

**BACKGROUND CHECKS FOR WEAPONS PURCHASE**

2000 GENERAL SESSION

STATE OF UTAH

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AN ACT RELATING TO THE CRIMINAL CODE; REQUIRING BACKGROUND CHECKS FOR FIREARM PURCHASES TO INCLUDE JUVENILE RECORDS.

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

AMENDS:

**76-10-503**, as last amended by Chapter 97, Laws of Utah 1999

**76-10-526**, as last amended by Chapter 227, Laws of Utah 1999

**78-3a-206**, as last amended by Chapter 377, Laws of Utah 1999

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

Section 1. Section **76-10-503** is amended to read:

**76-10-503. Purchase or possession of dangerous weapon, firearm, or explosive -- Persons not permitted to have -- Penalties.**

(1) (a) Any person who has been convicted of any crime of violence under the laws of the United States, this state, or any other state, government, or country, or who is addicted to the use of any narcotic drug, or who has been declared mentally incompetent may not own or have in his possession or under his custody or control any dangerous weapon as defined in Section 76-10-501.

(b) Any person who violates this subsection is guilty of a class A misdemeanor, and if the dangerous weapon is a firearm or sawed-off shotgun, he is guilty of a third degree felony.

(2) (a) Any person who is on parole or probation for a felony may not have in his possession or under his custody or control any explosive, chemical, or incendiary device as those terms are defined in Section 76-10-306 or dangerous weapon as defined in Section 76-10-501.

(b) Any person who violates this subsection is guilty of a third degree felony, but if the dangerous weapon is a firearm or an explosive, chemical, or incendiary device he is guilty of a second degree felony.

(3) (a) A person may not purchase, possess, or transfer any handgun described in this part

who:

(i) has been convicted of, or adjudicated delinquent for, any felony offense under the laws of the United States, this state, or any other state;

(ii) is under indictment;

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

(iv) is a drug dependent person as defined in Section 58-37-2;

(v) has been adjudicated as mentally defective, as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental institution;

(vi) is an alien who is illegally or unlawfully in the United States;

(vii) has been discharged from the Armed Forces under dishonorable conditions; or

(viii) is a person who, having been a citizen of the United States, has renounced such citizenship.

(b) Any person who violates this Subsection (3) is guilty of a third degree felony.

Section 2. Section **76-10-526** is amended to read:

**76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**

**Exemption for concealed firearm permit holders.**

(1) A criminal background check required by this section shall only apply to the purchase of a handgun until federal law requires the background check to extend to other firearms.

(2) At the time that federal law extends the criminal background check requirement to other firearms, the division shall make rules to extend the background checks required under this section to the other firearms.

(3) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued pursuant to Section 53-5-705.

(4) To establish personal identification and residence in this state for purposes of this part, a dealer shall require any person receiving a firearm to present:

(a) one photo identification on a form issued by a governmental agency of the state; and

(b) one other documentation of residence which must show an address identical to that shown

on the photo identification form.

(5) A criminal history background check is required for the sale of a firearm by a licensed firearm dealer in the state.

(6) Any person, except a dealer, purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the division. The form shall also contain the following information:

- (a) the dealer identification number;
- (b) the name and address of the person receiving the firearm;
- (c) the date of birth, height, weight, eye color, and hair color of the person receiving the firearm; and
- (d) the Social Security number or any other identification number of the person receiving the firearm.

(7) (a) The dealer shall send the form required by Subsection (6) to the division immediately upon its completion.

(b) No dealer shall sell or transfer any firearm to any person until the dealer has provided the division with the information in Subsection (6) and has received approval from the division under Subsection ~~[(8)]~~ (9).

(8) The dealer shall make a request for criminal history background information by telephone or other electronic means to the division and shall receive approval or denial of the inquiry by telephone or other electronic means.

(9) When the dealer calls for or requests a criminal history background check, the division shall:

- (a) review the criminal history files, including juvenile court records, to determine if the person is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;
- (b) inform the dealer that:
  - (i) the ~~[criminal record indicates]~~ records indicate the person is so prohibited; or
  - (ii) the person is approved for purchasing, possessing, or transferring a firearm;
- (c) provide the dealer with a unique transaction number for that inquiry; and

(d) provide a response to the requesting dealer during the call for a criminal background, or by return call, or other electronic means, without delay, except in case of electronic failure or other circumstances beyond the control of the division, the division shall advise the dealer of the reason for such delay and give the dealer an estimate of the length of ~~[such]~~ the delay.

(10) The division shall not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request if the division determines that the person receiving the gun is not prohibited from purchasing, possessing, or transferring the firearm under state or federal law. However, the division shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

(11) If the criminal history background check discloses information indicating that the person attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the division shall inform the law enforcement agency in the jurisdiction where the person resides.

(12) If a person is denied the right to purchase a firearm under this section, the person may review his criminal history information and may challenge or amend the information as provided in Section 53-10-108.

(13) The division shall make rules as provided in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the division pursuant to this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

(14) (a) All dealers shall collect a criminal history background check fee which is \$7.50. This fee remains in effect until changed by the division through the process under Section 63-38-3.2.

(b) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the division by the last day of the month following the sale of a firearm. The division shall deposit the fees in the General Fund as dedicated credits to cover the cost of administering and conducting the criminal history background check program.

(15) A person with a concealed firearm permit issued pursuant to Title 53, Chapter 5, Part 7, Concealed Weapon Act, shall be exempt from the background check and corresponding fee

required in this section for the purchase of a firearm if:

(a) the person presents his concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the division that the person's concealed firearm permit is valid.

Section 3. Section **78-3a-206** is amended to read:

**78-3a-206. Court records -- Inspection.**

(1) The court and the probation department shall keep records as required by the board and the presiding judge.

(2) Court records shall be open to inspection by:

(a) the parents or guardian, other parties in the case, the attorneys, and agencies to which custody of a minor has been transferred;

(b) for information relating to adult offenders alleged to have committed a sexual offense, a felony or class A misdemeanor drug offense, or an offense against the person under Title 76, Chapter 5, Offenses Against the Person, the State Office of Education for the purpose of evaluating whether an individual should be permitted to obtain or retain a license as an educator or serve as an employee or volunteer in a school, with the understanding that the office must provide the individual with an opportunity to respond to any information gathered from its inspection of the records before it makes a decision concerning licensure or employment; and

(c) the Division of Criminal Investigations and Technical Services, established in Section 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm and establishing good character for issuance of a concealed firearm permit as provided in Section 53-5-704.

(3) With the consent of the judge, court records may be inspected by the minor, by persons having a legitimate interest in the proceedings, and by persons conducting pertinent research studies.

(4) If a petition is filed charging a minor 14 years of age or older with an offense that would be a felony if committed by an adult, the court shall make available to any person upon request the petition, any adjudication or disposition orders, and the delinquency history summary of the minor charged unless the records are closed by the court upon findings on the record for good cause.

(5) Probation officers' records and reports of social and clinical studies are not open to inspection, except by consent of the court, given under rules adopted by the board.

(6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency history summary of any person charged as an adult with a felony offense shall be made available to any person upon request.

(b) This provision does not apply to records that have been destroyed or expunged in accordance with court rules.

(c) The court may charge a reasonable fee to cover the costs associated with retrieving a requested record that has been archived.