

1 **WEAPONS AND EXPLOSIVES RESTRICTIONS**
2 **- PRIVATE PROPERTY, SCHOOLS,**
3 **CHURCHES, AND OLYMPIC VENUES**

4 1999 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: David M. Jones**

7 AN ACT RELATING TO PUBLIC SAFETY AND THE JUDICIAL CODE; PROVIDING
8 CROSS REFERENCES TO RESTRICTED AREAS; PROVIDING DEFINITIONS;
9 SEPARATING INTO TWO SECTIONS PROVISIONS RELATING TO DEFINITIONS AND
10 UNIFORM LAW TO FACILITATE THE ADDITION OF DEFINITIONS IN THE FUTURE;
11 AUTHORIZING RULEMAKING AUTHORITY TO THE OLYMPIC LAW ENFORCEMENT
12 COMMANDER TO DESIGNATE CONTROLLED ACCESS AREAS AND PROVIDE NOTICE;
13 RESTRICTING WEAPONS IN HOUSES OF WORSHIP, IN A PRIVATE RESIDENCE, ON
14 ELEMENTARY AND SECONDARY SCHOOLS PREMISES; RESTRICTING WEAPONS
15 AND EXPLOSIVES AT CONTROLLED ACCESS AREAS AT OLYMPIC VENUES;
16 PRESCRIBING PENALTIES AND EXCEPTIONS; MAKING TECHNICAL CORRECTIONS;
17 AND PROVIDING A REPEALER FOR THE OLYMPIC PROVISIONS.

18 This act affects sections of Utah Code Annotated 1953 as follows:

19 AMENDS:

20 **53-5-710**, as enacted by Chapter 117, Laws of Utah 1997

21 **53A-3-502**, as enacted by Chapter 2, Laws of Utah 1988

22 **53A-11-904**, as last amended by Chapter 74, Laws of Utah 1996

23 **76-3-203.2**, as last amended by Chapter 289, Laws of Utah 1997

24 **76-8-311.3**, as last amended by Chapter 288, Laws of Utah 1997

25 **76-10-501**, as last amended by Chapter 263, Laws of Utah 1998

26 **76-10-505.5**, as last amended by Chapters 10 and 289, Laws of Utah 1997

27 **78-3a-603**, as last amended by Chapter 365, Laws of Utah 1997

28 ENACTS:

29 **53-12-301.1**, Utah Code Annotated 1953

30 **63-55b-153**, Utah Code Annotated 1953

31 **63-55b-176**, Utah Code Annotated 1953

32 **76-10-500**, Utah Code Annotated 1953

33 **76-10-530**, Utah Code Annotated 1953

34 **76-10-531**, Utah Code Annotated 1953

35 **76-10-532**, Utah Code Annotated 1953

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

37 Section 1. Section **53-5-710** is amended to read:

38 **53-5-710. Cross-references to concealed firearm permit restrictions.**

39 A person with a permit to carry a concealed firearm may not carry a concealed firearm in
40 [the following] certain locations including:

41 (1) any secure area prescribed in Section 76-10-523.5 in which firearms are prohibited and
42 notice of the prohibition posted; [and]

43 (2) in any airport secure area as provided in Section 76-10-529;

44 (3) in any house of worship in violation of Section 76-10-530;

45 (4) in a private residence in violation of Section 76-10-531;

46 (5) on school premises in violation of Section 76-10-505.5; and

47 (6) at an Olympic venue controlled access area in violation of Section 76-10-532.

48 Section 2. Section **53-12-301.1** is enacted to read:

49 **53-12-301.1. Rulemaking authority for Olympic venue controlled access areas.**

50 In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
51 Olympic law enforcement commander designated in Section 53-12-301 shall make rules:

52 (1) designating the locations of controlled access areas at or within Olympic venues where
53 a firearm, ammunition, dangerous weapon, or explosive, chemical, or incendiary device is
54 prohibited; and

55 (2) providing notice that a reasonable person would understand regarding:

56 (a) the locations of the controlled access areas where the items in Subsection (1) are
57 prohibited; and

58 (b) the penalty for violating Section 76-10-532, restriction of dangerous weapons in

59 Olympic venue controlled access areas.

60 (3) The notice in Subsection (2) shall include:

61 (a) written notice provided to a person at the time the person receives tickets to events at
62 controlled access areas; and

63 (b) notice posted at any entrance to a controlled access area.

