subject to any penalty provided in those sections.

Amended by Chapter 3, 2008 General Session

76-10-524. Purchase of firearms pursuant to federal law.

This part will allow purchases of firearms and ammunition pursuant to U.S.C. Title 18 Chapter 44 Sec. 922b(3).

Amended by Chapter 360, 2004 General Session

76-10-526. Criminal background check prior to purchase of a firearm -- Fee -- Exemption for concealed firearm permit holders and law enforcement officers.

(1) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued under Section 53-5-705.

(2) (a) To establish personal identification and residence in this state for purposes of this part, a dealer shall require an individual receiving a firearm to present one photo identification on a form issued by a governmental agency of the state.

(b) A dealer may not accept a driving privilege card issued under Section 53-3-207 as proof of identification for the purpose of establishing personal identification and residence in this state as required under this Subsection (2).

(3) (a) A criminal history background check is required for the sale of a firearm by a licensed firearm dealer in the state.

(b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms Licensee.

(4) (a) An individual purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the bureau.

(b) The form shall contain the following information:

(i) the dealer identification number;

(ii) the name and address of the individual receiving the firearm;

(iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and

(iv) the Social Security number or any other identification number of the

individual receiving the firearm.

(5) (a) The dealer shall send the information required by Subsection (4) to the bureau immediately upon its receipt by the dealer.

(b) A dealer may not sell or transfer a firearm to an individual until the dealer has provided the bureau with the information in Subsection (4) and has received approval from the bureau under Subsection (7).

(6) The dealer shall make a request for criminal history background information by telephone or other electronic means to the bureau and shall receive approval or denial of the inquiry by telephone or other electronic means.

(7) When the dealer calls for or requests a criminal history background check, the bureau shall:

(a) review the criminal history files, including juvenile court records, to determine if the individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

(b) inform the dealer that:

(i) the records indicate the individual is prohibited; or

(ii) the individual is approved for purchasing, possessing, or transferring a firearm;

(c) provide the dealer with a unique transaction number for that inquiry; and

(d) provide a response to the requesting dealer during the call for a criminal background check, or by return call, or other electronic means, without delay, except in case of electronic failure or other circumstances beyond the control of the bureau, the bureau shall advise the dealer of the reason for the delay and give the dealer an estimate of the length of the delay.

(8) (a) The bureau may not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request, if the bureau determines that the individual receiving the firearm is not prohibited from purchasing, possessing, or transferring the firearm under state or federal law.

(b) However, the bureau shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

(9) If the criminal history background check discloses information indicating that the individual attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the bureau shall inform the law enforcement agency in the jurisdiction where the individual resides.

(10) If an individual is denied the right to purchase a firearm under this section, the individual may review the individual's criminal history information and may challenge or amend the information as provided in Section 53-10-108.

(11) The bureau shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the bureau under this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

(12) (a) (i) A dealer shall collect a criminal history background check fee of $7.50 for the sale of a firearm under this section.

(ii) This fee remains in effect until changed by the bureau through the process under Section 63J-1-504.

(b) (i) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the bureau by the last day of the month following the sale of a firearm.

(ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover the cost of administering and conducting the criminal history background check program.

(13) An individual with a concealed firearm permit issued under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

(a) the individual presents the individual's concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the bureau that the individual's concealed firearm permit is valid.

(14) A law enforcement officer, as defined in Section 53-13-103, is exempt from the background check fee required in this section for the purchase of a personal firearm to be carried while off-duty if the law enforcement officer verifies current employment by providing a letter of good standing from the officer's commanding officer and current law enforcement photo identification. This section may only be used by a law enforcement officer to purchase a personal firearm once in a 24-month period.

(15) (a) A dealer may participate in the redeemable coupon program described in this Subsection (15) and Subsection 53-10-202(18).

(b) A participating dealer shall:

(i) accept the redeemable coupon only from the individual whose name is on the coupon and apply it only toward the purchase of a gun safe;

(ii) collect the receipts from the purchase of gun safes using the redeemable coupon and send them to the Bureau of Criminal Identification for redemption; and

(iii) make the firearm safety brochure described in Subsection 53-10-202(18) available to customers free of charge.

Amended by Chapter 226, 2014 General Session

76-10-527. Penalties.

(1) A dealer is guilty of a class A misdemeanor who willfully and intentionally:

(a) requests, obtains, or seeks to obtain criminal history background information under false pretenses;

(b) disseminates criminal history background information; or

(c) violates Section 76-10-526.

(2) A person who purchases or transfers a firearm is guilty of a felony of the third degree if the person willfully and intentionally makes a false statement of the information required for a criminal background check in Section 76-10-526.

(3) Except as otherwise provided in Subsection (1), a dealer is guilty of a felony of the third degree if the dealer willfully and intentionally sells or transfers a firearm in violation of this part.

(4) A person is guilty of a felony of the third degree if the person purchases a firearm with the intent to:

(a) resell or otherwise provide a firearm to a person who is ineligible to purchase or receive a firearm from a dealer; or

(b) transport a firearm out of this state to be resold to an ineligible person.

Amended by Chapter 20, 2009 General Session

76-10-528. Carrying a dangerous weapon while under influence of alcohol or drugs unlawful.

(1) Any person who carries a dangerous weapon while under the influence of alcohol or a controlled substance as defined in Section 58-37-2 is guilty of a class B misdemeanor. Under the influence means the same level of influence or blood or breath alcohol concentration as provided in Subsections 41-6a-502(1)(a) through(c).

(2) It is not a defense to prosecution under this section that the person:

(a) is licensed in the pursuit of wildlife of any kind; or

(b) has a valid permit to carry a concealed firearm.

Amended by Chapter 226, 2008 General Session

76-10-529. Possession of dangerous weapons, firearms, or explosives in airport secure areas prohibited -- Penalty.

(1) As used in this section:

(a) "Airport authority" has the same meaning as defined in Section 72-10-102.

(b) "Dangerous weapon" is the same as defined in Section 76-10-501.

(c) "Explosive" is the same as defined for "explosive, chemical, or incendiary device" in Section 76-10-306.

(d) "Firearm" is the same as defined in Section 76-10-501.

(2) (a) Within a secure area of an airport established pursuant to this section, a person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapon Act, is guilty of:

(i) a class A misdemeanor if the person knowingly or intentionally possesses any dangerous weapon or firearm;

(ii) an infraction if the person recklessly or with criminal negligence possesses any dangerous weapon or firearm; or

(iii) a violation of Section 76-10-306 if the person transports, possesses, distributes, or sells any explosive, chemical, or incendiary device.

(b) Subsection (2)(a) does not apply to:

(i) persons exempted under Section 76-10-523; and

(ii) members of the state or federal military forces while engaged in the performance of their official duties.

(3) An airport authority, county, or municipality regulating the airport may:

(a) establish any secure area located beyond the main area where the public generally buys tickets, checks and retrieves luggage; and

(b) use reasonable means, including mechanical, electronic, x-ray, or any other

device, to detect dangerous weapons, firearms, or explosives concealed in baggage or upon the person of any individual attempting to enter the secure area.

(4) At least one notice shall be prominently displayed at each entrance to a secure area in which a dangerous weapon, firearm, or explosive is restricted.

(5) Upon the discovery of any dangerous weapon, firearm, or explosive, the airport authority, county, or municipality, the employees, or other personnel administering the secure area may:

(a) require the individual to deliver the item to the air freight office or airline ticket counter;

(b) require the individual to exit the secure area; or

(c) obtain possession or retain custody of the item until it is transferred to law enforcement officers.

Amended by Chapter 169, 2004 General Session

76-10-530. Trespass with a firearm in a house of worship or private residence -- Notice -- Penalty.

(1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53, Chapter 5, Part 7, Concealed Weapon Act, after notice has been given as provided in Subsection (2) that firearms are prohibited, may not knowingly and intentionally:

(a) transport a firearm into:

(i) a house of worship; or

(ii) a private residence; or

(b) while in possession of a firearm, enter or remain in:

(i) a house of worship; or

(ii) a private residence.

(2) Notice that firearms are prohibited may be given by:

(a) personal communication to the actor by:

(i) the church or organization operating the house of worship;

(ii) the owner, lessee, or person with lawful right of possession of the private residence; or

(iii) a person with authority to act for the person or entity in Subsections (2)(a)(i) and (ii);

(b) posting of signs reasonably likely to come to the attention of persons entering the house of worship or private residence;

(c) announcement, by a person with authority to act for the church or organization operating the house of worship, in a regular congregational meeting in the house of worship;

(d) publication in a bulletin, newsletter, worship program, or similar document generally circulated or available to the members of the congregation regularly meeting in the house of worship; or

(e) publication:

(i) in a newspaper of general circulation in the county in which the house of worship is located or the church or organization operating the house of worship has its

principal office in this state; and

(ii) as required in Section 45-1-101.

(3) A church or organization operating a house of worship and giving notice that firearms are prohibited may:

(a) revoke the notice, with or without supersedure, by giving further notice in any manner provided in Subsection (2); and

(b) provide or allow exceptions to the prohibition as the church or organization considers advisable.

(4) (a) (i) Within 30 days of giving or revoking any notice pursuant to Subsection (2)(c), (d), or (e), a church or organization operating a house of worship shall notify the division on a form and in a manner as the division shall prescribe.

(ii) The division shall post on its website a list of the churches and organizations operating houses of worship who have given notice under Subsection (4)(a)(i).

(b) Any notice given pursuant to Subsection (2)(c), (d), or (e) shall remain in effect until revoked or for a period of one year from the date the notice was originally given, whichever occurs first.

(5) Nothing in this section permits an owner who has granted the lawful right of possession to a renter or lessee to restrict the renter or lessee from lawfully possessing a firearm in the residence.

(6) A violation of this section is an infraction.

Amended by Chapter 388, 2009 General Session

76-10-532. Removal from National Instant Check System database.

(1) A person who is subject to the restrictions in Subsection 76-10-503(1)(b)(v), (vi), or (vii), or 18 U.S.C. 922(d)(4) and (g)(4) based on a commitment, finding, or adjudication that occurred in this state may petition the district court in the county in which the commitment, finding, or adjudication occurred to remove the disability imposed.

(2) The petition shall be filed in the district court in the county where the commitment, finding, or adjudication occurred. The petition shall include:

(a) a listing of facilities, with their addresses, where the petitioner has ever received mental health treatment;

(b) a release signed by the petitioner to allow the prosecutor or county attorney to obtain the petitioner's mental health records;

(c) a verified report of a mental health evaluation conducted by a licensed psychiatrist occurring within 30 days prior to the filing of the petition, which shall include a statement regarding:

(i) the nature of the commitment, finding, or adjudication that resulted in the restriction on the petitioner's ability to purchase or possess a dangerous weapon;

(ii) the petitioner's previous and current mental health treatment;

(iii) the petitioner's previous violent behavior, if any;

(iv) the petitioner's current mental health medications and medication management;

(v) the length of time the petitioner has been stable;

(vi) external factors that may influence the petitioner's stability;

(vii) the ability of the petitioner to maintain stability with or without medication; and

(viii) whether the petitioner is dangerous to public safety; and

(d) a copy of the petitioner's state and federal criminal history record.

(3) The petitioner shall serve the petition on the prosecuting entity that prosecuted the case or, if the disability is not based on a criminal case, on the county or district attorney's office having jurisdiction where the petition was filed and the individual who filed the original action which resulted in the disability.

(4) The court shall schedule a hearing as soon as practicable. The petitioner may present evidence and subpoena witnesses to appear at the hearing. The prosecuting, county attorney, or the individual who filed the original action which resulted in the disability may object to the petition and present evidence in support of the objection.

(5) The court shall consider the following evidence:

(a) the facts and circumstances that resulted in the commitment, finding, or adjudication; and

(b) the person's mental health and criminal history records.

(6) The court shall grant the relief if the court finds by clear and convincing evidence that:

(a) the person is not a danger to the person or to others;

(b) the person is not likely to act in a manner dangerous to public safety; and

(c) the requested relief would not be contrary to the public interest.

(7) The court shall issue an order with its findings and send a copy to the bureau.

(8) The bureau, upon receipt of a court order removing a person's disability under Subsection 76-10-503(1)(b)(vii), shall send a copy of the court order to the National Instant Check System requesting removal of the person's name from the database. In addition, if the person is listed in a state database utilized by the bureau to determine eligibility for the purchase or possession of a firearm or to obtain a concealed firearm permit, the bureau shall remove the petitioner's name or send a copy of the court's order to the agency responsible for the database for removal of the petitioner's name.

(9) If the court denies the petition, the petitioner may not petition again for relief until at least two years after the date of the court's final order.

(10) The petitioner may appeal a denial of the requested relief. The review on appeal shall be de novo.

Enacted by Chapter 424, 2013 General Session

76-10-601. Definitions.

As used in this part:

(1) "Person" means any individual, organization, group, association, partnership, corporation, or any combination of them;

(2) "Professional fund raiser" means any person who for compensation or any

other consideration plans, conducts, or manages in this state, the solicitation of contributions for or on behalf of any charitable organization or any other person, or who engages in the business of, or holds himself out to persons in this state as independently engaged in the business of soliciting contributions for such purpose, but shall not include a bona fide officer or employee of a charitable organization;

(3) "Professional solicitor" means any person who is employed or retained for compensation by a professional fund raiser to solicit contributions in this state for charitable purposes;

(4) "Charitable organization" means any organization that is benevolent, philanthropic, patriotic, or eleemosynary or one purporting to be such;

(5) "Contribution" means the promise or grant of any money or property of any kind or value.

Enacted by Chapter 196, 1973 General Session

76-10-602. Use of person's name without consent for soliciting contribution prohibited -- Exception.

No charitable organization, professional fund raiser, or professional solicitor, seeking to raise funds for charitable purposes, shall use the name of any other person for the purpose of soliciting contributions, in this state, without the written consent of the person; provided that this section shall not apply to religious corporations or organizations, charities, agencies, and organizations operated, supervised, or controlled by or in connection with a religious corporation or organization.

Enacted by Chapter 196, 1973 General Session

76-10-603. Use of name without consent on stationery or as one who contributed to organization prohibited.

It is a violation of this part to use, without written consent, the name of a person for the purpose of soliciting contributions if the person's name is listed on any stationery, advertisement, brochure, or correspondence of a charitable organization, or his name is listed or referred to as one who has contributed to, sponsored, or endorsed the charitable organization or its activities.

Amended by Chapter 20, 1995 General Session

76-10-604. Violations -- Classification of offense.

Any person who violates the provisions of this part is guilty of a class B misdemeanor.

Amended by Chapter 20, 1995 General Session

76-10-701. Definitions.

As used in this part:

(1) "Bona fide stockholder of record" means a stockholder of record who has

acquired stock in good faith and is acting for a proper purpose reasonably related to his interests as a stockholder.

(2) "Director" means any of the persons having by law the direction or management of the affairs of a corporation, by whatever name the persons are described in its charter or known by law.

Enacted by Chapter 196, 1973 General Session

76-10-702. Fraudulent signing of stock subscriptions.

Every person who signs the name of a fictitious person to any subscription for, or agreement to take, stock in any corporation existing or proposed, and every person who signs to any subscription or agreement the name of any person, knowing that the person has no means or does not intend in good faith to comply with all the terms thereof, or under any understanding or agreement that the terms of the subscription or agreement are not to be complied with or enforced, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-703. Fraudulent documents relating to organization or increase of capital stock.

Every officer, agent, or clerk of any corporation, or any person proposing to organize a corporation, or to increase the capital stock of any corporation, who knowingly exhibits any false, forged, or altered book, paper, voucher, security, or other instrument of evidence to any public officer or board authorized by law to examine the organization of the corporation, or to investigate its affairs, or to allow an increase of its capital, with intent to deceive the officer or board in respect thereto, shall be guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-10-704. Misrepresenting person as officer, agent, member or promoter.

Every person who, without being authorized so to do, subscribes the name of another to, or inserts the name of another in, any prospectus, circular, or other advertisement or announcement of any corporation or joint stock association, existing or intended to be formed, with intent to permit it to be published, and thereby to lead persons to believe that the person whose name is so subscribed is an officer, agent, member, or promoter of such corporation or association, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-705. Concurrence by director in dividend or division of capital in violation of law.

Every director of any stock corporation except savings and loan or building and loan associations who concurs in any vote or act of the directors of the corporation or

any of them, by which it is intended either:

(1) to make any dividend except as permitted by Title 16, Chapter 10a, Utah Revised Business Corporation Act; or

(2) to divide, withdraw, or in any manner pay to the stockholders, or any of them, any part of the stated capital of the corporation except as permitted by Title 16, Chapter 10a, Utah Revised Business Corporation Act, is guilty of a class B misdemeanor.

Amended by Chapter 6, 1992 Special Session 3

76-10-706. Unlawful acts by director, officer or agent.

Every director, officer, or agent of any corporation or association who knowingly receives or possesses himself of any property of such corporation or association, otherwise than in payment of a just demand, and who, with intent to defraud, omits to make, or to cause or direct to be made, a full and true entry thereof in the books or accounts of the corporation or association; and every director, officer, agent, or member of any corporation or association who embezzles, abstracts, or willfully misapplies any of the money, funds, or credits of the corporation or association; or who, without authority from the directors, issues or puts in circulation any of the notes of the corporation or association; or who, without the authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree; or who makes any false entry in any book, report, or statement of the corporation or association; or who issues any fraudulent, fictitious, or illegal stock in any such corporation or association, with intent in either case to injure or defraud the corporation or association, or any other company, body politic, or corporate, or any individual person, or to deceive any officer of the corporation or association, or any agent appointed to examine the affairs of any such corporation or association; and every person who, with like intent, aids or abets any officer, clerk, or agent in any violation of this section is guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-10-707. False reports.

Every director, officer, or agent of any corporation or joint stock association who knowingly makes or concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition, containing any material statement which is false is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-708. Refusing inspection of books.

Every officer or agent of any corporation having or keeping an office within this state, who has in his custody or control the books of such corporation, and who refuses to give to a bona fide stockholder of record or member of the corporation, lawfully

demanding during office hours, the right to inspect or take a copy of it or of any part thereof, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-709. Presumption of director's knowledge of affairs.

Every director of a corporation or joint stock association is deemed to possess a knowledge of the affairs of his corporation as to enable him to determine whether any act, proceeding, or omission of its directors is a violation of this part.

Amended by Chapter 20, 1995 General Session

76-10-710. Presumption of director's concurrence in action if present at meeting -- Written dissent required.

Every director of a corporation or joint stock association who is present at a meeting of the directors at which any act, proceeding, or omission of the directors in violation of this part occurs is deemed to have concurred therein, unless he at the time causes, or in writing requires, his dissent therefrom to be entered in the minutes of the directors or forwards his dissent by registered mail to the secretary of the corporation immediately after the adjournment of the meeting.

Enacted by Chapter 196, 1973 General Session

76-10-711. Foreign corporations subject to laws.

It is no defense to a prosecution for a violation of any of the provisions of this part that the corporation was one created by the laws of another state, government, or country if it was one carrying on business or keeping an office therefor within this state.

Amended by Chapter 20, 1995 General Session

76-10-801. "Nuisance" defined -- Violation -- Classification of offense.

