



2010 Legislative Session Sentencing Update Utah Sentencing Commission

Bill #	Title	Statute	Description	Penalty Changes	Increased Fine or Fees	Anticipated Prison Admissions	Anticipated Fiscal Impact
House Bills							
HB 14	Juvenile Transfers From Justice Court	Amends 78A-7-106	Provides discretion for a justice court judge to transfer traffic cases involving juveniles from justice court to juvenile court.				
HB 19	Post Conviction Remedies Amendments	Amends 78B-9-106	Amends the Post-Conviction Remedies Act to state that relief due to ineffective counsel is the only ground for relief under the Act.				
HB 21	Expungement Revisions	AMENDS: 41-6a-501 53-3-414 53-5-704 53-6-302 53-10-202.5 53A-6-306 76-8-504.6 77-27-21.5 77-38-14 78A-2-301 Renumbers and Amends 77-40-102	Defines “expunge” as, “to seal or otherwise restrict access to the petitioner’s record of arrest, investigation, detention, or conviction held by an agency.” Specifies the offenses and number of convictions that bar someone from receiving a certificate of eligibility from BCI. Allows BCI to deny a petitioner a certificate of eligibility if the petition provides false or misleading information on an application. Make it a class B misdemeanor to intentionally or knowingly provide false information when applying for a certificate of eligibility. Gives BCI rulemaking authority to assess a fee associated with the issuing of a certificate of eligibility.	New class B misdemeanor			

		77-40-108 77-40-109 77-40-112 77-40-113 Repeals 77-18-10 77-18-11 77-18-12 77-18-13					
HB 30	Drug Law Amendments	Amends 58-37-4	Adds carisprodol, which has the brand name of Soma, as a Schedule IV drug.				
HB 38	Scheduling of Controlled Substances	Enacts 58-38a-101 58-38a-102 58-38a-201 58-38a-202 58-38a-203 58-38a-204	Creates the Controlled Substances Advisory Committee and establishes the Committee's membership. Establishes the role of the committee as an advisory body with the responsibility to place substances in the statutory schedule of controlled substances, change the schedule of a substance, or remove a substance from the schedule. Provides guidelines for determining if a substance should be scheduled and in which schedule to place a substance.				
HB 62	Penalties for Violent Crimes in the Presence of a Child	Enacts 76-3-203.10	Creates a new class B misdemeanor for the commission or the attempted commission of a violent crime in the presence of a child. Specifies that "in the presence of" means in the physical presence of a child younger than 14 years of age and having knowledge that the child is present and may see or hear the commission of the violent offense. Regardless of the number of children present during the commission of the violent crime, only one count of Violence in the Presence of a Child may be charged For the purposes of this statute, "violent offense" does not include a domestic violence offense as defined in Section 77-36-1.	New class B misdemeanor			
HB 68	Habitual Wanton Destruction of Wildlife	Enacts 23-20-4.7	Makes a third violation of class B Wanton Destruction of Protected Wildlife a 3 rd degree felony.	New 3rd degree felony			

<p>HB 88</p>	<p>Electronic Cigarette Restrictions</p>	<p>Amends 53-3-229 53-3-810 53A-11-908 76-8-311.3 76-10-101 76-10-104 76-10-105 76-10-105.1 76-10-111 77-39-101</p>	<p>Creates multiple new criminal offenses related to the possession and distribution of electronic cigarettes. Use of a false ID to obtain: - Class A misdemeanor Possession in a mental health or correctional facility: - Class A misdemeanor Facilitation of possession in a mental health or correctional facility: - Class B misdemeanor Providing to a person under 19 years of age: - 1st offense- class C misdemeanor - 2nd offense- class B misdemeanor - 3rd or subsequent offense- Class A misdemeanor Possession by a person 18 years of age: - Class C misdemeanor Face to face transaction: - 1st offense- Class C misdemeanor - 2nd offense- Class B misdemeanor - 3rd or subsequent offense- Class A misdemeanor Distribution without charge: - Class C misdemeanor Provides that an 18 year old in possession of an electronic cigarette is subject to the jurisdiction of the Juvenile Court.</p>	<p>3 New class A misdemeanors 3 New class B misdemeanors 3 New class C misdemeanors</p>			
<p>HB 125</p>	<p>Kidnap and Sex Offender Registry Amendments</p>	<p>Amends 77-27-21.5</p>	<p>Removes subsections (1)(a), to detain or restrain the victim for any substantial period of time, and subsection (1)(b), to detain or restrain the victim in circumstances exposing the victim to risk of bodily injury from the list of offenses requiring registration on the Sex and Kidnap Offender Registry. Subsections (1)(c), to hold the victim in involuntary servitude, subsection (1)(d), to detain or restrain a minor without the consent of a minor older than 14, but younger than 18, and (1)(e), to move the victim any substantial distance or across a state line, still require registration.</p>				<p>None</p>

