

FIREARM POSSESSION REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Lyman

Senate Sponsor: Kirk A. Cullimore

Cosponsors:	Tim Jimenez	Christine F. Watkins
Melissa G. Ballard	Jason B. Kyle	
Kera Birkeland	Trevor Lee	
Kay J. Christofferson	Rex P. Shipp	

LONG TITLE

General Description:

This bill amends the definition of a restricted person.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the definition of a restricted person; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-501, as last amended by Laws of Utah 2015, Chapters 212, 406

76-10-503, as last amended by Laws of Utah 2021, Chapter 262

76-10-532, as last amended by Laws of Utah 2015, Chapter 37

28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54

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

Section 1. Section **76-10-501** is amended to read:

76-10-501. Definitions.

As used in this part:

(1) (a) "Antique firearm" means:

(i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured in or before 1898; [or]

(ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the replica:

(A) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition; or

(B) uses rimfire or centerfire fixed ammunition which is:

(I) no longer manufactured in the United States; and

(II) is not readily available in ordinary channels of commercial trade; or

(iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

(B) is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

(b) "Antique firearm" does not include:

(i) a weapon that incorporates a firearm frame or receiver;

(ii) a firearm that is converted into a muzzle loading weapon; or

(iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

(D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

55 (2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201
56 within the Department of Public Safety.

57 (3) (a) "Concealed firearm" means a firearm that is:

58 (i) covered, hidden, or secreted in a manner that the public would not be aware of its
59 presence; and

60 (ii) readily accessible for immediate use.

61 (b) A firearm that is unloaded and securely encased is not a concealed firearm for the
62 purposes of this part.

63 (4) "Criminal history background check" means a criminal background check
64 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal
65 Firearms Licensee, through the bureau or the local law enforcement agency where the firearms
66 dealer conducts business.

67 (5) "Curio or relic firearm" means a firearm that:

68 (a) is of special interest to a collector because of a quality that is not associated with
69 firearms intended for:

70 (i) sporting use;

71 (ii) use as an offensive weapon; or

72 (iii) use as a defensive weapon;

73 (b) (i) was manufactured at least 50 years before the current date; and

74 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);

75 (c) is certified by the curator of a municipal, state, or federal museum that exhibits
76 firearms to be a curio or relic of museum interest;

77 (d) derives a substantial part of its monetary value:

78 (i) from the fact that the firearm is:

79 (A) novel;

80 (B) rare; or

81 (C) bizarre; or

- 82 (ii) because of the firearm's association with an historical:
83 (A) figure;
84 (B) period; or
85 (C) event; and
86 (e) has been designated as a curio or relic firearm by the director of the United States
87 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.
88 (6) (a) "Dangerous weapon" means:
89 (i) a firearm; or
90 (ii) an object that in the manner of its use or intended use is capable of causing death or
91 serious bodily injury.
92 (b) The following factors are used in determining whether any object, other than a
93 firearm, is a dangerous weapon:
94 (i) the location and circumstances in which the object was used or possessed;
95 (ii) the primary purpose for which the object was made;
96 (iii) the character of the wound, if any, produced by the object's unlawful use;
97 (iv) the manner in which the object was unlawfully used;
98 (v) whether the manner in which the object is used or possessed constitutes a potential
99 imminent threat to public safety; and
100 (vi) the lawful purposes for which the object may be used.
101 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device
102 as defined by Section [76-10-306](#).
103 (7) "Dealer" means a person who is:
104 (a) licensed under 18 U.S.C. Sec. 923; and
105 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
106 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.
107 (8) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).
108 [~~8~~] (9) "Enter" means intrusion of the entire body.

109 ~~[(9)]~~ (10) "Federal Firearms Licensee" means a person who:

110 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

111 (b) is engaged in the activities authorized by the specific category of license held.

112 ~~[(10)]~~ (11) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle
113 or short barreled rifle, or a device that could be used as a dangerous weapon from which is
114 expelled a projectile by action of an explosive.

115 (b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an
116 antique firearm.

117 ~~[(11)]~~ (12) "Firearms transaction record form" means a form created by the bureau to
118 be completed by a person purchasing, selling, or transferring a handgun from a dealer in the
119 state.

120 ~~[(12)]~~ (13) "Fully automatic weapon" means a firearm which fires, is designed to fire,
121 or can be readily restored to fire, automatically more than one shot without manual reloading
122 by a single function of the trigger.