64 Section 3. Section **53A-3-502** is amended to read:

65 **53A-3-502. Dangerous materials in the public schools -- Class B misdemeanor --**
66 **Exceptions.**

67 (1) A person who possesses a weapon, explosive, flammable material, or other material
68 dangerous to persons or property, other than a dangerous weapon restricted under Section
69 76-10-505.5, in a public or private elementary or secondary school, on the grounds of the school,
70 or in those parts of a building, park, or stadium which are being used for an activity sponsored by
71 or through the school is guilty of a class B misdemeanor, unless a higher penalty is prescribed in
72 Title 76, Criminal Code, in which case the penalty provisions of that title control.

73 (2) Subsection (1) does not apply under the following circumstances:

74 (a) possession is approved by the responsible school administrator; or

75 (b) the item or material is present or to be used in connection with a lawful, approved
76 activity and is in the possession or under the control of the person responsible for its possession
77 or use.

78 Section 4. Section **53A-11-904** is amended to read:

79 **53A-11-904. Grounds for suspension or expulsion from a public school.**

80 (1) A student may be suspended or expelled from a public school for any of the following
81 reasons:

82 (a) frequent or flagrant willful disobedience, defiance of proper authority, or disruptive
83 behavior, including the use of foul, profane, vulgar, or abusive language;

84 (b) willful destruction or defacing of school property;

85 (c) behavior or threatened behavior which poses an immediate and significant threat to the
86 welfare, safety, or morals of other students or school personnel or to the operation of the school;

87 (d) possession, control, or use of an alcoholic beverage as defined in Section 32A-1-105;

88 or

89 (e) behavior proscribed under Subsection (2) which threatens harm or does harm to the

90 school or school property, to a person associated with the school, or property associated with any
91 such person, regardless of where it occurs.

92 (2) (a) A student shall be suspended or expelled from a public school for any of the
93 following reasons:

94 (i) any serious violation affecting another student or a staff member, or any serious
95 violation occurring in a school building, in or on school property, or in conjunction with any
96 school activity, including the possession, control, or actual or threatened use of a real, look alike,
97 or pretend weapon, explosive, or noxious or flammable material under Section 53A-3-502 or
98 76-10-505.5, or the sale, control, or distribution of a drug or controlled substance as defined in
99 Section 58-37-2, an imitation controlled substance defined in Section 58-37b-2, or drug
100 paraphernalia as defined in Section 58-37a-3; or

101 (ii) the commission of an act involving the use of force or the threatened use of force
102 which if committed by an adult would be a felony or class A misdemeanor.

103 (b) A student who commits a violation of Subsection (a) involving a real, look alike, or
104 pretend firearm, explosive, or flammable material shall be expelled from school for a period of not
105 less than one year, unless the district superintendent determines, on a case-by-case basis, that a
106 lesser penalty would be more appropriate.

107 (3) A student may be denied admission to a public school on the basis of having been
108 expelled from that or any other school during the preceding 12 months.

109 (4) A suspension or expulsion under this section is not subject to the age limitations under
110 Subsection 53A-11-102(1).

111 Section 5. Section **63-55B-153** is enacted to read:

112 **63-55b-153. Repeal date - Title 53.**

113 (1) Section 53-12-301.1 is repealed December 31, 2002.

114 (2) Subsection 53-5-710(6) pertaining to restrictions at Olympic venue controlled access
115 areas is repealed December 31, 2002.

116 Section 6. Section **63-55b-176** is enacted to read:

117 **63-55b-176. Repeal date -- Title 76.**

118 Section 76-10-532 is repealed December 31, 2002.

119 Section 7. Section **76-3-203.2** is amended to read:

120 **76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or**

121 **about school premises -- Enhanced penalties.**

122 For purposes of this section:

123 (1) (a) "On or about school premises" [~~as used in this section and Section 76-10-505.5]~~

124 means any of the following:

125 (i) in a public or private elementary, secondary, or on the grounds of any of those schools;

126 (ii) in a public or private vocational school or postsecondary institution or on the grounds

127 of any of those schools or institutions;

128 (iii) in those portions of any building, park, stadium, or other structure or grounds which

129 are, at the time of the act, being used for an activity sponsored by or through a school or institution

130 under Subsections (1)(a)(i) and (ii);

131 (iv) in or on the grounds of a preschool or child-care facility; and

132 (v) within 1,000 feet of any structure, facility, or grounds included in Subsections (1)(a)(i),

133 (ii), (iii), and (iv).