(1) A nuisance is any item, thing, manner, condition whatsoever that is dangerous to human life or health or renders soil, air, water, or food impure or unwholesome.

(2) Any person, whether as owner, agent, or occupant who creates, aids in creating, or contributes to a nuisance, or who supports, continues, or retains a nuisance, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-802. Befouling waters.

A person is guilty of a class B misdemeanor if he:

(1) Constructs or maintains a corral, sheep pen, goat pen, stable, pigpen, chicken coop, or other offensive yard or outhouse where the waste or drainage therefrom shall flow directly into the waters of any stream, well, or spring of water used

for domestic purposes; or

(2) Deposits, piles, unloads, or leaves any manure heap, offensive rubbish, or the carcass of any dead animal where the waste or drainage therefrom will flow directly into the waters of any stream, well, or spring of water used for domestic purposes; or

(3) Dips or washes sheep in any stream, or constructs, maintains, or uses any pool or dipping vat for dipping or washing sheep in such close proximity to any stream used by the inhabitants of any city or town for domestic purposes as to make the waters thereof impure or unwholesome; or

(4) Constructs or maintains any corral, yard, or vat to be used for the purpose of shearing or dipping sheep within 12 miles of any city or town, where the refuse or filth from the corral or yard would naturally find its way into any stream of water used by the inhabitants of any city or town for domestic purposes; or

(5) Establishes and maintains any corral, camp, or bedding place for the purpose of herding, holding, or keeping any cattle, horses, sheep, goats, or hogs within seven miles of any city or town, where the refuse or filth from the corral, camp, or bedding place will naturally find its way into any stream of water used by the inhabitants of any city or town for domestic purposes.

Enacted by Chapter 196, 1973 General Session

76-10-803. "Public nuisance" defined -- Agricultural operations.

(1) A public nuisance is a crime against the order and economy of the state and consists in unlawfully doing any act or omitting to perform any duty, which act or omission:

(a) annoys, injures, or endangers the comfort, repose, health, or safety of three or more persons;

(b) offends public decency;

(c) unlawfully interferes with, obstructs, or tends to obstruct, or renders dangerous for passage, any lake, stream, canal, or basin, or any public park, square, street, or highway;

(d) is a nuisance as defined in Section 78B-6-1107; or

(e) in any way renders three or more persons insecure in life or the use of property.

(2) An act which affects three or more persons in any of the ways specified in this section is still a nuisance regardless of the extent to which the annoyance or damage inflicted on individuals is unequal.

(3) (a) Activities conducted in the normal and ordinary course of agricultural operations, as defined in Subsection 78B-6-1101(7), and conducted in accordance with sound agricultural practices are presumed to be reasonable and not constitute a public nuisance under Subsection (1).

(b) Agricultural operations undertaken in conformity with federal, state, and local laws and regulations, including zoning ordinances, are presumed to be operating within sound agricultural practices.

Amended by Chapter 21, 2009 General Session

76-10-804. Maintaining, committing or failing to remove public nuisance -- Classification of offense.

Every person who maintains or commits any public nuisance, the punishment for which is not otherwise prescribed, or who willfully omits to perform any legal duty relating to the removal of a public nuisance, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-805. Carcass or offal -- Prohibitions relating to disposal -- Classification of offense.

Every person who puts the carcass of any dead animal, or the offal from any slaughter pen, corral, or butcher shop into any river, creek, pond, street, alley, or public highway, or road in common use, or who attempts to destroy it by fire, within one-fourth of a mile of any city or town is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-806. Action for abatement of public nuisance.

The county attorney of the county where the public nuisance exists, upon direction of the county executive, or city attorney of the city where the public nuisance exists, upon direction of the board of city commissioners, or attorney general, upon direction of the governor, or any of the above attorneys without the necessity of direction, is empowered to institute an action in the name of the county, city, or state, as the case may be, to abate a public nuisance. The action shall be brought in the district court of the district where the public nuisance exists and shall be in the form prescribed by the Rules of Civil Procedure of the State of Utah for injunctions, but none of the above attorneys shall be required to execute a bond with respect to the action. If the action is instituted, however, to abate the distribution or exhibition of material alleged to offend public decency, the action shall be in the form prescribed by the Rules of Civil Procedure of Utah for injunctions, but no restraining order or injunction shall issue except upon notice to the person sought to be enjoined; and that person shall be entitled to a trial of the issues commencing within three days after filing of an answer to the complaint and a decision shall be rendered by the court within two days after the conclusion of the trial. As used in this part, "distribute," "exhibit," and "material" mean the same as provided in Section 76-10-1201.

Amended by Chapter 227, 1993 General Session

76-10-807. Violation of order enjoining a public nuisance.

A person who knowingly violates any judgment or order abating or otherwise enjoining a public nuisance as defined under Section 76-10-803 is guilty of a class B misdemeanor.

Enacted by Chapter 99, 2010 General Session

76-10-808. Relief granted for public nuisance.

If the existence of a public nuisance as defined by subsection 76-10-803(1)(b) is admitted or established, either in a civil or criminal proceeding, a judgment shall be entered which shall:

(a) Permanently enjoin each defendant and any other person from further maintaining the nuisance at the place complained of and each defendant from maintaining such nuisance elsewhere;

(b) Direct the person enjoined to surrender to the sheriff of the county in which the action was brought any material in his possession which is subject to the injunction, and the sheriff shall seize and destroy this material; and

(c) Without proof of special injury direct that an accounting be had and all money and other consideration paid as admission to view any motion picture film determined to constitute a public nuisance, or paid for any publication determined to constitute a public nuisance, in either case without deduction for expenses, be forfeited and paid into the general fund of the county where the nuisance was maintained.

Enacted by Chapter 92, 1977 General Session

76-10-1001. Definitions.

For the purpose of this part:

(1) "Forged trademark," "forged trade name," "forged trade device," and "counterfeited trademark," "counterfeited trade name," "counterfeited trade device," or their equivalents, as used in this part, include every alteration or imitation of any trademark, trade name, or trade device so resembling the original as to be likely to deceive.

(2) "Trademark" or "trade name" or "trade device," as used in this part, includes every trademark registrable with the Division of Corporations and Commercial Code.

Amended by Chapter 66, 1984 General Session

76-10-1002. Forging or counterfeiting trademark, trade name or trade device.

Every person who willfully forges or counterfeits, or procures to be forged or counterfeited, any trademark, trade name, or trade device, usually affixed by any person, or by any association or union of workingmen, to his or its goods, which has been filed with the Division of Corporations and Commercial Code, with intent to pass off any goods to which the forged or counterfeited trademark, trade name, or trade device is affixed, or intended to be affixed, as the goods of the person or association or union of workingmen, is guilty of a class B misdemeanor.

Amended by Chapter 66, 1984 General Session

76-10-1003. Selling goods under counterfeited trademark, trade name or trade device.

Every person who sells or keeps for sale any goods upon or to which any

counterfeited trademark, trade name, or trade device has been affixed, after it has been filed with the Division of Corporations and Commercial Code, intending to represent the goods as the genuine goods of another, knowing it to be counterfeited, is guilty of a class B misdemeanor.

Amended by Chapter 66, 1984 General Session

76-10-1004. Sales in containers bearing registered trademark of substituted articles.

Every person who has or uses any container or similar article bearing or having in any way connected with it the registered trademark of another for the purpose of disposing, with intent to deceive or defraud, of any article or substance other than that which the container or similar article originally contained or was connected with by the owner of such trademark is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-1005. Using, destroying, concealing or possessing articles with registered trademark or service mark to deprive owner of use or possession -- Exception.

Every person who, without the consent of the owner of an article bearing the owner's validly registered trademark or service mark, uses, destroys, conceals, or possesses the article or who defaces or otherwise conceals the trademark or service mark upon the article with intent to deprive the owner of the use or possession of the article is guilty of a class B misdemeanor; provided, however, that nothing contained in this part shall be construed to apply to or restrict the transfer or use of wooden boxes or the re-use of burlap or cotton bags or sacks when those bags or sacks have been reversed inside out or the markings thereon have been concealed or obliterated to effectively demonstrate that the products contained therein do not purport to be the products of the owner of the registered trademark or service mark theretofore put upon those bags.

Amended by Chapter 20, 1995 General Session

76-10-1006. Selling or dealing with articles bearing registered trademark or service mark with intent to defraud.

Every person who, without the consent of the owner of an article bearing the owner's validly registered trademark or service mark, knowingly sells or traffics in the articles or who withholds the articles from the owner thereof with intent to defraud the owner thereof is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-1007. Use of registered trademark without consent.

Every person who adopts or in any way uses the registered trademark of another

without the consent of the owner thereof, is guilty of a class B misdemeanor.

Enacted by Chapter 196, 1973 General Session

76-10-1008. Inspections by trade commission.

Subject to the provisions of Section 76-10-1009 of this part, the Utah State Trade Commission may, for purposes of enforcement of this part, inspect the premises of any business operating in this state during regular business hours.

Amended by Chapter 20, 1995 General Session

76-10-1009. Violation as unfair trade practice and unfair competition -- Investigation and enforcement proceedings by trade commission.

Violation of a provision of this part is hereby declared to be an unfair trade practice and an unfair method of competition. The Utah state trade commission shall have jurisdiction over violations and may proceed against a violator as provided by the trade commission act. The trade commission may institute an investigation upon receiving an informal complaint from a person who claims to have been injured by the violation of this part. Upon receiving a sworn complaint from a person claiming to be injured by a violation of this part, the trade commission must institute an investigation. If evidence of a violation is found by the commission or is produced by the complainant, the commission must take appropriate enforcement proceedings as provided in the trade commission act.

Enacted by Chapter 196, 1973 General Session

76-10-1010. Action by law enforcement agencies on complaints.

Nothing in this part providing for enforcement by the trade commission shall be construed to deprive law enforcement agencies from assuming jurisdiction and acting upon a proper complaint as provided by law.

Enacted by Chapter 196, 1973 General Session

76-10-1101. Definitions.

As used in this part:

(1) (a) "Fringe gambling" means any gambling, lottery, or video gaming device which is:

(i) given, conducted, or offered for use or sale by a business in exchange for anything of value; or

(ii) given away incident to the purchase of other goods or services.

(b) "Fringe gambling" does not mean a promotional activity that is clearly ancillary to the primary activity of a business.

(c) Determination of whether a promotional activity is clearly ancillary under Subsection (1)(b) is by consideration of the totality of the circumstances, which may include one or more of these factors:

(i) the manner in which the business is marketed, advertised, or promoted;

(ii) whether and the degree to which the business provides instructions regarding the use or operation of the promotional activity, as compared to the use or operation of the goods or services sold by the business;

(iii) the availability and terms of any free play option to engage in the promotional activity;

(iv) whether any contest, sweepstakes, or other promotional entries provided to customers who purchase goods or services from the business provide any advantage in winning a prize over any advantage provided to participants in the promotional activity who do not purchase goods or services from the business;

(v) whether the goods or services promoted for purchase by the business are on terms that are commercially reasonable; and

(vi) whether any prize won by participation in the promotion may be parlayed into one or more additional opportunities to win an additional prize.

(2) (a) "Gambling" means risking anything of value for a return or risking anything of value upon the outcome of a contest, game, gaming scheme, or gaming device when the return or outcome:

(i) is based upon an element of chance; and

(ii) is in accord with an agreement or understanding that someone will receive something of value in the event of a certain outcome.

(b) "Gambling" includes a lottery and fringe gambling.

(c) "Gambling" does not include:

(i) a lawful business transaction; or

(ii) playing an amusement device that confers only an immediate and unrecorded right of replay not exchangeable for value.

(3) "Gambling bet" means money, checks, credit, or any other representation of value.

(4) "Gambling device or record" means anything specifically designed for use in gambling or used primarily for gambling.

(5) "Gambling proceeds" means anything of value used in gambling.

(6) "Internet gambling" or "online gambling" means gambling or gaming by use of:

(a) the Internet; or

(b) any mobile electronic device that allows access to data and information.

(7) "Lottery" means any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining property, or portion of it, or for any share or any interest in property, upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, raffle, or gift enterprise, or by whatever name it is known.

(8) "Video gaming device" means any device that possesses all of the following characteristics:

(a) a video display and computer mechanism for playing a game;

(b) the length of play of any single game is not substantially affected by the skill, knowledge, or dexterity of the player;

(c) a meter, tracking, or recording mechanism that records or tracks any money, tokens, games, or credits accumulated or remaining;

(d) a play option that permits a player to spend or risk varying amounts of money, tokens, or credits during a single game, in which the spending or risking of a greater amount of money, tokens, or credits:

(i) does not significantly extend the length of play time of any single game; and

(ii) provides for a chance of greater return of credits, games, or money; and

(e) an operating mechanism that requires inserting money, tokens, or other valuable consideration in order to function.

Amended by Chapter 27, 2012 General Session
Amended by Chapter 157, 2012 General Session

76-10-1102. Gambling.

(1) A person is guilty of gambling if the person:

(a) participates in gambling, including any Internet or online gambling;

(b) knowingly permits any gambling to be played, conducted, or dealt upon or in any real or personal property owned, rented, or under the control of the actor, whether in whole or in part; or

(c) knowingly allows the use of any video gaming device that is:

(i) in any business establishment or public place; and

(ii) accessible for use by any person within the establishment or public place.

(2) Gambling is a class B misdemeanor, except that any person who is convicted two or more times under this section is guilty of a class A misdemeanor.

(3) (a) A person is guilty of a class A misdemeanor who intentionally provides or offers to provide any form of Internet or online gambling to any person in this state.

(b) Subsection (3)(a) does not apply to an Internet service provider or hosting company as defined in Section 76-10-1230, a provider of public telecommunications services as defined in Section 54-8b-2, or an Internet advertising service by reason of the fact that the Internet service provider, hosting company, Internet advertising service, or provider of public telecommunications services:

(i) transmits, routes, or provides connections for material without selecting the material; or

(ii) stores or delivers the material at the direction of a user.

(4) If any federal law is enacted that authorizes Internet gambling in the states and that federal law provides that individual states may opt out of Internet gambling, this state shall opt out of Internet gambling in the manner provided by federal law and within the time frame provided by that law.

(5) Whether or not any federal law is enacted that authorizes Internet gambling in the states, this section acts as this state's prohibition of any gambling, including Internet gambling, in this state.

Amended by Chapter 157, 2012 General Session

76-10-1103. Gambling fraud.

(1) A person is guilty of gambling fraud if he participates in gambling and wins or acquires to himself or another any gambling proceeds when he knows he has a lesser risk of losing or greater chance of winning than one or more of the other participants, and the risk is not known to all participants.

(2) A person convicted of gambling fraud shall be punished as in the case of theft of property of like value.

Enacted by Chapter 196, 1973 General Session

76-10-1104. Gambling promotion.

(1) A person is guilty of gambling promotion if he derives or intends to derive an economic benefit other than personal winnings from gambling and:

(a) he induces or aids another to engage in gambling; or

(b) he knowingly invests in, finances, owns, controls, supervises, manages, or participates in any gambling.

(2) Gambling promotion is a class B misdemeanor, provided, however that any person who is twice convicted under this section shall be guilty of a felony of the third degree.

Amended by Chapter 241, 1991 General Session

76-10-1104.5. Advertisement or solicitation for participation in lotteries -- Void in Utah.

(1) For purposes of this section:

(a) "Conspicuously printed" means printed in either larger or bolder type size than the adjacent and surrounding material so as to be clearly legible to any person viewing the print.

(b) "Lottery" means the same as defined in Section 76-10-1101.

(2) It is unlawful for any person to distribute or disseminate any advertisement or other written or printed material containing an advertisement or solicitation for participation in any lottery unless the advertisement or solicitation contains or includes the words "Void in Utah" conspicuously printed.

(3) (a) Any person who is convicted of violating Subsection (2) shall be fined the sum of $2,500.

(b) Any person who is twice or more convicted under this section shall be fined the sum of $10,000.

Enacted by Chapter 182, 2001 General Session

76-10-1105. Possessing a gambling device or record.

(1) A person is guilty of possessing a gambling device or record if he knowingly possesses it with intent to use it in gambling.

(2) Possession of a gambling device or record is a class B misdemeanor, provided, however, that any person who is twice convicted under this section shall be guilty of a class A misdemeanor, and any person who is convicted three or more times

under this section shall be guilty of a felony of the third degree.

Enacted by Chapter 196, 1973 General Session

76-10-1106. Duty of prosecuting attorney or law enforcement officer to prosecute offenses.

All prosecuting attorneys, sheriffs, constables, and peace officers who have reasonable cause to believe any person has violated any provisions of this part shall diligently prosecute those persons.

Amended by Chapter 118, 1990 General Session

76-10-1108. Seizure and disposition of gambling debts or proceeds.

Any gambling bets or gambling proceeds which are reasonably identifiable as having been used or obtained in violation of this part may be seized and are subject to forfeiture proceedings in accordance with Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act.

Amended by Chapter 180, 2007 General Session

76-10-1109. Confidence game -- Punishment as for theft -- Description in charge.

(1) Any person who obtains or attempts to obtain from any other person any money or property by any means, instrument or device commonly called a confidence game shall be punished as in the case of theft of property of like value.

(2) In every indictment, information, or complaint under this section, it shall be deemed and held a sufficient description of the offense to charge that the accused did, on, ____ (insert the date) unlawfully and knowingly obtain or attempt to obtain (as the case may be) from ____, (insert the name of the person or persons defrauded or attempted to be defrauded) his money or property (as the case may be) by means and by use of a confidence game.

Enacted by Chapter 196, 1973 General Session

76-10-1201. Definitions.

For the purpose of this part:

(1) "Blinder rack" means an opaque cover that covers the lower 2/3 of a material so that the lower 2/3 of the material is concealed from view.

(2) "Contemporary community standards" means those current standards in the vicinage where an offense alleged under this part has occurred, is occurring, or will occur.

(3) "Distribute" means to transfer possession of materials whether with or without consideration.

(4) "Exhibit" means to show.

(5) (a) "Harmful to minors" means that quality of any description or

representation, in whatsoever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse when it:

(i) taken as a whole, appeals to the prurient interest in sex of minors;

(ii) is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

(iii) taken as a whole, does not have serious value for minors.

(b) Serious value includes only serious literary, artistic, political or scientific value for minors.

(6) (a) "Knowingly," regarding material or a performance, means an awareness, whether actual or constructive, of the character of the material or performance.

(b) As used in this Subsection (6), a person has constructive knowledge if a reasonable inspection or observation under the circumstances would have disclosed the nature of the subject matter and if a failure to inspect or observe is either for the purpose of avoiding the disclosure or is criminally negligent as described in Section 76-2-103.

(7) "Material" means anything printed or written or any picture, drawing, photograph, motion picture, or pictorial representation, or any statue or other figure, or any recording or transcription, or any mechanical, chemical, or electrical reproduction, or anything which is or may be used as a means of communication. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects.

(8) "Minor" means any person less than 18 years of age.

(9) "Negligently" means simple negligence, the failure to exercise that degree of care that a reasonable and prudent person would exercise under like or similar circumstances.

(10) "Nudity" means:

(a) the showing of the human male or female genitals, pubic area, or buttocks, with less than an opaque covering;

(b) the showing of a female breast with less than an opaque covering, or any portion of the female breast below the top of the areola; or

(c) the depiction of covered male genitals in a discernibly turgid state.