123 ~~[(13)]~~ (14) (a) "Handgun" means a pistol, revolver, or other firearm of any description,
124 loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of
125 which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

126 (b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol
127 or revolver" do not include an antique firearm.

128 ~~[(14)]~~ (15) "House of worship" means a church, temple, synagogue, mosque, or other
129 building set apart primarily for the purpose of worship in which religious services are held and
130 the main body of which is kept for that use and not put to any other use inconsistent with its
131 primary purpose.

132 ~~[(15)]~~ (16) "Prohibited area" means a place where it is unlawful to discharge a firearm.

133 ~~[(16)]~~ (17) "Readily accessible for immediate use" means that a firearm or other
134 dangerous weapon is carried on the person or within such close proximity and in such a manner
135 that it can be retrieved and used as readily as if carried on the person.

136 [~~(17)~~] (18) "Residence" means an improvement to real property used or occupied as a
137 primary or secondary residence.

138 [~~(18)~~] (19) "Securely encased" means not readily accessible for immediate use, such as
139 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
140 storage area of a motor vehicle, not including a glove box or console box.

141 [~~(19)~~] (20) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a
142 barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or
143 barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun
144 by alteration, modification, or otherwise, if the weapon as modified has an overall length of
145 fewer than 26 inches.

146 [~~(20)~~] (21) "Shotgun" means a smooth bore firearm designed to fire cartridges
147 containing pellets or a single slug.

148 [~~(21)~~] (22) "Shoulder arm" means a firearm that is designed to be fired while braced
149 against the shoulder.

150 (23) "Single criminal episode" means the same as that term is defined in Section
151 [76-1-401](#).

152 [~~(22)~~] (24) "Slug" means a single projectile discharged from a shotgun shell.

153 [~~(23)~~] (25) "State entity" means a department, commission, board, council, agency,
154 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
155 unit, bureau, panel, or other administrative unit of the state.

156 [~~(24)~~] (26) "Violent felony" means the same as that term is defined in Section
157 [76-3-203.5](#).

158 Section 2. Section **76-10-503** is amended to read:

159 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
160 **dangerous weapons by certain persons -- Exceptions.**

161 (1) For purposes of this section:

162 (a) A Category I restricted person is a person who:

- 163 (i) has been convicted of ~~[any]~~ a violent felony ~~[as defined in Section 76-3-203.5]~~;
- 164 (ii) is on probation or parole for ~~[any]~~ a felony;
- 165 (iii) is on parole from secure care, as defined in Section 80-1-102;
- 166 (iv) within the last 10 years has been adjudicated under Section 80-6-701 for an offense
- 167 which if committed by an adult would have been a violent felony as defined in Section
- 168 76-3-203.5;
- 169 (v) is an alien who is illegally or unlawfully in the United States; or
- 170 (vi) is on probation for a conviction of possessing:
 - 171 (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;
 - 172 (B) a controlled substance analog; or
 - 173 (C) a substance listed in Section 58-37-4.2.
- 174 (b) A Category II restricted person is a person who:
 - 175 (i) has been convicted of ~~[any]~~:
 - 176 (A) a domestic violence offense that is a felony;
 - 177 (B) a felony that is not a domestic violence offense or a violent felony and within seven
 - 178 years after completing the sentence for the conviction, has been convicted of or charged with
 - 179 another felony or class A misdemeanor;
 - 180 (C) multiple felonies that are part of a single criminal episode and are not domestic
 - 181 violence offenses or violent felonies and within seven years after completing the sentence for
 - 182 the convictions, has been convicted of or charged with another felony or class A misdemeanor;
 - 183 or
 - 184 (D) multiple felonies that are not part of a single criminal episode;
 - 185 (ii) (A) within the last seven years has completed a sentence for:
 - 186 (I) a conviction for a felony that is not a domestic violence offense or a violent felony;
 - 187 or
 - 188 (II) convictions for multiple felonies that are part of a single criminal episode and are
 - 189 not domestic violence offenses or violent felonies; and

190 (B) within the last seven years and after the completion of a sentence for a conviction
191 described in Subsection (1)(b)(ii)(A), has not been convicted of or charged with another felony
192 or class A misdemeanor;

193 ~~[(ii)]~~ (iii) within the last seven years has been adjudicated delinquent for an offense
194 which if committed by an adult would have been a felony;

195 ~~[(iii)]~~ (iv) is an unlawful user of a controlled substance as defined in Section 58-37-2;