134 (b) As used in this section:

135 (i) "Educator" means any person who is employed by a public school district and who is

136 required to hold a certificate issued by the State Board of Education in order to perform duties of

137 employment.

138 (ii) "Within the course of employment" means that an educator is providing services or

139 engaging in conduct required by the educator's employer to perform the duties of employment.

140 (2) Any person who, on or about school premises, commits any offense and uses or

141 threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the

142 offense is subject to an enhanced degree of offense as provided in [~~Subsection~~] Subsections (4)

143 and (5).

144 (3) (a) Any person who commits an offense against an educator when the educator is

145 acting within the course of employment is subject to an enhanced degree of offense as provided

146 in Subsection (4).

147 (b) As used in Subsection (3)(a), "offense" means [~~an~~] any offense;

148 (i) under Title 76, Chapter 5, Offenses Against The Person; [~~and~~] or

149 [~~(c) an offense~~] (ii) under Title 76, Chapter 6, Part 3, Robbery.

150 (4) The enhanced degree of offense for offenses committed under this section are:

151 (a) if the offense is otherwise a class B misdemeanor it is a class A misdemeanor;

- 152 (b) if the offense is otherwise a class A misdemeanor it is a third degree felony;
153 (c) if the offense is otherwise a third degree felony it is a second degree felony; or
154 (d) if the offense is otherwise a second degree felony it is a first degree felony.

155 (5) The enhanced penalty for a first degree felony offense of a convicted person:

156 (a) shall be imprisonment for a term of not less than five years and which may be for life,
157 and imposition or execution of the sentence may not be suspended unless the court:

158 (i) finds that the interests of justice would be best served; and

159 (ii) states the specific circumstances justifying the disposition on the record; and

160 (b) shall [be] subject the person also to the dangerous weapon enhancement provided in
161 Section 76-3-203 except for an offense committed under Subsection (3) that does not involve a
162 firearm.

163 (6) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide
164 notice upon the information or indictment that the defendant is subject to the enhanced degree of
165 offense or penalty under Subsection (4) or (5).

166 (b) The notice shall be in a clause separate from and in addition to the substantive offense
167 charged.

168 [(b)] (c) If the notice is not included initially, the court may subsequently allow the
169 prosecutor to amend the charging documents to include the notice if the court finds:

170 (i) the charging document, including any statement of probable cause, provide notice to
171 the defendant of the allegation he committed the offense on or about school premises[;]; or [if the
172 court finds]

173 (ii) the defendant has not otherwise been substantially prejudiced by the omission.

174 (7) [In] The convicted person shall not be subject to the dangerous weapon enhancement
175 in Section 76-3-203:

176 (a) in cases where an offense is enhanced pursuant to Subsection (4)(a), (b), (c), or (d)[;];
177 or

178 (b) under Subsection (5)(a) for an offense committed under Subsection (2) that does not
179 involve a firearm[; the convicted person shall not be subject to the dangerous weapon enhancement
180 in Section 76-3-203].

181 Section 8. Section **76-8-311.3** is amended to read:

182 **76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.**

183 (1) As used in this section:

184 (a) "Contraband" means any item not specifically prohibited for possession by offenders
185 under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

186 (b) "Controlled substance" means any substance defined as a controlled substance under
187 Title 58, Chapter 37, Utah Controlled Substances Act.

188 (c) "Correctional facility" means:

189 (i) any facility operated by the Department of Corrections to house offenders in either a
190 secure or nonsecure setting;

191 (ii) any facility operated by a municipality or a county to house or detain criminal
192 offenders;

193 (iii) any juvenile detention facility; and

194 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
195 municipality, or county for use as a correctional facility.

196 (d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17a, Pharmacy
197 Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37,
198 Utah Controlled Substances Act.

199 (e) "Mental health facility" has the same meaning as defined in Section 62A-12-202.

200 (f) "Offender" means a person in custody at a correctional facility.

