

CRIMINAL CODE - RESTRICTED PERSONS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

AN ACT RELATING TO THE CRIMINAL CODE; DIRECTING THE MAGISTRATES AND COURT CLERKS TO SUPPLY CERTAIN INFORMATION TO THE CRIMINAL INVESTIGATIONS AND TECHNICAL SERVICES DIVISION OF THE DEPARTMENT OF PUBLIC SAFETY; REVISING CATEGORIES OF RESTRICTED PERSONS; ALLOWING THE BUREAU OF CRIMINAL IDENTIFICATION TO ACCESS JUVENILE COURT RECORDS FOR THE PURPOSE OF BACKGROUND CHECKS FOR FIREARM PURCHASES; PROVIDING FOR CONFIDENTIALITY OF INFORMATION; MAKING TECHNICAL CHANGES; AND PROVIDING A COORDINATION CLAUSE.

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

AMENDS:

53-10-208, as last amended by Chapter 187 and renumbered and amended by Chapter 263, Laws of Utah 1998

62A-12-247, as last amended by Chapter 161, Laws of Utah 1989

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

76-10-504, as last amended by Chapter 289, Laws of Utah 1997

76-10-509.6, as enacted by Chapter 10, Laws of Utah 1993, Second Special Session

76-10-512, as last amended by Chapter 12, Laws of Utah 1994

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

ENACTS:

53-10-208.1, Utah Code Annotated 1953

REPEALS AND REENACTS:

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

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

Section 1. Section **53-10-208** is amended to read:

**53-10-208. Definition -- Offenses included on statewide warrant system --
Transportation fee to be included -- Statewide warrant system responsibility -- Quality control
-- Training -- Technical support -- Transaction costs.**

(1) "Statewide warrant system" means the portion of the state court computer system that is accessible by modem from the state mainframe computer and contains:

- (a) records of criminal warrant information; and
- (b) after notice and hearing, records of protective orders issued pursuant to:
 - (i) Title 30, Chapter 6, Cohabitant Abuse Act; or
 - (ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

~~[(2) Every magistrate or clerk of a court responsible for court records in this state shall furnish the division with information pertaining to:]~~

~~[(a) all dispositions of criminal matters, including guilty pleas, convictions, dismissals, acquittals, pleas held in abeyance, or probations granted, within 30 days of the disposition and on forms and in the manner provided by the division;]~~

~~[(b) the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within one day of the action and in a manner provided by the division; and]~~

~~[(c) protective orders issued after notice and hearing, pursuant to:]~~

~~[(i) Title 30, Chapter 6, Cohabitant Abuse Act; or]~~

~~[(ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act.]~~

~~[(3)]~~ (2) (a) (i) The division shall include on the statewide warrant system all warrants issued for felony offenses and class A, B, and C misdemeanor offenses in the state.

(ii) For each offense the division shall indicate whether the magistrate ordered under Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

(b) Infractions shall not be included on the statewide warrant system, including any subsequent failure to appear warrants issued on an infraction.

~~[(4)]~~ (3) The division is the agency responsible for the statewide warrant system and shall:

- (a) ensure quality control of all warrants of arrest or commitment and protective orders

contained in the statewide warrant system by conducting regular validation checks with every clerk of a court responsible for entering the information on the system;

(b) upon the expiration of the protective orders and in the manner prescribed by the division, purge information regarding protective orders described in Subsection [~~(2)(c)~~] 53-10-208.1(4) within 30 days of the time after expiration;

(c) establish system procedures and provide training to all criminal justice agencies having access to information contained on the state warrant system;

(d) provide technical support, program development, and systems maintenance for the operation of the system; and

(e) pay data processing and transaction costs for state, county, and city law enforcement agencies and criminal justice agencies having access to information contained on the state warrant system.

[~~(5)~~] (4) (a) Any data processing or transaction costs not funded by legislative appropriation shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

(b) This Subsection (4) supersedes any conflicting provision in Subsection [~~(4)~~](3)(e).

Section 2. Section **53-10-208.1** is enacted to read:

53-10-208.1. Magistrates and court clerks to supply information.