<p>HB 133 S01</p>	<p>Release of Court Documents and Child Interviews</p>	<p>Amends 63G-2-305 77-37-4 78A-6-317</p>	<p>Adds the video and audio recordings of Children’s Justice Center interviews to the list of records classified as “protected” under GRAMA. Specifies that copies of Children’s Justice Center interviews may not be distributed, released, or displayed to anyone without a court order limiting the further distribution of the interviews. Specifies that the prosecutor, the Attorney General’s child protection division, law enforcement agencies, and the attorney for the child who is the subject of the interview may receive a copy of the interview without a court order, but those parties may not distribute the interview further. Allows for the release of the recordings, in a criminal prosecution, to the defense attorney or a <i>pro se</i> defendant pursuant to a valid request for discovery.</p> <p>Provides that a violation of the court order or distribution of the interview or other protected document without a court order is punishable by contempt during the course of the criminal case, or a class B misdemeanor if the court no longer has jurisdiction over the defendant.</p>	<p>2 new class B misdemeanors</p>			<p>None</p>
<p>HB 138</p>	<p>Hazing Penalties</p>	<p>Amends 76-5-107.5</p>	<p>Provides that it is a class A misdemeanor to commit an act of hazing involving alcohol or drugs.</p>	<p>New class A misdemeanor</p>			<p>None</p>
<p>HB 195</p>	<p>Homicide Penalty Amendment</p>	<p>Amends 76-3-207 76-5-202</p>	<p>Clarifies that the lowest penalty for Aggravated Murder is 25 years to life, and makes all references consistent with the amendments made during the 2009 General Session.</p>				<p>None</p>
<p>HB 197 S05</p>	<p>Custodial Interference Amendments</p>	<p>Amends 53-3-220 Enacts 76-5-303.5 Repeals and Reenacts 76-5-303</p>	<p>Amends the elements and penalties of custodial interference. Removes the requirement that a person interfere with the child’s custody for a substantial period of time and requires that the person intentionally interfere with the child’s custody. Reduces the penalty from a Class A misdemeanor to a class B misdemeanor except upon a third offense within 2 years, which remains a class A misdemeanor. The penalty remains a third degree felony if the person removes the child from the state. Imposes a driver’s license suspension upon a person convicted of custodial interference.</p>	<p>Decrease from class A misdemeanor to class B misdemeanor</p> <p>Imposes driver’s license suspension</p>			<p>\$3,000</p>

HB 206	Ban on Sale of Smoking Paraphernalia to Minors	Enacts 76-10-104.1	Creates a class C misdemeanor for providing tobacco paraphernalia to a person under the age of 19 and a class B misdemeanor for a second or subsequent offense.	New class B misdemeanor and new class C misdemeanor			None
HB 209	Sex Offender Regulation Amendments	Amends 77-27-21.5	Provides that in addition to the \$100 annual registration fee that sex and kidnap offenders are currently required to pay to the Department of Corrections a local registering agency may assess a fine fee of not more than \$25.		\$25		None
HB 225	Counterfeit Substance Amendments	Amends 58-37-2 58-37-8 58-37b-2 Repeals 58-37b-3	Amends the definition of “counterfeit controlled substance,” including adding a reasonable person standard. Amends the definition of “imitation controlled substance,” including providing that an imitation controlled substance resembles any legally or illegally manufactured controlled substance.				None
HB 230	Human Trafficking Amendments	Amends 76-5-309	Specifies that it is a separate offense for each person who is trafficked or smuggled in violation of current law.	New offense for each victim			None
HB 250	Criminal Penalties Amendments- Leaving the Scene of an Accident	Amends 41-6a-301.3 41-6a.401.5	Increases the penalty from a class A misdemeanor to a third degree felony for a person who fails to stop at the scene of an accident involving death.	Increase from class A misdemeanor to 3rd degree felony			\$32,100
HB 276	Sex Offender Registry Amendment	Amends 77-27-21.5	Clarifies the definition of “jurisdiction” within the Utah Sex and Kidnap Offender Registry by specifically including all other “state, federal, or military courts.”				None
HB 277	Overdose Reporting Amendments	Enacts 32A-13-110	Provides that the court may consider, in the sentencing of a person younger than 21 for possession or consumption of alcohol or providing alcohol to a minor, that they sought help for a person who was in physical danger because of the consumption of alcohol in the same event, as a mitigating factor.				None
HB 293 S01	Victims’ Rights Amendments	Amends 77-38-11	Replaces two subsections inadvertently deleted in previous legislation which allow for appeals in adverse rulings regarding victims’ rights.				None
HB 303	Protections for Victims of Domestic Violence	Amends 77-36-1 77-36-2.4 77-36-2.5	Clarifies procedures surrounding criminal protective orders. Defines the various types of protective orders within the criminal justice system. Provides time limits on protective orders and jail release agreements and	New class A misdemeanor			None

