

**Representative Curtis Oda** proposes the following substitute bill:

**DANGEROUS WEAPON AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis Oda**

Senate Sponsor: David P. Hinkins

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Utah Criminal Code regarding the definition of "on or about school premises" as related to the use of a dangerous weapon.

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of "on or about school premises" as related to:
  - sentencing enhancements for the use of a dangerous weapon; and
  - those locations where a person may not possess a dangerous weapon, firearm, or sawed-off shotgun; and
- ▶ makes certain technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-3-203.2**, as last amended by Laws of Utah 2007, Chapter 339

**76-10-505.5**, as last amended by Laws of Utah 2003, Chapter 203



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

Section 1. Section **76-3-203.2** is amended to read:

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

(1) (a) As used in this section [~~and Section 76-10-505.5;~~] "on or about school premises" means [~~any of the following~~]:

(i) (A) in a public or private elementary[;] or secondary[;] school; or

(B) on the grounds of any of those schools; and

(ii) (A) in a public [~~or private vocational school or postsecondary~~] institution of higher education; or

(B) on the grounds of [~~any of those schools or institutions;~~] a public institution of higher education.

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

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

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

(b) As used in this section:

(i) "Dangerous weapon" has the same definition as in Section 76-1-601.

(ii) "Educator" means [~~any~~] a person who is:

(A) employed by a public school district; and [~~who is~~]

(B) required to hold a certificate issued by the State Board of Education in order to perform duties of employment.

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

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

57 (3) (a) ~~Any~~ A person who commits an offense against an educator when the educator  
58 is acting within the course of employment is subject to an enhanced degree of offense as  
59 provided in Subsection (4).

60 (b) As used in Subsection (3)(a), "offense" means:

61 (i) an offense under Title 76, Chapter 5, Offenses Against the Person; and

62 (ii) an offense under Title 76, Chapter 6, Part 3, Robbery.

63 (4) If the trier of fact finds beyond a reasonable doubt that the defendant, while on or  
64 about school premises, commits ~~any~~ an offense and in the commission of the offense uses or  
65 threatens to use a dangerous weapon, or that the defendant committed an offense against an  
66 educator when the educator was acting within the course of ~~his~~ the educator's employment,  
67 the enhanced penalty for a:

68 (a) class B misdemeanor is a class A misdemeanor;

69 (b) class A misdemeanor is a third degree felony;

70 (c) third degree felony is a second degree felony; or

71 (d) second degree felony is a first degree felony.

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

73 (a) is imprisonment for a term of not less than five years and which may be for life, and  
74 imposition or execution of the sentence may not be suspended unless the court finds that the  
75 interests of justice would be best served and states the specific circumstances justifying the  
76 disposition on the record; and

77 (b) is subject also to the dangerous weapon enhancement provided in Section  
78 76-3-203.8, except for an offense committed under Subsection (3) that does not involve a  
79 firearm.

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

83 (7) In cases where an offense is enhanced ~~pursuant to~~ under Subsection (4)~~(a), (b),~~  
84 ~~(c), or (d)~~, or under Subsection (5)(a) for an offense committed under Subsection (2) that does  
85 not involve a firearm, the convicted person is not subject to the dangerous weapon  
86 enhancement in Section 76-3-203.8.

87 (8) The sentencing enhancement described in this section does not apply if:

88 (a) the offense for which the person is being sentenced is:

89 (i) a grievous sexual offense;

90 (ii) child kidnapping[;] under Section 76-5-301.1;

91 (iii) aggravated kidnapping[;] under Section 76-5-302; or

92 (iv) forcible sexual abuse[;] under Section 76-5-404; and

93 (b) applying the sentencing enhancement provided for in this section would result in a  
94 lower maximum penalty than the penalty provided for under the section that describes the  
95 offense for which the person is being sentenced.

96 Section 2. Section **76-10-505.5** is amended to read:

97 **76-10-505.5. Possession of a dangerous weapon, firearm, or sawed-off shotgun on**  
98 **or about school premises -- Penalties.**

99 (1) As used in this section, "on or about school premises" means:

100 (a) (i) in a public or private elementary or secondary school; or

101 (ii) on the grounds of any of those schools; and

102 (b) (i) in a public institution of higher education; or

103 (ii) on the grounds of a public institution of higher education.

104 ~~[(1)]~~ (2) A person may not possess any dangerous weapon, firearm, or sawed-off  
105 shotgun, as those terms are defined in Section 76-10-501, at a place that the person knows, or  
106 has reasonable cause to believe, is on or about school premises as defined in [~~Subsection~~  
107 ~~76-3-203.2(1)~~] this section.

108 ~~[(2)]~~ (3) (a) Possession of a dangerous weapon on or about school premises is a class B  
109 misdemeanor.

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

112 ~~[(3)]~~ (4) This section does not apply if:

113 (a) the person is authorized to possess a firearm as provided under Section 53-5-704,  
114 53-5-705, 76-10-511, or 76-10-523, or as otherwise authorized by law;

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

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

118 (d) the possession is:

119 (i) at the person's place of residence or on the person's property; or  
120 (ii) in any vehicle lawfully under the person's control, other than a vehicle owned by  
121 the school or used by the school to transport students[~~;~~or].  
122 [~~(iii) at the person's place of business which is not located in the areas described in~~  
123 ~~Subsection 76-3-203.2(1)(a)(i), (ii), or (iv).~~]  
124 [~~(4)~~ (5)] This section does not prohibit prosecution of a more serious weapons offense  
125 that may occur on or about school premises.

# FISCAL NOTE

H.B. 75 1st Sub. (Buff)

SHORT TITLE: **Dangerous Weapon Amendments**

SPONSOR: **Oda, C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.

2/9/2011, 04:29 PM, Lead Analyst: Syphus, G./Attorney: JLW

Office of the Legislative Fiscal Analyst