Every magistrate or clerk of a court responsible for court records in this state shall, within 30 days of the disposition and on forms and in the manner provided by the division, furnish the division with information pertaining to:

(1) all dispositions of criminal matters, including:

(a) guilty pleas;

(b) convictions;

(c) dismissals;

(d) acquittals;

(e) pleas held in abeyance;

(f) judgments of not guilty by reason of insanity for a felony offense;

(g) findings of mental incompetence to stand trial for a felony offense; or

(h) probations granted;

(2) orders of civil commitment under the terms of Section 62A-12-234;

(3) the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within one day of the action and in a manner provided by the division; and

(4) protective orders issued after notice and hearing, pursuant to:

(a) Title 30, Chapter 6, Cohabitant Abuse Act; or

(b) Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

Section 3. Section **62A-12-247** is amended to read:

62A-12-247. Confidentiality of information and records -- Exceptions -- Penalty.

(1) All certificates, applications, records, and reports made for the purpose of this part, including those made on judicial proceedings for involuntary commitment, that directly or indirectly identify a patient or former patient or an individual whose commitment has been sought under this part, shall be kept confidential and may not be disclosed by any person except insofar as:

(a) the individual identified or his legal guardian, if any, or, if a minor, his parent or legal guardian shall consent;

(b) disclosure may be necessary to carry out ~~[any of]~~ the provisions of:

(i) this part; or

(ii) Section 53-10-208.1; or

(c) a court may direct, upon its determination that disclosure is necessary for the conduct of proceedings before it, and that failure to make the disclosure would be contrary to the public interest.

(2) A person who ~~[violates any provision of]~~ knowingly or intentionally discloses any information not authorized by this section is guilty of a class B misdemeanor.

Section 4. Section **76-10-501** is amended to read:

76-10-501. Definitions.

As used in this part:

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

for immediate use.

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

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

~~[(3)]~~ (2) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun through the division or the local law enforcement agency where the firearms dealer conducts business.

~~[(4)]~~ (3) (a) "Dangerous weapon" means any item that in the manner of its use or intended use is capable of causing death or serious bodily injury. The following factors shall be used in determining whether a knife, or any other item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

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

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

~~[(5)]~~ (4) "Dealer" means every person who is licensed under crimes and criminal procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

~~[(6)]~~ (5) "Division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.

~~[(7)]~~ (6) "Enter" means intrusion of the entire body.

~~[(8)]~~ (7) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off

rifle, or any device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

~~[(9)]~~ (8) "Firearms transaction record form" means a form created by the division to be completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

~~[(10)]~~ (9) "Fully automatic weapon" means any firearm which fires, is designed to fire, or can be readily restored to fire, automatically more than one shot without manual reloading by a single function of the trigger.

~~[(11)]~~ (10) "Handgun" means a pistol, revolver, or other firearm of any description, loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

~~[(12)]~~ (11) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.

~~[(13)]~~ (12) "Prohibited area" means any place where it is unlawful to discharge a firearm.

~~[(14)]~~ (13) "Readily accessible for immediate use" means that a firearm or other dangerous weapon is carried on the person or within such close proximity and in such a manner that it can be retrieved and used as readily as if carried on the person.

~~[(15)]~~ (14) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

~~[(16)]~~ (15) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer than 26 inches.

~~[(17)]~~ (16) "Securely encased" means not readily accessible for immediate use, such as held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage area of a motor vehicle, not including a glove box or console box.

~~[(18)]~~ (17) "State entity" means each department, commission, board, council, agency,

institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel, or other administrative unit of the state.

(18) "Violent felony" means the same as defined in Section 76-3-203.5.

Section 5. Section **76-10-503** is repealed and reenacted to read:

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

(1) For purposes of this section:

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

(i) has been convicted of any violent felony as defined in Section 76-3-203.5;

(ii) is on probation or parole for any felony;

(iii) is on parole from a secure facility as defined in Section 62A-7-101; or

(iv) within the last ten years has been adjudicated delinquent for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5.

(b) A Category II restricted person is a person who:

(i) has been convicted of or is under indictment for any felony;

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

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

(iv) is in possession of a dangerous weapon and is knowingly and intentionally in unlawful possession of a Schedule I controlled substance as defined in Section 58-37-2;

(v) has been found not guilty by reason of insanity for a felony offense;

(vi) has been found mentally incompetent to stand trial for a felony offense;

(vii) 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;

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

(ix) has been dishonorably discharged from the armed forces; or

(x) has renounced his citizenship after having been a citizen of the United States.

(2) A Category I restricted person who purchases, transfers, possesses, uses, or has under his custody or control:

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

(b) any dangerous weapon other than a firearm is guilty of a third degree felony.

(3) A Category II restricted person who purchases, transfers, possesses, uses, or has under his custody or control:

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

(b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

(4) A person may be subject to the restrictions of both categories at the same time.

