

SB0138S03 compared with SB0138S02

~~{deleted text}~~ shows text that was in SB0138S02 but was deleted in SB0138S03.

inserted text shows text that was not in SB0138S02 but was inserted into SB0138S03.

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~~{Senator David P. Hinkins}~~Representative Karianne Lisonbee proposes the following substitute bill:

VIOLENCE, DISORDER, AND LOOTING ENFORCEMENT

PROTECTION ACT

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: David P. Hinkins

House Sponsor: Karianne Lisonbee

LONG TITLE

General Description:

This bill provides for criminal violations and consequences related to rioting.

Highlighted Provisions:

This bill:

- ▶ increases penalties for the crime of rioting under certain circumstances;
- ▶ increases the penalty for harassment;
- ▶ enhances the penalty for assaulting a peace officer during a riot;
- ▶ provides that a person may be denied bail if charged with rioting;
- ▶ enhances penalties for arson committed during a riot; and

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- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-5-102.4, as last amended by Laws of Utah 2017, Chapters 62 and 123

76-5-102.9, as enacted by Laws of Utah 2013, Chapter 153

76-5-106, as last amended by Laws of Utah 1995, Chapter 300

76-6-102, as last amended by Laws of Utah 2013, Chapter 272

76-9-101, as last amended by Laws of Utah 1997, Chapter 289

77-20-1, as last amended by Laws of Utah 2020, Chapters 142 and 185

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

Section 1. Section **76-5-102.4** is amended to read:

76-5-102.4. Assault against peace officer or a military servicemember in uniform

-- Penalties.

(1) As used in this section:

(a) "Assault" means the same as that term is defined in Section 76-5-102.

(b) "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.

(c) "Peace officer" means:

(i) a law enforcement officer certified under Section 53-13-103;

(ii) a correctional officer under Section 53-13-104;

(iii) a special function officer under Section 53-13-105; or

(iv) a federal officer under Section 53-13-106.

(d) "Threat of violence" means the same as that term is defined in Section 76-5-107.

(2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3)

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and (4), who:

(a) commits an assault or threat of violence against 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) commits an assault or threat of violence against 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; or

(c) during the course of a riot, the person causes **substantial** bodily injury to ~~another individual~~**a peace officer or servicemember** or damages the property of ~~another person~~**a peace officer or servicemember**.

(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]~~ 180 consecutive days for a first or second offense; and

(b) ~~[180]~~ 270 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.

Section 2. Section **76-5-102.9** is amended to read:

76-5-102.9. Propelling an object or bodily substance -- Penalties.

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(1) As used in this section, a listed substance ~~[or]~~, material, or object is:

(a) saliva, blood, urine, or fecal material;

(b) an infectious agent as defined in Section 26-6-2 ~~[of]~~ or a material that carries an infectious agent; ~~[or]~~

(c) vomit or a material that carries vomit ~~;~~ or ~~:~~

~~{ (d) a dangerous weapon as defined in Section 76-1-601.~~

~~†~~ (2) Any ~~[person]~~ individual who knowingly or intentionally uses, throws, or otherwise propels any bodily substance ~~[or]~~, material, or object listed under Subsection (1) at another ~~[person]~~ individual 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:

(a) the substance or material propelled is listed in Subsection (1)(a), (b), or (c), and:

~~[(a)]~~ (i) if the substance is the ~~[person's]~~ individual's saliva, the ~~[person]~~ individual knows he or she is infected with HIV, hepatitis B, or hepatitis C; or

~~[(b)]~~ (ii) the substance or material comes into contact with any portion of the other ~~[person's]~~ individual's face, including the eyes or mouth, or comes into contact with any open wound on the other ~~[person's]~~ individual's body ~~;~~ or ~~:~~

~~{ (b) a dangerous weapon is used, propelled, or thrown and causes bodily injury.~~

~~†~~ (4) A second or subsequent violation of Subsection (3) is a third degree felony.

~~[(4)]~~ (5) 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.

Section 3. Section **76-5-106** is amended to read:

76-5-106. Harassment.

(1) ~~[A person]~~ An individual is guilty of harassment if, with intent to frighten or ~~[harass]~~ intimidate another, the individual:

(a) ~~[he]~~ communicates a written or recorded threat to commit any violent felony; or

(b) communicates, either verbally or through overt action, the immediate or present ability to inflict bodily injury upon an individual or damage the property of another person.

