

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

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; and
- ▶ 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



26 [76-5-106](#), as last amended by Laws of Utah 1995, Chapter 300
27 [76-9-101](#), as last amended by Laws of Utah 1997, Chapter 289
28 [77-20-1](#), as last amended by Laws of Utah 2020, Chapters 142 and 185



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

31 Section 1. Section [76-5-102.4](#) is amended to read:

32 **[76-5-102.4. Assault against peace officer or a military servicemember in uniform](#)**

33 **-- Penalties.**

34 (1) As used in this section:

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

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

37 (i) a member of any branch of the United States military who is wearing a uniform as
38 authorized by the member's branch of service; or

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

40 (c) "Peace officer" means:

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

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

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

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

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

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

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

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

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

56 (a) has been previously convicted of a class A misdemeanor or a felony violation of

57 this section; [or]

58 (b) the person causes substantial bodily injury; or

59 (c) during the course of a riot, the person causes bodily injury to another individual or
60 damages the property of another person.

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

63 (a) a dangerous weapon as defined in Section 76-1-601; or

64 (b) other means or force likely to produce death or serious bodily injury.

65 (5) A person who violates this section shall serve, in jail or another correctional
66 facility, a minimum of:

67 (a) [90] 180 consecutive days for a first or second offense; and

68 (b) [180] 270 consecutive days for each subsequent offense.

69 (6) The court may suspend the imposition or execution of the sentence required under
70 Subsection (5) if the court finds that the interests of justice would be best served by the
71 suspension and the court makes specific findings concerning the disposition on the record.

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

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

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

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

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

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

81 (c) vomit or a material that carries vomit; ~~S~~→ [or]

82 ~~(d) a dangerous weapon as defined in Section 76-1-601;~~ ←~~S~~

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

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

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

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

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

93 ~~— (b) a dangerous weapon is used, propelled, or thrown and causes bodily injury.] ← §~~

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

95 ~~[(4)]~~ (5) If an offense committed under this section amounts to an offense subject to a
96 greater penalty under another provision of state law than under this section, this section does
97 not prohibit prosecution and sentencing for the more serious offense.

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

99 **76-5-106. Harassment.**

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

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

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

105 (2) Harassment is a class B misdemeanor.

106 (3) If the trier of fact finds beyond a reasonable doubt that the defendant was a
107 participant in a riot and the harassment was committed against an individual who was not a
108 participant in the riot, the penalty shall be enhanced one degree to a class A misdemeanor.

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

112 Section 4. Section **76-9-101** is amended to read:

113 **76-9-101. Riot -- Penalties -- Collateral consequences.**

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

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

118 (b) ~~[he]~~ assembles with two or more other ~~[persons]~~ individuals with the purpose of

119 engaging, soon thereafter, in [~~tumultuous or~~] violent conduct, knowing, that two or more other
 120 [~~persons~~] individuals in the assembly have the same purpose; or

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

125 (2) Any [~~person~~] individual who refuses to comply with a lawful order to withdraw
 126 [~~given to him immediately~~] prior to, during, or immediately following a violation of Subsection
 127 (1) is guilty of riot. It is no defense to a prosecution under this Subsection (2) that withdrawal
 128 must take place over private property; provided, however, that [~~no persons so withdrawing~~
 129 ~~shall~~] an individual who withdraws may not incur criminal or civil liability by virtue of [~~acts~~]
 130 actions reasonably necessary to accomplish the withdrawal.

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

132 [~~(3)~~] (4) Riot is a felony of the third degree if, in the course of and as a result of the
 133 conduct[;]:

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

135 (b) substantial property damage[;] or arson occurs; or

136 (c) [~~or~~] the defendant was armed with a dangerous weapon, as defined in Section
 137 76-1-601[~~, otherwise it is a class B misdemeanor.~~].

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

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

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

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

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

148 **77-20-1. Right to bail -- Pretrial status order -- Denial of bail -- Detention hearing**
 149 **-- Motion to modify.**