196 ~~[(iv)]~~ (v) is in possession of a dangerous weapon and is knowingly and intentionally in
197 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

198 ~~[(v)]~~ (vi) has been found not guilty by reason of insanity for a felony offense;

199 ~~[(vi)]~~ (vii) has been found mentally incompetent to stand trial for a felony offense;

200 ~~[(vii)]~~ (viii) has been adjudicated as mentally defective as provided in the Brady
201 Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been
202 committed to a mental institution;

203 ~~[(viii)]~~ (ix) has been dishonorably discharged from the armed forces;

204 ~~[(ix)]~~ (x) has renounced the individual's citizenship after having been a citizen of the
205 United States;

206 ~~[(x)]~~ (xi) is a respondent or defendant subject to a protective order or child protective
207 order that is issued after a hearing for which the respondent or defendant received actual notice
208 and at which the respondent or defendant has an opportunity to participate, that restrains the
209 respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that
210 would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate
211 partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate
212 partner, and that:

213 (A) includes a finding that the respondent or defendant represents a credible threat to
214 the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C.
215 Sec. 921 or the child of the individual; or

216 (B) explicitly prohibits the use, attempted use, or threatened use of physical force that

217 would reasonably be expected to cause bodily harm against an intimate partner or the child of
218 an intimate partner; or

219 ~~[(xi)]~~ (xii) has been convicted of the commission or attempted commission of assault
220 under Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or
221 former spouse, parent, guardian, individual with whom the restricted person shares a child in
222 common, individual who is cohabitating or has cohabitated with the restricted person as a
223 spouse, parent, or guardian, or against an individual similarly situated to a spouse, parent, or
224 guardian of the restricted person.

225 (c) As used in this section, a conviction of a felony or adjudication of delinquency for
226 an offense which would be a felony if committed by an adult does not include:

227 (i) a conviction or an adjudication under Section 80-6-701 for an offense pertaining to
228 antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to
229 the regulation of business practices not involving theft or fraud; or

230 (ii) a conviction or an adjudication under Section 80-6-701 which, according to the law
231 of the jurisdiction in which it occurred, has been expunged, set aside, reduced to a
232 misdemeanor by court order, pardoned or regarding which the person's civil rights have been
233 restored unless the pardon, reduction, expungement, or restoration of civil rights expressly
234 provides that the person may not ship, transport, possess, or receive firearms.

235 (d) It is the burden of the defendant in a criminal case to provide evidence that a
236 conviction or an adjudication under Section 80-6-701 is subject to an exception provided in
237 Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt
238 that the conviction or the adjudication is not subject to that exception.

239 (2) A Category I restricted person who intentionally or knowingly agrees, consents,
240 offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or
241 control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under
242 the person's custody or control:

243 (a) any firearm is guilty of a second degree felony; or

244 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.
245 (3) A Category II restricted person who intentionally or knowingly purchases, transfers,
246 possesses, uses, or has under the person's custody or control:
247 (a) any firearm is guilty of a third degree felony; or
248 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.
249 (4) A person may be subject to the restrictions of both categories at the same time.
250 (5) If a higher penalty than is prescribed in this section is provided in another section
251 for one who purchases, transfers, possesses, uses, or has under this custody or control any
252 dangerous weapon, the penalties of that section control.
253 (6) It is an affirmative defense to a charge based on the definition in Subsection
254 [~~(1)(b)(iv)~~] (1)(b)(v) that the person was:
255 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner
256 for use of a member of the person's household or for administration to an animal owned by the
257 person or a member of the person's household; or
258 (b) otherwise authorized by law to possess the substance.
259 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon
260 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:
261 (i) was possessed by the person or was under the person's custody or control before the
262 person became a restricted person;
263 (ii) was not used in or possessed during the commission of a crime or subject to
264 disposition under Section [24-3-103](#);
265 (iii) is not being held as evidence by a court or law enforcement agency;
266 (iv) was transferred to a person not legally prohibited from possessing the weapon; and
267 (v) unless a different time is ordered by the court, was transferred within 10 days of the
268 person becoming a restricted person.
269 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person
270 of a firearm or other dangerous weapon by a restricted person.

271 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or
272 dangerous weapon to any person, knowing that the recipient is a person described in
273 Subsection (1)(a) or (b).