(2) Harassment is a class B misdemeanor.

(3) If the trier of fact finds beyond a reasonable doubt that the defendant was a participant in a riot and the harassment was committed against an individual who was not a

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participant in the riot, the penalty shall be enhanced one degree to a class A misdemeanor.

(4) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment notice that the defendant is subject to the enhanced penalty provided under this section.

Section 4. Section 76-6-102 is amended to read:

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

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(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.

(7) If the trier of fact finds beyond a reasonable doubt that the defendant was a participant in a riot in accordance with Section 76-9-101 when the arson was committed, the penalty shall be enhanced one degree.

Section ~~(4)~~5. Section 76-9-101 is amended to read:

76-9-101. Riot -- Penalties -- Collateral consequences.

(1) ~~[A person]~~ An individual is guilty of riot if ~~the individual~~:

(a) simultaneously with two or more other ~~[persons he]~~ individuals engages in ~~[tumultuous or]~~ violent conduct ~~[and thereby]~~, knowingly or recklessly ~~[creates]~~ creating a substantial risk of causing public alarm; ~~[or]~~

(b) ~~[he]~~ assembles with two or more other ~~[persons]~~ individuals with the purpose of engaging, soon thereafter, in ~~[tumultuous or]~~ violent conduct, knowing, that two or more other ~~[persons]~~ individuals in the assembly have the same purpose; or

(c) ~~[he]~~ assembles with two or more other ~~[persons]~~ individuals with the purpose of committing an offense against a person, or ~~the~~ the property of another person who ~~[he]~~ the individual supposes to be guilty of a violation of law, believing that two or more other ~~[persons]~~ individuals in the assembly have the same purpose.

(2) Any ~~[person]~~ individual 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]~~ an individual who withdraws may not incur criminal or civil liability by virtue of ~~[acts]~~ actions 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.]

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(3) Except as provided in Subsection (4), riot is a class B misdemeanor.

~~{{(3)}} (4) Riot is a ~~felony of the~~ third degree felony if, in the course of ~~and as a result of~~ the conduct ~~{}{}~~:~~

~~(a) any [person] individual suffers bodily injury[, or]:~~

~~(b) the individual causes substantial or serious bodily injury;~~

~~(b) the individual causes substantial property damage ~~{}{}~~ or arson occurs; or~~

~~(c) ~~{}{or}{} the ~~defendant~~ individual was ~~armed with~~ in possession of a dangerous weapon ~~{}{}~~ as defined in Section 76-1-601 ~~{}{; otherwise it is a class B misdemeanor.}{}.~~~~~~

(5) A motor vehicle operator who unintentionally causes injury or death to an individual is not criminally or civilly liable for the injury or death, if:

(a) the injury or death occurs while the motor vehicle operator is fleeing from a riot, under a reasonable belief that fleeing is necessary to protect the motor vehicle operator or occupants from serious injury or death; and

(b) the motor vehicle driver exercises due care at the time of the death or injury.

(6) An individual convicted of a felony violation of this section may not, for a period of five years after the date of sentencing on the conviction, be employed by, or hold any position with, the state or any political subdivision of the state.

Section ~~5~~6. Section 77-20-1 is amended to read:

77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing -- Motion to modify.

(1) As used in this chapter:

(a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.

(b) "Financial condition" or "monetary bail" means any monetary condition that may be imposed under Section 77-20-4 to secure an individual's pretrial release.

(c) "Pretrial release" or "bail" means release of an individual charged with or arrested for a criminal offense from law enforcement or judicial custody during the time the individual awaits trial or other resolution of the criminal charges.

(d) "Pretrial status order" means an order issued by the court exercising jurisdiction over an individual charged with a criminal offense that sets the terms and conditions of the individual's pretrial release or denies pretrial release and orders that the individual be detained pending resolution of the criminal charges.

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(e) "Surety" and "sureties" mean a surety insurer or a bail bond agency.

(f) "Surety insurer" means the same as that term is defined in Section 31A-35-102.