(11) "Performance" means any physical human bodily activity, whether engaged in alone or with other persons, including singing, speaking, dancing, acting, simulating, or pantomiming.

(12) "Public place" includes a place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding its being designated a private club or by words of like import.

(13) "Sadomasochistic abuse" means:

(a) flagellation or torture by or upon a person who is nude or clad in undergarments, a mask, or in a revealing or bizarre costume; or

(b) the condition of being fettered, bound, or otherwise physically restrained on the part of a person clothed as described in Subsection (13)(a).

(14) "Sexual conduct" means acts of masturbation, sexual intercourse, or any touching of a person's clothed or unclothed genitals, pubic area, buttocks, or, if the person is a female, breast, whether alone or between members of the same or opposite

sex or between humans and animals in an act of apparent or actual sexual stimulation or gratification.

(15) "Sexual excitement" means a condition of human male or female genitals when in a state of sexual stimulation or arousal, or the sensual experiences of humans engaging in or witnessing sexual conduct or nudity.

Amended by Chapter 278, 2013 General Session

76-10-1203. Pornographic material or performance -- Expert testimony not required.

(1) Any material or performance is pornographic if:

(a) The average person, applying contemporary community standards, finds that, taken as a whole, it appeals to prurient interest in sex;

(b) It is patently offensive in the description or depiction of nudity, sexual conduct, sexual excitement, sadomasochistic abuse, or excretion; and

(c) Taken as a whole it does not have serious literary, artistic, political or scientific value.

(2) In prosecutions under this part, where circumstances of production, presentation, sale, dissemination, distribution, exhibition, or publicity indicate that the matter is being commercially exploited by the defendant for the sake of its prurient appeal, this evidence is probative with respect to the nature of the matter and can justify the conclusion that, in the context in which it is used, the matter has no serious literary, artistic, political, or scientific value.

(3) Neither the prosecution nor the defense shall be required to introduce expert witness testimony as to whether the material or performance is or is not harmful to adults or minors or is or is not pornographic, or as to any element of the definition of pornographic, including contemporary community standards.

Amended by Chapter 92, 1977 General Session

76-10-1204. Distributing pornographic material -- Penalties -- Exemptions for Internet service providers and hosting companies.

(1) A person is guilty of distributing pornographic material when the person knowingly:

(a) sends or brings any pornographic material into the state with intent to distribute or exhibit it to others;

(b) prepares, publishes, prints, or possesses any pornographic material with intent to distribute or exhibit it to others;

(c) distributes or offers to distribute, or exhibits or offers to exhibit, any pornographic material to others;

(d) writes, creates, or solicits the publication or advertising of pornographic material;

(e) promotes the distribution or exhibition of material the person represents to be pornographic; or

(f) presents or directs a pornographic performance in any public place or any

place exposed to public view or participates in that portion of the performance which makes it pornographic.

(2) Each distributing of pornographic material as defined in Subsection (1) is a separate offense.

(3) It is a separate offense under this section for:

(a) each day's exhibition of any pornographic motion picture film; and

(b) each day in which any pornographic publication is displayed or exhibited in a public place with intent to distribute or exhibit it to others.

(4) (a) An offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than $1,000, plus $10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) An offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.

(c) An offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.

(d) Subsection (4)(a) supersedes Section 77-18-1.

(5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct prohibited under Subsection (1), (2), or (3) is guilty of a third degree felony and is subject to the penalties under Subsection (4)(a).

(6) (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:

(A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;

(ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and

(iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

Amended by Chapter 345, 2009 General Session

76-10-1205. Inducing acceptance of pornographic material -- Exemptions for Internet service providers and hosting companies.

(1) A person is guilty of inducing acceptance of pornographic material when he knowingly:

(a) requires or demands as a condition to a sale, allocation, consignment, or delivery for resale of any newspaper, magazine, periodical, book, publication, or other merchandise that the purchaser or consignee receive any pornographic material or material reasonably believed by the purchaser or consignee to be pornographic; or

(b) denies, revokes, or threatens to deny or revoke a franchise, or to impose any penalty, financial or otherwise, because of the failure or refusal to accept pornographic material or material reasonably believed by the purchaser or consignee to be pornographic.

(2) (a) An offense under this section is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than $1,000 plus $10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) This Subsection (2) supersedes Section 77-18-1.

(3) (a) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the Internet service provider's function of:

(A) transmitting or routing data from one person to another person; or

(B) providing a connection between one person and another person;

(ii) the Internet service provider does not intentionally aid or abet in the distribution of the pornographic material; and

(iii) the Internet service provider does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute the pornographic material.

(b) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

Amended by Chapter 337, 2007 General Session

76-10-1206. Dealing in material harmful to a minor -- Penalties --

Exemptions for Internet service providers and hosting companies.

(1) A person is guilty of dealing in material harmful to minors when, knowing or believing that a person is a minor, or having negligently failed to determine the proper age of a minor, the person intentionally:

(a) distributes or offers to distribute, or exhibits or offers to exhibit, to a minor or a person the actor believes to be a minor, any material harmful to minors;

(b) produces, performs, or directs any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors; or

(c) participates in any performance, before a minor or a person the actor believes to be a minor, that is harmful to minors.

(2) (a) Each separate offense under this section committed by a person 18 years of age or older is a third degree felony punishable by:

(i) a minimum mandatory fine of not less than $1,000, plus $10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than 14 days.

(b) Each separate offense under this section committed by a person 16 or 17 years of age is a class A misdemeanor.

(c) Each separate offense under this section committed by a person younger than 16 years of age is a class B misdemeanor.

(d) Subsection (2)(a) supersedes Section 77-18-1.

(3) (a) If a defendant 18 years of age or older has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a second degree felony punishable by:

(i) a minimum mandatory fine of not less than $5,000, plus $10 for each article exhibited up to the maximum allowed by law; and

(ii) incarceration, without suspension of sentence, for a term of not less than one year.

(b) If a defendant younger than 18 years of age has been previously convicted or adjudicated to be under the jurisdiction of the juvenile court under this section, each separate subsequent offense is a third degree felony.

(c) Subsection (3)(a) supersedes Section 77-18-1.

(d) (i) This section does not apply to an Internet service provider, as defined in Section 76-10-1230, a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:

(A) the distribution of pornographic material by the Internet service provider occurs only incidentally through the provider's function of:

(I) transmitting or routing data from one person to another person; or

(II) providing a connection between one person and another person;

(B) the provider does not intentionally aid or abet in the distribution of the pornographic material; and

(C) the provider does not knowingly receive from or through a person who

distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.

(ii) This section does not apply to a hosting company, as defined in Section 76-10-1230, if:

(A) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;

(B) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(C) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the pornographic material.

(4) A service provider, as defined in Section 76-10-1230, is not negligent under this section if it complies with Section 76-10-1231.

(5) A person 18 years of age or older who knowingly solicits, requests, commands, encourages, or intentionally aids another person younger than 18 years of age to engage in conduct in violation of Subsection (1) is guilty of a third degree felony and is subject to the penalties under Subsection (2)(a).

Amended by Chapter 345, 2009 General Session

76-10-1207. Use of real property by tenant or occupant -- Voiding of lease -- Allowance of such use by owner or lessor.

(1) If a tenant or occupant of real property uses this property for an activity for which he or his employee is convicted under any provision of this part, the conviction makes void the lease or other title under which he holds at the option of the fee owner or any intermediate lessor; and 10 days after the fee owner or any intermediate lessor gives notice in writing to the tenant or occupant that he is exercising the option, the right of possession to the property reverts in the person exercising the option. This option does not arise until all avenues of direct appeal from the conviction have been exhausted or abandoned by the tenant or occupant, or his employee.

(2) It shall be unlawful for a fee owner or intermediate lessor of real property to knowingly allow this property to be used for the purpose of distributing or exhibiting pornographic materials, or for pornographic performances, by a tenant or occupant if the tenant or occupant, or his employee, has been convicted under any provision of this part of an offense occurring on the same property and all avenues of direct appeal from the conviction have been exhausted or abandoned.

(a) "Allow" under this subsection (2) means a failure to exercise the option arising under subsection (1) within 10 days after the fee owner or lessor receives notice in writing from the county attorney of the county where the property is situated, or if situated in a city of the first or second class, from the city attorney of that city, that the property is being used for a purpose prohibited by this subsection (2).

(b) A willful violation of this subsection (2) is a class A misdemeanor and any

fine assessed, if not paid within 30 days after judgment, shall become a lien upon the property.

(3) Any tenant or occupant who receives a notice in writing that the fee owner or intermediate lessor is exercising the option provided by subsection (1) and who does not quit the premises within 10 days after the giving of that notice is guilty of a class A misdemeanor.

Enacted by Chapter 92, 1977 General Session

76-10-1207.5. Exemption -- Corrections treatment, programs.

This part does not apply to the Department of Corrections or any treatment program by or under contract with the department when the use of sexually explicit material that is pornographic is limited to the assessment or treatment of an offender as defined under Section 64-13-1.

Enacted by Chapter 138, 1990 General Session

76-10-1208. Affirmative defenses.

(1) It is an affirmative defense to prosecution under this part that the distribution of pornographic material is restricted to institutions or persons having scientific, educational, governmental, or other similar justification for possessing pornographic material.

(2) It is not a defense to prosecution under this part that the actor is a motion picture projectionist, usher, ticket-taker, bookstore employee, or otherwise is required to violate this part incident to the person's employment.

(3) It is an affirmative defense to prosecution under Section 76-10-1206, 76-10-1227, or 76-10-1228 for displaying or exhibiting an outer portion of material, that the material is:

(a) in a sealed opaque wrapper that covers at least the lower 2/3 of the material so that the lower 2/3 of the material is concealed from view;

(b) placed behind a blinder rack; or

(c) displayed in an area from which a minor is physically excluded if the material cannot be viewed by the minor from an area in which a minor is allowed.

Amended by Chapter 123, 2007 General Session

76-10-1209. Injunctive relief -- Jurisdiction -- Consent to be sued.

(1) The district courts of this state shall have full power, authority, and jurisdiction, upon application by any county attorney or city attorney within their respective jurisdictions or the attorney general, to issue any and all proper restraining orders, preliminary and permanent injunctions, and any other writs and processes appropriate to carry out and enforce the provisions of this part. No restraining order or injunction, however, shall issue except upon notice to the person sought to be enjoined. That person shall be entitled to a trial of the issues commencing within three days after filing of an answer to the complaint and a decision shall be rendered by the court within

two days after the conclusion of the trial. If a final order or judgment of injunction is entered against the person sought to be enjoined, this final order or judgment shall contain a provision directing the person to surrender to the sheriff of the county in which the action was brought any pornographic material in the person's possession which is subject to the injunction; and the sheriff shall be directed to seize and destroy this material.

(2) Any person not qualified to do business in the state who sends or brings any pornographic material into the state with the intent to distribute or exhibit it to others in this state consents that the person may be sued in any proceedings commenced under this section.

Amended by Chapter 43, 2010 General Session

76-10-1210. Relation to other laws.

(1) (a) It is not the intent of this part to prescribe or limit the regulation of pornographic materials or materials harmful to minors, and counties, cities, and other political subdivisions are specifically given the right to further regulate the materials.

(b) Without limitation, a political subdivision may further regulate materials by ordinances relating to:

(i) zoning;

(ii) licensing;

(iii) public nuisances;

(iv) a specific type of business such as adult bookstores or drive-in movies; or

(v) use of blinder racks.

(2) It is not the intent of this part to preclude the application of other laws of this state to pornographic materials or materials harmful to minors. Specifically, without limitation, this part is not in derogation of Sections 76-10-803 and 76-10-806.

(3) The commission of a crime under this part shall be considered to offend public decency under Section 76-10-803. It is the intent of this part to give the broadest meaning permissible under the federal and state constitutions to the words "offends public decency" in Section 76-10-803.

Amended by Chapter 123, 2007 General Session

76-10-1211. Separability clause.

If any clause, sentence, paragraph, or part of this part or its application to any person or circumstance shall for any reason be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder of this part or its application to other persons or circumstances but shall be confined in its operation to the clause, sentence, paragraph, persons, or circumstances, or part thereof directly involved in the controversy in which the judgment shall have been rendered.

Amended by Chapter 20, 1995 General Session

76-10-1212. Search and seizure -- Affidavit -- Issuance of warrant -- Hearing upon claim that material seized not pornographic or harmful to minors -- Procedures cumulative.

(1) An affidavit for a search warrant shall be filed with the magistrate describing with specificity the material sought to be seized. Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit for search warrant to afford the magistrate the opportunity to examine this material.

(2) Upon the filing of an affidavit for a search warrant, the magistrate shall determine, by examination of the material sought to be seized if attached, by examination of the affidavit describing the material, or by other manner or means that he finds necessary, whether probable cause exists to believe that the material is pornographic or harmful to minors and whether probable cause exists for the immediate issuance of a search warrant. Upon making this determination, he shall issue a search warrant ordering the seizure of the material described in the affidavit for a search warrant according to the provisions of the Utah Rules of Criminal Procedure.

(3) (a) If a search warrant is issued and material alleged to be pornographic or harmful to minors is seized under the provisions of this section, any person claiming to be in possession of this material or claiming ownership of it at the time of its seizure may file a notice in writing with the magistrate within 10 days after the date of the seizure, alleging that the material is not pornographic or harmful to minors.

(b) The magistrate shall set a hearing within seven days after the filing of this notice, or at another time to which the claimant might agree. At this hearing evidence may be presented as to whether there is probable cause to believe the material seized is pornographic or harmful to minors, and at the conclusion of the hearing the magistrate shall make a further determination of whether probable cause exists to believe that the material is pornographic or harmful to minors.

(c) A decision as to whether there is probable cause to believe the seized material is pornographic or harmful to minors shall be rendered by the court within two days after the conclusion of the hearing.

(d) If at the hearing the magistrate finds that no probable cause exists to believe that the material is pornographic or harmful to minors, then the material shall be returned to the person or persons from whom it was seized.

(e) If the material seized is a film, and the claimant demonstrates that no other copy of the film is available to him, the court shall allow the film to be copied at the claimant's expense pending the hearing.

(4) If a motion to suppress the evidence is granted on the grounds of an unlawful seizure, the property shall be restored unless it is subject to confiscation as contraband, in which case it may not be returned.

(5) (a) Procedures under this section for the seizure of allegedly pornographic material or material harmful to minors are cumulative of all other lawful means of obtaining evidence as provided by the laws of this state.

(b) This section does not prevent the obtaining of allegedly pornographic material or material harmful to minors by purchase, subpoena duces tecum, or under injunction proceedings as authorized by this act or by any other provision of law of the state.

Amended by Chapter 53, 2000 General Session

76-10-1213. Corporate defendants -- Summons -- Subpoena duces tecum.

(1) (a) The attendance in court of a corporation for purposes of commencing or prosecuting a criminal action against it under this part may be accomplished by the issuance and service of a summons. A summons shall be issued by a magistrate if he finds probable cause that material in the possession of the corporation against which the summons is sought is pornographic or harmful to minors, which finding shall be upon affidavit describing with specificity the material alleged to be pornographic or harmful to minors or by another manner or means the magistrate finds necessary.

(b) Where practical, the material alleged to be pornographic or harmful to minors shall be attached to the affidavit so as to afford the magistrate the opportunity to examine this material.

(c) The summons must be served upon the corporation by delivery of it to an officer, director, managing or general agent, or cashier, or assistant cashier of the corporation.

(2) The production of material alleged to be pornographic or harmful to minors in any proceedings under this part against a corporation may be compelled by the issuance and service of a subpoena duces tecum. This section does not prohibit or limit the use of a subpoena duces tecum in proceedings against natural persons under this part.

Amended by Chapter 53, 2000 General Session

76-10-1214. Conspiracy an offense -- Punishment.

(1) A conspiracy of two or more persons to commit any offense proscribed by this part is a third degree felony punishable for each separate offense by a minimum mandatory fine of not less than $1,000 and by imprisonment, without suspension of sentence in any way, for a term of not less than 60 days. This subsection supersedes Section 77-18-1.

(2) If a defendant has already been convicted once under this section, each separate further offense is a second degree felony punishable by a minimum mandatory fine of not less than $5,000 and by imprisonment, without suspension of sentence in any way, for a term of not less than one year. This subsection supersedes Section 77-18-1.

Amended by Chapter 163, 1990 General Session

76-10-1215. Prosecution by county, district, or city attorney -- Fines payable to county or city.

Prosecution for violation of any section of this part, including a felony violation, shall be brought by the county attorney or, if within a prosecution district, the district attorney of the county where the violation occurs. If the violation occurs, however, in a city of the first or second class, prosecution may be brought by either the county,

district, or city attorney, notwithstanding any provision of law limiting the powers of city attorneys. All fines imposed for the violation of this part shall be paid to the county or city of the prosecuting attorney, as the case may be.

Amended by Chapter 38, 1993 General Session

76-10-1216. Distribution of motion picture films -- Definitions.

As used in this act:

(1) "Exhibit" means to show in a public place or in a place where the public is admitted, whether or not an admission fee is charged.

(2) "Distributor" means any person from which a film is acquired by sale, lease, loan, or any other means, directly or indirectly, for the purpose of exhibiting it in this state or elsewhere but shall not include any person whose function with respect to any film is limited to the transportation or storage thereof.

(3) "Film" means what is usually known as a motion picture film and which is intended to be shown commercially for profit by devices of any kind whatsoever.

(4) "Person" includes a natural person, firm, association, partnership, or corporation.

(5) "Public place" includes any place to which admission is gained by payment of a membership or admission fee, however designated, notwithstanding it is designated as a private club or by words of like import.

Enacted by Chapter 92, 1977 General Session

76-10-1217. Intent to prevent commercial distribution and exhibition of pornographic films--Local regulation and other laws not limited.

(1) It is the intent of this act to prevent the commercial distribution and exhibition of films in this state which are pornographic. There is substantial evidence that elements of organized crime have engaged to an increasing degree in the production and distribution of such films and, therefore, it is the further intent of this act to facilitate the criminal prosecution of distributors of pornographic films.

(2) It is not the intent of this act to limit the regulation of films by counties, cities, towns, and other political subdivisions within the state, and these subdivisions are specifically given the right by this act to further regulate films. Nor is it the intent of this act to limit or abridge the power to otherwise prosecute violations of any other provisions of law including, but not limited to, those provisions of Part 12 of Title 76, Chapter 10.

Enacted by Chapter 93, 1977 General Session

76-10-1218. Qualification for exhibition and distribution of films required.

No person shall distribute any film for exhibition in this state unless that person is first qualified to do so nor exhibit any film in this state which was not acquired for exhibition, directly or indirectly, from a distributor qualified to distribute films in this state.

Enacted by Chapter 93, 1977 General Session

76-10-1219. Qualification for distribution of films.

(1) A distributor which is a corporation shall be qualified to distribute films within this state if:

(a) it is a domestic corporation in good standing or a foreign corporation authorized to transact business in this state; and

(b) it submits itself to the jurisdiction and laws of this state relating to being a distributor in this state.

