

Senator David P. Hinkins 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

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**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;
- ▶ provides that a victim of a crime during a riot may sue a local governmental entity for damages if the local government does not protect private property;
- ▶ increases the penalty for harassment during a riot;
- ▶ enhances the penalty for assaulting a peace officer during a riot; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**63G-7-301**, as last amended by Laws of Utah 2020, Chapters 288, 338, and 365



26 [76-5-102.4](#), as last amended by Laws of Utah 2017, Chapters 62 and 123

27 [76-5-102.9](#), as enacted by Laws of Utah 2013, Chapter 153

28 [76-5-106](#), as last amended by Laws of Utah 1995, Chapter 300

29 [76-9-101](#), as last amended by Laws of Utah 1997, Chapter 289

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

32 Section 1. Section **63G-7-301** is amended to read:

33 **63G-7-301. Waivers of immunity.**

34 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual  
35 obligation.

36 (b) Actions arising out of contractual rights or obligations are not subject to the  
37 requirements of Section [63G-7-401](#), [63G-7-402](#), [63G-7-403](#), or [63G-7-601](#).

38 (c) The Division of Water Resources is not liable for failure to deliver water from a  
39 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development  
40 Act, if the failure to deliver the contractual amount of water is due to drought, other natural  
41 condition, or safety condition that causes a deficiency in the amount of available water.

42 (2) Immunity from suit of each governmental entity is waived:

43 (a) as to any action brought to recover, obtain possession of, or quiet title to real or  
44 personal property;

45 (b) as to any action brought to foreclose mortgages or other liens on real or personal  
46 property, to determine any adverse claim on real or personal property, or to obtain an  
47 adjudication about any mortgage or other lien that the governmental entity may have or claim  
48 on real or personal property;

49 (c) as to any action based on the negligent destruction, damage, or loss of goods,  
50 merchandise, or other property while it is in the possession of any governmental entity or  
51 employee, if the property was seized for the purpose of forfeiture under any provision of state  
52 law;

53 (d) subject to Subsection [63G-7-302](#)(1), as to any action brought under the authority of  
54 Utah Constitution, Article I, Section 22, for the recovery of compensation from the  
55 governmental entity when the governmental entity has taken or damaged private property for  
56 public uses without just compensation;

57 (e) subject to Subsection 63G-7-302(2), as to any action brought to recover attorney  
58 fees under Sections 63G-2-405 and 63G-2-802;

59 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees  
60 Act;

61 (g) as to any action brought to obtain relief from a land use regulation that imposes a  
62 substantial burden on the free exercise of religion under Title 63L, Chapter 5, Utah Religious  
63 Land Use Act;

64 (h) except as provided in Subsection 63G-7-201(3), as to any injury caused by:

65 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,  
66 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

67 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,  
68 or other public improvement;

69 (i) subject to Subsections 63G-7-101(4) and 63G-7-201(4), as to any injury  
70 proximately caused by a negligent act or omission of an employee committed within the scope  
71 of employment; [~~and~~]

72 (j) notwithstanding Subsection 63G-7-101(4), as to a claim for an injury resulting from  
73 a sexual battery, as provided in Section 76-9-702.1, committed:

74 (i) against a student of a public elementary or secondary school, including a charter  
75 school; and

76 (ii) by an employee of a public elementary or secondary school or charter school who:

77 (A) at the time of the sexual battery, held a position of special trust, as defined in  
78 Section 76-5-404.1, with respect to the student;

79 (B) is criminally charged in connection with the sexual battery; and

80 (C) the public elementary or secondary school or charter school knew or in the exercise  
81 of reasonable care should have known, at the time of the employee's hiring, to be a sex  
82 offender, as defined in Section 77-41-102, required to register under Title 77, Chapter 41, Sex  
83 and Kidnap Offender Registry, whose status as a sex offender would have been revealed in a  
84 background check under Section 53G-11-402[-]; and

85 (k) when a governmental entity intentionally fails to protect private property or  
86 individuals during a riot.