- 150 (1) As used in this chapter:
- 151 (a) "Bail bond agency" means the same as that term is defined in Section 31A-35-102.
- 152 (b) "Financial condition" or "monetary bail" means any monetary condition that may be
153 imposed under Section 77-20-4 to secure an individual's pretrial release.
- 154 (c) "Pretrial release" or "bail" means release of an individual charged with or arrested
155 for a criminal offense from law enforcement or judicial custody during the time the individual
156 awaits trial or other resolution of the criminal charges.
- 157 (d) "Pretrial status order" means an order issued by the court exercising jurisdiction
158 over an individual charged with a criminal offense that sets the terms and conditions of the
159 individual's pretrial release or denies pretrial release and orders that the individual be detained
160 pending resolution of the criminal charges.
- 161 (e) "Surety" and "sureties" mean a surety insurer or a bail bond agency.
- 162 (f) "Surety insurer" means the same as that term is defined in Section 31A-35-102.
- 163 (2) An individual charged with or arrested for a criminal offense shall be admitted to
164 bail as a matter of right, except if the individual is charged with a:
- 165 (a) capital felony, when the court finds there is substantial evidence to support the
166 charge;
- 167 (b) felony committed while on probation or parole, or while free on bail awaiting trial
168 on a previous felony charge, when the court finds there is substantial evidence to support the
169 current felony charge;
- 170 (c) felony when there is substantial evidence to support the charge and the court finds
171 by clear and convincing evidence that the individual would constitute a substantial danger to
172 any other individual or to the community, or is likely to flee the jurisdiction of the court, if
173 released on bail;
- 174 (d) felony when the court finds there is substantial evidence to support the charge and
175 the court finds by clear and convincing evidence that the individual violated a material
176 condition of release while previously on bail; [or]
- 177 (e) domestic violence offense if the court finds:
- 178 (i) that there is substantial evidence to support the charge; and
- 179 (ii) by clear and convincing evidence, that the individual would constitute a substantial
180 danger to an alleged victim of domestic violence if released on bail; or

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

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

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

192 (i) the individual's appearance in court when required;

193 (ii) the safety of any witnesses or victims of the offense allegedly committed by the
194 individual;

195 (iii) the safety and welfare of the public; and

196 (iv) that the individual will not obstruct or attempt to obstruct the criminal justice
197 process.

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

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

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

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

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

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

- 212 (i) not commit a federal, state, or local offense during the period of release;
- 213 (ii) avoid contact with a victim or victims of the alleged offense;
- 214 (iii) avoid contact with a witness or witnesses who may testify concerning the alleged
215 offense that are named in the pretrial status order;
- 216 (iv) not use or consume alcohol, or any narcotic drug or other controlled substance
217 except as prescribed by a licensed medical practitioner;
- 218 (v) submit to drug or alcohol testing;
- 219 (vi) complete a substance abuse evaluation and comply with any recommended
220 treatment or release program;
- 221 (vii) submit to electronic monitoring or location device tracking;
- 222 (viii) participate in inpatient or outpatient medical, behavioral, psychological, or
223 psychiatric treatment;
- 224 (ix) maintain employment, or if unemployed, actively seek employment;
- 225 (x) maintain or commence an education program;
- 226 (xi) comply with limitations on where the individual is allowed to be located or the
227 times the individual shall be or may not be at a specified location;
- 228 (xii) comply with specified restrictions on personal associations, place of residence, or
229 travel;
- 230 (xiii) report to a law enforcement agency, pretrial services program, or other designated
231 agency at a specified frequency or on specified dates;
- 232 (xiv) comply with a specified curfew;
- 233 (xv) forfeit or refrain from possession of a firearm or other dangerous weapon;
- 234 (xvi) if the individual is charged with an offense against a child, is limited or denied
235 access to any location or occupation where children are, including any residence where children
236 are on the premises, activities including organized activities in which children are involved,
237 locations where children congregate, or where a reasonable person should know that children
238 congregate;
- 239 (xvii) comply with requirements for house arrest;
- 240 (xviii) return to custody for a specified period of time following release for
241 employment, schooling, or other limited purposes;
- 242 (xix) remain in the custody of one or more designated individuals who agree to

243 supervise and report on the behavior and activities of the individual charged and to encourage
244 compliance with all court orders and attendance at all required court proceedings;

245 (xx) comply with a financial condition; or

246 (xxi) comply with any other condition that is necessary to reasonably ensure

247 compliance with Subsection (3)(b).

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

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

253 (a) any form of pretrial services assessment;

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

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

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

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

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

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

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

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

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

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

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

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

284 (a) the individual is accused of committing an offense that qualifies the individual for
285 detention under Subsection (2) or Utah Constitution, Article I, Section 8;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

314 (c) The court may rely on information as provided in Subsection (5) and may base its
315 ruling on evidence provided at the hearing so long as each party is provided an opportunity to
316 present additional evidence or information relevant to bail.

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

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

322 (14) For purposes of this section, any arrest or charge for a violation of Section
323 [76-5-202](#), Aggravated murder, is a capital felony unless:

324 (a) the prosecutor files a notice of intent to not seek the death penalty; or

325 (b) the time for filing a notice to seek the death penalty has expired and the prosecutor
326 has not filed a notice to seek the death penalty.