201 (g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

202 (2) Notwithstanding [~~any other statute to the contrary, including Subsection 76-10-501(b)]~~

203 Section 76-10-500, a correctional or mental health facility may provide by rule that no firearm,

204 ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous

205 or fermented liquor, medicine, or poison in any quantity may be:

206 (a) transported to or upon a correctional or mental health facility;

207 (b) sold or given away at any correctional or mental health facility;

208 (c) given to or used by any offender at a correctional or mental health facility; or

209 (d) knowingly or intentionally possessed at a correctional or mental health facility.

210 (3) It is a defense to any prosecution under this section if the accused in committing the
211 act made criminal by this section:

212 (a) with respect to a correctional facility operated by the Department of Corrections, acted
213 in conformity with departmental rule or policy;

214 (b) with respect to a correctional facility operated by a municipality, acted in conformity
215 with the policy of the municipality;

216 (c) with respect to a correctional facility operated by a county, acted in conformity with
217 the policy of the county; or

218 (d) with respect to a mental health facility, acted in conformity with the policy of the
219 mental health facility.

220 (4) (a) Any person who transports to or upon a correctional facility, or into a secure area
221 of a mental health facility, any firearm, ammunition, dangerous weapon, explosive, or implement
222 of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

223 (b) Any person who provides or sells to any offender at a correctional facility, or any
224 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon,
225 explosive, or implement of escape is guilty of a second degree felony.

226 (c) Any offender who possesses at a correctional facility, or any detainee who possesses
227 at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, explosive,
228 or implement of escape is guilty of a second degree felony.

229 (d) Any person who, without the permission of the authority operating the correctional
230 facility or the secure area of a mental health facility, knowingly possesses at a correctional facility
231 or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, implement
232 of escape, or explosive is guilty of a third degree felony.

233 (5) (a) A person is guilty of a third degree felony who, without the permission of the
234 authority operating the correctional facility or secure area of a mental health facility, knowingly
235 transports to or upon a correctional facility or into a secure area of a mental health facility any:

236 (i) spirituous or fermented liquor;

237 (ii) medicine, whether or not lawfully prescribed for the offender; or

238 (iii) poison in any quantity.

239 (b) A person is guilty of a third degree felony who knowingly violates correctional or
240 mental health facility policy or rule by providing or selling to any offender at a correctional facility
241 or detainee within a secure area of a mental health facility any:

242 (i) spirituous or fermented liquor;

243 (ii) medicine, whether or not lawfully prescribed for the offender; or

244 (iii) poison in any quantity.

245 (c) An inmate is guilty of a third degree felony who, in violation of correctional or mental
246 health facility policy or rule, possesses at a correctional facility or in a secure area of a mental
247 health facility any:

248 (i) spirituous or fermented liquor;

249 (ii) medicine, other than medicine provided by the facility's health care providers in
250 compliance with facility policy; or

251 (iii) poison in any quantity.

252 (d) A person is guilty of a class A misdemeanor who, without the permission of the
253 authority operating the correctional or mental health facility, fails to declare or knowingly
254 possesses at a correctional facility or in a secure area of a mental health facility any:

255 (i) spirituous or fermented liquor;

256 (ii) medicine; or

257 (iii) poison in any quantity.

258 (e) A person is guilty of a class B misdemeanor who, without the permission of the
259 authority operating the facility, knowingly engages in any activity that would facilitate the
260 possession of any contraband by an offender in a correctional facility.

261 (f) Exemptions may be granted for worship for Native American inmates pursuant to
262 Section 64-13-40.

263 (6) The possession, distribution, or use of a controlled substance at a correctional facility
264 or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58,
265 Chapter 37, Utah Controlled Substances Act.

266 Section 9. Section **76-10-500** is enacted to read:

267 **76-10-500. Uniform law.**

268 (1) The individual right to keep and bear arms being a constitutionally protected right, the
269 Legislature finds the need to provide uniform laws throughout the state. Except as specifically
270 provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

271 (a) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm
272 at his place of residence, property, business, or in any vehicle under his control; or

273 (b) required to have a permit or license to purchase, own, possess, transport, or keep a
274 firearm.

275 (2) This part is uniformly applicable throughout this state and in all its political

276 subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state
277 except where the Legislature specifically delegates responsibility to local authorities. Unless
278 specifically authorized by the Legislature by statute, a local authority may not enact or enforce any
279 ordinance, regulation, or rule pertaining to firearms.