(2) A distributor which is not a corporation shall be qualified to distribute films within this state if:

(a) it has and continuously maintains a registered office in this state; and

(b) it has a registered agent whose business address is at that registered office and which is either an individual residing and domiciled in this state, a domestic corporation in good standing, or a foreign corporation authorized to transact business in this state.

(3) This section shall not affect the right to serve any process, notice, or demand, required or permitted by law to be served upon a distributor, in any other manner provided by law.

Amended by Chapter 43, 2010 General Session
Amended by Chapter 324, 2010 General Session

76-10-1220. Change of registered office or agent by film distributor.

A distributor qualified to distribute films in this state may change its registered office or registered agent in accordance with Title 16, Chapter 17, Model Registered Agents Act.

Amended by Chapter 43, 2010 General Session

76-10-1221. Service of process, notice, or demand on registered agent of film distributor.

Any process, notice, or demand required or permitted by law to be served upon the distributor may be served upon the registered agent of that distributor.

Amended by Chapter 43, 2010 General Session

76-10-1222. Distribution of pornographic film -- Penalties for violations.

(1) Any person who knowingly or by criminal negligence distributes for exhibition within this state a film which is pornographic as that term is defined in the Utah criminal code shall be guilty of a class A misdemeanor and shall, for each separate offense, be fined not less than $1,000 and imprisoned, without suspension of sentence in any way, for a term of not less than 60 days.

(2) Any person convicted of a violation of this section who has been convicted

before of a violation of this section, shall be guilty of a felony of the third degree and shall, for each separate offense, be fined not less than $5,000 and imprisoned, without suspension of sentence in any way, for a term of not less than six months.

(3) Each copy of a pornographic film distributed for exhibition within this state in violation of this section shall constitute a separate offense.

Enacted by Chapter 93, 1977 General Session

76-10-1223. Distribution of film without being qualified -- Exhibition of film not acquired from qualified distributor -- Penalties for violations.

(1) Any person who knowingly distributes any film for exhibition within this state without being qualified to do so, or who knowingly exhibits a film in this state which has not been acquired from a distributor qualified to distribute films in this state is guilty of a class B misdemeanor and shall, for each separate offense, be fined not less than $299 and imprisoned, without suspension of sentence in any way, for a term of not less than 30 days.

(2) Any person convicted of a violation of this section, who has been convicted before of a violation of this section, shall be guilty of a class A misdemeanor and shall, for each separate offense, be fined not less than $1,000 and imprisoned, without suspension of sentence in any way, for a term of not less than 60 days.

(3) Each day's exhibition of such a film, and each copy of a film distributed for exhibition within this state, shall constitute a separate offense.

Enacted by Chapter 93, 1977 General Session

76-10-1224. Defense to prosecution for distribution or exhibition of pornographic film -- Status as projectionist or other employee no defense.

(1) It shall be an affirmative defense to any prosecution under Section 76-10-1222 or 76-10-1223 that the distribution is exempt from the restrictions of this act by the provisions of Section 76-10-1226.

(2) It shall not constitute a defense to any prosecution under Section 76-10-1222 or 76-10-1223 that the actor was a motion picture projectionist or was otherwise required by his employment to commit the violation complained of.

Enacted by Chapter 93, 1977 General Session

76-10-1225. Prosecution of pornographic film violations by county attorney, district attorney, or city attorney.

The county attorney of the county where the violation occurred or within a prosecution district where the violation occurred, the district attorney shall file and prosecute any action for violations of this act unless the violation occurs in a city of the first or second class. If the violation occurs in such a city, the action may be commenced and prosecuted by either the city attorney or the county attorney. All fines imposed for any violation of this act shall be paid to the political subdivision employing the prosecuting attorney.

Amended by Chapter 38, 1993 General Session

76-10-1226. Exemptions from application of film distribution act.

This part does not apply to any film:

(1) distributed to or exhibited by any accredited university, college, school, library, or other educational institution, church, or museum, if there is scientific, religious, or educational justification for the exhibition of the film; or

(2) exhibited by the Department of Corrections or exhibited as part of any treatment program operated by or under contract with the department if the exhibition of the film is solely for the assessment or treatment of an offender as defined under Section 64-13-1.

Amended by Chapter 138, 1990 General Session

76-10-1227. Indecent public displays -- Definitions.

(1) For purposes of this section and Section 76-10-1228:

(a) "Description or depiction of illicit sex or sexual immorality" means:

(i) human genitals in a state of sexual stimulation or arousal;

(ii) acts of human masturbation, sexual intercourse, or sodomy;

(iii) fondling or other erotic touching of human genitals or pubic region; or

(iv) fondling or other erotic touching of the human buttock or female breast.

(b) "Nude or partially denuded figure" means:

(i) less than completely and opaquely covering human:

(A) genitals;

(B) pubic regions;

(C) buttock; and

(D) female breast below a point immediately above the top of the areola; and

(ii) human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(2) (a) Subject to Subsection (2)(c), this section and Section 76-10-1228 do not apply to any material which, when taken as a whole, has serious value for minors.

(b) As used in Subsection (2)(a), "serious value" means having serious literary, artistic, political, or scientific value for minors, taking into consideration the ages of all minors who could be exposed to the material.

(c) A description or depiction of illicit sex or sexual immorality as defined in Subsection (1)(a)(i), (ii), or (iii) has no serious value for minors.

Amended by Chapter 123, 2007 General Session

76-10-1228. Indecent public displays -- Prohibitions -- Penalty.

(1) Subject to the affirmative defense in Subsection 76-10-1208(3), a person is guilty of a class A misdemeanor who willfully or knowingly:

(a) engages in the business of selling, lending, giving away, showing, advertising for sale, or distributing to a minor or has in the person's possession with

intent to engage in that business or to otherwise offer for sale or commercial distribution to a minor any material with:

(i) a description or depiction of illicit sex or sexual immorality; or

(ii) a nude or partially denuded figure; or

(b) publicly displays at newsstands or any other establishment frequented by minors, or where the minors are or may be invited as a part of the general public, any motion picture, or any live, taped, or recorded performance, or any still picture or photograph, or any book, pocket book, pamphlet, or magazine the cover or content of which:

(i) exploits, is devoted to, or is principally made up of one or more descriptions or depictions of illicit sex or sexual immorality; or

(ii) consists of one or more pictures of nude or partially denuded figures.

(2) (a) A violation of this section is punishable by:

(i) a minimum mandatory fine of not less than $500; and

(ii) incarceration, without suspension of sentence in any way, for a term of not less than 30 days.

(b) This section supersedes Section 77-18-1.

Amended by Chapter 123, 2007 General Session

76-10-1229.5. Breast feeding is not violation of this part.

A woman's breast feeding, including breast feeding in any location where the woman otherwise may rightfully be, does not under any circumstance constitute a violation of this part, irrespective of whether or not the breast is covered during or incidental to feeding.

Enacted by Chapter 131, 1995 General Session

76-10-1230. Definitions.

As used in Sections 76-10-1231 and 76-10-1233:

(1) "Consumer" means a natural person residing in this state who subscribes to a service provided by a service provider for personal or residential use.

(2) "Content provider" means a person domiciled in Utah or that generates or hosts content in Utah, and that creates, collects, acquires, or organizes electronic data for electronic delivery to a consumer with the intent of making a profit.

(3) (a) "Hosting company" means a person that provides services or facilities for storing or distributing content over the Internet without editorial or creative alteration of the content.

(b) A hosting company may have policies concerning acceptable use without becoming a content provider under Subsection (2).

(4) (a) "Internet service provider" means a person engaged in the business of providing a computer communications facility in Utah, with the intent of making a profit, through which a consumer may obtain access to the Internet.

(b) "Internet service provider" does not include a common carrier if it provides only telecommunications service.

(5) "Properly rated" means content using a labeling system to label material harmful to minors provided by the content provider in a way that:

(a) accurately apprises a consumer of the presence of material harmful to minors; and

(b) allows the consumer the ability to control access to material harmful to minors based on the material's rating by use of reasonably priced commercially available software, including software in the public domain.

(6) "Restrict" means to limit access to material harmful to minors by:

(a) properly rating content; or

(b) any other reasonable measures feasible under available technology.

(7) (a) Except as provided in Subsection (7)(b), "service provider" means an Internet service provider.

(b) "Service provider" does not include a person who does not terminate a service in this state, but merely transmits data through:

(i) a wire;

(ii) a cable; or

(iii) an antenna.

(c) "Service provider," notwithstanding Subsection (7)(b), includes a person who meets the requirements of Subsection (7)(a) and leases or rents a wire or cable for the transmission of data.

Amended by Chapter 297, 2008 General Session

76-10-1231. Data service providers -- Internet content harmful to minors.

(1) (a) Upon request by a consumer, a service provider shall filter content to prevent the transmission of material harmful to minors to the consumer.

(b) A service provider complies with Subsection (1)(a) if it uses a generally accepted and commercially reasonable method of filtering.

(2) At the time of a consumer's subscription to a service provider's service, or at the time this section takes effect if the consumer subscribes to the service provider's service at the time this section takes effect, the service provider shall notify the consumer in a conspicuous manner that the consumer may request to have material harmful to minors blocked under Subsection (1).

(3) (a) A service provider may comply with Subsection (1) by:

(i) providing in-network filtering to prevent receipt of material harmful to minors, provided that the filtering does not affect or interfere with access to Internet content for consumers who do not request filtering under Subsection (1); or

(ii) providing software, engaging a third party to provide software, or referring users to a third party that provides filtering software, by providing a clear and conspicuous hyperlink or written statement, for installation on the consumer's computer that blocks, in an easy-to-enable and commercially reasonable manner, receipt of material harmful to minors.

(b) A service provider may charge a consumer for providing filtering under Subsection (3)(a).

(4) If the attorney general determines that a service provider violates

Subsection (1) or (2), the attorney general shall:

(a) notify the service provider that the service provider is in violation of Subsection (1) or (2); and

(b) notify the service provider that the service provider has 30 days to comply with the provision being violated or be subject to Subsection (5).

(5) A service provider that intentionally or knowingly violates Subsection (1) or (2) is subject to a civil fine of $2,500 for each separate violation of Subsection (1) or (2), up to $10,000 per day.

(6) A proceeding to impose a civil fine under Subsection (5) may only be brought by the attorney general in a court of competent jurisdiction.

(7) (a) The Division of Consumer Protection within the Department of Commerce shall, in consultation with other entities as the Division of Consumer Protection considers appropriate, test the effectiveness of a service provider's system for blocking material harmful to minors under Subsection (1) at least annually.

(b) The results of testing by the Division of Consumer Protection under Subsection (7)(a) shall be made available to:

(i) the service provider that is the subject of the test; and

(ii) the public.

(c) The Division of Consumer Protection shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to fulfil its duties under this section.

Amended by Chapter 297, 2008 General Session
Amended by Chapter 382, 2008 General Session

76-10-1233. Content providers -- Material harmful to minors.

(1) A content provider that is domiciled in Utah, or generates or hosts content in Utah, shall restrict access to material harmful to minors.

(2) If the attorney general determines that a content provider violates Subsection (1), the attorney general shall:

(a) notify the content provider that the content provider is in violation of Subsection (1); and

(b) notify the content provider that the content provider has 30 days to comply with Subsection (1) or be subject to Subsection (3).

(3) (a) If a content provider intentionally or knowingly violates this section more than 30 days after receiving the notice provided under Subsection (2), the content provider is subject to a civil fine of $2,500 for each separate violation of Subsection (1), up to $10,000 per day.

(b) A proceeding to impose the civil fine under this section may be brought only by the state attorney general and shall be brought in a court of competent jurisdiction.

Amended by Chapter 297, 2008 General Session

76-10-1234. Rulemaking authority.

The Division of Consumer Protection shall make rules in accordance with Title

63G, Chapter 3, Utah Administrative Rulemaking Act, to establish acceptable rating methods to be implemented by a content provider under Subsection 76-10-1233(1).

Amended by Chapter 382, 2008 General Session

76-10-1235. Accessing pornographic or indecent material on school property.

(1) As used in this section:

(a) "Pornographic or indecent material" means any material:

(i) defined as harmful to minors in Section 76-10-1201;

(ii) described as pornographic in Section 76-10-1203; or

(iii) described in Section 76-10-1227.

(b) "School property" means property, including land and improvements, that a school district or charter school owns, leases, or occupies.

(2) Except as provided in Subsection (3), a person is guilty of accessing pornographic or indecent material on school property when the person willfully or knowingly creates, views, or otherwise gains access to pornographic or indecent material while present on school property, under circumstances not amounting to an attempted or actual violation of:

(a) distributing pornographic material as specified in Section 76-10-1204;

(b) inducing acceptance of pornographic material as specified in Section 76-10-1205;

(c) dealing in material harmful to a minor as specified in Section 76-10-1206; or

(d) indecent public displays as specified in Section 76-10-1228.

(3) This section does not apply to school or law enforcement personnel when the access to pornographic or indecent material on school property is limited to:

(a) investigation of a violation of this section; or

(b) enforcement of this section.

(4) Each separate offense under this section is:

(a) a class A misdemeanor if the person is 18 years of age or older; and

(b) a class B misdemeanor if the person is under 18 years of age.

(5) This section does not prohibit disciplinary action for actions that violate this section.

Enacted by Chapter 79, 2007 General Session

76-10-1301. Definitions.

For the purposes of this part:

(1) "Child" is a person younger than 18 years of age.

(2) "House of prostitution" means a place where prostitution or promotion of prostitution is regularly carried on by one or more persons under the control, management, or supervision of another.

(3) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(4) "Public place" means any place to which the public or any substantial group

of the public has access.

(5) "Sexual activity" means acts of masturbation, sexual intercourse, or any sexual act involving the genitals of one person and the mouth or anus of another person, regardless of the sex of either participant.

Amended by Chapter 196, 2013 General Session

76-10-1302. Prostitution.

(1) An individual is guilty of prostitution when the individual:

(a) engages in any sexual activity with another individual for a fee;

(b) is an inmate of a house of prostitution; or

(c) loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

(2) (a) Except as provided in Subsection (2)(b) or Section 76-10-1309, prostitution is a class B misdemeanor.

(b) Except as provided in Section 76-10-1309, an individual who is convicted a second time, and on all subsequent convictions, of a subsequent offense of prostitution under this section or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor.

(3) (a) As used in this Subsection (3):

(i) "Child" is as defined in Section 76-10-1301.

(ii) "Child engaged in prostitution" means a child who engages in conduct described in Subsection (1).

(iii) "Child engaged in sexual solicitation" means a child who offers or agrees to commit or engage in any sexual activity with another person for a fee under Subsection 76-10-1313(1)(a) or (c).

(iv) "Division" means the Division of Child and Family Services created in Section 62A-4a-103.

(v) "Receiving center" is as defined in Section 62A-7-101.

(b) Upon encountering a child engaged in prostitution or sexual solicitation, a law enforcement officer shall:

(i) conduct an investigation;

(ii) refer the child to the division;

(iii) if an arrest is made, bring the child to a receiving center, if available; and

(iv) contact the child's parent or guardian, if practicable.

(c) If a law enforcement officer refers a child to the division under Subsection (3)(b)(ii), the division shall:

(i) check the division's records to verify whether law enforcement referred the child to the division under Subsection (3)(b)(ii) on a prior occasion; and

(ii) provide the information described in Subsection (3)(c)(i) to the law enforcement officer.

(d) If law enforcement has not referred the child to the division under Subsection (3)(b)(ii) on at least one prior occasion, the division shall provide services to the child under Title 62A, Chapter 4a, Child and Family Services.

(e) If law enforcement has referred the child to the division under Subsection

(3)(b)(ii) on at least one prior occasion the child may be subject to delinquency proceedings under Title 62A, Chapter 7, Juvenile Justice Services, and Section 78A-6-601 through Section 78A-6-704.

Amended by Chapter 140, 2014 General Session

76-10-1303. Patronizing a prostitute.

(1) A person is guilty of patronizing a prostitute when the person:

(a) pays or offers or agrees to pay another person a fee for the purpose of engaging in an act of sexual activity; or

(b) enters or remains in a house of prostitution for the purpose of engaging in sexual activity.

(2) Patronizing a prostitute is a class B misdemeanor, except as provided in Subsection (3) or (4) and Section 76-10-1309.

(3) A violation of this section that is preceded by a conviction under this section or a conviction under local ordinance adopted under Section 76-10-1307 is a class A misdemeanor.

(4) If the patronizing of a prostitute under Subsection (1)(a) involves a child as the other person, a violation of Subsection (1)(a) is a third degree felony.

Amended by Chapter 30, 2013 General Session
Amended by Chapter 196, 2013 General Session

76-10-1304. Aiding prostitution.

(1) A person is guilty of aiding prostitution if the person:

(a) (i) solicits a person to patronize a prostitute;

(ii) procures or attempts to procure a prostitute for a patron; or

(iii) leases or otherwise permits a place controlled by the actor, alone or in association with another, to be used for prostitution or the promotion of prostitution; or

(iv) provides any service or commits any act that enables another person to commit a violation of this Subsection (1)(a) or facilitates another person's ability to commit any violation of this Subsection (1)(a); or

(b) solicits, receives, or agrees to receive any benefit for committing any of the acts prohibited by Subsection (1)(a).

(2) Aiding prostitution is a class B misdemeanor. However, a person who is convicted a second time, and on all subsequent convictions, under this section or under a local ordinance adopted in compliance with Section 76-10-1307 is guilty of a class A misdemeanor.

Amended by Chapter 56, 2012 General Session

76-10-1305. Exploiting prostitution.

(1) A person is guilty of exploiting prostitution if he:

(a) procures an inmate for a house of prostitution or place in a house of prostitution for one who would be an inmate;

(b) encourages, induces, or otherwise purposely causes another to become or remain a prostitute;

(c) transports a person into or within this state with a purpose to promote that person's engaging in prostitution or procuring or paying for transportation with that purpose;

(d) not being a child or legal dependent of a prostitute, shares the proceeds of prostitution with a prostitute pursuant to their understanding that he is to share therein; or

(e) owns, controls, manages, supervises, or otherwise keeps, alone or in association with another, a house of prostitution or a prostitution business.

(2) Exploiting prostitution is a felony of the third degree.

Amended by Chapter 1, 2000 General Session

76-10-1306. Aggravated exploitation of prostitution.

(1) A person is guilty of aggravated exploitation if:

(a) in committing an act of exploiting prostitution, as defined in Section 76-10-1305, the person uses any force, threat, or fear against any person;

(b) the person procured, transported, or persuaded or with whom the person shares the proceeds of prostitution is a child or is the spouse of the actor; or

(c) in the course of committing exploitation of prostitution, a violation of Section 76-10-1305, the person commits human trafficking or human smuggling, a violation of Section 76-5-308.

(2) Aggravated exploitation of prostitution is a second degree felony, except under Subsection (3).

(3) Aggravated exploitation of prostitution involving a child is a first degree felony.

Amended by Chapter 196, 2013 General Session

76-10-1307. Local ordinance consistent with code provisions.

An ordinance adopted by a local authority governing prostitution or aiding prostitution shall be consistent with the provisions of this part which govern those matters.

Enacted by Chapter 107, 1991 General Session

76-10-1308. Prosecution.

