

**DANGEROUS WEAPONS AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael G. Waddoups**

**This act modifies provisions on dangerous weapons by providing clarification on the restriction of weapons at schools and restricting certain drug offenders from possessing a dangerous weapon. The act modifies notice requirements related to prohibiting firearms in a house of worship or private residence.**

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

AMENDS:

**53A-11-904**, as last amended by Chapter 210, Laws of Utah 2002

**76-10-503**, as repealed and reenacted by Chapter 303, Laws of Utah 2000

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

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

REPEALS:

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

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

Section 1. Section **53A-11-904** is amended to read:

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

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

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

(b) willful destruction or defacing of school property;

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

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

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

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

(i) any serious violation affecting another student or a staff member, or any serious violation occurring in a school building, in or on school property, or in conjunction with any school activity, including:

(A) the possession, control, or actual or threatened use of a real weapon, explosive, or noxious or flammable material [~~under Section 53A-3-502~~];

(B) the actual or threatened use of a look alike weapon with intent to intimidate another person or to disrupt normal school activities; or

(C) the sale, control, or distribution of a drug or controlled substance as defined in Section 58-37-2, an imitation controlled substance defined in Section 58-37b-2, or drug paraphernalia as defined in Section 58-37a-3; or

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

(b) A student who commits a violation of Subsection (2)(a) involving a real or look alike weapon, explosive, or flammable material shall be expelled from school for a period of not less than one year subject to the following:

(i) within 45 days after the expulsion the student shall appear before the student's local school board superintendent or the superintendent's designee, accompanied by a parent or legal guardian; and

(ii) the superintendent shall determine:

(A) what conditions must be met by the student and the student's parent for the student to return to school;

(B) if the student should be placed on probation in a regular or alternative school setting consistent with Section 53A-11-907, and what conditions must be met by the student in order to

ensure the safety of students and faculty at the school the student is placed in; and

(C) if it would be in the best interest of both the school district and the student to modify the expulsion term to less than a year, conditioned on approval by the local school board and giving highest priority to providing a safe school environment for all students.

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

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

(5) Each local school board shall prepare an annual report for the State Board of Education on:

- (a) each violation committed under this section; and
- (b) each action taken by the school district against a student who committed the violation.

Section 2. Section **76-10-503** is amended 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 or II 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.

(6) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of a member of the person's household or for administration to an animal owned by the person or a member of the person's household; or

(b) otherwise authorized by law to possess the substance.

Section 3. Section **76-10-505.5** is amended to read:

**76-10-505.5. Possession of a dangerous weapon, firearm, or sawed-off shotgun on or about school premises -- Penalties.**

(1) A person may not possess any dangerous weapon, firearm, or sawed-off shotgun, as those terms are defined in Section 76-10-501, at a place that the person knows, or has reasonable cause to believe, is on or about school premises as defined in Subsection 76-3-203.2(1).

(2) (a) Possession of a dangerous weapon on or about school premises is a class B misdemeanor.

(b) Possession of a firearm or sawed-off shotgun on or about school premises is a class A misdemeanor.

(3) This section [~~applies to any person, except persons~~] does not apply if:

(a) the person is authorized to possess a firearm as provided under [Sections] Section 53-5-704, 53-5-705, [~~53A-3-502,~~] 76-10-511, or 76-10-523, or [Subsection 76-10-504(2), and] as otherwise authorized by law[-];

(b) the possession is approved by the responsible school administrator;

(c) the item is present or to be used in connection with a lawful, approved activity and is in the possession or under the control of the person responsible for its possession or use; or

(d) the possession is:

(i) at the person's place of residence or on the person's property;

(ii) in any vehicle lawfully under the person's control, other than a vehicle owned by the school or used by the school to transport students; or

(iii) at the person's place of business which is not located in the areas described in Subsection 76-3-203.2(1)(a)(i), (ii), or (iv).

(4) This section does not prohibit prosecution of a more serious weapons offense that may occur on or about school premises.

Section 4. Section **76-10-530** is amended to read:

**76-10-530. Trespass with a firearm in a house of worship or private residence -- Notice -- Penalty.**

(1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53, Chapter 5, Part 7, Concealed Weapon Act, after ~~[having received]~~ notice has been given as provided in Subsection (2) that firearms are prohibited, may not knowingly and intentionally:

(a) transport a firearm into:

(i) a house of worship; or

(ii) a private residence; or

(b) while in possession of a firearm, enter or remain in:

(i) a house of worship; or

(ii) a private residence.

(2) Notice that firearms are prohibited may be ~~[made]~~ given by:

(a) personal communication to the actor by:

(i) the church or organization operating the house of worship;

(ii) the owner, lessee, or person with lawful right of possession of the private residence;

or

(iii) a person with authority to act for the person or entity in Subsections (2)(a)(i) and (ii);

~~[or]~~

(b) posting of signs reasonably likely to come to the attention of persons entering the house of worship or private residence~~[-]~~;

(c) announcement, by a person with authority to act for the church or organization operating the house of worship, in a regular congregational meeting in the house of worship;

(d) publication in a bulletin, newsletter, worship program, or similar document generally circulated or available to the members of the congregation regularly meeting in the house of worship; or

(e) publication in a newspaper of general circulation in the county in which the house of worship is located or the church or organization operating the house of worship has its principal office in this state.

(3) A church or organization operating a house of worship and giving notice that firearms are prohibited may:

(a) revoke the notice, with or without supersedure, by giving further notice in any manner provided in Subsection (2); and

(b) provide or allow exceptions to the prohibition as the church or organization considers advisable.

(4) (a) (i) Within 30 days of giving or revoking any notice pursuant to Subsection (2)(c), (d), or (e), a church or organization operating a house of worship shall notify the division on a form and in a manner as the division shall prescribe.

(ii) The division shall post on its website a list of the churches and organizations operating houses of worship who have given notice under Subsection (4)(a)(i).

(b) Any notice given pursuant to Subsection (2)(c), (d), or (e) shall remain in effect until revoked or for a period of one year from the date the notice was originally given, whichever occurs first.

~~[(3)]~~ (5) Nothing in this section permits an owner who has granted the lawful right of possession to a renter or lessee to restrict the renter or lessee from lawfully possessing a firearm in the residence.

~~[(4)]~~ (6) A violation of this section is an infraction.

**Section 5. Repealer.**

This act repeals:

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