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

281 **76-10-501. Definitions.**

282 [(1) (a) The individual right to keep and bear arms being a constitutionally protected right,
283 the Legislature finds the need to provide uniform laws throughout the state. Except as specifically
284 provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:]

285 [(i) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm
286 at his place of residence, property, business, or in any vehicle under his control; or]

287 [(ii) required to have a permit or license to purchase, own, possess, transport, or keep a
288 firearm.]

289 [(b) This part is uniformly applicable throughout this state and in all its political
290 subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state
291 except where the Legislature specifically delegates responsibility to local authorities. Unless
292 specifically authorized by the Legislature by statute, a local authority may not enact or enforce any
293 ordinance, regulation, or rule pertaining to firearms.]

294 [(2)] As used in this part:

295 (1) (a) [(i)] "Concealed dangerous weapon" means a dangerous weapon that is covered,
296 hidden, or secreted in a manner that the public would not be aware of its presence and is readily
297 accessible for immediate use.

298 [(ii)] (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it
299 is a firearm which is unloaded and is securely encased.

300 [(b)] (2) "Crime of violence" means aggravated murder, murder, manslaughter, rape,
301 mayhem, kidnaping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by
302 threats of violence, assault with a dangerous weapon, assault with intent to commit any offense
303 punishable by imprisonment for more than one year, arson punishable by imprisonment for more
304 than one year, or an attempt to commit any of these offenses.

305 [(c)] (3) "Criminal history background check" means a criminal background check
306 conducted by a licensed firearms dealer on every purchaser of a handgun through the division or

307 the local law enforcement agency where the firearms dealer conducts business.

308 [(d)] (4) "Dangerous weapon" means any item that in the manner of its use or intended use
309 is capable of causing death or serious bodily injury. The following factors shall be used in
310 determining whether a knife, or any other item, object, or thing not commonly known as a
311 dangerous weapon is a dangerous weapon:

312 [(i)] (a) the character of the instrument, object, or thing;

313 [(ii)] (b) the character of the wound produced, if any;

314 [(iii)] (c) the manner in which the instrument, object, or thing was used; and

315 [(iv)] (d) the other lawful purposes for which the instrument, object, or thing may be used.

316 [(e)] (5) "Dealer" means every person who is licensed under crimes and criminal
317 procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring
318 a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

319 [(f)] (6) "Division" means the Criminal Investigations and Technical Services Division of
320 the Department of Public Safety, created in Section 53-10-103.

321 (7) "Enter" means intrusion of the entire body.

322 [(g)] (8) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
323 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
324 a projectile by action of an explosive.

325 [(h)] (9) "Fully automatic weapon" means any firearm which fires, is designed to fire, or
326 can be readily restored to fire, automatically more than one shot without manual reloading by a
327 single function of the trigger.

328 [(i)] (10) "Firearms transaction record form" means a form created by the division to be
329 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

330 [(j)] (11) "Handgun" means a pistol, revolver, or other firearm of any description, loaded
331 or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which,
332 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

333 (12) "House of worship" means a church, temple, synagogue, mosque, or other building
334 set apart primarily for the purpose of worship in which religious services are held and the main
335 body of which is kept for that use and not put to any other use inconsistent with its primary
336 purpose.

337 (13) (a) "On school premises" means:

338 (i) in a public or private elementary or secondary school building; or
339 (ii) on school grounds made readily identifiable by enclosure or posting of signs.

340 (b) "On school premises" does not include the outdoor areas of implied access to the
341 school, which area consists of roadways, parking lots, and walkways and sidewalks which are
342 adjacent to a roadway or parking lot.

343 (14) "Private residence" means an improvement to real property used or occupied as a
344 primary or secondary residence.

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

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

349 (17) "Responsible school administrator" means any person authorized by the public school
350 district or the governing board of a private elementary or secondary school to grant case-by-case
351 exceptions to any weapons prohibition.

352 ~~[(m)]~~ (18) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or
353 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer
354 than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration,
355 modification, or otherwise, if the weapon as modified has an overall length of fewer than 26
356 inches.