(5) If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control any dangerous weapon, the penalties of that section control.

Section 6. Section **76-10-504** is amended to read:

76-10-504. Carrying concealed dangerous weapon -- Penalties.

(1) Except as provided in Section 76-10-503 and in Subsections (2) and (3):

(a) a person who carries a concealed dangerous weapon, as defined in Section 76-10-501, which is not a firearm on his person or one that is readily accessible for immediate use which is not securely encased, as defined in this part, in a place other than his residence, property, or business under his control is guilty of a class B misdemeanor; and

(b) a person without a valid concealed firearm permit who carries a concealed dangerous weapon which is a firearm and that contains no ammunition is guilty of a class B misdemeanor, but if the firearm contains ammunition the person is guilty of a class A misdemeanor.

(2) A person who carries concealed a sawed-off shotgun or a sawed-off rifle is guilty of a second degree felony.

(3) If the concealed firearm is used in the commission of a [~~crime of violence~~] violent felony as defined in Section [~~76-10-501~~] 76-3-203.5, and the person is a party to the offense, the person is guilty of a second degree felony.

(4) Nothing in Subsection (1) shall prohibit a person engaged in the lawful taking of

protected or unprotected wildlife as defined in Title 23, ~~[Fish and Game]~~ Wildlife Resources Code, from carrying a concealed weapon or a concealed firearm with a barrel length of four inches or greater as long as the taking of wildlife does not occur:

- (a) within the limits of a municipality in violation of that municipality's ordinances; or
- (b) upon the highways of the state as defined in Section 41-6-1.

Section 7. Section **76-10-509.6** is amended to read:

76-10-509.6. Parent or guardian providing firearm to violent minor.

(1) A parent or guardian may not intentionally or knowingly provide a firearm to, or permit the possession of a firearm by, any minor who has been convicted of a ~~[crime of violence]~~ violent felony as defined in Section 76-3-203.5 or any minor who has been adjudicated in juvenile court for an offense which would constitute a ~~[crime of violence]~~ violent felony if the minor were an adult.

(2) Any person who violates this section is guilty of:

- (a) a class A misdemeanor upon the first offense; and
- (b) a third degree felony for each subsequent offense.

Section 8. Section **76-10-512** is amended to read:

76-10-512. Target concessions, shooting ranges, competitions, and hunting excepted from prohibitions.

The provisions of ~~[Sections 76-10-503;]~~ Section 76-10-509[;] and Subsection 76-10-509.4(1) regarding possession of handguns by minors shall not apply to any of the following:

- (1) Patrons firing at lawfully operated target concessions at amusement parks, piers, and similar locations provided that the firearms to be used are firmly chained or affixed to the counters.
- (2) Any person in attendance at a hunter's safety course or a firearms safety course.
- (3) Any person engaging in practice or any other lawful use of a firearm at an established range or any other area where the discharge of a firearm is not prohibited by state or local law.
- (4) Any person engaging in an organized competition involving the use of a firearm, or participating in or practicing for such competition.
- (5) Any minor under 18 years of age who is on real property with the permission of the owner, licensee, or lessee of the property and who has the permission of a parent or legal guardian

or the owner, licensee, or lessee to possess a firearm not otherwise in violation of law.

(6) Any resident or nonresident hunters with a valid hunting license or other persons who are lawfully engaged in hunting.

(7) Any person traveling to or from any activity described in Subsection (2), (3), (4), (5), or (6) with an unloaded firearm in his possession.

Section 9. 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]~~ the 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 10. 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.

Section 11. **Coordination clause.**

If this bill and H.B. 176, Weapons Restrictions for Mentally Ill Persons, both pass, it is the intent of the Legislature that the amendments in Subsection 53-10-208.1(1) read as follows:

(1) all dispositions of criminal matters, including:

(a) guilty pleas;

(b) convictions;

(c) dismissals;

(d) acquittals;

(e) pleas held in abeyance;

(f) judgments of not guilty by reason of insanity for a violation of:

(i) a felony offense;

(ii) Title 76, Chapter 5, Offenses Against the Person; or

(iii) Title 76, Chapter 10, Part 5, Weapons;

(g) judgments of guilty and mentally ill;

(h) finding of mental incompetence to stand trial for a violation of:

(i) a felony offense;

(ii) Title 76, Chapter 5, Offenses Against the Person; or

(iii) Title 76, Chapter 10, Part 5, Weapons; or

(i) probations granted; and