The following class A misdemeanors may be prosecuted by attorneys of cities and towns, as well as by prosecutors authorized elsewhere in this code to prosecute these alleged violations:

(1) class A misdemeanor violations of Section 76-10-1302; and

(2) class A misdemeanor violations of Section 76-10-1304.

Enacted by Chapter 107, 1991 General Session

76-10-1309. Enhanced penalties -- HIV positive offender.

A person who is convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 is guilty of a third degree felony if at the time of the offense the person is an HIV positive individual, and the person:

(1) has actual knowledge of the fact; or

(2) has previously been convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313.

Amended by Chapter 70, 2011 General Session

76-10-1310. Definitions.

(1) "HIV infection" means an indication of Human Immunodeficiency Virus (HIV) infection determined by current medical standards and detected by any of the following:

(a) presence of antibodies to HIV, verified by a positive confirmatory test, such as Western blot or other method approved by the Utah State Health Laboratory. Western blot interpretation will be based on criteria currently recommended by the Association of State and Territorial Public Health Laboratory Directors;

(b) presence of HIV antigen;

(c) isolation of HIV; or

(d) demonstration of HIV proviral DNA.

(2) "HIV positive individual" means a person who has an HIV infection as determined under Subsection (1).

(3) "Local law enforcement agency" means the agency responsible for investigation of the violations of Sections 76-10-1302, 76-10-1303, and 76-10-1313, the filing of charges which may lead to conviction, and the conducting of or obtaining the results of tests for HIV infection.

(4) "Positive" means an indication of the HIV infection as defined in Subsection (1).

(5) "Test" or "testing" means a test or tests for HIV infection in accordance with standards recommended by the Department of Health.

Amended by Chapter 70, 2011 General Session

76-10-1311. Mandatory testing -- Retention of offender medical file -- Civil liability.

(1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an HIV positive individual. The mandatory test shall be required and conducted prior to sentencing.

(2) If the mandatory test has not been conducted prior to sentencing, and the convicted offender is already confined in a county jail or state prison, such person shall be tested while in confinement.

(3) The local law enforcement agency shall cause the blood specimen of the

offender as defined in Subsection (1) confined in county jail to be taken and tested.

(4) The Department of Corrections shall cause the blood specimen of the offender defined in Subsection (1) confined in any state prison to be taken and tested.

(5) The local law enforcement agency shall collect and retain in the offender's medical file the following data:

(a) the HIV infection test results;

(b) a copy of the written notice as provided in Section 76-10-1312;

(c) photographic identification; and

(d) fingerprint identification.

(6) The local law enforcement agency shall classify the medical file as a private record pursuant to Subsection 63G-2-302(1)(b) or a controlled record pursuant to Section 63G-2-304.

(7) The person tested shall be responsible for the costs of testing, unless the person is indigent. The costs will then be paid by the local law enforcement agency or the Department of Corrections from the General Fund.

(8) (a) The laboratory performing testing shall report test results to only designated officials in the Department of Corrections, the Department of Health, and the local law enforcement agency submitting the blood specimen.

(b) Each department or agency shall designate those officials by written policy.

(c) Designated officials may release information identifying an offender under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under Subsection 63G-2-202(1) and for purposes of prosecution pursuant to Section 76-10-1309.

(9) (a) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly liable except when disclosure constitutes fraud or willful misconduct as provided in Section 63G-7-202.

(b) An employee of the local law enforcement agency, the Department of Corrections, or the Department of Health who discloses the HIV test results under this section is not civilly or criminally liable, except when disclosure constitutes a knowing violation of Section 63G-2-801.

(10) When the medical file is released as provided in Section 63G-2-803, the local law enforcement agency, the Department of Corrections, or the Department of Health or its officers or employees are not liable for damages for release of the medical file.

Amended by Chapter 382, 2008 General Session

76-10-1312. Notice to offender of HIV positive test results.

(1) A person convicted under Section 76-10-1302, 76-10-1303, or 76-10-1313 who has tested positive for the HIV infection shall be notified of the test results in person by:

(a) the local law enforcement agency;

(b) the Department of Corrections, for offenders confined in any state prison;

(c) the state Department of Health; or

(d) an authorized representative of any of the agencies listed in this Subsection (1).

(2) The notice under Subsection (1) shall contain the signature of the HIV positive person, indicating the person's receipt of the notice, the name and signature of the person providing the notice, and:

(a) the date of the test;

(b) the positive test results;

(c) the name of the HIV positive individual; and

(d) the following language:

"A person who has been convicted of prostitution under Section 76-10-1302, patronizing a prostitute under Section 76-10-1303, or sexual solicitation under Section 76-10-1313 after being tested and diagnosed as an HIV positive individual and either had actual knowledge that the person is an HIV positive individual or the person has previously been convicted of any of the criminal offenses listed above is guilty of a third degree felony under Section 76-10-1309."

(3) Failure to provide this notice, or to provide the notice in the manner or form prescribed under this section, does not create any civil liability and does not create a defense to any prosecution under this part.

(4) Upon conviction under Section 76-10-1309, and as a condition of probation, the offender shall receive treatment and counseling for HIV infection and drug abuse as provided in Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

Amended by Chapter 70, 2011 General Session

76-10-1313. Sexual solicitation -- Penalty.

(1) A person is guilty of sexual solicitation when the person:

(a) offers or agrees to commit any sexual activity with another person for a fee;

(b) pays or offers or agrees to pay a fee to another person to commit any sexual activity; or

(c) with intent to engage in sexual activity for a fee or to pay another person to commit any sexual activity for a fee engages in, offers or agrees to engage in, or requests or directs another to engage in any of the following acts:

(i) exposure of a person's genitals, the buttocks, the anus, the pubic area, or the female breast below the top of the areola;

(ii) masturbation;

(iii) touching of a person's genitals, the buttocks, the anus, the pubic area, or the female breast; or

(iv) any act of lewdness.

(2) An intent to engage in sexual activity for a fee may be inferred from a person's engaging in, offering or agreeing to engage in, or requesting or directing another to engage in any of the acts described in Subsection (1)(c) under the totality of the existing circumstances.

(3) (a) Sexual solicitation is a class B misdemeanor, except under Subsection (3)(b).

(b) Any person who is convicted a second or subsequent time under this section

or under a local ordinance adopted in compliance with Section 76-10-1307, is guilty of a class A misdemeanor, except as provided in Section 76-10-1309.

(4) If a person commits an act of sexual solicitation and the person solicited is a child, the offense is a third degree felony if the solicitation does not amount to human trafficking or human smuggling, a violation of Section 76-5-308, or aggravated human trafficking or aggravated human smuggling, a violation of Section 76-5-310.

Amended by Chapter 196, 2013 General Session

76-10-1314. Examination of testing procedures and results in legal proceedings.

(1) Employees of the laboratory who conduct laboratory analysis of blood samples for presence of antibody to HIV provided pursuant to a request by a law enforcement agency or the Department of Corrections under Section 76-10-1311, may be examined in a legal proceeding of any kind or character as to:

(a) the nature of the testing;

(b) the validity of the testing;

(c) the results of the test;

(d) the HIV positivity or negativity of the person tested;

(e) the evidentiary chain of custody; and

(f) other factors relevant to the prosecution, subject to the court's ruling.

(2) This section applies only to the criminal investigation and prosecution under Section 76-10-1309 which permits enhanced penalties upon a subsequent conviction for:

(a) prostitution, Section 76-10-1302;

(b) patronizing a prostitute, Section 76-10-1303; or

(c) sexual solicitation, Section 76-10-1313.

Enacted by Chapter 179, 1993 General Session

76-10-1501. Short title.

This act shall be known and may be cited as the "Bus Passenger Safety Act."

Enacted by Chapter 72, 1979 General Session

76-10-1502. Legislative findings.

The legislature finds that the continued orderly operation of bus transportation is beneficial to the commerce of the state and to the convenience of its citizens; that it is essential to the comfort, safety and well-being of bus passengers that orderly conduct be maintained; that the promotion of bus transportation is beneficial to the economy of the state and conservation of energy; and that an increasing number of citizens avail themselves of this mode of transportation.

Enacted by Chapter 72, 1979 General Session

76-10-1503. Definitions.

As used in this act:

(1) "Bus" means any passenger bus or coach or other motor vehicle having a seating capacity of 15 or more passengers operated by a bus company for the purpose of carrying passengers or cargo for hire and includes a transit vehicle, as defined in Section 17B-2a-802, of a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act.

(2) "Bus company" or "company" means any person, group of persons or corporation providing for-hire transportation to passengers or cargo by bus upon the highways in the state, including passengers and cargo in interstate or intrastate travel. These terms also include local public bodies, public transit districts, municipalities, public corporations, boards and commissions established under the laws of the state providing transportation to passengers or cargo by bus upon the highways in the state, whether or not for hire.

(3) "Charter" means a group of persons, pursuant to a common purpose and under a single contract, and at a fixed charge in accordance with a bus company's tariff, which has acquired the exclusive use of a bus to travel together to a specified destination or destinations.

(4) "Passenger" means any person transported or served by a bus company, including persons accompanying or meeting another being transported, any person shipping or receiving cargo and any person purchasing a ticket or receiving a pass.

(5) "Terminal" means a bus station or depot or any other facility operated or leased by or operated on behalf of a bus company and includes a transit facility, as defined in Section 17B-2a-802, of a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit District Act. This term includes a reasonable area immediately adjacent to any designated stop along the route traveled by any bus operated by a bus company and parking lots or areas adjacent to terminals.

Amended by Chapter 329, 2007 General Session

76-10-1504. Bus hijacking -- Assault with intent to commit hijacking -- Use of a dangerous weapon or firearm -- Penalties.

(1) (a) A person is guilty of bus hijacking if the person seizes or exercises control, by force or violence or threat of force or violence, of a bus within the state.

(b) Bus hijacking is a first degree felony.

(2) (a) A person is guilty of assault with the intent to commit bus hijacking if the person intimidates, threatens, or commits assault or battery toward a driver, attendant, guard, or any other person in control of a bus so as to interfere with the performance of duties by the person.

(b) Assault with the intent to commit bus hijacking is a second degree felony.

(3) A person who, in the commission of assault with intent to commit bus hijacking, uses a dangerous weapon, as defined in Section 76-1-601, is guilty of a first degree felony.

(4) (a) A person who boards a bus with a concealed dangerous weapon or firearm upon his person or effects is guilty of a third degree felony.

(b) The prohibition of Subsection (4)(a) does not apply to:
(i) individuals listed in Subsections 76-10-523(1)(a), (b), (c), (d), and (e);
(ii) a person licensed to carry a concealed weapon; or
(iii) persons in possession of weapons or firearms with the consent of the owner of the bus or the owner's agent, or the lessee or bailee of the bus.

Amended by Chapter 310, 2007 General Session

76-10-1505. Discharging firearms and hurling missiles into buses and terminals -- Exception.

(1) Any person who discharges a firearm or hurls a missile at or into any bus or terminal shall be guilty of a third degree felony.
(2) The prohibition of this section does not apply to elected or appointed peace officers or commercial security personnel who discharge firearms or hurl missiles in the course and scope of their employment.

Amended by Chapter 97, 1999 General Session

76-10-1506. Threatening breach of peace -- Disorderly conduct -- Foul language -- Refusing requests -- Use of controlled substance, liquor, or tobacco -- Ejection of passenger.

(1) A person is guilty of a class C misdemeanor, if the person:
(a) threatens a breach of the peace, is disorderly, or uses obscene, profane, or vulgar language on a bus;
(b) is in or upon any bus while unlawfully under the influence of a controlled substance as defined in Section 58-37-2;
(c) fails to obey a reasonable request or order of a bus driver, bus company representative, a nondrinking designee other than the driver as provided in Subsection 32B-4-415(4)(c)(ii), or other person in charge or control of a bus or terminal;
(d) ingests any controlled substance, unless prescribed by a physician or medical facility, in or upon any bus, or drinks intoxicating liquor in or upon any bus, except a chartered bus as defined and provided in Sections 32B-1-102 and 41-6a-526; or
(e) smokes tobacco or other products in or upon any bus, except a chartered bus.
(2) If any person violates Subsection (1), the driver of the bus or person in charge thereof may stop at the place where the offense is committed or at the next regular or convenient stopping place and remove such person, using only such force as may be necessary to accomplish the removal, and the driver or person in charge may request the assistance of passengers to assist in the removal.
(3) The driver or person in charge may cause the person so removed to be detained and delivered to the proper authorities.

Amended by Chapter 276, 2010 General Session

76-10-1507. Exclusion of persons without bona fide business from terminal -- Firearms and dangerous materials -- Surveillance devices and seizure of offending materials -- Detention of violators -- Private security personnel.

(1) (a) In order to provide for the safety, welfare and comfort of passengers, a bus company may refuse admission to terminals to a person not having bona fide business within the terminal.

(b) The refusal may not be inconsistent or contrary to state or federal laws or regulations, or to an ordinance of the political subdivision in which the terminal is located.

(c) An authorized bus company representative may require a person in a terminal to identify himself and state his business.

(d) Failure to comply with a request under Subsection (1)(c) or to state an acceptable business purpose is grounds for the representative to request that the person depart the terminal.

(e) A person who refuses to comply with a request made under Subsection (1)(d) is guilty of a class C misdemeanor.

(2) (a) A person who carries a concealed dangerous weapon, firearm, or any highly inflammable or hazardous materials or devices into a terminal or aboard a bus is guilty of a third degree felony.

(b) The prohibition of Subsection (2)(a) does not apply to individuals listed in Subsection 76-10-1504(4).

(c) The bus company may employ reasonable means, including mechanical, electronic or x-ray devices to detect the items concealed in baggage or upon the person of a passenger.

(d) Upon the discovery of an item referred to in Subsection (2)(a), the company may obtain possession and retain custody of the item until it is transferred to a peace officer.

(3) (a) An authorized bus company representative may detain within a terminal or bus any person violating the provisions of this section for a reasonable time until law enforcement authorities arrive.

(b) The detention does not constitute unlawful imprisonment and neither the bus company nor the representative is civilly or criminally liable upon grounds of unlawful imprisonment or assault, provided that only reasonable and necessary force is exercised against the detained person.

(4) (a) A bus company may employ or contract for private security personnel.

(b) The personnel may:

(i) detain within a terminal or bus a person violating this section for a reasonable time until law enforcement authorities arrive; and

(ii) use reasonable and necessary force in subduing or detaining the person.

Amended by Chapter 310, 2007 General Session

76-10-1508. Theft of baggage or cargo.

Any person who removes any baggage, cargo or other item transported upon a bus or stored in a terminal without consent of the owner of the property or the bus

company, or its duly authorized representative is guilty of theft and shall be punished pursuant to section 76-6-412.

Enacted by Chapter 72, 1979 General Session

76-10-1509. Obstructing operation of bus.

Any person who unlawfully obstructs or impedes by force or violence, or any means of intimidation, the regular operation of a bus is guilty of a class C misdemeanor.

Enacted by Chapter 72, 1979 General Session

76-10-1510. Obstructing operation of bus -- Conspiracy.

Two or more persons who willfully combine or conspire to violate Section 76-10-1509 shall each be guilty of a class C misdemeanor.

Amended by Chapter 229, 2007 General Session

76-10-1511. Cumulative and supplemental nature of act.

The provisions of this act shall be cumulative and supplemental to the provisions of any other law of the state.

Enacted by Chapter 72, 1979 General Session

76-10-1601. Short title.

This act is the "Pattern of Unlawful Activity Act."

Amended by Chapter 238, 1987 General Session

76-10-1602. Definitions.

As used in this part:

(1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.

(2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

(4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:

(a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized Recording Practices Act;

(b) any act prohibited by the criminal provisions of Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;

(c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources Code of Utah, or Section 23-20-4;

(d) false claims for medical benefits, kickbacks, and any other act prohibited by Title 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

(e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal Offenses and Procedure Act;

(f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;

(h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act;

(i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah Procurement Code;

(j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

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

(l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

(m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

(n) human trafficking, human smuggling, or aggravated human trafficking, Sections 76-5-308, 76-5-309, and 76-5-310;

(o) sexual exploitation of a minor, Section 76-5b-201;

(p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

(q) causing a catastrophe, Section 76-6-105;

(r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

(s) burglary of a vehicle, Section 76-6-204;

(t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

(u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;

(v) theft, Section 76-6-404;

(w) theft by deception, Section 76-6-405;

(x) theft by extortion, Section 76-6-406;
(y) receiving stolen property, Section 76-6-408;
(z) theft of services, Section 76-6-409;
(aa) forgery, Section 76-6-501;
(bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
(cc) deceptive business practices, Section 76-6-507;
(dd) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;
(ee) bribery of a labor official, Section 76-6-509;
(ff) defrauding creditors, Section 76-6-511;
(gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
(hh) unlawful dealing with property by fiduciary, Section 76-6-513;
(ii) bribery or threat to influence contest, Section 76-6-514;
(jj) making a false credit report, Section 76-6-517;
(kk) criminal simulation, Section 76-6-518;
(ll) criminal usury, Section 76-6-520;
(mm) fraudulent insurance act, Section 76-6-521;
(nn) retail theft, Section 76-6-602;
(oo) computer crimes, Section 76-6-703;
(pp) identity fraud, Section 76-6-1102;
(qq) mortgage fraud, Section 76-6-1203;
(rr) sale of a child, Section 76-7-203;
(ss) bribery to influence official or political actions, Section 76-8-103;
(tt) threats to influence official or political action, Section 76-8-104;
(uu) receiving bribe or bribery by public servant, Section 76-8-105;
(vv) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;
(ww) official misconduct, Sections 76-8-201 and 76-8-202;
(xx) obstruction of justice, Section 76-8-306;
(yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
(zz) false or inconsistent material statements, Section 76-8-502;
(aaa) false or inconsistent statements, Section 76-8-503;
(bbb) written false statements, Section 76-8-504;
(ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
(ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
(eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
(fff) tampering with evidence, Section 76-8-510.5;
(ggg) falsification or alteration of government record, Section 76-8-511, if the record is a record described in Title 20A, Election Code, or Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act;
(hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;

(iii) unemployment insurance fraud, Section 76-8-1301;

(jjj) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(2)(d) or (e), or Section 76-9-301.1;

(kkk) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;

(lll) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;

(mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;

(nnn) unlawful marking of pistol or revolver, Section 76-10-521;

(ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;

(ppp) forging or counterfeiting trademarks, trade name, or trade device, Section 76-10-1002;

(qqq) selling goods under counterfeited trademark, trade name, or trade devices, Section 76-10-1003;

(rrr) sales in containers bearing registered trademark of substituted articles, Section 76-10-1004;

(sss) selling or dealing with article bearing registered trademark or service mark with intent to defraud, Section 76-10-1006;

(ttt) gambling, Section 76-10-1102;

(uuu) gambling fraud, Section 76-10-1103;

(vvv) gambling promotion, Section 76-10-1104;

(www) possessing a gambling device or record, Section 76-10-1105;

(xxx) confidence game, Section 76-10-1109;

(yyy) distributing pornographic material, Section 76-10-1204;

(zzz) inducing acceptance of pornographic material, Section 76-10-1205;

(aaaa) dealing in harmful material to a minor, Section 76-10-1206;

(bbbb) distribution of pornographic films, Section 76-10-1222;

(cccc) indecent public displays, Section 76-10-1228;

(dddd) prostitution, Section 76-10-1302;

(eeee) aiding prostitution, Section 76-10-1304;

(ffff) exploiting prostitution, Section 76-10-1305;

(gggg) aggravated exploitation of prostitution, Section 76-10-1306;

(hhhh) communications fraud, Section 76-10-1801;

(iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and Currency Transaction Reporting Act;

(jjjj) vehicle compartment for contraband, Section 76-10-2801;

(kkkk) any act prohibited by the criminal provisions of the laws governing taxation in this state; and

(llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C. Sec. 1961(1)(B), (C), and (D).

