

1 **CRIMINAL CODE - RESTRICTED PERSONS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Terry R. Spencer**

5 AN ACT RELATING TO THE CRIMINAL CODE; REVISING CATEGORIES OF
6 RESTRICTED PERSONS; ALLOWING THE BUREAU OF CRIMINAL IDENTIFICATION TO
7 ACCESS JUVENILE COURT RECORDS FOR THE PURPOSE OF BACKGROUND CHECKS
8 FOR FIREARM PURCHASES; PROVIDING FOR CONFIDENTIALITY OF INFORMATION;
9 AND MAKING TECHNICAL CHANGES.

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

11 AMENDS:

12 **53-10-208**, as last amended by Chapter 187 and renumbered and amended by Chapter 263,
13 Laws of Utah 1998

14 **62A-12-247**, as last amended by Chapter 161, Laws of Utah 1989

15 **76-10-501**, as last amended by Chapters 5, 97 and 366, Laws of Utah 1999

16 **76-10-504**, as last amended by Chapter 289, Laws of Utah 1997

17 **76-10-509.6**, as enacted by Chapter 10, Laws of Utah 1993, Second Special Session

18 **76-10-512**, as last amended by Chapter 12, Laws of Utah 1994

19 **76-10-526**, as last amended by Chapter 227, Laws of Utah 1999

20 **78-3a-206**, as last amended by Chapter 377, Laws of Utah 1999

21 ENACTS:

22 **53-10-208.1**, Utah Code Annotated 1953

23 REPEALS AND REENACTS:

24 **76-10-503**, as last amended by Chapter 97, Laws of Utah 1999

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

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

27 **53-10-208. Definition -- Offenses included on statewide warrant system --**

28 **Transportation fee to be included -- Statewide warrant system responsibility -- Quality**
29 **control -- Training -- Technical support -- Transaction costs.**

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

32 (a) records of criminal warrant information; and

33 (b) after notice and hearing, records of protective orders issued pursuant to:

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

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

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

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

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

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

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

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

47 ~~[(3)]~~ (2) (a) (i) The division shall include on the statewide warrant system all warrants
48 issued for felony offenses and class A, B, and C misdemeanor offenses in the state.

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

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

53 ~~[(4)]~~ (3) The division is the agency responsible for the statewide warrant system and shall:

54 (a) ensure quality control of all warrants of arrest or commitment and protective orders
55 contained in the statewide warrant system by conducting regular validation checks with every clerk
56 of a court responsible for entering the information on the system;

57 (b) upon the expiration of the protective orders and in the manner prescribed by the
58 division, purge information regarding protective orders described in Subsection ~~[(2)(c)]~~

59 53-10-208.1(4) within 30 days of the time after expiration;

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

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

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

67 [(5)] (4) (a) Any data processing or transaction costs not funded by legislative
68 appropriation shall be paid on a pro rata basis by all agencies using the system during the fiscal
69 year.

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

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

72 **53-10-208.1. Magistrates and court clerks to supply information.**

73 Every magistrate or clerk of a court responsible for court records in this state shall, within
74 30 days of the disposition and on forms and in the manner provided by the division, furnish the
75 division with information pertaining to:

76 (1) all dispositions of criminal matters, including:

77 (a) guilty pleas;

78 (b) convictions;

79 (c) dismissals;

80 (d) acquittals;

81 (e) pleas held in abeyance;

82 (f) judgments of not guilty by reason of insanity;

83 (g) judgments of guilty and mentally ill;

84 (h) findings of mental incompetence to stand trial; or

85 (i) probations granted;

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

87 (3) the issuance, recall, cancellation, or modification of all warrants of arrest or

88 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within

89 one day of the action and in a manner provided by the division; and

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

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

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

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

94 **62A-12-247. Confidentiality of information and records -- Exceptions -- Penalty.**

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

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

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

103 (i) this part; or

104 (ii) Section 53-10-208.1; or

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

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

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

111 **76-10-501. Definitions.**

112 As used in this part:

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

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

118 [~~(2) "Crime of violence" means aggravated murder, murder, manslaughter, rape, mayhem,~~
119 ~~kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of~~
120 ~~violence, assault with a dangerous weapon, assault with intent to commit any offense punishable~~

121 by imprisonment for more than one year, arson punishable by imprisonment for more than one
122 year, or an attempt to commit any of these offenses.}]

123 [(3)] (2) "Criminal history background check" means a criminal background check
124 conducted by a licensed firearms dealer on every purchaser of a handgun through the division or
125 the local law enforcement agency where the firearms dealer conducts business.

