

DOMESTIC VIOLENCE -- WEAPONS RESTRICTIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to certain weapons restrictions relating to domestic violence.

Highlighted Provisions:

This bill:

- ▶ expands the scope of a Category II restricted person to include:
 - a person who is subject to a protective order or child protective order; and
 - a person who has been convicted of assault or aggravated assault against a cohabitant.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-503, as last amended by Laws of Utah 2015, First Special Session, Chapter 1

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

Section 1. Section **76-10-503** is amended to read:

76-10-503. Restrictions on possession, purchase, transfer, and ownership of



28 **dangerous weapons by certain persons -- Exceptions.**

29 (1) For purposes of this section:

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

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

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

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

34 (iv) within the last 10 years has been adjudicated delinquent for an offense which if
35 committed by an adult would have been a violent felony as defined in Section 76-3-203.5;

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

37 (vi) is on probation for a conviction of possessing:

38 (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;

39 (B) a controlled substance analog; or

40 (C) a substance listed in Section 58-37-4.2.

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

42 (i) has been convicted of any felony;

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

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

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

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

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

50 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
51 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
52 to a mental institution;

53 (viii) has been dishonorably discharged from the armed forces; [or]

54 (ix) has renounced [his] the person's citizenship after having been a citizen of the
55 United States[-];56 (x) is a respondent or defendant subject to a protective order or child protective order
57 issued under Title 77, Chapter 36, Cohabitant Abuse Procedures Act; Title 78A, Chapter 6,
58 Juvenile Court Act; Title 78B, Chapter 7, Part 1, Cohabitant Abuse Act; or a foreign protection

59 order enforceable under Title 78B, Chapter 7, Part 3, Uniform Interstate Enforcement of
60 Domestic Violence Protection Orders Act; or

61 (xi) has been convicted of the commission or attempted commission of assault under
62 Section 76-5-102, or aggravated assault under Section 76-5-103, against an intimate partner, as
63 defined in Title 18 U.S.C. Section 921.

64 (c) As used in this section, a conviction of a felony or adjudication of delinquency for
65 an offense which would be a felony if committed by an adult does not include:

66 (i) a conviction or adjudication of delinquency for an offense pertaining to antitrust
67 violations, unfair trade practices, restraint of trade, or other similar offenses relating to the
68 regulation of business practices not involving theft or fraud; or

69 (ii) a conviction or adjudication of delinquency which, according to the law of the
70 jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by
71 court order, pardoned or regarding which the person's civil rights have been restored unless the
72 pardon, reduction, expungement, or restoration of civil rights expressly provides that the person
73 may not ship, transport, possess, or receive firearms.

74 (d) It is the burden of the defendant in a criminal case to provide evidence that a
75 conviction or adjudication of delinquency is subject to an exception provided in Subsection
76 (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the
77 conviction or adjudication of delinquency is not subject to that exception.

78 (2) A Category I restricted person who intentionally or knowingly agrees, consents,
79 offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or
80 control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under
81 the person's custody or control:

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

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

84 (3) A Category II restricted person who intentionally or knowingly purchases, transfers,
85 possesses, uses, or has under the person's custody or control:

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

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

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

89 (5) If a higher penalty than is prescribed in this section is provided in another section

90 for one who purchases, transfers, possesses, uses, or has under this custody or control any
91 dangerous weapon, the penalties of that section control.

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

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

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

98 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon
99 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

100 (i) was possessed by the person or was under the person's custody or control before the
101 person became a restricted person;

102 (ii) was not used in or possessed during the commission of a crime or subject to
103 disposition under Section [24-3-103](#);

104 (iii) is not being held as evidence by a court or law enforcement agency;

105 (iv) was transferred to a person not legally prohibited from possessing the weapon; and

106 (v) unless a different time is ordered by the court, was transferred within 10 days of the
107 person becoming a restricted person.

108 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person
109 of a firearm or other dangerous weapon by a restricted person.

110 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or
111 dangerous weapon to any person, knowing that the recipient is a person described in
112 Subsection (1)(a) or (b).

113 (b) A person who violates Subsection (8)(a) when the recipient is:

114 (i) a person described in Subsection (1)(a) and the transaction involves a firearm, is
115 guilty of a second degree felony;

116 (ii) a person described in Subsection (1)(a) and the transaction involves any dangerous
117 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
118 the weapon for any unlawful purpose, is guilty of a third degree felony;

119 (iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is
120 guilty of a third degree felony; or

121 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous
122 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
123 the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

124 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or
125 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under
126 circumstances which the person knows would be a violation of the law.

127 (b) A person may not provide to a dealer or other person any information that the
128 person knows to be materially false information with intent to deceive the dealer or other
129 person about the legality of a sale, transfer or other disposition of a firearm or dangerous
130 weapon.

131 (c) "Materially false information" means information that portrays an illegal transaction
132 as legal or a legal transaction as illegal.

133 (d) A person who violates this Subsection (9) is guilty of:

134 (i) a third degree felony if the transaction involved a firearm; or

135 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a
136 firearm.

Legislative Review Note
Office of Legislative Research and General Counsel