Amended by Chapter 167, 2014 General Session

76-10-1603. Unlawful acts.

(1) It is unlawful for any person who has received any proceeds derived, whether directly or indirectly, from a pattern of unlawful activity in which the person has participated as a principal, to use or invest, directly or indirectly, any part of that income, or the proceeds of the income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or the establishment or operation of, any enterprise.

(2) It is unlawful for any person through a pattern of unlawful activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.

(3) It is unlawful for any person employed by or associated with any enterprise to conduct or participate, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity.

(4) It is unlawful for any person to conspire to violate any provision of Subsection (1), (2), or (3).

Repealed and Re-enacted by Chapter 238, 1987 General Session

76-10-1603.5. Violation a felony -- Costs -- Fines -- Divestiture -- Restrictions -- Dissolution or reorganization -- Prior restraint.

(1) A person who violates any provision of Section 76-10-1603 is guilty of a second degree felony. In addition to penalties prescribed by law, the court may order the person found guilty of the felony to pay to the state, if the attorney general brought the action, or to the county, if the county attorney or district attorney brought the action, the costs of investigating and prosecuting the offense and the costs of securing the forfeitures provided for in this section.

(2) In lieu of a fine otherwise authorized by law for a violation of Section 76-10-1603, a defendant who derives net proceeds from a conduct prohibited by Section 76-10-1603 may be fined not more than twice the amount of the net proceeds.

(3) Upon conviction for violating any provision of Section 76-10-1603, and in addition to any penalty prescribed by law, the court may do any or all of the following:

(a) order restitution to any victim or rightful owner of property obtained, directly or indirectly, from:

(i) the conduct constituting the pattern of unlawful activity; or

(ii) any act or conduct constituting the pattern of unlawful activity that is proven as part of the violation of any provision of Section 76-10-1603;

(b) order the person to divest himself of any interest in or any control, direct or indirect, of any enterprise;

(c) impose reasonable restrictions on the future activities or investments of any person, including prohibiting the person from engaging in the same type of endeavor as the enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United States permit; or

(d) order the dissolution or reorganization of any enterprise.

(4) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the court may not enter any order that would amount to a prior restraint on the exercise of an affected party's rights under the First Amendment to

the Constitution of the United States or Utah Constitution Article I, Section 15.

(5) For purposes of this section, the "net proceeds" of an offense means property acquired as a result of the violation minus the direct costs of acquiring the property.

Amended by Chapter 394, 2013 General Session

76-10-1604. Enforcement authority of peace officers.

Notwithstanding any law to the contrary, peace officers in the state of Utah shall have authority to enforce the criminal provisions of this act by initiating investigations, assisting grand juries, obtaining indictments, filing informations, and assisting in the prosecution of criminal cases through the attorney general or county attorneys' offices.

Enacted by Chapter 94, 1981 General Session

76-10-1605. Remedies of person injured by a pattern of unlawful activity -- Double damages -- Costs, including attorney fees -- Arbitration -- Agency -- Burden of proof -- Actions by attorney general or county attorney -- Dismissal -- Statute of limitations -- Authorized orders of district court.

(1) A person injured in his person, business, or property by a person engaged in conduct forbidden by any provision of Section 76-10-1603 may sue in an appropriate district court and recover twice the damages he sustains, regardless of whether:

(a) the injury is separate or distinct from the injury suffered as a result of the acts or conduct constituting the pattern of unlawful conduct alleged as part of the cause of action; or

(b) the conduct has been adjudged criminal by any court of the state or of the United States.

(2) A party who prevails on a cause of action brought under this section recovers the cost of the suit, including reasonable attorney fees.

(3) All actions arising under this section which are grounded in fraud are subject to arbitration under Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(4) In all actions under this section, a principal is liable for actual damages for harm caused by an agent acting within the scope of either his employment or apparent authority. A principal is liable for double damages only if the pattern of unlawful activity alleged and proven as part of the cause of action was authorized, solicited, requested, commanded, undertaken, performed, or recklessly tolerated by the board of directors or a high managerial agent acting within the scope of his employment.

(5) In all actions arising under this section, the burden of proof is clear and convincing evidence.

(6) The attorney general, county attorney, or, if within a prosecution district, the district attorney may maintain actions under this section on behalf of the state, the county, or any person injured by a person engaged in conduct forbidden by any provision of Section 76-10-1603, to prevent, restrain, or remedy injury as defined in this section and may recover the damages and costs allowed by this section.

(7) In all actions under this section, the elements of each claim or cause of

action shall be stated with particularity against each defendant.

(8) If an action, claim, or counterclaim brought or asserted by a private party under this section is dismissed prior to trial or disposed of on summary judgment, or if it is determined at trial that there is no liability, the prevailing party shall recover from the party who brought the action or asserted the claim or counterclaim the amount of its reasonable expenses incurred because of the defense against the action, claim, or counterclaim, including a reasonable attorney's fee.

(9) An action or proceeding brought under this section shall be commenced within three years after the conduct prohibited by Section 76-10-1603 terminates or the cause of action accrues, whichever is later. This provision supersedes any limitation to the contrary.

(10) (a) In any action brought under this section, the district court has jurisdiction to prevent, restrain, or remedy injury as defined by this section by issuing appropriate orders after making provisions for the rights of innocent persons.

(b) Before liability is determined in any action brought under this section, the district court may:

(i) issue restraining orders and injunctions;

(ii) require satisfactory performance bonds or any other bond it considers appropriate and necessary in connection with any property or any requirement imposed upon a party by the court; and

(iii) enter any other order the court considers necessary and proper.

(c) After a determination of liability, the district court may, in addition to granting the relief allowed in Subsection (1), do any one or all of the following:

(i) order any person to divest himself of any interest in or any control, direct or indirect, of any enterprise;

(ii) impose reasonable restrictions on the future activities or investments of any person, including prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United States permit; or

(iii) order the dissolution or reorganization of any enterprise.

(d) However, if an action is brought to obtain any relief provided by this section, and if the conduct prohibited by Section 76-10-1603 has for its pattern of unlawful activity acts or conduct illegal under Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the court may not enter any order that would amount to a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States, or Article I, Sec. 15 of the Utah Constitution. The court shall, upon the request of any affected party, and upon the notice to all parties, prior to the issuance of any order provided for in this subsection, and at any later time, hold hearings as necessary to determine whether any materials at issue are obscene or pornographic and to determine if there is probable cause to believe that any act or conduct alleged violates Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222. In making its findings the court shall be guided by the same considerations required of a court making similar findings in criminal cases brought under Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, including, but not limited to, the definitions in Sections 76-10-1201, 76-10-1203, and 76-10-1216, and the exemptions in Section

76-10-1226.

Amended by Chapter 3, 2008 General Session

76-10-1607. Evidentiary value of criminal judgment in civil proceeding.

A final judgment or decree rendered in favor of the state or a county in any criminal proceeding brought by this state or a county shall preclude the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding.

Enacted by Chapter 94, 1981 General Session

76-10-1608. Severability clause.

If any part or application of the Utah Pattern of Unlawful Activity Act is held invalid, the remainder of this part, or its application to other situations or persons, is not affected.

Amended by Chapter 238, 1987 General Session

76-10-1609. Prospective application.

The amendments to the Utah Pattern of Unlawful Activity Act are prospective in nature and apply only to civil causes of action accruing after the effective date of this act. However, crimes committed prior to the effective date of this act may comprise part of a pattern of unlawful activity if at least one of the criminal episodes comprising that pattern occurs after the effective date of this act and the pattern otherwise meets the definition of pattern of unlawful activity as defined in Section 76-10-1602.

Enacted by Chapter 238, 1987 General Session

76-10-1801. Communications fraud -- Elements -- Penalties.

(1) Any person who has devised any scheme or artifice to defraud another or to obtain from another money, property, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions, and who communicates directly or indirectly with any person by any means for the purpose of executing or concealing the scheme or artifice is guilty of:

(a) a class B misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is less than $500;

(b) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is or exceeds $500 but is less than $1,500;

(c) a third degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds $1,500 but is less than $5,000;

(d) a second degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds $5,000; and

(e) a second degree felony when the object or purpose of the scheme or artifice to defraud is the obtaining of sensitive personal identifying information, regardless of

the value.

(2) The determination of the degree of any offense under Subsection (1) shall be measured by the total value of all property, money, or things obtained or sought to be obtained by the scheme or artifice described in Subsection (1) except as provided in Subsection (1)(e).

(3) Reliance on the part of any person is not a necessary element of the offense described in Subsection (1).

(4) An intent on the part of the perpetrator of any offense described in Subsection (1) to permanently deprive any person of property, money, or thing of value is not a necessary element of the offense.

(5) Each separate communication made for the purpose of executing or concealing a scheme or artifice described in Subsection (1) is a separate act and offense of communication fraud.

(6) (a) To communicate as described in Subsection (1) means to:

(i) bestow, convey, make known, recount, or impart;

(ii) give by way of information;

(iii) talk over; or

(iv) transmit information.

(b) Means of communication include use of the mail, telephone, telegraph, radio, television, newspaper, computer, and spoken and written communication.

(7) A person may not be convicted under this section unless the pretenses, representations, promises, or material omissions made or omitted were made or omitted intentionally, knowingly, or with a reckless disregard for the truth.

(8) As used in this section, "sensitive personal identifying information" means information regarding an individual's:

(a) Social Security number;

(b) driver's license number or other government issued identification number;

(c) financial account number or credit or debit card number;

(d) password or personal identification number or other identification required to gain access to a financial account or a secure website;

(e) automated or electronic signature;

(f) unique biometric data; or

(g) any other information that can be used to gain access to an individual's financial accounts or to obtain goods or services.

Amended by Chapter 193, 2010 General Session

76-10-1901. Short title.

This part is known as the Money Laundering and Currency Transaction Reporting Act.

Enacted by Chapter 241, 1989 General Session

76-10-1902. Definitions.

As used in this part:

(1) "Bank" means an agent, agency, or office in this state of a person doing business in any one of the following capacities:

(a) a commercial bank or trust company organized under the laws of this state or of the United States;

(b) a private bank;

(c) a savings and loan association or a building and loan association organized under the laws of the United States;

(d) an insured institution as defined in Section 401 of the National Housing Act;

(e) a savings bank, industrial bank, or other thrift institution;

(f) a credit union organized under the laws of this state or of the United States; or

(g) any other organization chartered under Title 7, Financial Institutions, and subject to the supervisory authority set forth in that title.

(2) "Conducts" includes initiating, concluding, or participating in initiating or concluding a transaction.

(3) (a) "Currency" means the coin and paper money of the United States or of another country that is designated as legal tender, that circulates, and is customarily used and accepted as a medium of exchange in the country of issuance.

(b) "Currency" includes United States silver certificates, United States notes, Federal Reserve notes, and foreign bank notes customarily used and accepted as a medium of exchange in a foreign country.

(4) "Financial institution" means an agent, agency, branch, or office within this state of a person doing business, whether or not on a regular basis or as an organized business concern, in one or more of the following capacities:

(a) a bank, except bank credit card systems;

(b) a broker or dealer in securities;

(c) a currency dealer or exchanger, including a person engaged in the business of check cashing;

(d) an issuer, seller, or redeemer of travelers checks or money orders, except as a selling agent exclusively who does not sell more than $150,000 of the instruments within any 30-day period;

(e) a licensed transmitter of funds or other person engaged in the business of transmitting funds;

(f) a telegraph company;

(g) a person subject to supervision by a state or federal supervisory authority; or

(h) the United States Postal Service regarding the sale of money orders.

(5) "Financial transaction" means a transaction:

(a) involving the movement of funds by wire or other means or involving one or more monetary instruments, which in any way or degree affects commerce; or

(b) involving the use of a financial institution that is engaged in, or its activities affect commerce in any way or degree.

(6) The phrase "knows that the property involved represents the proceeds of some form of unlawful activity" means that the person knows or it was represented to the person that the property involved represents proceeds from a form of activity, although the person does not necessarily know which form of activity, that constitutes a

crime under state or federal law, regardless of whether or not the activity is specified in Subsection (12).

(7) "Monetary instruments" means coins or currency of the United States or of another country, travelers checks, personal checks, bank checks, money orders, and investment securities or negotiable instruments in bearer form or in other form so that title passes upon delivery.

(8) "Person" means an individual, corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, and all other entities cognizable as legal personalities.

(9) "Proceeds" means property acquired or derived directly or indirectly from, produced through, realized through, or caused by an act or omission and includes property of any kind.

(10) "Property" means anything of value, and includes an interest in property, including a benefit, privilege, land, or right with respect to anything of value, whether real or personal, tangible or intangible.

(11) "Prosecuting agency" means the office of the attorney general or the office of the county attorney, including an attorney on the staff whether acting in a civil or criminal capacity.

(12) "Specified unlawful activity" means an unlawful activity defined as an unlawful activity in Section 76-10-1602, except an illegal act under Title 18, Section 1961(1)(B), (C), and (D), United States Code, and includes activity committed outside this state which, if committed within this state, would be unlawful activity.

(13) "Transaction" means a purchase, sale, loan, pledge, gift, transfer, delivery, or other disposition. With respect to a financial institution, "transaction" includes a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of a stock, bond, certificate of deposit, or other monetary instrument, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected.

(14) "Transaction in currency" means a transaction involving the physical transfer of currency from one person to another. A transaction that is a transfer of funds by means of bank check, bank draft, wire transfer, or other written order that does not include the physical transfer of currency is not a transaction in currency under this chapter.

Amended by Chapter 73, 2013 General Session

76-10-1903. Money laundering.

(1) A person commits the offense of money laundering who:

(a) transports, receives, or acquires the property which is in fact proceeds of the specified unlawful activity, knowing that the property involved represents the proceeds of some form of unlawful activity;

(b) makes proceeds of unlawful activity available to another by transaction, transportation, or other means, knowing that the proceeds are intended to be used for the purpose of continuing or furthering the commission of specified unlawful activity;

(c) conducts a transaction knowing the property involved in the transaction

represents the proceeds of some form of unlawful activity with the intent:

(i) to promote the unlawful activity;

(ii) to conceal or disguise the nature, location, source, ownership, or control of the property; or

(iii) to avoid a transaction reporting requirement under this chapter or under federal law; or

(d) knowingly accepts or receives property which is represented to be proceeds of unlawful activity.

(2) Under Subsection (1)(d), knowledge that the property represents the proceeds of unlawful activity may be established by proof that a law enforcement officer or an individual acting at the request of a law enforcement officer made the representations and the person's subsequent statements or actions indicate that the person believed those representations to be true.

Amended by Chapter 74, 2009 General Session

76-10-1904. Money laundering -- Penalty.

(1) A person who violates Subsection 76-10-1903(1)(a), (b), or (c) is guilty of a second degree felony.

(2) A person who violates Subsection 76-10-1903(1)(d) is guilty of a third degree felony.

Amended by Chapter 17, 1996 General Session

76-10-1906. Reporting -- Criminal and civil penalties -- Enforcement.

(1) (a) A person engaged in a trade or business, except a financial institution, who receives more than $10,000 as described in Subsection (1)(b) shall complete and file with the State Bureau of Investigation the information required by 26 U.S.C. Sec. 6050I, concerning returns relating to currency received in trade or business.

(b) Subsection (1)(a) applies if the person described in Subsection (1) receives more than $10,000 in domestic or foreign currency:

(i) in one transaction; or

(ii) through two or more related transactions during one business day.

(c) A person who knowingly and intentionally fails to comply with the reporting requirements of this Subsection (1) is:

(i) on a first conviction, guilty of a class C misdemeanor; and

(ii) on a second or subsequent conviction, guilty of a class A misdemeanor.

(d) A person is guilty of a third degree felony who knowingly and intentionally violates this Subsection (1) and the violation is committed either:

(i) in furtherance of the commission of any other violation of state law; or

(ii) as part of a pattern of illegal activity involving transactions exceeding $100,000 in any 12-month period.

(2) (a) The State Bureau of Investigation and the Office of the Attorney General:

(i) shall enforce compliance with Subsection (1); and

(ii) are custodians of and have access to all information and documents filed

under Subsection (1).

(b) The information is confidential, except a law enforcement agency, county attorney, or district attorney, when establishing a clear need for the information for investigative purposes, shall have access to the information and shall maintain the information in a confidential manner except as otherwise provided by the Utah Rules of Criminal Procedure.

Amended by Chapter 268, 2008 General Session

76-10-1907. Separate offenses.

(1) Under this part each individual currency transaction exceeding $10,000 and made in violation of Subsection 76-10-1906(1) or each financial transaction in violation of Section 76-10-1903 or 76-10-1904 involving the movement of funds in excess of $10,000 is a separate punishable offense.

(2) Under this part each failure to file a report as required under Subsection 76-10-1906 (1) is a separate punishable offense.

Enacted by Chapter 241, 1989 General Session

76-10-2001. Definitions.

As used in this part:

(1) "Building," in addition to its commonly-accepted meaning, means any watercraft, aircraft, trailer, sleeping car, or other structure or vehicle adapted for overnight accommodations of persons or for carrying on business and includes:

(a) each separately secured or occupied portion of the building or vehicle; and

(b) each structure appurtenant or connected to the building or vehicle.

(2) "Enter" means:

(a) an intrusion of any part of the body; or

(b) the intrusion of any physical object, sound wave, light ray, electronic signal, or other means of intrusion under the control of the actor.

(3) "Research" means studious and serious inquiry, examination, investigation, or experimentation aimed at the discovery, examination, or accumulation of facts, data, devices, theories, technologies, or applications done for any public, governmental, proprietorial, or teaching purpose.

(4) "Research facility" means any building, or separately secured yard, pad, pond, laboratory, pasture, pen, or corral which is not open to the public, the major use of which is to conduct research, to house research subjects, to store supplies, equipment, samples, specimens, records, data, prototypes, or other property used in or generated from research.

Enacted by Chapter 179, 1989 General Session

76-10-2002. Burglary of a research facility -- Penalties.

(1) A person is guilty of burglary of a research facility if he enters or remains unlawfully in a research facility with the intent to:

(a) obtain unauthorized control over any property, sample, specimen, record, data, test result, or proprietary information in the facility;

(b) alter or eradicate any sample, specimen, record, data, test result, or proprietary information in the facility;

(c) damage, deface, or destroy any property in the facility;

(d) release from confinement or remove any animal or biological vector in the facility regardless of whether or not that animal or vector is dangerous;

(e) commit an assault on any person;

(f) commit any other felony; or

(g) interfere with the personnel or operations of a research facility through any conduct that does not constitute an assault.

(2) A person who violates Subsection (1)(g) is guilty of a class A misdemeanor. A person who violates any other provision in this section is guilty of a felony of the second degree.