126 [(4)] (3) (a) "Dangerous weapon" means any item that in the manner of its use or intended
127 use is capable of causing death or serious bodily injury. The following factors shall be used in
128 determining whether a knife, or any other item, object, or thing not commonly known as a
129 dangerous weapon is a dangerous weapon:

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

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

136 [(5)] (4) "Dealer" means every person who is licensed under crimes and criminal
137 procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring
138 a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

139 [(6)] (5) "Division" means the Criminal Investigations and Technical Services Division
140 of the Department of Public Safety, created in Section 53-10-103.

141 [(7)] (6) "Enter" means intrusion of the entire body.

142 [(8)] (7) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
143 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
144 a projectile by action of an explosive.

145 [(9)] (8) "Firearms transaction record form" means a form created by the division to be
146 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

147 [(10)] (9) "Fully automatic weapon" means any firearm which fires, is designed to fire, or
148 can be readily restored to fire, automatically more than one shot without manual reloading by a
149 single function of the trigger.

150 [(11)] (10) "Handgun" means a pistol, revolver, or other firearm of any description, loaded
151 or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which,

152 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

153 ~~[(12)]~~ (11) "House of worship" means a church, temple, synagogue, mosque, or other
154 building set apart primarily for the purpose of worship in which religious services are held and the
155 main body of which is kept for that use and not put to any other use inconsistent with its primary
156 purpose.

157 ~~[(13)]~~ (12) "Prohibited area" means any place where it is unlawful to discharge a firearm.

158 ~~[(14)]~~ (13) "Readily accessible for immediate use" means that a firearm or other dangerous
159 weapon is carried on the person or within such close proximity and in such a manner that it can
160 be retrieved and used as readily as if carried on the person.

161 ~~[(15)]~~ (14) "Residence" means an improvement to real property used or occupied as a
162 primary or secondary residence.

163 ~~[(16)]~~ (15) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or
164 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer
165 than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration,
166 modification, or otherwise, if the weapon as modified has an overall length of fewer than 26
167 inches.

168 ~~[(17)]~~ (16) "Securely encased" means not readily accessible for immediate use, such as
169 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
170 storage area of a motor vehicle, not including a glove box or console box.

171 ~~[(18)]~~ (17) "State entity" means each department, commission, board, council, agency,
172 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
173 unit, bureau, panel, or other administrative unit of the state.

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

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

176 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
177 **dangerous weapons by certain persons.**

178 (1) For purposes of this section:

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

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

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

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

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

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

186 (i) has been convicted of any felony;

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

189 (iii) is an unlawful user of a controlled substance or has been convicted of two or more
190 violations, arising from separate criminal incidents, one of which convictions is within the last
191 three years, of:

192 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

193 (B) Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

194 (C) Title 58, Chapter 37b, Imitation Controlled Substances Act;

195 (D) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

196 (E) Title 58, Chapter 37d, Clandestine Drug Lab Act;

197 (iv) has been found not guilty by reason of insanity;

198 (v) has been found guilty and mentally ill;

199 (vi) has been found mentally incompetent to stand trial;

200 (vii) has been civilly committed under the terms of Section 62A-12-234;

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

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

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

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

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

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

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

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

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

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

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

214 **76-10-504. Carrying concealed dangerous weapon -- Penalties.**

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

216 (a) a person who carries a concealed dangerous weapon, as defined in Section 76-10-501,
217 which is not a firearm on his person or one that is readily accessible for immediate use which is
218 not securely encased, as defined in this part, in a place other than his residence, property, or
219 business under his control is guilty of a class B misdemeanor; and220 (b) a person without a valid concealed firearm permit who carries a concealed dangerous
221 weapon which is a firearm and that contains no ammunition is guilty of a class B misdemeanor,
222 but if the firearm contains ammunition the person is guilty of a class A misdemeanor.223 (2) A person who carries concealed a sawed-off shotgun or a sawed-off rifle is guilty of
224 a second degree felony.225 (3) If the concealed firearm is used in the commission of a [~~crime of violence~~] violent
226 felony as defined in Section [~~76-10-501~~] 76-3-203.5, and the person is a party to the offense, the
227 person is guilty of a second degree felony.228 (4) Nothing in Subsection (1) shall prohibit a person engaged in the lawful taking of
229 protected or unprotected wildlife as defined in Title 23, [~~Fish and Game~~] Wildlife Resources Code,
230 from carrying a concealed weapon or a concealed firearm with a barrel length of four inches or
231 greater as long as the taking of wildlife does not occur:

232 (a) within the limits of a municipality in violation of that municipality's ordinances; or

233 (b) upon the highways of the state as defined in Section 41-6-1.

