

1                                   **DANGEROUS WEAPONS AMENDMENTS**

2   1999 GENERAL SESSION

3   STATE OF UTAH

4   **Sponsor: Bill Wright**

5 AN ACT RELATING TO THE CRIMINAL CODE; REPEALING AND REENACTING  
6 PROVISIONS RELATING TO BRANDISHING A DANGEROUS WEAPON; SEPARATING  
7 INTO TWO SECTIONS PROVISIONS RELATING TO THE UNIFORM LAW AND  
8 DEFINITIONS TO FACILITATE AMENDMENTS TO DEFINITIONS IN THE FUTURE;  
9 MODIFYING UNIFORM LAW REGARDING DANGEROUS WEAPONS IN CERTAIN  
10 VEHICLES PERMITTED; AND MAKING TECHNICAL CORRECTIONS.

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

12 AMENDS:

13               **76-3-203.3**, as enacted by Chapter 102, Laws of Utah 1992

14               **76-8-311.3**, as last amended by Chapter 288, Laws of Utah 1997

15               **76-10-501**, as last amended by Chapter 263, Laws of Utah 1998

16 ENACTS:

17               **76-5-107.3**, Utah Code Annotated 1953

18               **76-10-500**, Utah Code Annotated 1953

19 REPEALS:

20               **76-10-506**, as last amended by Chapter 101, Laws of Utah 1992

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

22               Section 1. Section **76-3-203.3** is amended to read:

23               **76-3-203.3. Penalty for hate crimes -- Civil rights violation.**

24               As used in this section:

25               (1) "Primary offense" means those offenses provided in Subsection (5).

26               (2) A person who commits any primary offense with the intent to intimidate or terrorize  
27 another person or with reason to believe that his action would intimidate or terrorize that person

28 is guilty of a third degree felony.

29 (3) "Intimidate or terrorize" means an act which causes the person to fear for his physical  
30 safety or damages the property of that person or another. The act must be accompanied with the  
31 intent to cause a person to fear to freely exercise or enjoy any right secured by the Constitution or  
32 laws of the state or by the Constitution or laws of the United States.

33 (4) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide  
34 notice on the complaint in misdemeanor cases that the defendant is subject to a third degree felony  
35 provided under this section. The notice shall be in a clause separate from and in addition to the  
36 substantive offense charged.

37 (b) If the notice is not included initially, the court may subsequently allow the prosecutor  
38 to amend the charging document to include the notice if the court finds:

39 (i) that the amended charging documents, including any statement of probable cause,  
40 provide notice that the defendant is subject to a third degree felony provided under this section;  
41 and

42 (ii) that the defendant has not otherwise been substantially prejudiced by the amendment.

43 (5) Primary offenses referred to in Subsection (2) are the misdemeanor offenses for:

44 (a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106, 76-5-107,  
45 76-5-107.3, and 76-5-108;

46 (b) any misdemeanor property destruction offense under Sections 76-6-102, 76-6-104, and  
47 76-8-714, and Subsection 76-6-106 (1)(b);

48 (c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;

49 (d) any misdemeanor theft offense under Section 76-6-412;

50 (e) any offense of obstructing government operations under Sections 76-8-301, 76-8-302,  
51 76-8-304, 76-8-305, 76-8-307, 76-8-308, and 76-8-313 and Subsections 76-8-306 (1)(a) through  
52 (f) and 76-8-310 (1);

53 (f) any offense of interfering or intending to interfere with activities of colleges and  
54 universities under Title 76, Chapter 8, Part 7, Offenses Against the Administration of Government;

55 (g) any misdemeanor offense against public order and decency as defined in Title 76,  
56 Chapter 9, Part 1, Breaches of the Peace and Related Offenses;

57 (h) any telephone abuse offense under Title 76, Chapter 9, Part 2, Telephone Abuse; and

58 (i) any cruelty to animals offense under Section 76-9-301[; and].

59 ~~[(j) any weapons offense under Section 76-10-506.]~~

60 Section 2. Section **76-5-107.3** is enacted to read:

61 **76-5-107.3. Brandishing a dangerous weapon.**

62 (1) A person is guilty of brandishing a dangerous weapon if, under circumstances not  
63 amounting to aggravated assault, and not in necessary self defense, the person draws or exhibits  
64 any dangerous weapon, as defined in Section 76-1-601, in a threatening manner in the presence  
65 of another person.

66 (2) Brandishing a dangerous weapon is a class A misdemeanor.

67 (3) This section does not apply to a peace officer in the performance of the peace officer's  
68 duties.