		77-36-2.6 77-36-2.7 77-36-5 77-36-5.1 77-36-6	orders. Provides that if a person charged with domestic violence is released, the person shall receive a copy of the protective order or jail release agreement or order prior to release. Requires that the arresting officer shall provide, at the time of arrest, to the alleged victim, notification that release conditions may expire at midnight of the following day. Requires that the responding officer provide the person charged with a domestic violence offense, information about the requirement to appear in court. Requires that action regarding protective orders be transmitted to the statewide domestic violence network. Provides that any criminal protective order related to a dismissed criminal domestic violence case shall be dismissed. Provides for a sentencing protective order to be issued for the duration of a domestic violence defendant's probation and provides that violation of the order is a class A misdemeanor. Requires the defendant to pay the costs of counseling for children who are affected by the domestic violence offense, in addition to the current requirement to pay for the victim's counseling.				
HB 306	Terrorism Amendments	Amends 13-5a-102 53-2-102 63K-1-102 63K-3-102 63K-4-103 76-3-203.5 76-5-107 76-6-206 76-10-1602 76-10-2402 77-23a-8	Creates the new offense of Threat of Terrorism	New 2nd degree felony New 3rd degree felony			None
HB 337	Uniform Driver License Act Amendments	Amends 53-3-218	Alters the administrative driver's license suspension for controlled substances violations so that an individual's license will not be suspended if their offense did not involve a motor vehicle and the person completes an approved substance abuse treatment program.	Removes license suspension			None

<p>HB 365</p>	<p>Department of Corrections Registry Amendments</p>	<p>Amends 77-27-21.5</p>	<p>Clarifies that a secondary residence may include locations that the offender does not own, or does not have a financial interest in, if the offender has stayed at the location for 10 or more nights in a 12 month period. Clarifies that the Department of Corrections is to assist in investigating kidnapping crimes.</p>				<p>None</p>
<p>HB 462</p>	<p>Criminal Homicide and Abortion Revisions</p>	<p>Amends 76-5-201 76-5-202 76-7-301 76-7-302 76-7-314 76-7-314.5 76-7-327 Enacts 76-7-301.5 Repeals 76-7-329</p>	<p>Narrows the definition of abortion to medical procedures carried out by a physician, or through a substance used under the direction of a physician, with the consent of the woman on whom the abortion is performed. Does away with the defense that has historically barred the prosecution of a woman seeking an illegal abortion.</p> <p>Allows for a woman to be charged with the killing of an unborn child, for knowing acts that result in the death of an unborn child. A woman may not be charged if the death of the unborn child is caused by her own criminally negligent or reckless act. Specifies that a woman is not guilty of criminal homicide if the unborn child's death is the result of the woman's refusal to consent to the medical treatment, a cesarean section, or failure to follow medical advice. An unborn child is not considered to be a child under the age of 14 for purposes of the aggravated murder statute.</p>	<p>New 1st degree felony</p> <p>New 2nd degree felony</p> <p>New class A misdemeanor</p>			<p>None</p>
<p>HJR 6</p>	<p>Strangulation and domestic Violence Joint Resolution</p>		<p>Encourages law enforcement officers and prosecutors to investigate, and prosecute, consistent with case law, all assaults in which the evidence shows that the defendant created a substantial likelihood of impediment to the victim's normal breathing or circulation by putting pressure on the victim's airway as felonies.</p>				<p>None</p>

Senate Bills

Bill #	Title	Statute	Description	Penalty Changes	Increased Fine or Fees	Anticipated Prison Admissions	Anticipated 2011 Fiscal Impact
SB 10	Criminal Offense Penalties Amendments	<p>Amends 9-4-612 63M-7-510 76-3-203.1 76-5-103 76-6-101 76-6-102 76-6-104 76-6-106 76-6-111 76-6-409.3 76-6-412 76-6-505 76-6-506.5 76-6-513 76-6-608 76-6-703 76-6-1204 76-8-1301 76-10-1801 78A-6-703 78B-6-1101 78B-6-1107</p>	<p>Provides that the commission of aggravated assault, resulting in serious bodily injury, is a second degree felony, regardless of whether the actor intended to cause serious bodily injury. Expands the “group enhancement” to include crimes that are committed at the direction of or for the benefit of a criminal street gang.</p> <p>Amends the value amounts related to the penalty scale for theft and other property crimes. The amounts and penalties are now:</p> <ul style="list-style-type: none"> - 2nd degree felony: remains at greater than \$5,000 - 3rd degree felony: changed from greater than \$1,000 to greater than \$1,500 - Class A misdemeanor: changed from greater than \$300 to greater than \$500 - Class B misdemeanor: changed from less than \$300 to less than \$500 <p>Requires that in order for a third offense of a theft or theft related crime to be a felony based upon prior offenses, that the two prior convictions relate to an offense committed or a conviction obtained within 10 years prior to the current offense. Specifies that a conviction for a fraud related offense can be used as a prior conviction for enhancement purposes.</p>	<p>Broadens 2nd degree aggravated assault</p> <p>Expands enhancement</p> <p>Shifts penalties for theft and property crimes</p>			\$18,000