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

360 Section 11. Section **76-10-505.5** is amended to read:

361 **76-10-505.5. Possession of a dangerous weapon, firearm, on school premises --**
362 **Penalties -- Exceptions.**

363 (1) A person, including a person licensed to carry a concealed firearm under Title 53,
364 Chapter 5, Part 7, Concealed Weapon Act, may not knowingly or intentionally possess any
365 dangerous weapon, including a firearm~~[, or sawed-off shotgun]~~, as those terms are defined in
366 Section 76-10-501, at a place that the person knows, or has reasonable cause to believe, is on [or
367 about] school premises.

368 (2) (a) ~~[Possession]~~ Except as provided in Subsection (2)(c), possession of a dangerous

369 weapon which is not a firearm on [or about] school premises is a class B misdemeanor.

370 (b) [Possession] Except as provided in Subsection (2)(c), possession of a firearm [or
371 sawed-off shotgun] on [or about] school premises is a class A misdemeanor.

372 (c) A person licensed to carry a concealed firearm pursuant to Title 53, Chapter 5, Part 7,
373 Concealed Weapon Act, who violates Subsection (1) is guilty of a class C misdemeanor.

374 (3) This section [applies] does not apply to any person[~~,-except persons authorized to~~
375 ~~possess a firearm as provided under Sections 53-5-704, 53-5-705, 53A-3-502, 76-10-511,~~
376 ~~76-10-523, Subsection 76-10-504(2), and as otherwise authorized by law.] whose possession of
377 the dangerous weapon or firearm is lawful and:~~

378 (a) the possession is approved by the responsible school administrator, including for
379 self-protection on a case-by-case basis; or

380 (b) the item or material is present or to be used in connection with a lawful, approved
381 activity and is in the possession or under the control of the person responsible for its possession
382 or use.

383 (4) This section does not prohibit prosecution of a more serious weapons offense that may
384 occur on [or about] school premises.

385 Section 12. Section **76-10-530** is enacted to read:

386 **76-10-530. Restricting dangerous weapons in a house of worship -- Defense -- Penalty.**

387 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
388 Chapter 5, Part 7, Concealed Weapon Act, may not knowingly or intentionally:

389 (a) transport a dangerous weapon into a house of worship; or

390 (b) enter or remain in a house of worship while in possession of a dangerous weapon.

391 (2) It is a defense to prosecution under this section that the person had permission of the
392 church or organization operating the house of worship to possess the dangerous weapon in or to
393 transport it into the house of worship.

394 (3) A violation of this section is a class C misdemeanor.

395 Section 13. Section **76-10-531** is enacted to read:

396 **76-10-531. Restricting dangerous weapons in a private residence -- Defense --**

397 **Penalty.**

398 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
399 Chapter 5, Part 7, Concealed Weapon Act, may not knowingly or intentionally:

- 400 (a) transport a dangerous weapon into a private residence; or
- 401 (b) enter or remain in a private residence while in possession of a dangerous weapon.
- 402 (2) It is a defense to prosecution under this section that the person had prior permission
- 403 to possess the dangerous weapon in the private residence of:
- 404 (a) the owner, lessee, or person with lawful right of possession of the private residence;
- 405 or
- 406 (b) a person with apparent authority to act for the person in Subsection (2)(a).
- 407 (3) A violation of this section is a class C misdemeanor.

408 Section 14. Section **76-10-532** is enacted to read:

409 **76-10-532. Restricting dangerous weapons and explosives in Olympic venue**
410 **controlled access areas -- Penalty -- Defense.**

411 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
412 Chapter 5, Part 7, Concealed Weapon Act, may not knowingly or intentionally transport into an
413 Olympic venue controlled access area, designated by rule pursuant to Section 53-12-301.1:

- 414 (a) a firearm, ammunition, or dangerous weapon; or
- 415 (b) an explosive, chemical, or incendiary device as those terms are defined in Section
- 416 76-10-306.

417 (2) A violation of this section is:

- 418 (a) a third degree felony if the violation is with a firearm, ammunition, or dangerous
- 419 weapon; or
- 420 (b) a first degree felony if the violation is with an explosive, chemical, or incendiary
- 421 device.

422 (3) It is a defense to any prosecution under this section that the accused, in committing the
423 act made criminal by this section, acted in conformity with the rules authorized by Section
424 53-12-301.1.