87 (3) (a) As used in this Subsection (3):

- 88 (i) "Code of conduct" means a code of conduct that:
- 89 (A) is not less stringent than a model code of conduct, created by the State Board of
- 90 Education, establishing a professional standard of care for preventing the conduct described in
- 91 Subsection (3)(a)(i)(D);
- 92 (B) is adopted by the applicable local education governing body;
- 93 (C) regulates behavior of a school employee toward a student; and
- 94 (D) includes a prohibition against any sexual conduct between an employee and a
- 95 student and against the employee and student sharing any sexually explicit or lewd
- 96 communication, image, or photograph.
- 97 (ii) "Local education agency" means:
- 98 (A) a school district;
- 99 (B) a charter school; or
- 100 (C) the Utah Schools for the Deaf and the Blind.
- 101 (iii) "Local education governing board" means:
- 102 (A) for a school district, the local school board;
- 103 (B) for a charter school, the charter school governing board; or
- 104 (C) for the Utah Schools for the Deaf and the Blind, the state board.
- 105 (iv) "Public school" means a public elementary or secondary school.
- 106 (v) "Sexual abuse" means the offense described in Subsection [76-5-404.1\(2\)](#).
- 107 (vi) "Sexual battery" means the offense described in Section [76-9-702.1](#), considering
- 108 the term "child" in that section to include an individual under age 18.
- 109 (b) Notwithstanding Subsection [63G-7-101\(4\)](#), immunity from suit is waived as to a
- 110 claim against a local education agency for an injury resulting from a sexual battery or sexual
- 111 abuse committed against a student of a public school by a paid employee of the public school
- 112 who is criminally charged in connection with the sexual battery or sexual abuse, unless:
- 113 (i) at the time of the sexual battery or sexual abuse, the public school was subject to a
- 114 code of conduct; and
- 115 (ii) before the sexual battery or sexual abuse occurred, the public school had:
- 116 (A) provided training on the code of conduct to the employee; and
- 117 (B) required the employee to sign a statement acknowledging that the employee has
- 118 read and understands the code of conduct.

119 (4) (a) As used in this Subsection (4):

120 (i) "Higher education institution" means an institution included within the state system  
121 of higher education under Section 53B-1-102.

122 (ii) "Policy governing behavior" means a policy adopted by a higher education  
123 institution or the Utah Board of Higher Education that:

124 (A) establishes a professional standard of care for preventing the conduct described in  
125 Subsections (4)(a)(ii)(C) and (D);

126 (B) regulates behavior of a special trust employee toward a subordinate student;

127 (C) includes a prohibition against any sexual conduct between a special trust employee  
128 and a subordinate student; and

129 (D) includes a prohibition against a special trust employee and subordinate student  
130 sharing any sexually explicit or lewd communication, image, or photograph.

131 (iii) "Sexual battery" means the offense described in Section 76-9-702.1.

132 (iv) "Special trust employee" means an employee of a higher education institution who  
133 is in a position of special trust, as defined in Section 76-5-404.1, with a higher education  
134 student.

135 (v) "Subordinate student" means a student:

136 (A) of a higher education institution; and

137 (B) whose educational opportunities could be adversely impacted by a special trust  
138 employee.

139 (b) Notwithstanding Subsection 63G-7-101(4), immunity from suit is waived as to a  
140 claim for an injury resulting from a sexual battery committed against a subordinate student by a  
141 special trust employee, unless:

142 (i) the institution proves that the special trust employee's behavior that otherwise would  
143 constitute a sexual battery was:

144 (A) with a subordinate student who was at least 18 years old at the time of the  
145 behavior; and

146 (B) with the student's consent; or

147 (ii) (A) at the time of the sexual battery, the higher education institution was subject to  
148 a policy governing behavior; and

149 (B) before the sexual battery occurred, the higher education institution had taken steps

150 to implement and enforce the policy governing behavior.

151 Section 2. Section **76-5-102.4** is amended to read:

152 **76-5-102.4. Assault against peace officer or a military servicemember in uniform**

153 **-- Penalties.**

154 (1) As used in this section:

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

156 (b) "Military servicemember in uniform" means:

157 (i) a member of any branch of the United States military who is wearing a uniform as

158 authorized by the member's branch of service; or

159 (ii) a member of the National Guard serving as provided in Section [39-1-5](#) or [39-1-9](#).

160 (c) "Peace officer" means:

161 (i) a law enforcement officer certified under Section [53-13-103](#);

162 (ii) a correctional officer under Section [53-13-104](#);

163 (iii) a special function officer under Section [53-13-105](#); or

164 (iv) a federal officer under Section [53-13-106](#).

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

166 (2) A person is guilty of a class A misdemeanor, except as provided in Subsections (3)  
167 and (4), who:

168 (a) commits an assault or threat of violence against a peace officer, with knowledge that  
169 the person is a peace officer, and when the peace officer is acting within the scope of authority  
170 as a peace officer; or

171 (b) commits an assault or threat of violence against a military servicemember in  
172 uniform when that servicemember is on orders and acting within the scope of authority granted  
173 to the military servicemember in uniform.

