

REPEAL OF WEAPONS LAW

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Scott Daniels

This act modifies provisions relating to firearms. The act repeals the statutory provision that reserves all authority to regulate firearms to the state except where specifically delegated by the Legislature to local authorities or state entities and makes certain technical changes.

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

AMENDS:

76-8-311.3, as last amended by Chapters 5, 97 and 197, Laws of Utah 1999

78-27-64, as enacted by Chapter 93, Laws of Utah 2000

REPEALS:

76-10-500, as enacted by Chapter 5, Laws of Utah 1999

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

Section 1. Section **76-8-311.3** is amended to read:

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

(1) As used in this section:

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

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

(c) "Correctional facility" means:

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

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

(iii) any juvenile detention facility; and



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

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

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

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

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

36 (2) [~~Notwithstanding Section 76-10-500, a~~] A correctional or mental health facility may
37 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape, explosive,
38 controlled substance, spirituous or fermented liquor, medicine, or poison in any quantity may be:

39 (a) transported to or upon a correctional or mental health facility;

40 (b) sold or given away at any correctional or mental health facility;

41 (c) given to or used by any offender at a correctional or mental health facility; or

42 (d) knowingly or intentionally possessed at a correctional or mental health facility.

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

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

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

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

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

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

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

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

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

66 (e) Any person violates Section 76-10-306 who knowingly or intentionally transports,
67 possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

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

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

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

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

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

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

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

90 (i) spirituous or fermented liquor;

91 (ii) medicine; or

92 (iii) poison in any quantity.

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

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

98 (6) The possession, distribution, or use of a controlled substance at a correctional facility
99 or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58,
100 Chapter 37, Utah Controlled Substances Act.

101 Section 2. Section **78-27-64** is amended to read:

102 **78-27-64. Lawsuits prohibited -- Exceptions.**

103 [~~1) As prescribed by Section 76-10-500, all authority to regulate firearms is reserved to
104 the state through the Legislature.]~~

105 [~~2) A person who lawfully designs, manufactures, markets, advertises, transports, or sells
106 firearms or ammunition to the public may not be sued by the state or any of its political
107 subdivisions for the subsequent use, whether lawfully or unlawfully, of the firearm or ammunition,
108 unless the suit is based on the breach of a contract or warranty for a firearm or ammunition
109 purchased by the state or political subdivision.~~

110 Section 3. **Repealer.**

111 This act repeals:

112 Section **76-10-500, Uniform law.**

Legislative Review Note
as of 9-27-01 12:58 PM

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

Office of Legislative Research and General Counsel