425 Section 15. Section **78-3a-603** is amended to read:

426 **78-3a-603. Certification hearings -- Juvenile court to hold preliminary hearing --**
427 **Factors considered by juvenile court for waiver of jurisdiction to district court.**

428 (1) If a criminal information filed in accordance with Subsection 78-3a-502(3) alleges the
429 commission of an act which would constitute a felony if committed by an adult, the juvenile court
430 shall conduct a preliminary hearing.

431 (2) At the preliminary hearing the state shall have the burden of going forward with its
432 case and the burden of establishing:

433 (a) probable cause to believe that a crime was committed and that the defendant committed
434 it; and

435 (b) by a preponderance of the evidence, that it would be contrary to the best interests of
436 the minor or of the public for the juvenile court to retain jurisdiction.

437 (3) In considering whether or not it would be contrary to the best interests of the minor or
438 of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may
439 base its decision on, the finding of one or more of the following factors:

440 (a) the seriousness of the offense and whether the protection of the community requires
441 isolation of the minor beyond that afforded by juvenile facilities;

442 (b) whether the alleged offense was committed by the minor in concert with two or more
443 persons under circumstances which would subject the minor to enhanced penalties under Section
444 76-3-203.1 were he an adult;

445 (c) whether the alleged offense was committed in an aggressive, violent, premeditated, or
446 willful manner;

447 (d) whether the alleged offense was against persons or property, greater weight being given
448 to offenses against persons, except as provided in Section 76-8-418;

449 (e) the maturity of the minor as determined by considerations of his home, environment,
450 emotional attitude, and pattern of living;

451 (f) the record and previous history of the minor;

452 (g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile
453 court;

454 (h) the desirability of trial and disposition of the entire offense in one court when the
455 minor's associates in the alleged offense are adults who will be charged with a crime in the district
456 court;

457 (i) whether the minor used a firearm in the commission of an offense; and

458 (j) whether the minor possessed a dangerous weapon on [or about] school premises as
459 provided in Section 76-10-505.5.

460 (4) The amount of weight to be given to each of the factors listed in Subsection (3) is
461 discretionary with the court.

462 (5) (a) Written reports and other materials relating to the minor's mental, physical,
463 educational, and social history may be considered by the court.

464 (b) If requested by the minor, the minor's parent, guardian, or other interested party, the
465 court shall require the person or agency preparing the report and other material to appear and be
466 subject to both direct and cross-examination.

467 (6) At the conclusion of the state's case, the minor may testify under oath, call witnesses,
468 cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

469 (7) If the court finds the state has met its burden under Subsection (2), the court may enter
470 an order:

471 (a) certifying that finding; and

472 (b) directing that the minor be held for criminal proceedings in the district court.

473 (8) If an indictment is returned by a grand jury, the preliminary examination held by the
474 juvenile court need not include a finding of probable cause, but the juvenile court shall proceed
475 in accordance with this section regarding the additional consideration referred to in Subsection
476 (2)(b).

477 (9) The provisions of Section 78-3a-116, Section 78-3a-913, and other provisions relating
478 to proceedings in juvenile cases are applicable to the hearing held under this section to the extent
479 they are pertinent.

480 (10) A minor who has been directed to be held for criminal proceedings in the district
481 court is not entitled to a preliminary examination in the district court.

482 (11) A minor who has been certified for trial in the district court shall have the same right
483 to bail as any other criminal defendant and shall be advised of that right by the juvenile court
484 judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

485 (12) When a minor has been certified to the district court under this section or when a
486 criminal information or indictment is filed in a court of competent jurisdiction before a committing
487 magistrate charging the minor with an offense described in Section 78-3a-602, the jurisdiction of
488 the Division of Youth Corrections and the jurisdiction of the juvenile court over the minor is
489 terminated regarding that offense, any other offenses arising from the same criminal episode, and
490 any subsequent misdemeanors or felonies charged against him, except as provided in Subsection
491 (14).

492 (13) A minor may be convicted under this section on the charges filed or on any other

493 offense arising out of the same criminal episode.

494 (14) The juvenile court under Section 78-3a-104 and the Division of Youth Corrections
495 regain jurisdiction and any authority previously exercised over the minor when there is an
496 acquittal, a finding of not guilty, or dismissal of the charges in the district court.

Legislative Review Note
as of 1-22-99 10:08 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel