

1 **FIREARMS RESTRICTIONS - HOUSES OF**
2 **WORSHIP, RESIDENCES, AND SCHOOLS**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: David M. Jones**

6 AN ACT RELATING TO WEAPONS; PROVIDING CROSS REFERENCES TO RESTRICTED
7 AREAS FOR CONCEALED FIREARM PERMIT HOLDERS; PROVIDING DEFINITIONS;
8 AMENDING RESTRICTIONS ON A PERSON, INCLUDING A CONCEALED FIREARM
9 PERMIT HOLDER, IN HOUSES OF WORSHIP, IN RESIDENCES, AND ON ELEMENTARY
10 AND SECONDARY SCHOOL PREMISES; PRESCRIBING PENALTIES, EXCEPTING, AND
11 DEFENSES; AND MAKING CONFORMING AMENDMENTS.

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

13 AMENDS:

14 **53-5-710**, as last amended by Chapter 366, Laws of Utah 1999

15 **53A-3-502**, as enacted by Chapter 2, Laws of Utah 1988

16 **53A-11-904**, as last amended by Chapter 74, Laws of Utah 1996

17 **76-3-203.2**, as last amended by Chapter 289, Laws of Utah 1997

18 **76-10-501**, as last amended by Chapters 5, 97 and 366, Laws of Utah 1999

19 **76-10-505.5**, as last amended by Chapters 10 and 289, Laws of Utah 1997

20 **76-10-523**, as last amended by Chapters 57 and 144, Laws of Utah 1997

21 **76-10-530**, as enacted by Chapter 366, Laws of Utah 1999

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

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

24 **53-5-710. Cross-references to concealed firearm permit restrictions.**

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

27 (1) on school premises in violation of Section 75-10-505.5;

28 [(1)] (2) any secure area prescribed in Section 76-10-523.5 in which firearms are
29 prohibited and notice of the prohibition posted;

30 [(2)] (3) in any airport secure area as provided in Section 76-10-529;

31 [(3)] (4) in any house of worship or in any private residence where dangerous weapons are
32 prohibited as provided in Section 76-10-530; or

33 [(4)] (5) at an Olympic venue secure area in violation of Section 76-10-531.

34 Section 2. Section 53A-3-502 is amended to read:

35 **53A-3-502. Dangerous materials in the public schools -- Class B misdemeanor --**

36 **Exceptions.**

37 (1) A person who possesses [~~a weapon, explosive, flammable material, or other~~] material
38 dangerous to persons or property, other than a dangerous weapon restricted under Section
39 76-10-505.5 or an explosive, chemical, or incendiary device restricted under Section 76-10-306,
40 in a public or private elementary or secondary school, on the grounds of the school, or in those
41 parts of a building, park, or stadium which are being used for an activity sponsored by or through
42 the school is guilty of a class B misdemeanor, unless a higher penalty is prescribed in Title 76,
43 Utah Criminal Code, in which case the penalty provisions of that title control.

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

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

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

49 Section 3. Section 53A-11-904 is amended to read:

50 **53A-11-904. Grounds for suspension or expulsion from a public school.**

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

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

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

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

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

59 or

60 (e) behavior proscribed under Subsection (2) which threatens harm or does harm to the
61 school or school property, to a person associated with the school, or property associated with any
62 such person, regardless of where it occurs.

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

65 (i) any serious violation affecting another student or a staff member, or any serious
66 violation occurring in a school building, in or on school property, or in conjunction with any
67 school activity, including the possession, control, or actual or threatened use of a real, look alike,
68 or pretend weapon, explosive, or noxious or flammable material under Section 53A-3-502,
69 76-10-306, or 76-10-505.5, or the sale, control, or distribution of a drug or controlled substance
70 as defined in Section 58-37-2, an imitation controlled substance defined in Section 58-37b-2, or
71 drug paraphernalia as defined in Section 58-37a-3; or

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

74 (b) A student who commits a violation of Subsection (2)(a) involving a real, look alike,
75 or pretend firearm, explosive, or flammable material shall be expelled from school for a period of
76 not less than one year, unless the district superintendent determines, on a case-by-case basis, that
77 a lesser penalty would be more appropriate.

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

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

82 Section 4. Section **76-3-203.2** is amended to read:

83 **76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or**
84 **about school premises -- Enhanced penalties.**

85 (1) For purposes of this section:

86 (a) "On or about school premises" as used in this section [~~and Section 76-10-505.5~~] means
87 any of the following:

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

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

90 of any of those schools or institutions;

91 (iii) in those portions of any building, park, stadium, or other structure or grounds which
92 are, at the time of the act, being used for an activity sponsored by or through a school or institution
93 under Subsections (1)(a)(i) and (ii);

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

95 (v) within 1,000 feet of any structure, facility, or grounds included in Subsections (1)(a)(i),
96 (ii), (iii), and (iv).

97 (b) As used in this section:

98 (i) "Educator" means any person who is employed by a public school district and who is
99 required to hold a certificate issued by the State Board of Education in order to perform duties of
100 employment.

101 (ii) "Within the course of employment" means that an educator is providing services or
102 engaging in conduct required by the educator's employer to perform the duties of employment.

103 (2) Any person who, on or about school premises, commits any offense and uses or
104 threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the
105 offense is subject to an enhanced degree of offense as provided in [Subsection] Subsections (4)
106 and (5).

107 (3) (a) Any person who commits an offense against an educator when the educator is
108 acting within the course of employment is subject to an enhanced degree of offense as provided
109 in [Subsection] Subsections (4) and (5).

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

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

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

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

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

115 (b) if the offense is otherwise a class A misdemeanor it is a third degree felony;

116 (c) if the offense is otherwise a third degree felony it is a second degree felony; or

117 (d) if the offense is otherwise a second degree felony it is a first degree felony.

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

119 (a) shall be imprisonment for a term of not less than five years and which may be for life,

120 and imposition or execution of the sentence may not be suspended unless the court;

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

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

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

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

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

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

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

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

137 (7) [It] The convicted person may not be subject to the dangerous weapon enhancement
138 in Section 76-3-203:

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

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

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

145 **76-10-501. Definitions.**

146 As used in this part:

147 (1) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered, hidden,
148 or secreted in a manner that the public would not be aware of its presence and is readily accessible
149 for immediate use.

150 (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a
151 firearm which is unloaded and is securely encased.

152 (2) "Crime of violence" means aggravated murder, murder, manslaughter, rape, mayhem,
153 kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of
154 violence, assault with a dangerous weapon, assault with intent to commit any offense punishable
155 by imprisonment for more than one year, arson punishable by imprisonment for more than one
156 year, or an attempt to commit any of these offenses.

157 (3) "Criminal history background check" means a criminal background check conducted
158 by a licensed firearms dealer on every purchaser of a handgun through the division or the local law
159 enforcement agency where the firearms dealer conducts business.

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

- 164 (i) the character of the instrument, object, or thing;
- 165 (ii) the character of the wound produced, if any;
- 166 (iii) the manner in which the instrument, object, or thing was used; and
- 167 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

168 (b) "Dangerous weapon" does not include any explosive, chemical, or incendiary device
169 as defined by Section 76-10-306.

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

173 (6) "Division" means the Criminal Investigations and Technical Services Division of the
174 Department of Public Safety, created in Section 53-10-103.

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

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

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

181 (10) "Fully automatic weapon" means any firearm which fires, is designed to fire, or can
182 be readily restored to fire, automatically more than one shot without manual reloading by a single

183 function of the trigger.

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

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

191 (13) "Prohibited area" means any place where it is unlawful to discharge a firearm.

192 (14) "Readily accessible for immediate use" means that a firearm or other dangerous
193 weapon is carried on the person or within such close proximity and in such a manner that it can
194 be retrieved and used as readily as if carried on the person.

195 (15) "Residence" means an improvement to real property used or occupied as a primary
196 or secondary residence.

197 (16) "Responsible school administrator" means any person authorized to grant
198 case-by-case exceptions to any weapons prohibition by:

199 (a) the public school district; or

200 (b) the governing board of a private elementary or secondary school.

201 ~~[(16)]~~ (17) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or
202 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer
203 than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration,
204 modification, or otherwise, if the weapon as modified has an overall length of fewer than 26
205 inches.

206 ~~[(17)]~~ (18) "Securely encased" means not readily accessible for immediate use, such as
207 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
208 storage area of a motor vehicle, not including a glove box or console box.

209 ~~[(18)]~~ (19) "State entity" means each department, commission, board, council, agency,
210 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
211 unit, bureau, panel, or other administrative unit of the state.

212 Section 6. Section **76-10-505.5** is amended to read:

213 **76-10-505.5. Possession of a dangerous weapon, firearm, on school premises --**

214 **Penalties -- Exceptions.**215 (1) For purposes of this section, "on school premises" means:216 (a) in a public or private elementary or secondary school building;217 (b) the clearly identifiable grounds of the school; or218 (c) those parts of any other building, facility, or real property that may be used for other
219 functions but are, at the time in question, being used exclusively for an activity sponsored by or
220 through the school.221 ~~[(1)–A]~~ (2) Any person may not knowingly or intentionally possess any dangerous
222 weapon, including a firearm, [or sawed-off shotgun,] as those terms are defined in Section
223 76-10-501, at a place that the person knows, or has reasonable cause to believe, is on [or about]
224 school premises.225 ~~[(2)]~~ (3) (a) Possession of a dangerous weapon which is not a firearm on [or about] school
226 premises is a class B misdemeanor.227 (b) Possession of a firearm [or sawed-off shotgun] on [or about] school premises is a class
228 A misdemeanor.229 ~~[(3)]~~ (4) This section applies to any person[;] except [persons] a person:230 (a) authorized to possess a firearm as provided under Sections [53-5-704, 53-5-705,]
231 53A-3-502, 76-10-511, Subsections 76-10-523[, Subsection 76-10-504(2)] (1)(a) through (1)(e),
232 and as otherwise authorized by law[;];233 (b) whose possession of the dangerous weapon is lawful and:234 (i) the possession is approved by the responsible school administrator; and235 (ii) the dangerous weapon is present or to be used in connection with a lawful, approved
236 activity and is in the possession or under the control of the person responsible for its possession
237 or use; or238 (c) licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed
239 Weapon Act, is permitted to lawfully possess a firearm on parking lots, streets, sidewalks, or
240 walkways that:241 (i) are adjacent to or cross school property; and242 (ii) are freely accessible to, and intended for use by, the general public for public and
243 private purposes, regardless of whether school is in session.244 ~~[(4)]~~ (5) This section does not prohibit prosecution of a more serious weapons offense that

245 may occur on or about school premises.

246 Section 7. Section **76-10-523** is amended to read:

247 **76-10-523. Persons exempt from weapons laws.**

248 (1) [This] Except as provided in Section 76-10-505.5, this part and Title 53, Chapter 5,
249 Part 7, Concealed Weapon Act, do not apply to any of the following:

250 (a) a United States marshal while engaged in the performance of his official duties;

251 (b) a federal official required to carry a firearm while engaged in the performance of his
252 official duties;

253 (c) a peace officer of this or any other jurisdiction while engaged in the performance of his
254 official duties;

255 (d) a law enforcement official as defined and qualified under Section 53-5-711;

256 (e) a judge as defined and qualified in Section 53-5-711;

257 (f) a common carrier while engaged in the regular and ordinary transport of firearms as
258 merchandise; or

259 (g) a nonresident traveling in or through the state, provided that any firearm is:

260 (i) unloaded; and

261 (ii) securely encased as defined in Section 76-10-501.

262 (2) The provisions of Subsections 76-10-504(1)(a), (1)(b), and Section 76-10-505 do not
263 apply to any person to whom a permit to carry a concealed firearm has been issued:

264 (a) pursuant to Section 53-5-704; or

265 (b) by another state whose requirements for issuance of a concealed firearm permit have
266 been determined annually by the Department of Public Safety to meet or exceed the requirements
267 for issuance of a concealed firearm permit in this state.

268 Section 8. Section **76-10-530** is amended to read:

269 **76-10-530. Firearms prohibited in a house of worship or private residence --**
270 **Exception -- Defense -- Penalty.**

271 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
272 Chapter 5, Part 7, Concealed Weapon Act, [~~after having received notice as provided in Subsection~~

273 ~~(2) that firearms are prohibited,~~] may not knowingly [and] or intentionally:

274 (a) transport a firearm into:

275 (i) a house of worship; or

276 (ii) a private residence; or
 277 (b) while in possession of a firearm, enter or remain in:
 278 (i) a house of worship; or
 279 (ii) a private residence.
 280 [~~(2) Notice that firearms are prohibited may be made by:~~]
 281 [~~(a) personal communication to the actor by:~~]
 282 (2) The prohibitions in Subsection (1) do not apply to a person who establishes that the
 283 person had prior permission to possess the firearm by:
 284 [(i)] (a) the church or organization operating the house of worship;
 285 [(ii)] (b) the owner, lessee, or person with lawful right of possession of the private
 286 residence; or
 287 [(iii)] (c) a person with authority to act for the person or entity in [Subsections] Subsection
 288 (2)(a)[(i) and (ii);] or (2)(b).
 289 [(b) posting of signs reasonably likely to come to the attention of persons entering the
 290 house of worship or private residence.]
 291 (3) An armed private security officer licensed under Title 58, Chapter 63, Security
 292 Personnel Licensing Act, while on duty is exempt from the prohibitions of this section regarding
 293 a private residence.
 294 [(3)] (4) Nothing in this section permits an owner who has granted the lawful right of
 295 possession to a renter or lessee to restrict the renter or lessee from lawfully possessing a firearm
 296 in the residence.
 297 [(4)] (5) A violation of this section is [an infraction] a class C misdemeanor.

Legislative Review Note
as of 1-3-00 3:30 PM

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

Office of Legislative Research and General Counsel