274 (b) A person who violates Subsection (8)(a) when the recipient is:

275 (i) a person described in Subsection (1)(a) and the transaction involves a firearm, is
276 guilty of a second degree felony;

277 (ii) a person described in Subsection (1)(a) and the transaction involves any dangerous
278 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
279 the weapon for any unlawful purpose, is guilty of a third degree felony;

280 (iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is
281 guilty of a third degree felony; or

282 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous
283 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
284 the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

285 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or
286 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under
287 circumstances which the person knows would be a violation of the law.

288 (b) A person may not provide to a dealer or other person any information that the
289 person knows to be materially false information with intent to deceive the dealer or other
290 person about the legality of a sale, transfer or other disposition of a firearm or dangerous
291 weapon.

292 (c) "Materially false information" means information that portrays an illegal transaction
293 as legal or a legal transaction as illegal.

294 (d) A person who violates this Subsection (9) is guilty of:

295 (i) a third degree felony if the transaction involved a firearm; or

296 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a
297 firearm.

298 Section 3. Section **76-10-532** is amended to read:

299 **76-10-532. Removal from National Instant Check System database.**

300 (1) A person who is subject to the restrictions in Subsection [~~76-10-503(1)(b)(v), (vi),~~
301 ~~or (vii)] 76-10-503(1)(b)(vi), (vii), or (viii), or 18 U.S.C. 922(d)(4) and (g)(4) based on a
302 commitment, finding, or adjudication that occurred in this state may petition the district court
303 in the county in which the commitment, finding, or adjudication occurred to remove the
304 disability imposed.~~

305 (2) The petition shall be filed in the district court in the county where the commitment,
306 finding, or adjudication occurred. The petition shall include:

307 (a) a listing of facilities, with their addresses, where the petitioner has ever received
308 mental health treatment;

309 (b) a release signed by the petitioner to allow the prosecutor or county attorney to
310 obtain the petitioner's mental health records;

311 (c) a verified report of a mental health evaluation conducted by a licensed psychiatrist
312 occurring within 30 days prior to the filing of the petition, which shall include a statement
313 regarding:

314 (i) the nature of the commitment, finding, or adjudication that resulted in the restriction
315 on the petitioner's ability to purchase or possess a dangerous weapon;

316 (ii) the petitioner's previous and current mental health treatment;

317 (iii) the petitioner's previous violent behavior, if any;

318 (iv) the petitioner's current mental health medications and medication management;

319 (v) the length of time the petitioner has been stable;

320 (vi) external factors that may influence the petitioner's stability;

321 (vii) the ability of the petitioner to maintain stability with or without medication; and

322 (viii) whether the petitioner is dangerous to public safety; and

323 (d) a copy of the petitioner's state and federal criminal history record.

324 (3) The petitioner shall serve the petition on the prosecuting entity that prosecuted the

325 case or, if the disability is not based on a criminal case, on the county or district attorney's
326 office having jurisdiction where the petition was filed and the individual who filed the original
327 action which resulted in the disability.

328 (4) The court shall schedule a hearing as soon as practicable. The petitioner may
329 present evidence and subpoena witnesses to appear at the hearing. The prosecuting, county
330 attorney, or the individual who filed the original action which resulted in the disability may
331 object to the petition and present evidence in support of the objection.

332 (5) The court shall consider the following evidence:

333 (a) the facts and circumstances that resulted in the commitment, finding, or
334 adjudication;

335 (b) the person's mental health and criminal history records; and

336 (c) the person's reputation, including the testimony of character witnesses.

337 (6) The court shall grant the relief if the court finds by clear and convincing evidence
338 that:

339 (a) the person is not a danger to the person or to others;

340 (b) the person is not likely to act in a manner dangerous to public safety; and

341 (c) the requested relief would not be contrary to the public interest.

342 (7) The court shall issue an order with its findings and send a copy to the bureau.

343 (8) The bureau, upon receipt of a court order removing a person's disability under
344 Subsection [~~76-10-503(1)(b)(vii)~~] 76-10-503(1)(b)(viii), shall send a copy of the court order to
345 the National Instant Check System requesting removal of the person's name from the database.
346 In addition, if the person is listed in a state database utilized by the bureau to determine
347 eligibility for the purchase or possession of a firearm or to obtain a concealed firearm permit,
348 the bureau shall remove the petitioner's name or send a copy of the court's order to the agency
349 responsible for the database for removal of the petitioner's name.

350 (9) If the court denies the petition, the petitioner may not petition again for relief until
351 at least two years after the date of the court's final order.

352 (10) The petitioner may appeal a denial of the requested relief. The review on appeal
353 shall be de novo.