174 (3) A person who violates Subsection (2) is guilty of a third degree felony if the  
175 person:

176 (a) has been previously convicted of a class A misdemeanor or a felony violation of  
177 this section; or

178 (b) the person causes substantial bodily injury.

179 (4) A person who violates Subsection (2) is guilty of a second degree felony if the  
180 person uses:

- 181 (a) a dangerous weapon as defined in Section 76-1-601; or  
 182 (b) other means or force likely to produce death or serious bodily injury.  
 183 (5) A person who violates Subsection (2) is guilty of a first degree felony if the person  
 184 causes serious bodily injury.

185 ~~[(5)]~~ (6) A person who violates this section shall serve, in jail or another correctional  
 186 facility, a minimum of:

- 187 (a) 90 consecutive days for a second offense;  
 188 (b) 180 consecutive days for a third offense; and  
 189 ~~[(b) 180]~~ (c) 270 consecutive days for each subsequent offense.

190 ~~[(6)]~~ (7) The court may suspend the imposition or execution of the sentence required  
 191 under Subsection ~~[(5)]~~ (6) if the court finds that the interests of justice would be best served by  
 192 the suspension and the court makes specific findings concerning the disposition on the record.

193 ~~[(7)]~~ (8) This section does not affect or limit any individual's constitutional right to the  
 194 lawful expression of free speech, the right of assembly, or any other recognized rights secured  
 195 by the Constitution or laws of Utah or by the Constitution or laws of the United States.

196 Section 3. Section 76-5-102.9 is amended to read:

197 **76-5-102.9. Propelling an object or bodily substance -- Penalties.**

198 (1) As used in this section, a listed substance or material is:

- 199 (a) saliva, blood, urine, or fecal material;  
 200 (b) an infectious agent as defined in Section 26-6-2 ~~[of]~~ or a material that carries an  
 201 infectious agent; or  
 202 (c) vomit or a material that carries vomit.

203 (2) Any ~~[person]~~ individual who knowingly or intentionally throws or otherwise  
 204 propels any bodily substance or material listed under Subsection (1) at another ~~[person]~~  
 205 individual is guilty of a class B misdemeanor, except as provided in Subsection (3).

206 (3) A violation of this section is a class A misdemeanor if:

- 207 (a) the substance or material propelled is listed in Subsection (1), and:  
 208 (a) if the substance is the ~~[person's]~~ individual's saliva, the ~~[person]~~ individual knows  
 209 he or she is infected with HIV, hepatitis B, or hepatitis C; or  
 210 (b) the substance or material comes into contact with any portion of the other ~~[person's]~~  
 211 individual's face, including the eyes or mouth, or comes into contact with any open wound on

212 the other ~~[person's]~~ individual's body.

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

214 ~~[(4)]~~ (5) If an offense committed under this section amounts to an offense subject to a  
215 greater penalty under another provision of state law than under this section, this section does  
216 not prohibit prosecution and sentencing for the more serious offense.

217 Section 4. Section **76-5-106** is amended to read:

218 **76-5-106. Harassment.**

219 (1) ~~[A person]~~ An individual is guilty of harassment if, with intent to frighten or  
220 ~~[harass]~~ intimidate another, ~~[he]~~ the individual communicates a written or recorded threat to  
221 commit any violent felony.

222 (2) Harassment is a class B misdemeanor.

223 (3) If the court determines that the defendant was a participant in a riot and the  
224 harassment was committed against an individual who was not a participant in the riot, the  
225 individual is guilty of a class A misdemeanor.

226 Section 5. Section **76-9-101** is amended to read:

227 **76-9-101. Riot -- Penalties -- Collateral consequences.**

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

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

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

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

239 (2) Any ~~[person]~~ individual who refuses to comply with a lawful order to withdraw  
240 ~~[given to him immediately]~~ prior to, during, or immediately following a violation of Subsection  
241 (1) is guilty of riot. It is no defense to a prosecution under this Subsection (2) that withdrawal  
242 must take place over private property; provided, however, that ~~[no persons so withdrawing]~~



243 ~~shall~~ an individual who withdraws may not incur criminal or civil liability by virtue of ~~[acts]~~  
244 actions reasonably necessary to accomplish the withdrawal.

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

246 ~~[(3)]~~ (4) Riot is a felony of the third degree if, in the course of and as a result of the  
247 conduct~~;~~:

248 (a) any ~~[person]~~ individual suffers bodily injury~~;~~~~or~~;

249 (b) substantial property damage~~;~~ or arson occurs; or

250 (c) ~~or~~ the defendant was armed with a dangerous weapon, as defined in Section

251 76-1-601~~;~~~~otherwise it is a class B misdemeanor~~].