SB 53	Voter Challenge Revisions	Amends 20A-3-105.5 Enacts 20A-3-201.5 20A-3-202.3 20A-3-202.5 Repeals and Reenacts 20A-3-202	States that a person who files a challenge to another's right to vote is subject to the penalties of 76-8-503, False or Inconsistent Statements, and 76-8-504, Written False Statement. Both violations are class B misdemeanors.	2 new class B misdemeanors			None
SB 58	Transportation Expenses for Defendants	Amends 76-3-201	Requires that a defendant shall pay restitution for the costs of warrant related transportation expenses, unless the court rules otherwise.		Adds transport costs		None
SB 110	Revisor's Statute	Amends 76-5-404 78A-6-702	Fixes the incorrect reference to discharge of a firearm in Utah code 78A-6-702, Serious Youth Offender. The statute previously referred to a felony violation of 76-10-508, Discharge of a Firearm From a Vehicle, as one of the offenses requiring prosecution under the Serious Youth Offender statute. However, because there is not felony violation of Discharge of a Firearm from a Vehicle, the reference was corrected to the intended reference of 76-110-508.1, Felony Discharge of a Firearm				None
SB 120	Disarming a Peace Officer Amendment	Amends 76-5-102.8	Provides that taking, or attempting to take, a conductive energy device from a peace officer is a 3 rd degree felony.	New 3rd degree			None
SB 140 S01	Juvenile Detention Amendments	Amends 62A- 7-201 78A-6-113 78A-6-116 78A-6-601 78A-6-602 78A-6-701 78A-6-702 78A-6-703	Clarifies the original intent of the legislature regarding the detention of minors and the filing of criminal charges by Information in Direct File cases.				None
SB 170	Suspension of Driving Privileges	Amends 41-6a-1715 53-3-218 76-5-205 76-5-206	Provides that a judge may order the revocation of a person's driver's license for a period of one year if the person is convicted of careless driving and the violation causes or results in the death of another person. Provides that the Driver's License Division shall revoke, deny, suspend, or disqualify the license of a person upon receiving a record of the person's conviction for manslaughter or negligent homicide if the death of another person resulted from driving a motor vehicle.				None

			Provides that a court shall forward the report of the manslaughter or negligent homicide conviction resulting from driving a motor vehicle to the Driver License Division.				
SB 217 S02	Increase in Surcharge on Fines	Amends 51-9-401 51-9-402 Enacts 51-9-412	Increases the surcharges on criminal fines and penalties from 85% to 90%.	Additional 5% of ordered fine			\$619,000
SB 219	Criminal Nuisance Amendment	Enacts 76-10-806.5	Provides that the violation of an order or judgment abating or enjoining a nuisance or a public nuisance is a class B misdemeanor.	2 new class B misdemeanors			None.
SB 277	DNA Modifications	Amends 53-10-403 53-10-403.5 53-10-404 53-10-406 53-10-407 78B-9-301 Enacts 53-10-404.5	Requires that any law enforcement agency that books a person for any violent crime obtain a DNA specimen at the time of booking. Increases the DNA fee at conviction from \$100 to \$150. Requires the booked person to pay the fee if the person is convicted of a charge resulting from the charge for which the person was booked. Provides that the DNA specimen taken at booking may not be processed until a judicial finding of probable cause.		\$50		\$250,000

2010 Totals*									
New 1st Degree Felonies	New 2nd Degree Felonies	New 3rd Degree Felonies	New Class A Misdemeanors	New Class B Misdemeanors	New Class C Misdemeanors	New Infractions	New Fines or Fees	Anticipated Prison Admissions	Anticipated Fiscal Impact^a
1	3	4	6	14	4		4		\$918,000
2009 Totals									
	1	7	9	10	4	2	°	1	\$301,700
2008 Totals									
1	3	11	6	2			°	15	\$360,000
2007 Totals									
1(Capital)	1	2	3	4	1		°	9	\$216,000

* New Crime totals include penalties increased or decreased from a previously existing penalty.

^a The anticipated fiscal impact predicts costs to state agencies in the fiscal year FY11 or the year indicated only and does not include ongoing costs or the costs to county or local governments.

° Information regarding new fines or fees to offenders was not tracked in these years.