(2) An individual charged with or arrested for a criminal offense shall be admitted to bail as a matter of right, except if the individual is charged with a:

(a) capital felony, when the court finds there is substantial evidence to support the charge;

(b) felony committed while on probation or parole, or while free on bail awaiting trial on a previous felony charge, when the court finds there is substantial evidence to support the current felony charge;

(c) felony when there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual would constitute a substantial danger to any other individual or to the community, or is likely to flee the jurisdiction of the court, if released on bail;

(d) felony when the court finds there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual violated a material condition of release while previously on bail; ~~or~~

(e) domestic violence offense if the court finds:

(i) that there is substantial evidence to support the charge; and

(ii) by clear and convincing evidence, that the individual would constitute a substantial danger to an alleged victim of domestic violence if released on bail; or

(f) felony violation of Section 76-9-101, or an offense committed during a riot in which substantial property damage or bodily injury is sustained, if there is substantial evidence to support the charge and the court finds by clear and convincing evidence that the individual is not likely to appear for a subsequent court appearance.

(3) (a) A court exercising jurisdiction over an individual charged with or arrested for a criminal offense shall issue a pretrial status order designating the conditions to be imposed upon the individual's release or ordering that the individual be detained under this section during the time the individual awaits trial or other resolution of the criminal charges.

(b) A court granting pretrial release shall impose the least restrictive reasonably available conditions of release on the individual who is the subject of the pretrial status order that the court determines will reasonably ensure:

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- (i) the individual's appearance in court when required;
- (ii) the safety of any witnesses or victims of the offense allegedly committed by the individual;
- (iii) the safety and welfare of the public; and
- (iv) that the individual will not obstruct or attempt to obstruct the criminal justice process.

(c) (i) The court shall issue the pretrial status order without unnecessary delay.

(ii) If a prosecutor files a motion for detention under Subsection (6), the court may delay issuing the pretrial status order until after hearing the motion to detain if the court finds:

(A) the prosecutor's motion states a reasonable case for detention; and

(B) detaining the defendant until after the motion is heard is in the interests of justice and public safety.

(4) (a) Except as otherwise provided in this section or Section 78B-7-802, the court shall order that an individual charged with a criminal offense be released on the individual's own recognizance, on condition that the individual appear at all required court proceedings, if the court finds that additional conditions are not necessary to reasonably ensure compliance with Subsection (3)(b).

(b) The court shall impose additional release conditions if the court finds that additional release conditions are necessary to reasonably ensure compliance with Subsection (3)(b). The conditions imposed may include that the individual:

(i) not commit a federal, state, or local offense during the period of release;

(ii) avoid contact with a victim or victims of the alleged offense;

(iii) avoid contact with a witness or witnesses who may testify concerning the alleged offense that are named in the pretrial status order;

(iv) not use or consume alcohol, or any narcotic drug or other controlled substance except as prescribed by a licensed medical practitioner;

(v) submit to drug or alcohol testing;

(vi) complete a substance abuse evaluation and comply with any recommended treatment or release program;

(vii) submit to electronic monitoring or location device tracking;

(viii) participate in inpatient or outpatient medical, behavioral, psychological, or

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psychiatric treatment;

(ix) maintain employment, or if unemployed, actively seek employment;

(x) maintain or commence an education program;

(xi) comply with limitations on where the individual is allowed to be located or the times the individual shall be or may not be at a specified location;

(xii) comply with specified restrictions on personal associations, place of residence, or travel;

(xiii) report to a law enforcement agency, pretrial services program, or other designated agency at a specified frequency or on specified dates;

(xiv) comply with a specified curfew;

(xv) forfeit or refrain from possession of a firearm or other dangerous weapon;

(xvi) if the individual is charged with an offense against a child, is limited or denied access to any location or occupation where children are, including any residence where children are on the premises, activities including organized activities in which children are involved, locations where children congregate, or where a reasonable person should know that children congregate;

(xvii) comply with requirements for house arrest;

(xviii) return to custody for a specified period of time following release for employment, schooling, or other limited purposes;

(xix) remain in the custody of one or more designated individuals who agree to supervise and report on the behavior and activities of the individual charged and to encourage compliance with all court orders and attendance at all required court proceedings;

(xx) comply with a financial condition; or

(xxi) comply with any other condition that is necessary to reasonably ensure compliance with Subsection (3)(b).

(c) If the court determines a financial condition, other than an unsecured bond, is necessary to impose on an individual as part of the individual's pretrial release, the court shall consider the individual's ability to pay when determining the amount of the financial condition.