69 Section 3. Section **76-8-311.3** is amended to read:

70 **76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.**

71 (1) As used in this section:

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

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

76 (c) "Correctional facility" means:

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

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

81 (iii) any juvenile detention facility; and

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

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

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

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

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

90 (2) Notwithstanding [~~any other statute to the contrary, including Subsection 76-10-501(b)]~~  
91 Section 76-10-500, a correctional or mental health facility may provide by rule that no firearm,  
92 ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous  
93 or fermented liquor, medicine, or poison in any quantity may be:

- 94 (a) transported to or upon a correctional or mental health facility;
- 95 (b) sold or given away at any correctional or mental health facility;
- 96 (c) given to or used by any offender at a correctional or mental health facility; or
- 97 (d) knowingly or intentionally possessed at a correctional or mental health facility.

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

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

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

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

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

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

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

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

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

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

- 124 (i) spirituous or fermented liquor;
- 125 (ii) medicine, whether or not lawfully prescribed for the offender; or
- 126 (iii) poison in any quantity.

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

- 130 (i) spirituous or fermented liquor;
- 131 (ii) medicine, whether or not lawfully prescribed for the offender; or
- 132 (iii) poison in any quantity.

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

- 136 (i) spirituous or fermented liquor;
- 137 (ii) medicine, other than medicine provided by the facility's health care providers in  
138 compliance with facility policy; or
- 139 (iii) poison in any quantity.

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

- 143 (i) spirituous or fermented liquor;
- 144 (ii) medicine; or
- 145 (iii) poison in any quantity.

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

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

151 (6) The possession, distribution, or use of a controlled substance at a correctional facility

152 or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58,  
153 Chapter 37, Utah Controlled Substances Act.

154 Section 4. Section **76-10-500** is enacted to read:

155 **76-10-500. Uniform law.**

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

159 (a) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm  
160 at his place of residence, property, business, or in any vehicle lawfully in his possession or lawfully  
161 under his control; or

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

164 (2) This part is uniformly applicable throughout this state and in all its political  
165 subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state  
166 except where the Legislature specifically delegates responsibility to local authorities. Unless  
167 specifically authorized by the Legislature by statute, a local authority may not enact or enforce any  
168 ordinance, regulation, or rule pertaining to firearms.

169 Section 5. Section **76-10-501** is amended to read:

170 **76-10-501. Uniform law -- Definitions.**

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

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

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

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

183            [~~(2)~~] As used in this part:

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

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

189            [~~(b)~~] (2) "Crime of violence" means aggravated murder, murder, manslaughter, rape,  
190 mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by  
191 threats of violence, assault with a dangerous weapon, assault with intent to commit any offense  
192 punishable by imprisonment for more than one year, arson punishable by imprisonment for more  
193 than one year, or an attempt to commit any of these offenses.

194            [~~(c)~~] (3) "Criminal history background check" means a criminal background check  
195 conducted by a licensed firearms dealer on every purchaser of a handgun through the division or  
196 the local law enforcement agency where the firearms dealer conducts business.

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

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

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

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

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

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

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

210            [~~(g)~~] (7) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or  
211 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled  
212 a projectile by action of an explosive.

213            [~~(h)~~] (8) "Fully automatic weapon" means any firearm which fires, is designed to fire, or

214 can be readily restored to fire, automatically more than one shot without manual reloading by a  
215 single function of the trigger.

216 [(i)] (9) "Firearms transaction record form" means a form created by the division to be  
217 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

218 [(j)] (10) "Handgun" means a pistol, revolver, or other firearm of any description, loaded  
219 or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which,  
220 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

221 [(k)] (11) "Prohibited area" means any place where it is unlawful to discharge a firearm.

222 [(l)] (12) "Readily accessible for immediate use" means that a firearm or other dangerous  
223 weapon is carried on the person or within such close proximity and in such a manner that it can  
224 be retrieved and used as readily as if carried on the person.

225 [(m)] (13) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or  
226 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer  
227 than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration,  
228 modification, or otherwise, if the weapon as modified has an overall length of fewer than 26  
229 inches.

230 [(n)] (14) "Securely encased" means not readily accessible for immediate use, such as held  
231 in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage  
232 area of a motor vehicle, not including a glove box or console box.

233 Section 6. **Repealer.**

234 This act repeals:

235 Section **76-10-506, Threatening with or using dangerous weapon in fight or quarrel.**

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**Legislative Review Note**  
**as of 1-25-99 3:51 PM**

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

**Office of Legislative Research and General Counsel**