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**CRIMINAL INTENT AMENDMENTS**  
2024 GENERAL SESSION  
STATE OF UTAH  
**Chief Sponsor: Nelson T. Abbott**  
Senate Sponsor: Heidi Balderree

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**LONG TITLE**

**General Description:**

This bill concerns mental states for criminal offenses involving threats.

**Highlighted Provisions:**

This bill:

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

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 76-3-203.5**, as last amended by Laws of Utah 2023, Chapter 111
- 76-5-106.5**, as last amended by Laws of Utah 2022, Chapters 142, 181 and 418
- 76-8-313**, as last amended by Laws of Utah 1996, Chapter 45
- 76-8-508.5**, as last amended by Laws of Utah 1992, Chapter 219

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

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

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

(1) As used in this section:

- (a) "Felony" means any violation of a criminal statute of the state, any other state, the

- 29 United States, or any district, possession, or territory of the United States for which  
30 the maximum punishment the offender may be subjected to exceeds one year in  
31 prison.
- 32 (b) "Habitual violent offender" means a person convicted within the state of any violent  
33 felony and who on at least two previous occasions has been convicted of a violent  
34 felony and committed to either prison in Utah or an equivalent correctional institution  
35 of another state or of the United States either at initial sentencing or after revocation  
36 of probation.
- 37 (c) "Violent felony" means:
- 38 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to  
39 commit any of the following offenses punishable as a felony:
- 40 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal  
41 mischief, Chapter 6, Part 1, Property Destruction;
- 42 (B) assault by prisoner, Section 76-5-102.5;
- 43 (C) disarming a police officer, Section 76-5-102.8;
- 44 (D) aggravated assault, Section 76-5-103;
- 45 (E) aggravated assault by prisoner, Section 76-5-103.5;
- 46 (F) mayhem, Section 76-5-105;
- 47 (G) stalking, Subsection 76-5-106.5(2);
- 48 (H) threat of terrorism, Section 76-5-107.3;
- 49 (I) aggravated child abuse, Subsection 76-5-109.2(3)(a) or (b);
- 50 (J) commission of domestic violence in the presence of a child, Section 76-5-114;
- 51 (K) abuse or neglect of a child with a disability, Section 76-5-110;
- 52 (L) abuse or exploitation of a vulnerable adult, Section 76-5-111, 76-5-111.2,  
53 76-5-111.3, or 76-5-111.4;
- 54 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
- 55 (N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;
- 56 (O) kidnapping, child kidnapping, and aggravated kidnapping under Chapter 5,  
57 Part 3, Kidnapping, Trafficking, and Smuggling;
- 58 (P) rape, Section 76-5-402;
- 59 (Q) rape of a child, Section 76-5-402.1;
- 60 (R) object rape, Section 76-5-402.2;
- 61 (S) object rape of a child, Section 76-5-402.3;
- 62 (T) forcible sodomy, Section 76-5-403;

- 63 (U) sodomy on a child, Section 76-5-403.1;
- 64 (V) forcible sexual abuse, Section 76-5-404;
- 65 (W) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a
- 66 child, Section 76-5-404.3;
- 67 (X) aggravated sexual assault, Section 76-5-405;
- 68 (Y) sexual exploitation of a minor, Section 76-5b-201;
- 69 (Z) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 70 (AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- 71 (BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2,
- 72 Burglary and Criminal Trespass;
- 73 (CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;
- 74 (DD) theft by extortion under Section 76-6-406 under the circumstances described
- 75 in Subsection 76-6-406(1)(a)(i) or (ii);
- 76 (EE) tampering with a witness under Subsection 76-8-508(1);
- 77 (FF) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 78 (GG) tampering with a juror under Subsection [~~76-8-508.5(2)(c)~~] 76-8-508.5
- 79 (2)(a)(iii);
- 80 (HH) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any
- 81 threat or by use of force theft by extortion has been committed under Section
- 82 76-6-406 under the circumstances described in Subsection 76-6-406(1)(a)(i),
- 83 (ii), or (ix);
- 84 (II) possession, use, or removal of explosive, chemical, or incendiary devices
- 85 under Subsections 76-10-306(3) through (6);
- 86 (JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section
- 87 76-10-307;
- 88 (KK) purchase or possession of a dangerous weapon or handgun by a restricted
- 89 person under Section 76-10-503;
- 90 (LL) unlawful discharge of a firearm under Section 76-10-508;
- 91 (MM) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
- 92 (NN) bus hijacking under Section 76-10-1504; and
- 93 (OO) discharging firearms and hurling missiles under Section 76-10-1505; or
- 94 (ii) any felony violation of a criminal statute of any other state, the United States, or
- 95 any district, possession, or territory of the United States which would constitute a
- 96 violent felony as defined in this Subsection (1) if committed in this state.

- 97 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier  
98 of fact determines beyond a reasonable doubt that the person is a habitual violent  
99 offender under this section, the penalty for a:
- 100 (a) third degree felony is as if the conviction were for a first degree felony;  
101 (b) second degree felony is as if the conviction were for a first degree felony; or  
102 (c) first degree felony remains the penalty for a first degree penalty except:  
103 (i) the convicted person is not eligible for probation; and  
104 (ii) the Board of Pardons and Parole shall consider that the convicted person is a  
105 habitual violent offender as an aggravating factor in determining the length of  
106 incarceration.
- 107 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide  
108 notice in the information or indictment that the defendant is subject to punishment as  
109 a habitual violent offender under this section. Notice shall include the case number,  
110 court, and date of conviction or commitment of any case relied upon by the  
111 prosecution.
- 112 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the  
113 defendant intends to deny that:  
114 (A) the defendant is the person who was convicted or committed;  
115 (B) the defendant was represented by counsel or had waived counsel; or  
116 (C) the defendant's plea was understandingly or voluntarily entered.  
117 (ii) The notice of denial shall be served not later than five days prior to trial and shall  
118 state in detail the defendant's contention regarding the previous conviction and  
119 commitment.
- 120 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a  
121 jury, the jury may not be told, until after it returns its verdict on the underlying felony  
122 charge, of the:  
123 (i) defendant's previous convictions for violent felonies, except as otherwise provided  
124 in the Utah Rules of Evidence; or  
125 (ii) allegation against the defendant of being a habitual violent offender.
- 126 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of  
127 being an habitual violent offender by the same jury, if practicable, unless the  
128 defendant waives the jury, in which case the allegation shall be tried immediately to  
129 the court.
- 130 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this

- 131 section applies.
- 132 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution  
133 and the defendant shall be afforded an opportunity to present any necessary  
134 additional evidence.
- 135 (iii) Before sentencing under this section, the trier of fact shall determine whether this  
136 section is applicable beyond a reasonable doubt.
- 137 (d) If any previous conviction and commitment is based upon a plea of guilty or no  
138 contest, there is a rebuttable presumption that the conviction and commitment were  
139 regular and lawful in all respects if the conviction and commitment occurred after  
140 January 1, 1970. If the conviction and commitment occurred prior to January 1,  
141 1970, the burden is on the prosecution to establish by a preponderance of the  
142 evidence that the defendant was then represented by counsel or had lawfully waived  
143 the right to have counsel present, and that the defendant's plea was understandingly  
144 and voluntarily entered.
- 145 (e) If the trier of fact finds this section applicable, the court shall enter that specific  
146 finding on the record and shall indicate in the order of judgment and commitment  
147 that the defendant has been found by the trier of fact to be a habitual violent offender  
148 and is sentenced under this section.
- 149 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the  
150 provisions of this section.
- 151 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in  
152 Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part  
153 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.
- 154 (6) The sentencing enhancement described in this section does not apply if:
- 155 (a) the offense for which the person is being sentenced is:
- 156 (i) a grievous sexual offense;
- 157 (ii) child kidnapping, Section 76-5-301.1;
- 158 (iii) aggravated kidnapping, Section 76-5-302; or
- 159 (iv) forcible sexual abuse, Section 76-5-404; and
- 160 (b) applying the sentencing enhancement provided for in this section would result in a  
161 lower maximum penalty than the penalty provided for under the section that  
162 describes the offense for which the person is being sentenced.
- 163 Section 2. Section **76-5-106.5** is amended to read:
- 164 **76-5-106.5 . Stalking -- Definitions -- Injunction -- Penalties -- Duties of law**

165 **enforcement officer.**

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

167 (i) "Course of conduct" means two or more acts directed at or toward a specific  
168 individual, including:169 (A) acts in which the actor follows, monitors, observes, photographs, surveils,  
170 threatens, or communicates to or about an individual, or interferes with an  
171 individual's property:

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

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

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

176 (I) approaches or confronts an individual;

177 (II) appears at the individual's workplace or contacts the individual's employer  
178 or coworker;179 (III) appears at an individual's residence or contacts an individual's neighbor, or  
180 enters property owned, leased, or occupied by an individual;181 (IV) sends material by any means to the individual or for the purpose of  
182 obtaining or disseminating information about or communicating with the  
183 individual to a member of the individual's family or household, employer,  
184 coworker, friend, or associate of the individual;185 (V) places an object on or delivers an object to property owned, leased, or  
186 occupied by an individual, or to the individual's place of employment with  
187 the intent that the object be delivered to the individual; or188 (VI) uses a computer, the Internet, text messaging, or any other electronic  
189 means to commit an act that is a part of the course of conduct.190 (ii) (A) "Emotional distress" means significant mental or psychological suffering,  
191 whether or not medical or other professional treatment or counseling is  
192 required.193 (B) "Emotional distress" includes significant mental or psychological suffering  
194 resulting from harm to an animal.195 (iii) "Immediate family" means a spouse, parent, child, sibling, or any other  
196 individual who regularly resides in the household or who regularly resided in the  
197 household within the prior six months.

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

- 199 (v) "Reasonable person" means a reasonable person in the victim's circumstances.
- 200 (vi) "Stalking" means an offense as described in Subsection (2).
- 201 (vii) "Text messaging" means a communication in the form of electronic text or one
- 202 or more electronic images sent by the actor from a telephone or computer to
- 203 another individual's telephone or computer by addressing the communication to
- 204 the recipient's telephone number.
- 205 (b) Terms defined in Section 76-1-101.5 apply to this section.
- 206 (2) An actor commits stalking if the actor intentionally or knowingly:
- 207 (a) engages in a course of conduct directed at a specific individual and knows ~~[or should~~
- 208 ~~know that]~~ or is reckless as to whether the course of conduct would cause a
- 209 reasonable person:
- 210 (i) to fear for the individual's own safety or the safety of a third individual; or
- 211 (ii) to suffer other emotional distress; or
- 212 (b) violates:
- 213 (i) a stalking injunction issued under Title 78B, Chapter 7, Part 7, Civil Stalking
- 214 Injunctions; or
- 215 (ii) a permanent criminal stalking injunction issued under Title 78B, Chapter 7, Part
- 216 9, Criminal Stalking Injunctions.
- 217 (3) (a) A violation of Subsection (2) is a class A misdemeanor:
- 218 (i) upon the actor's first violation of Subsection (2); or
- 219 (ii) if the actor violated a stalking injunction issued under Title 78B, Chapter 7, Part
- 220 7, Civil Stalking Injunctions.
- 221 (b) Notwithstanding Subsection (3)(a), a violation of Subsection (2) is a third degree
- 222 felony if the actor:
- 223 (i) has been previously convicted of an offense of stalking;
- 224 (ii) has been previously convicted in another jurisdiction of an offense that is
- 225 substantially similar to the offense of stalking;
- 226 (iii) has been previously convicted of any felony offense in Utah or of any crime in
- 227 another jurisdiction which if committed in Utah would be a felony, in which the
- 228 victim of the stalking offense or a member of the victim's immediate family was
- 229 also a victim of the previous felony offense;
- 230 (iv) violated a permanent criminal stalking injunction issued under Title 78B,
- 231 Chapter 7, Part 9, Criminal Stalking Injunctions; or
- 232 (v) has been or is at the time of the offense a cohabitant, as defined in Section