234 Section 7. Section **76-10-509.6** is amended to read:235 **76-10-509.6. Parent or guardian providing firearm to violent minor.**236 (1) A parent or guardian may not intentionally or knowingly provide a firearm to, or permit
237 the possession of a firearm by, any minor who has been convicted of a [~~crime of violence~~] violent
238 felony as defined in Section 76-3-203.5 or any minor who has been adjudicated in juvenile court
239 for an offense which would constitute a [~~crime of violence~~] violent felony if the minor were an
240 adult.

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

242 (a) a class A misdemeanor upon the first offense; and

243 (b) a third degree felony for each subsequent offense.

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

245 **76-10-512. Target concessions, shooting ranges, competitions, and hunting excepted**
246 **from prohibitions.**

247 The provisions of [~~Sections 76-10-503,~~] Section 76-10-509[;] and Subsection
248 76-10-509.4(1) regarding possession of handguns by minors shall not apply to any of the
249 following:

250 (1) Patrons firing at lawfully operated target concessions at amusement parks, piers, and
251 similar locations provided that the firearms to be used are firmly chained or affixed to the counters.

252 (2) Any person in attendance at a hunter's safety course or a firearms safety course.

253 (3) Any person engaging in practice or any other lawful use of a firearm at an established
254 range or any other area where the discharge of a firearm is not prohibited by state or local law.

255 (4) Any person engaging in an organized competition involving the use of a firearm, or
256 participating in or practicing for such competition.

257 (5) Any minor under 18 years of age who is on real property with the permission of the
258 owner, licensee, or lessee of the property and who has the permission of a parent or legal guardian
259 or the owner, licensee, or lessee to possess a firearm not otherwise in violation of law.

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

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

264 Section 9. Section **76-10-526** is amended to read:

265 **76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**
266 **Exemption for concealed firearm permit holders.**

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

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

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

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

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

277 (b) one other documentation of residence which must show an address identical to that
278 shown on the photo identification form.

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

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

284 (a) the dealer identification number;

285 (b) the name and address of the person receiving the firearm;

286 (c) the date of birth, height, weight, eye color, and hair color of the person receiving the
287 firearm; and

288 (d) the Social Security number or any other identification number of the person receiving
289 the firearm.

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

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

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

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

300 (a) review the criminal history files, including juvenile court records, to determine if the
301 person is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

302 (b) inform the dealer that:

303 (i) the [~~criminal record indicates~~] records indicate the person is so prohibited; or

304 (ii) the person is approved for purchasing, possessing, or transferring a firearm;

305 (c) provide the dealer with a unique transaction number for that inquiry; and

306 (d) provide a response to the requesting dealer during the call for a criminal background,

307 or by return call, or other electronic means, without delay, except in case of electronic failure or
308 other circumstances beyond the control of the division, the division shall advise the dealer of the
309 reason for [such] the delay and give the dealer an estimate of the length of [such] the delay.

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

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

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

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

327 (14) (a) All dealers shall collect a criminal history background check fee which is \$7.50.
328 This fee remains in effect until changed by the division through the process under Section
329 63-38-3.2.

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

334 (15) A person with a concealed firearm permit issued pursuant to Title 53, Chapter 5, Part
335 7, Concealed Weapon Act, shall be exempt from the background check and corresponding fee
336 required in this section for the purchase of a firearm if:

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

338 firearm; and

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

340 Section 10. Section **78-3a-206** is amended to read:

341 **78-3a-206. Court records -- Inspection.**

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

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

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

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

354 (c) the Division of Criminal Investigations and Technical Services, established in Section
355 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm
356 and establishing good character for issuance of a concealed firearm permit as provided in Section
357 53-5-704.

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

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

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

368 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency

369 history summary of any person charged as an adult with a felony offense shall be made available
370 to any person upon request.

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

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

Legislative Review Note
as of 1-21-00 7:01 PM

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

Office of Legislative Research and General Counsel