(5) In making a determination under Subsection (3), the court may rely on the following:

(a) any form of pretrial services assessment;

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(b) the nature and circumstances of the offense or offenses charged, including whether the charges include a violent offense and the vulnerability of witnesses or alleged victims;

(c) the nature and circumstances of the individual, including the individual's character, physical and mental health, family and community ties, employment status and history, financial resources, past criminal conduct, history of drug or alcohol abuse, and history of timely appearances at required court proceedings;

(d) the potential danger to another individual or individuals posed by the release of the individual;

(e) if the individual was on probation, parole, or release pending an upcoming court proceeding at the time the individual allegedly committed the offense;

(f) the availability of other individuals who agree to assist the individual in attending court when required or other evidence relevant to the individual's opportunities for supervision in the individual's community;

(g) the eligibility and willingness of the individual to participate in various treatment programs, including drug treatment; or

(h) other evidence relevant to the individual's likelihood of fleeing or violating the law if released.

(6) (a) If the criminal charges filed against the individual include one or more offenses eligible for detention under Subsection (2) or Utah Constitution, Article I, Section 8, the prosecution may file a motion for pretrial detention.

(b) Upon receiving a motion under Subsection (6)(a), the court shall set a hearing on the matter as soon as practicable.

(c) The individual who is the subject of the detention hearing has the right to be represented by counsel at the pretrial detention hearing and, if a court finds the individual is indigent under Section 78B-22-202, the court shall appoint counsel to represent the individual in accordance with Section 78B-22-203.

(d) The court shall give both parties the opportunity to make arguments and to present relevant evidence at the detention hearing.

(7) After hearing evidence on a motion for pretrial detention, the court may detain the individual if:

(a) the individual is accused of committing an offense that qualifies the individual for

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detention under Subsection (2) or Utah Constitution, Article I, Section 8;

(b) the prosecution demonstrates substantial evidence to support the charge, and meets all additional evidentiary burdens required under Subsection (2) or Utah Constitution, Article I, Section 8; and

(c) the court finds that no conditions that may be imposed upon granting the individual pretrial release will reasonably ensure compliance with Subsection (3)(b).

(8) (a) If an individual is charged with a criminal offense described in Subsection (8)(b), there is a rebuttable presumption that the individual be detained.

(b) Criminal charges that create a rebuttable presumption of detention under Subsection (8)(a) include:

(i) criminal homicide as defined in Section 75-5-201; and

(ii) any offense for which the term of imprisonment may include life.

(c) The individual may rebut the presumption of detention by demonstrating, by a preponderance of the evidence, that specified conditions of release will reasonably ensure compliance with Subsection (3)(b).

(9) Except as otherwise provided, the court issuing a pretrial warrant of arrest shall issue the initial pretrial status order.

(10) (a) An individual arrested for a violation of a jail release agreement or jail release court order issued in accordance with Section 78B-7-802:

(i) may be denied pretrial release by the court under Subsection (2); and

(ii) if denied pretrial release, may not be released before the individual's initial appearance before the court.

(b) Nothing in this section precludes or nullifies a jail release agreement or jail release order required under Section 78B-7-802.

(11) (a) A motion to modify the initial pretrial status order may be made by a party at any time upon notice to the opposing party sufficient to permit the opposing party to prepare for hearing and to permit each alleged victim to be notified and be present.

(b) Hearing on a motion to modify a pretrial status order may be held in conjunction with a preliminary hearing or any other pretrial hearing.

(c) The court may rely on information as provided in Subsection (5) and may base its ruling on evidence provided at the hearing so long as each party is provided an opportunity to

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present additional evidence or information relevant to bail.

(12) Subsequent motions to modify a pretrial status order may be made only upon a showing that there has been a material change in circumstances.

(13) An appeal may be taken from an order of a court denying bail to the Utah Court of Appeals pursuant to the Utah Rules of Appellate Procedure, which shall review the determination under Subsection (7).

(14) For purposes of this section, any arrest or charge for a violation of Section 76-5-202, Aggravated murder, is a capital felony unless:

- (a) the prosecutor files a notice of intent to not seek the death penalty; or
- (b) the time for filing a notice to seek the death penalty has expired and the prosecutor has not filed a notice to seek the death penalty.