- 233 78B-7-102, of the victim.
- 234 (c) Notwithstanding Subsection (3)(a) or (b), a violation of Subsection (2) is a second  
235 degree felony if the actor:
- 236 (i) used a dangerous weapon or used other means or force likely to produce death or  
237 serious bodily injury, in the commission of the crime of stalking;
- 238 (ii) has been previously convicted two or more times of the offense of stalking;
- 239 (iii) has been convicted two or more times in another jurisdiction or jurisdictions of  
240 offenses that are substantially similar to the offense of stalking;
- 241 (iv) has been convicted two or more times, in any combination, of offenses under  
242 Subsection (3)(b)(i), (ii), or (iii);
- 243 (v) has been previously convicted two or more times of felony offenses in Utah or of  
244 crimes in another jurisdiction or jurisdictions which, if committed in Utah, would  
245 be felonies, in which the victim of the stalking was also a victim of the previous  
246 felony offenses; or
- 247 (vi) has been previously convicted of an offense under Subsection (3)(b)(iv) or (v).
- 248 (4) In a prosecution under this section, it is not a defense that the actor:
- 249 (a) was not given actual notice that the course of conduct was unwanted; or  
250 (b) did not intend to cause the victim fear or other emotional distress.
- 251 (5) An offense of stalking may be prosecuted under this section in any jurisdiction where  
252 one or more of the acts that is part of the course of conduct was initiated or caused an  
253 effect on the victim.
- 254 (6) (a) Except as provided in Subsection (6)(b), an actor does not violate this section if  
255 the actor is acting:
- 256 (i) in the actor's official capacity as a law enforcement officer, governmental  
257 investigator, or private investigator; and  
258 (ii) for a legitimate official or business purpose.
- 259 (b) A private investigator is not exempt from this section if the private investigator  
260 engages in conduct that would constitute a ground for disciplinary action under  
261 Section 53-9-118.
- 262 (7) (a) A permanent criminal stalking injunction limiting the contact between the actor  
263 and victim may be filed in accordance with Section 78B-7-902.
- 264 (b) This section does not preclude the filing of criminal information for stalking based  
265 on the same act which is the basis for the violation of the stalking injunction issued  
266 under Title 78B, Chapter 7, Part 7, Civil Stalking Injunctions, or a permanent



- 267 criminal stalking injunction issued under Title 78B, Chapter 7, Part 9, Criminal  
 268 Stalking Injunctions.
- 269 (8) (a) A law enforcement officer who responds to an allegation of stalking shall use all  
 270 reasonable means to protect the victim and prevent further violence, including:
- 271 (i) taking action that, in the officer's discretion, is reasonably necessary to provide for  
 272 the safety of the victim and any family or household member;
  - 273 (ii) confiscating the weapon or weapons involved in the alleged stalking;
  - 274 (iii) making arrangements for the victim and any child to obtain emergency housing  
 275 or shelter;
  - 276 (iv) providing protection while the victim removes essential personal effects;
  - 277 (v) arranging, facilitating, or providing for the victim and any child to obtain medical  
 278 treatment; and
  - 279 (vi) arranging, facilitating, or providing the victim with immediate and adequate  
 280 notice of the rights of victims and of the remedies and services available to  
 281 victims of stalking, in accordance with Subsection (8)(b).
- 282 (b) (i) A law enforcement officer shall give written notice to the victim in simple  
 283 language, describing the rights and remedies available under this section and Title  
 284 78B, Chapter 7, Part 7, Civil Stalking Injunctions.
- 285 (ii) The written notice shall also include:
    - 286 (A) a statement that the forms needed in order to obtain a stalking injunction are  
 287 available from the court clerk's office in the judicial district where the victim  
 288 resides or is temporarily domiciled; and
    - 289 (B) a list of shelters, services, and resources available in the appropriate  
 290 community, together with telephone numbers, to assist the victim in accessing  
 291 any needed assistance.
  - 292 (c) If a weapon is confiscated under this Subsection (8), the law enforcement agency  
 293 shall return the weapon to the individual from whom the weapon is confiscated if a  
 294 stalking injunction is not issued or once the stalking injunction is terminated.

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

296 **76-8-313 . Threatened or attempted assault on an elected official.**

297 [~~A person commits~~] An actor commits threatened or attempted assault on an  
 298 elected official~~[-when he]~~ :

- 299 (1) if the actor attempts or threatens, irrespective of a showing of immediate force or  
 300 violence, to inflict bodily injury [to the] on an elected official with the intent to impede,

301 intimidate, or interfere with the elected official in the performance of [~~his~~] the elected  
 302 official's official duties or with the intent to retaliate against the elected official because  
 303 of the performance of [~~his~~] the elected official's official duties[-] ; and

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

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

308 **76-8-508.5 . Tampering with or retaliating against a juror.**

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

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

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

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

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

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

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

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

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

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

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

326 (B) the actor is reckless as to whether the actor's threat would be considered to be  
 327 threatening by a reasonable person who received the threat; or

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

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

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

334 [(4)] (3) [~~Tampering with a juror~~] A violation of Subsection (2) is a third degree felony.

335           Section 5. **Effective date.**  
336           This bill takes effect on May 1, 2024.