Enacted by Chapter 179, 1989 General Session

76-10-2101. Use of recycling bins -- Prohibited items -- Penalties.

(1) As used in this section:

(a) "Recycling" means the process of collecting materials diverted from the waste stream for reuse.

(b) "Recycling bin" means any receptacle made available to the public by a governmental entity or private business for the collection of any source-separated item for recycling purposes.

(2) It is an infraction to place any prohibited item or substance in a recycling bin if the bin is posted with the following information printed legibly in basic English:

(a) a descriptive list of the items that may be deposited in the recycling bin, entitled in boldface capital letters: "ITEMS YOU MAY DEPOSIT IN THIS RECYCLING BIN:";

(b) at the end of the list in Subsection (2)(a), the following statement in boldface capital letters: "REMOVING FROM THIS BIN ANY ITEM THAT IS LISTED ABOVE AND THAT YOU DID NOT PLACE IN THE CONTAINER IS THE CRIMINAL OFFENSE OF THEFT, PUNISHABLE BY LAW.";

(c) the following statement in boldface capital letters: "DEPOSIT OF ANY OTHER ITEM IN THIS RECYCLING BIN IS AGAINST THE LAW.";

(d) the following statement in boldface capital letters, posted on the recycling collection container in close proximity to the notices required under Subsections (2)(a), (b), and (c): "PLACING ANY ITEM OR SUBSTANCE IN THIS RECYCLING BIN OTHER THAN THOSE ALLOWED IN THE LIST POSTED ON THIS BIN IS AN INFRACTION, PUNISHABLE BY A MAXIMUM FINE OF $750."; and

(e) the name and telephone number of the entity that owns the recycling bin or is responsible for its placement and maintenance.

Amended by Chapter 324, 2010 General Session

76-10-2201. Unlawful body piercing and tattooing of a minor -- Penalties.

(1) As used in this section:

(a) "Body piercing" means the creation of an opening in the body, excluding the ear, for the purpose of inserting jewelry or other decoration.

(b) "Consent of a minor's parent or legal guardian" means the presence of a parent or legal guardian during the performance of body piercing or tattooing upon the minor after the parent or legal guardian has provided:

(i) reasonable proof of personal identity and familial relationship; and

(ii) written permission signed by the parent or legal guardian authorizing the performance of body piercing or tattooing upon the minor.

(c) "Minor" means a person younger than 18 years of age who:

(i) is not married; and

(ii) has not been declared emancipated by a court of law.

(d) "Tattoo" means to fix an indelible mark or figure upon the body by inserting a pigment under the skin or by producing scars.

(2) A person is guilty of unlawful body piercing of a minor if the person performs or offers to perform a body piercing:

(a) upon a minor;

(b) without receiving the consent of the minor's parent or legal guardian; and

(c) for remuneration or in the course of a business or profession.

(3) A person is guilty of unlawful tattooing of a minor if the person performs or offers to perform a tattooing:

(a) upon a minor;

(b) without receiving the consent of the minor's parent or legal guardian; and

(c) for remuneration or in the course of a business or profession.

(4) A person is not guilty of Subsection (2) or (3), if the person:

(a) has no actual knowledge of the minor's age; and

(b) reviews, photocopies, and retains the photocopy of an apparently valid driver license or other government-issued picture identification for the minor that expressly purports that the minor is 18 years of age or older before the person performs the body piercing or tattooing.

(5) (a) A person who violates Subsection (2) or (3) is guilty of a class B misdemeanor.

(b) The owner or operator of a business in which a violation of Subsection (2) or (3) occurs is subject to a civil penalty of $1,000 for each violation.

Amended by Chapter 329, 2013 General Session

76-10-2202. Leaving a child unattended in a motor vehicle.

(1) As used in this section:

(a) "Child" means a person who is younger than nine years old.

(b) "Enclosed compartment" means any enclosed area of a motor vehicle, including the passenger compartment, regardless of whether a door, window, or hatch is left open.

(c) "Motor vehicle" means an automobile, truck, truck tractor, bus, or any other

self-propelled vehicle.

(2) A person who is responsible for a child is guilty of a class C misdemeanor if:

(a) the person intentionally, recklessly, knowingly, or with criminal negligence leaves the child in an enclosed compartment of a motor vehicle;

(b) the motor vehicle is on:

(i) public property; or

(ii) private property that is open to the general public;

(c) the child is not supervised by a person who is at least nine years old; and

(d) the conditions present a risk to the child of:

(i) hyperthermia;

(ii) hypothermia; or

(iii) dehydration.

(3) This section does not apply if the person's conduct that constitutes a violation of this section is subject to a greater penalty under another provision of state law.

(4) This section preempts enforcement of a local law or ordinance that makes it an infraction or a criminal offense to engage in the conduct that constitutes a misdemeanor under this section.

(5) Notwithstanding any provision of state law to the contrary, a conviction under this section may not be used by a state or local government entity as grounds for revoking, refusing to grant, or refusing to renew, a license or permit, including a license or permit relating to the provision of day care or child care.

Enacted by Chapter 204, 2011 General Session

76-10-2301. Contributing to the delinquency of a minor -- Definitions -- Penalties.

(1) For purposes of this part:

(a) "Adult" means a person 18 years of age or older.

(b) "Minor" means a person younger than 18 years of age.

(2) Any adult who commits any act or engages in any conduct which he knows or should know would have the effect of causing or encouraging a minor to commit an act which would be a misdemeanor or infraction criminal violation of any federal or state statute or any county or municipal ordinance if committed by an adult is guilty of a class B misdemeanor.

(3) A violation of Subsection (2) does not require that the minor be found to be delinquent or to have committed a delinquent act.

(4) An offense committed under Subsection (2) is in addition to any completed or inchoate offense which the actor may have committed personally or as a party.

Amended by Chapter 105, 2000 General Session

76-10-2401. Definitions.

As used in this part:

(1) "Building", in addition to its commonly accepted meaning, means any

watercraft, aircraft, trailer, sleeping car, or other structure or vehicle adapted for overnight accommodations of persons or for carrying on business and includes:

(a) each separately secured or occupied portion of the building or vehicle; and

(b) each structure appurtenant or connected to the building or vehicle.

(2) "Business" means a retail business dealing in tangible personal property.

(3) "Enter" means:

(a) an intrusion of any part of the body; or

(b) the intrusion of any physical object under the control of the actor.

Amended by Chapter 31, 2002 General Session

76-10-2402. Commercial obstruction -- Penalties.

(1) (a) A person is guilty of a misdemeanor if the person enters or remains unlawfully on the premises of or in a building of any business with the intent to interfere with the employees, customers, personnel, or operations of a business through any conduct that does not constitute an offense listed under Subsection (2).

(b) A violation of Subsection (1)(a) is a class A misdemeanor.

(2) A person is guilty of felony commercial obstruction if the person enters or remains unlawfully on the premises or in a building of any business with the intent to interfere with the employees, customers, personnel, or operations of a business and also with the intent to:

(a) obtain unauthorized control over any merchandise, property, records, data, or proprietary information of the business;

(b) alter, eradicate, or remove any merchandise, records, data, or proprietary information of the business;

(c) damage, deface, or destroy any property on the premises of the business;

(d) commit an assault on any person; or

(e) commit any other felony.

(3) A person who violates any provision in Subsection (2) is guilty of a second degree felony.

(4) This section does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151 et seq.

(5) This section does not apply to a person's exercise of the rights under the First Amendment to the Constitution of the United States or under Article I, Sec. 15 of the Utah Constitution.

Amended by Chapter 334, 2010 General Session

76-10-2501. Unlawful use of a laser pointer -- Definitions -- Penalties.

(1) As used in this section:

(a) "Laser light" means light that is amplified by stimulated emission of radiation.

(b) "Laser pointer" means any portable device that emits a visible beam of laser light that may be directed at a person.

(c) "Law enforcement officer" means an officer under Section 53-13-103.

(2) A person is guilty of unlawful use of a laser pointer if the person directs a beam of laser light from a laser pointer at:

(a) a moving motor vehicle or its occupants; or

(b) one whom the person knows or has reason to know is a law enforcement officer.

(3) It is an affirmative defense to a charge under Subsection (2)(b) that:

(a) the law enforcement officer was:

(i) not in uniform;

(ii) not traveling in a vehicle identified as a law enforcement vehicle; and

(iii) not otherwise engaged in an activity that would give the person reason to know him to be a law enforcement officer; and

(b) the law enforcement officer was not otherwise known by the person to be a law enforcement officer.

(4) Violation of Subsection (2)(a) is an infraction. Violation of Subsection (2)(b) is a class C misdemeanor.

(5) If the violation of this section constitutes an offense subject to a greater penalty under another provision of Title 76, Utah Criminal Code, than is provided under this section, this section does not prohibit the prosecution and sentencing for the offense subject to a greater penalty.

Enacted by Chapter 67, 2001 General Session

76-10-2601. Fencing of shafts and wells.

(1) Any person who has sunk or sinks a shaft or well on the public domain for any purpose shall enclose it with a substantial curb or fence, which shall be at least 4-1/2 feet high.

(2) Any person violating this section is guilty of a class B misdemeanor.

Enacted by Chapter 166, 2002 General Session

76-10-2701. Destructive or injurious materials on parks, recreation areas, waterways, or other public or private lands -- Enforcement officers -- Litter receptacles required.

(1) A person may not throw, deposit, or discard, or permit to be dropped, thrown, deposited, or discarded on any park, recreation area, or other public or private land, or waterway, any glass bottle, glass, nails, tacks, wire, cans, barbed wire, boards, trash or garbage, paper or paper products, or any other substance which would or could mar or impair the scenic aspect or beauty of the land in the state whether under private, state, county, municipal, or federal ownership without the permission of the owner or person having control or custody of the land.

(2) A person who drops, throws, deposits, or discards, or permits to be dropped, thrown, deposited, or discarded, on any park, recreation area, or other public or private land or waterway any destructive, injurious, or unsightly material shall:

(a) immediately remove the material or cause it to be removed; and

(b) deposit the material in a receptacle designed to receive the material.

(3) A person distributing commercial handbills, leaflets, or other advertising shall take whatever measures are reasonably necessary to keep the material from littering public or private property.

(4) A person removing a wrecked or damaged vehicle from a park, recreation area, or other public or private land shall remove any glass or other injurious substance dropped from the vehicle in the park, recreation area, or other public or private land.

(5) A person in charge of a construction or demolition site shall take reasonable steps to prevent the accumulation of litter at the construction or demolition site.

(6) A law enforcement officer as defined in Section 53-13-103, within the law enforcement officer's jurisdiction:

(a) shall enforce the provisions of this section;

(b) may issue citations to a person who violates any of the provisions of this section; and

(c) may serve and execute all warrants, citations, and other processes issued by any court in enforcing this section.

(7) An operator of a park, campground, trailer park, drive-in restaurant, gasoline service station, shopping center, grocery store parking lot, tavern parking lot, parking lots of industrial firms, marina, boat launching area, boat moorage and fueling station, public and private pier, beach, and bathing area shall maintain sufficient litter receptacles on the premises to accommodate the litter that accumulates.

(8) A municipality within its corporate limits and a county outside of incorporated municipalities may enact local ordinances to carry out the provisions of this section.

Enacted by Chapter 22, 2008 General Session

76-10-2702. Penalty for littering on a park, recreation area, waterway, or other public or private land.

(1) A person who violates any of the provisions of Section 76-10-2701 is guilty of a class C misdemeanor and shall be fined not less than $100 for each violation.

(2) The sentencing judge may require that the offender devote at least four hours in cleaning up:

(a) litter caused by the offender; and

(b) existing litter from a safe area designated by the sentencing judge.

Enacted by Chapter 22, 2008 General Session

76-10-2801. Vehicle compartment for contraband -- Penalties.

(1) As used in this section:

(a) (i) "Compartment" means any box, container, space, or enclosure:

(A) that is intended or designed to conceal, hide, or otherwise prevent the discovery of contraband; and

(B) that is within a vehicle or attached to a vehicle.

(ii) "Compartment" includes:

(A) false, altered, or modified fuel tanks;

(B) original factory equipment of a vehicle that is modified, altered, or changed

to accommodate or contain contraband; and

(C) a box, container, space, or enclosure that is fabricated, made, created from, or added to the existing structure of a vehicle.

(b) (i) "Contraband" means any property, item, or substance which is unlawful to produce or possess under state or federal law.

(ii) "Contraband" includes any cash or monetary instrument that is the proceeds of an unlawful activity under Subsection 76-10-1602(4).

(c) "Motor vehicle" has the same meaning as in Section 41-6a-102.

(d) "Semitrailer" has the same meaning as in Section 41-6a-102.

(e) "Trailer" has the same meaning as in Section 41-1a-102.

(f) "Vehicle" means a motor vehicle, a trailer, and a semitrailer.

(2) It is a class A misdemeanor for a person to knowingly possess, use, or control a vehicle which has a compartment with the intent to store, conceal, or transport contraband in the compartment.

(3) It is a third degree felony for a person to facilitate the storage, concealment, or transportation of contraband by:

(a) designing, constructing, building, altering, or fabricating a compartment for a vehicle;

(b) installing or creating a compartment in a vehicle; or

(c) attaching a compartment to a vehicle.

(4) The trier of fact may infer that a person intended to store, conceal, or transport contraband if the person possesses, uses, or controls a vehicle that has a compartment, and the compartment contains:

(a) contraband; or

(b) evidence of prior storage, concealment, or transportation of contraband.

Enacted by Chapter 298, 2008 General Session

76-10-2901. Transporting or harboring aliens -- Definition -- Penalty.

(1) As used in this part:

(a) Except as provided in Subsection (1)(b), "alien" means an individual who is illegally present in the United States.

(b) On or after the program start date, as defined in Section 63G-12-102, "alien" does not include an individual who holds a valid permit, as defined in Section 63G-12-102.

(2) It is unlawful for a person to:

(a) transport, move, or attempt to transport into this state or within the state an alien for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law, in furtherance of the illegal presence of the alien in the United States;

(b) knowingly, with the intent to violate federal immigration law, conceal, harbor, or shelter from detection an alien in a place within this state, including a building or means of transportation for commercial advantage or private financial gain, knowing or in reckless disregard of the fact that the alien is in the United States in violation of federal law;

(c) encourage or induce an alien to come to, enter, or reside in this state, knowing or in reckless disregard of the fact that the alien's coming to, entry, or residence is or will be in violation of law; or

(d) engage in a conspiracy, for commercial advantage or private financial gain, to commit any of the offenses listed in this Subsection (2).

(3) (a) A person who violates Subsection (2)(a), (c), or (d) is guilty of a third degree felony.

(b) A person who violates Subsection (2)(b) is guilty of a class A misdemeanor.

(4) Nothing in this part prohibits or restricts the provision of:

(a) a state or local public benefit described in 8 U.S.C. Sec. 1621(b); or

(b) charitable or humanitarian assistance, including medical care, housing, counseling, food, victim assistance, religious services and sacraments, and transportation to and from a location where the assistance is provided, by a charitable, educational, or religious organization or its employees, agents, or volunteers, using private funds.

(5) (a) It is not a violation of this part for a religious denomination or organization or an agent, officer, or member of a religious denomination or organization to encourage, invite, call, allow, or enable an alien to perform the vocation of a minister or missionary for the denomination or organization in the United States as a volunteer who is not compensated as an employee, notwithstanding the provision of room, board, travel, medical assistance, and other basic living expenses.

(b) Subsection (5)(a) applies only to an alien who has been a member of the religious denomination or organization for at least one year.

(6) An individual's participation in Title 63G, Chapter 14, Utah Pilot Sponsored Resident Immigrant Program Act, either as a sponsor or resident alien does not constitute encouraging or inducing an alien to come to, enter, or reside in this state in violation of Subsection (2)(c).

Amended by Chapter 18, 2011 General Session
Amended by Chapter 20, 2011 General Session, (Coordination Clause)
Amended by Chapter 21, 2011 General Session

76-10-3001. Fraudulent practices to affect market price.

Every person who willfully makes or publishes any false statement, spreads any false rumor, or employs any other false or fraudulent means or device, with intent to affect the market price of any kind of property, is guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3002. Unfair discrimination in competitive practices.

Every person engaged in the production, manufacture, or distribution of any commodity in general use who intentionally for the purpose of destroying the competition of any regular, established dealer in such commodity, or to prevent the competition of any person who in good faith intends and attempts to become a dealer, discriminates between different sections, communities, or cities of this state by selling

the commodity at a lower rate in one section, community, or city, or any portion thereof, than the person charges for the commodity in another section, community, or city, after equalizing the distance from the point of production, manufacture, or distribution and freight rates therefrom, is guilty of unfair discrimination.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3003. Corporation guilty of unfair discrimination -- Action by attorney general.

If complaint is made to the attorney general that any corporation is guilty of unfair discrimination as defined by the preceding section, he shall investigate the complaint, and for that purpose, he may subpoena witnesses, administer oaths, take testimony, and require the production of books or other documents, and, if in his opinion sufficient grounds exist therefor, he may prosecute an action in the name of the state in the proper court to annul the charter or revoke the license of the corporation, as the case may be, and to permanently enjoin the corporation from doing business in this state, and, if in the action the court finds that the corporation is guilty of unfair discrimination as defined by the preceding section, the court shall annul the charter or revoke the license of the corporation and may permanently enjoin it from transacting business in this state.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3004. Penalty for violation.

Any person, firm, or corporation violating any of the provisions of this part shall be fined not less than $500 nor more than $4,000 for each offense.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3005. Unfair discrimination by buyer of milk, cream or butterfat -- Classification of offense.

Any person doing business in this state and engaged in the business of buying milk, cream, or butterfat for the purpose of sale or storage, who, for the purpose of creating a monopoly or destroying the business of a competitor, discriminates between different sections, communities, localities, cities, or towns of this state by purchasing the commodity or commodities at a higher price or rate in one section, community, location, city, or town than is paid for the same commodity by the person in another section, community, locality, city, or town, after making due allowance for the difference, if any, in the grade or quality, and in the actual cost of transportation from the point of purchase to the point of manufacture, sale, or storage, is guilty of unfair discrimination, which is hereby prohibited and declared to be unlawful; and any person, firm, company, association, or corporation, or any officer, agent, receiver, or member of such firm, company, association, or corporation, found guilty of unfair discrimination as herein defined shall be guilty of a class B misdemeanor.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3101. Title.

This part is known as the "Utah Antitrust Act."

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3102. Legislative findings -- Purpose of act.

The Legislature finds and determines that competition is fundamental to the free market system and that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress, while at the same time providing an environment conducive to the preservation of our democratic, political and social institutions.

The purpose of this act is, therefore, to encourage free and open competition in the interest of the general welfare and economy of this state by prohibiting monopolistic and unfair trade practices, combinations and conspiracies in restraint of trade or commerce and by providing adequate penalties for the enforcement of its provisions.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3103. Definitions.

As used in this act:

(1) "Attempt to monopolize" means action taken without a legitimate business purpose and with a specific intent of destroying competition or controlling prices to substantially lessen competition, or creating a monopoly, where there is a dangerous probability of creating a monopoly.

(2) "Commodity" includes any product of the soil, any article of merchandise or trade or commerce, and any other kind of real or personal property.

(3) "Manufacturer" means the producer or originator of any commodity or service.

(4) "Service" includes any activity that is performed in whole or in part for the purpose of financial gain including, but not limited to, personal service, professional service, rental, leasing or licensing for use.

(5) "Trade or commerce" includes all economic activity involving, or relating to, any commodity, service, or business activity, including the cost of exchange or transportation.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3104. Illegal anticompetitive activities.

(1) Every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce is declared to be illegal.

(2) It shall be unlawful for any person to monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of trade or commerce.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3105. Exempt activities.

(1) This act may not be construed to prohibit:

(a) the activities of any public utility to the extent that those activities are subject to regulation by the public service commission, the state or federal department of transportation, the federal energy regulatory commission, the federal communications commission, the interstate commerce commission, or successor agencies;

(b) the activities of any insurer, insurance producer, independent insurance adjuster, or rating organization including, but not limited to, making or participating in joint underwriting or reinsurance arrangements, to the extent that those activities are subject to regulation by the commissioner of insurance;

(c) the activities of securities dealers, issuers, or agents, to the extent that those activities are subject to regulation under the laws of either this state or the United States;

(d) the activities of any state or national banking institution, to the extent that the activities are regulated or supervised by state government officers or agencies under the banking laws of this state or by federal government officers or agencies under the banking laws of the United States;

(e) the activities of any state or federal savings and loan association to the extent that those activities are regulated or supervised by state government officers or agencies under the banking laws of this state or federal government officers or agencies under the banking laws of the United States;

(f) the activities of a political subdivision to the extent authorized or directed by state law, consistent with the state action doctrine of federal antitrust law; or

(g) the activities of an emergency medical service provider licensed under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, to the extent that those activities are regulated by state government officers or agencies under that act.

(2) (a) The labor of a human being is not a commodity or article of commerce.

(b) Nothing contained in the antitrust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purpose of mutual help and not having capital stock or conducted for profit, or to forbid or restrain individual members of these organizations from lawfully carrying out their legitimate objects; nor may these organizations or membership in them be held to be illegal combinations or conspiracies in restraint of trade under the antitrust laws.

(3) (a) As used in this section, an entity is also a municipality if the entity was formed under Title 11, Chapter 13, Interlocal Cooperation Act, prior to January 1, 1981, and the entity is:

(i) a project entity as defined in Section 11-13-103;

(ii) an electric interlocal entity as defined in Section 11-13-103; or

(iii) an energy services interlocal entity as defined in Section 11-13-103.

(b) The activities of the entities under Subsection (3)(a) are authorized or directed by state law.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3106. Attorney General's powers -- Investigations -- Institution of actions -- Cooperation.

(1) The attorney general may investigate suspected violations of this act and institute appropriate actions regarding those suspected violations as provided in this act.

(2) Any violations of this act which come to the attention of any state government officer or agency shall be reported to the attorney general. All state government officers and agencies shall cooperate with, and assist in, any prosecution for violation of this act.

(3) The attorney general may proceed under any antitrust laws in the state or federal courts on behalf of this state, any of its political subdivisions or agencies, or as parens patriae on behalf of natural persons in this state.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3107. Civil antitrust investigations -- Demand for production of documents and responses to written interrogatories -- Oral examination -- Judicial order for compliance -- Confidentiality -- Subpoenas precluded.

(1) When the attorney general has reasonable cause to believe that any person may be in possession, custody, or control of any information relevant to a civil antitrust investigation, he may, prior to the commencement of a civil action thereon, issue and cause to be served upon that person a written civil investigative demand requesting that person to:

(a) produce the documentary material for inspection, copying, or reproduction by the state where the documents are located or produced;

(b) give oral testimony under oath, concerning the subject of the investigation;

(c) respond to written interrogatories; or

(d) furnish any combination of these.

(2) (a) Each demand shall state:

(i) The nature of the activities under investigation, constituting the alleged antitrust violation, which may result in a violation of this act and the applicable provision of law;

(ii) that the recipient is entitled to counsel;

(iii) that the documents, materials, or testimony in response to the demand may be used in a civil or criminal proceeding;

(iv) that if the recipient does not comply with the demand the Office of the Attorney General may compel compliance by appearance, upon reasonable notice to the recipient, before the district court in the judicial district wherein the recipient resides or does business and only upon a showing before that district court that the requirements of Subsection (7) have been met;

(v) that the recipient has the right at any time before the return date of the demand, or within 30 days, whichever period is shorter, to seek a court order determining the validity of the demand; and

(vi) that at any time during the proceeding the person may assert any applicable privilege.

(b) If the demand is for production of documentary material, it shall also:

(i) describe the documentary material to be produced with sufficient definiteness and certainty as to permit the material to be fairly identified;

(ii) prescribe return dates that provide a reasonable period of time within which the material demanded may be assembled and made available for inspection and reproduction; and

(iii) identify the individual at the attorney general's office to whom the material shall be made available.

(c) If the demand is for the giving of oral testimony, it shall also:

(i) prescribe the date, time, and place at which oral testimony shall be commenced;

(ii) state that a member of the attorney general's office staff shall conduct the examination; and

(iii) state that the recording or the transcript of such examination shall be submitted to and maintained by the Office of the Attorney General.

(d) If the demand is for responses to written interrogatories, it shall also:

(i) state that each interrogatory shall be answered separately and fully in writing and under oath, unless the person objects to the interrogatory, in which event the reasons for objection shall be stated in lieu of an answer;

(ii) state that the answers are to be signed by the person making them, and the objections are to be signed by the attorney making them;

(iii) identify by name and address the individual at the Office of the Attorney General on whom answers and objections provided under this Subsection (2)(d) are to be served; and

(iv) prescribe the date on or before which these answers and objections are to be served on the identified individual.

(3) The civil investigative demand may be served upon any person who is subject to the jurisdiction of any Utah court and shall be served upon the person in the manner provided for service of a subpoena.

(4) (a) The documents submitted in response to a demand served under this section shall be accompanied by an affidavit, in the form the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by a person having knowledge of the facts and circumstances relating to the production.

(b) The affidavit shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has in good faith been produced and made available to the Office of the Attorney General.

(c) The affidavit shall identify any demanded documents that are not produced and state the reason why each document was not produced.

(5) (a) The examination of any person pursuant to a demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths or affirmations by the laws of the United States or of the place where the

examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under his direction and in his presence, record the testimony of the witness. If the testimony is taken stenographically, it shall be transcribed and the officer before whom the testimony is taken shall promptly transmit the transcript of the testimony to the Office of the Attorney General.

(b) When taking oral testimony, all persons other than personnel from the attorney general's office, the witness, counsel for the witness, and the officer before whom the testimony is to be taken shall be excluded from the place where the examination is held.

(c) The oral testimony of any person taken pursuant to a demand served under this section shall be taken in the county where the person resides or transacts business or in any other place agreed upon by the attorney general and the person.

(d) When testimony is fully transcribed, the transcript shall be certified by the officer before whom the testimony was taken and submitted to the witness for examination and signing, in accordance with Rule 30(e) of the Utah Rules of Civil Procedure. A copy of the deposition shall be furnished free of charge to each witness upon his request.

(e) Any change in testimony recorded by nonstenographic means shall be made in the manner provided in Rule 30 of the Utah Rules of Civil Procedure for changing deposition testimony recorded by nonstenographic means.

(f) Any person compelled to appear under a demand for oral testimony under this section may be accompanied, represented, and advised by counsel. Counsel may advise the person, in confidence, either upon the request of the person or upon counsel's own initiative, with respect to any question asked of the person. The person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the objection. An objection may properly be made, received, and entered upon the record when it is claimed that the person is entitled to refuse to answer the question on grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. If the person refuses to answer any question, the attorney general may petition the district court for an order compelling the person to answer the question.

(g) If any person compelled to appear under a demand for oral testimony or other information pursuant to this section refuses to answer any questions or produce information on grounds of the privilege against self-incrimination, the testimony of that person may be compelled as in criminal cases.

(h) Any person appearing for oral examination pursuant to a demand served under this section is entitled to the same fees and mileage which are paid to witnesses in the district courts of the state of Utah. Witness fees and expenses shall be tendered and paid as in any civil action.

(6) The providing of any testimony, documents, or objects in response to a civil investigative demand issued pursuant to the provisions of this act shall be considered part of an official proceeding as defined in Section 76-8-501.

(7) (a) If a person fails to comply with the demand served upon him under this section, the attorney general may file in the district court of the county in which the

person resides, is found, or does business, a petition for an order compelling compliance with the demand. Notice of hearing of the petition and a copy of the petition shall be served upon the person, who may appear in opposition to the petition. If the court finds that the demand is proper, that there is reasonable cause to believe there has been a violation of this act, and that the information sought or document or object demanded is relevant to the violation, it shall order the person to comply with the demand, subject to modifications the court may prescribe.

(b) (i) At any time before the return date specified in a demand or within 30 days after the demand has been served, whichever period is shorter, the person who has been served may file a petition for an order modifying or setting aside the demand. This petition shall be filed in the district court in the county of the person's residence, principal office, or place of business, or in the district court in Salt Lake County. The petition shall specify each ground upon which the petitioner relies in seeking the relief sought. The petition may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of the petitioner. The petitioner shall serve notice of hearing of the petition and a copy of the petition upon the attorney general. The attorney general may submit an answer to the petition within 30 days after receipt of the petition.

(ii) After hearing on the petition described in Subsection (7)(b)(i), and for good cause shown, the court may make any further order in the proceedings that justice requires to protect the person from unreasonable annoyance, embarrassment, oppression, burden, or expense. At any hearing pursuant to this section it is the attorney general's burden to establish that the demand is proper, that there is reasonable cause to believe that there has been a violation of this act, and that the information sought or document or object demanded is relevant to the violation.

(8) (a) Any procedure, testimony taken, or material produced under this section shall be kept confidential by the attorney general unless confidentiality is waived in writing by the person who has testified, or produced documents or objects.

(b) Notwithstanding any other provision of this section, the attorney general may disclose testimony or documents obtained under this section, without either the consent of the person from whom it was received or the person being investigated, to:

(i) any grand jury; and

(ii) officers and employees of federal or state law enforcement agencies, provided the person from whom the information, documents, or objects were obtained is notified 20 days prior to disclosure, and the federal or state law enforcement agency certifies that the information will be:

(A) maintained in confidence, as required by Subsection (8)(a); and

(B) used only for official law enforcement purposes.

(9) Use of a civil investigative demand under this action precludes the invocation by the attorney general of Section 77-22-2.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3108. Attorney general may bring action for injunctive relief, damages, or civil penalty.

(1) The attorney general may bring an action for appropriate injunctive relief, and for damages or a civil penalty in the name of the state, any of its political subdivisions or agencies, or as parens patriae on behalf of natural persons in this state, for a violation of this act. Actions may be brought under this section regardless of whether the plaintiff dealt directly or indirectly with the defendant. This remedy is an additional remedy to any other remedies provided by law. It may not diminish or offset any other remedy.

(2) Any individual who violates this act is subject to a civil penalty of not more than $100,000 for each violation. Any person, other than an individual, who violates this act is subject to a civil penalty of not more than $500,000 for each violation.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3109. Person may bring action for injunctive relief and damages -- Treble damages -- Recovery of actual damages or civil penalty by state or political subdivisions -- Immunity of political subdivisions from damages, costs, or attorney fees.

(1) (a) A person who is a citizen of this state or a resident of this state and who is injured or is threatened with injury in his business or property by a violation of the Utah Antitrust Act may bring an action for injunctive relief and damages, regardless of whether the person dealt directly or indirectly with the defendant. This remedy is in addition to any other remedies provided by law. It may not diminish or offset any other remedy.

(b) Subject to the provisions of Subsections (3), (4), and (5), the court shall award three times the amount of damages sustained, plus the cost of suit and a reasonable attorney fees, in addition to granting any appropriate temporary, preliminary, or permanent injunctive relief.

(2) (a) If the court determines that a judgment in the amount of three times the damages awarded plus attorney fees and costs will directly cause the insolvency of the defendant, the court shall reduce the amount of judgment to the highest sum that would not cause the defendant's insolvency.

(b) The court may not reduce a judgment to an amount less than the amount of damages sustained plus the costs of suit and reasonable attorney fees.

(3) The state or any of its political subdivisions may recover the actual damages it sustains, or the civil penalty provided by the Utah Antitrust Act, in addition to injunctive relief, costs of suit, and reasonable attorney fees.

(4) No damages, costs, or attorney fees may be recovered under this section:

(a) from any political subdivision;

(b) from the official or employee of any political subdivision acting in an official capacity; or

(c) against any person based on any official action directed by a political subdivision or its official or employee acting in an official capacity.

(5) Subsection (4) does not apply to cases filed before April 27, 1987, unless the defendant establishes and the court determines that in light of all the circumstances, including the posture of litigation and the availability of alternative relief,

it would be inequitable not to apply Subsection (4) to a pending case.

(6) When a defendant has been sued in one or more actions by both direct and indirect purchasers, whether in state court or federal court, a defendant shall be entitled to prove as a partial or complete defense to a claim for damages that the damages incurred by the plaintiff or plaintiffs have been passed on to others who are entitled to recover so as to avoid duplication of recovery of damages. In an action by indirect purchasers, any damages or settlement amounts paid to direct purchasers for the same alleged antitrust violations shall constitute a defense in the amount paid on a claim by indirect purchasers under this chapter so as to avoid duplication of recovery of damages.

(7) It shall be presumed, in the absence of proof to the contrary, that the injured persons who dealt directly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. It shall also be presumed, in the absence of proof to the contrary, that the injured persons who dealt indirectly with the defendant incurred at least 1/3 of the damages, and shall, therefore, recover at least 1/3 of the awarded damages. The final 1/3 of the damages shall be awarded by the court to those injured persons determined by the court as most likely to have absorbed the damages.

(8) There is a presumption, in the absence of proof to the contrary and subject to Subsection (7), that each level in a product's or service's distribution chain passed on any and all increments in its cost due to an increase in the cost of an ingredient or a component product or service that was caused by a violation of this chapter. This amount will be presumed, in the absence of evidence to the contrary, to be equal to the change in the cost, in dollars and cents, of the ingredient, component product, or service to its first purchaser.

(9) The attorney general shall be notified by the plaintiff about the filing of any class action involving antitrust violations that includes plaintiffs from this state. The attorney general shall receive a copy of each filing from each plaintiff. The attorney general may, in his or her discretion, intervene or file amicus briefs in the case, and may be heard on the question of the fairness or appropriateness of any proposed settlement agreement.

(10) If, in a class action or parens patriae action filed under this chapter, including the settlement of any action, it is not feasible to return any part of the recovery to the injured plaintiffs, the court shall order the residual funds be applied to benefit the specific class of injured plaintiffs, to improve antitrust enforcement generally by depositing the residual funds into the Attorney General Litigation Fund created by Section 76-10-3114, or both.

(11) In any action brought under this chapter, the court shall approve all attorney fees and arrangements for the payment of attorney fees, including contingency fee agreements.

Renumbered and Amended by Chapter 187, 2013 General Session
Amended by Chapter 278, 2013 General Session

76-10-3112. Fine for violation -- Certain vertical agreements excluded --

Nolo contendere.

(1) (a) Any person who violates Section 76-10-3104 by price fixing, bid rigging, agreeing among competitors to divide customers or territories, or by engaging in a group boycott with specific intent of eliminating competition is guilty of a third degree felony and, notwithstanding Sections 76-3-301 and 76-3-302, is subject to:

(i) if an individual, a fine not to exceed $100,000; or

(ii) if by a person other than an individual, a fine not to exceed $500,000.

(b) Subsection (1)(a) may not be construed to include vertical agreements between a manufacturer, its distributors, or their subdistributors dividing customers and territories solely involving the manufacturer's commodity or service where the manufacturer distributes its commodity or service both directly and through distributors or subdistributors in competition with itself.

(2) A defendant may plead nolo contendere to a charge brought under this title but only with the consent of the court. The court may accept the plea only after due consideration of the views of the parties and the interest of the public in the effective administration of justice.

Renumbered and Amended by Chapter 187, 2013 General Session
Amended by Chapter 285, 2013 General Session

76-10-3113. Conviction as prima facie evidence in action for injunctive relief or damages.

In any action brought by the state, a final judgment or decree determining that a person has criminally violated this act, other than a judgment entered pursuant to a nolo contendere plea or a decree entered prior to the taking of any testimony, shall be prima facie evidence against that person in any action brought pursuant to Section 76-10-3109, as to all matters with respect to which the judgment or decree would be an estoppel between the parties thereto.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3114. Attorney General Litigation Fund.

(1) (a) There is created an expendable special revenue fund known as the Attorney General Litigation Fund for the purpose of providing funds to pay for any costs and expenses incurred by the state attorney general in relation to actions under state or federal antitrust, criminal laws, or civil proceedings under Title 13, Chapter 44, Protection of Personal Information Act. These funds are in addition to other funds as may be appropriated by the Legislature to the attorney general for the administration and enforcement of the laws of this state.

(b) At the close of any fiscal year, any balance in the fund in excess of $2,000,000 shall be transferred to the General Fund.

(c) The attorney general may expend money from the Attorney General Litigation Fund for the purposes in Subsection (1)(a).

(2) (a) All money received by the state or its agencies by reason of any judgment, settlement, or compromise as the result of any action commenced,

investigated, or prosecuted by the attorney general, after payment of any fines, restitution, payments, costs, or fees allocated by the court, shall be deposited in the Attorney General Litigation Fund, except as provided in Subsection (2)(b).

(b) (i) Any expenses advanced by the attorney general in any of the actions under Subsection (1)(a) shall be credited to the Attorney General Litigation Fund.

(ii) Any money recovered by the attorney general on behalf of any private person or public body other than the state shall be paid to those persons or bodies from funds remaining after payment of expenses under Subsection (2)(b)(i).

(3) The Division of Finance shall transfer any money remaining in the Antitrust Revolving Account on July 1, 2002, to the Attorney General Litigation Fund created in Subsection (1).

Renumbered and Amended by Chapter 187, 2013 General Session
Amended by Chapter 400, 2013 General Session

76-10-3115. Attorney general to advocate competition.

The attorney general shall have the authority and responsibility to advocate the policy of competition before all political subdivisions of this state and all public agencies whose actions may affect the interests of persons in this state.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3116. Venue of actions by state -- Transfer.

Any action brought by the state pursuant to this act shall be brought in any county wherein the defendant resides or does business, or at the option of the defendant, such action shall be transferred, upon motion made within 30 days after commencement of the action, to Salt Lake County.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3117. Statute of limitations.

(1) Any action brought by the attorney general pursuant to this act is barred if it is not commenced within four years after the cause of action accrues.

(2) Any other action pursuant to this act is barred if it is not commenced within four years after the cause of action accrues, or within one year after the conclusion of an action brought by the state pursuant to this act based in whole or in part on any matter complained of in the subsequent action, whichever is the latter.

Renumbered and Amended by Chapter 187, 2013 General Session

76-10-3118. Interpretation of act.

The Legislature intends that the courts, in construing this act, will be guided by interpretations given by the federal courts to comparable federal antitrust statutes and by other state courts to comparable state antitrust statutes.

Renumbered and Amended by Chapter 187, 2013 General Session