

Matt MacPherson proposes the following substitute bill:

Firearm Retention Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matt MacPherson

Senate Sponsor: Daniel McCay

LONG TITLE

General Description:

This bill address the retention in evidence of seized firearms.

Highlighted Provisions:

This bill:

- prohibits a plea in abeyance from allowing a condition of the plea that the defendant forfeits the defendant's firearms in certain circumstances;

- requires firearms seized by law enforcement from an individual as a result of the individual committing a criminal offense to be returned to the individual if the individual may lawfully possess the firearm and is not charged with a crime that would make the individual a restricted person;

- contains a coordination clause to coordinate technical changes between this bill, H.B. 21, Criminal Code Recodification and Cross References, and H.B. 133, Dangerous Weapons Amendments; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a coordination clause.

Utah Code Sections Affected:

AMENDS:

76-10-529, as last amended by Laws of Utah 2024, Chapter 332

77-2a-2, as last amended by Laws of Utah 2024, Chapter 208

77-11a-402, as last amended by Laws of Utah 2024, Chapter 332

Utah Code Sections affected by Coordination Clause:

77-11a-402, as last amended by Laws of Utah 2024, Chapter 332

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

Section 6. Section **76-10-529** is amended to read:

76-10-529 . Possession of firearms, other dangerous weapons, or explosives in airport secure areas prohibited -- Punishment limitations -- Reporting requirement.

(1)(a) As used in this section:

- (i) "Airport authority" has the same meaning as defined in Section 72-10-102.
- (ii) "Explosive" is the same as defined for "explosive, chemical, or incendiary device" in Section 76-10-306.
- (iii) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

(b) Terms defined in Sections 76-1-101.5 and 76-10-501 apply to this section.

(2)(a) Within a secure area of an airport established pursuant to this section, an actor, including an actor licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is guilty of:

- (i) a class A misdemeanor if the actor knowingly or intentionally possesses a firearm or other dangerous weapon;
- (ii) subject to Subsection (5), an infraction if the actor recklessly or with criminal negligence possesses a firearm or other dangerous weapon; or
- (iii) a violation of Section 76-10-306 if the actor transports, possesses, distributes, or sells an explosive, chemical, or incendiary device.

(b) Subsection (2)(a) does not apply to:

- (i) individuals exempted under Section 76-10-523; and
- (ii) a member of the state or federal military forces while engaged in the performance of the member's official duties.

(3) An airport authority, county, municipality, or other entity regulating an airport may:

- (a) establish a secure area located beyond the main area where the public generally buys tickets, checks and retrieves luggage; and
- (b) use reasonable means, including mechanical, electronic, x-ray, or another device, to detect firearms, other dangerous weapons, or explosives concealed in baggage or upon the person of an individual attempting to enter the secure area.

(4) At least one notice shall be prominently displayed at each entrance to a secure area in which a firearm, other dangerous weapon, or explosive is restricted.

(5)(a) An actor who violates Subsection (2)(a)(ii) on a first offense may receive a written

63 warning for the offense and may not receive a citation or any other form of
64 punishment.

65 (b) An actor who violates Subsection (2)(a)(ii) on a second or subsequent offense may
66 receive a written warning or a citation.

67 (6)(a) Except as provided in Subsection (6)(d), if a law enforcement officer issues a
68 citation to an actor for an infraction as a result of the actor's conduct described in
69 Subsection (2)(a)(ii), or provides an oral or written warning for that conduct, the law
70 enforcement officer shall:

71 (i) if the law enforcement officer is able to confirm that the actor may lawfully
72 possess the firearm or other dangerous weapon, allow the actor, at the actor's
73 option, to:

74 (A) temporarily surrender custody of the firearm or other dangerous weapon into
75 the custody of the law enforcement agency so that the firearm or other
76 dangerous weapon may be retrieved by the actor at a later date; or

77 (B) exit the secure area of the airport with the firearm or other dangerous weapon;
78 or

79 (ii) if the law enforcement officer is unable to confirm that the actor may lawfully
80 possess the firearm or other dangerous weapon, or the airport authority under
81 Subsection (6)(d) prohibits the procedure described in Subsection (6)(a)(i), take
82 temporary custody of the firearm or other dangerous weapon so that the firearm or
83 other dangerous weapon may be retrieved by the actor at a later date if legally
84 permitted to do so.

85 (b) If a law enforcement officer takes temporary custody of a firearm or other dangerous
86 weapon under Subsection (6)(a):

87 (i) at the time the firearm or other dangerous weapon is obtained from the actor, the
88 law enforcement officer, or another law enforcement officer, or an employee who
89 works in the secure area of the airport, shall provide the actor with written
90 instructions on how, when, and where the actor may retrieve the actor's firearm or
91 other dangerous weapon; and

92 (ii) within three business days from the time when the law enforcement officer
93 receives the firearm or other dangerous weapon, the law enforcement agency shall
94 determine whether the actor is legally permitted to possess the firearm or other
95 dangerous weapon, and if so, ensure that the firearm or other dangerous weapon is
96 available for the actor to retrieve.

- 97 (c) An unclaimed firearm or other dangerous weapon that is surrendered into the custody
 98 of a law enforcement agency under this Subsection (6) may be disposed of pursuant
 99 to Section 77-11d-105, disposition of unclaimed property.
- 100 (d) An airport authority may implement a policy that prohibits the law enforcement
 101 agency with jurisdiction over the airport from utilizing the procedure described in
 102 Subsection (6)(a)(i).
- 103 (7)(a) An actor's firearm that is confiscated based on a violation of Subsection (2)(a)(i)
 104 shall be returned to the actor in accordance with Subsection [~~77-11a-402(1)(b)~~]
 105 77-11a-402(2).
- 106 (b) In accordance with Subsection 77-11b-102(5), a firearm seized under Subsection
 107 (2)(a)(i) is not subject to forfeiture if the actor may lawfully possess the firearm.
- 108 (c) In a prosecution brought under this section, a prosecutor may not condition a plea on
 109 the forfeiture of a firearm.
- 110 (8) An airport authority, county, municipality, or other entity regulating an airport or with
 111 local jurisdiction over an airport may not:
- 112 (a) charge, cite, or prosecute an actor with a different offense under the Utah Code, local
 113 ordinance, or another state or local law or regulation for conduct described in
 114 Subsection (2)(a)(ii);
- 115 (b) assess a civil penalty for conduct described in Subsection (2)(a)(i) or (ii); or
- 116 (c) enact a regulation, ordinance, or law covering conduct described in Subsection (2).
- 117 (9) A law enforcement agency that issues a written warning, citation, or referral for
 118 prosecution under this section shall record and report the information as required under
 119 Section 53-25-103.

120 Section 3. Section **77-2a-2** is amended to read:

121 **77-2a-2 . Plea in abeyance agreement -- Negotiation -- Contents -- Terms of**
 122 **agreement -- Waiver of time for sentencing.**

- 123 (1) At any time after acceptance of a plea of guilty or no contest but before entry of
 124 judgment of conviction and imposition of sentence, the court may, upon motion of both
 125 the prosecuting attorney and the defendant, hold the plea in abeyance and not enter
 126 judgment of conviction against the defendant nor impose sentence upon the defendant
 127 within the time periods contained in Rule 22(a), Utah Rules of Criminal Procedure.
- 128 (2) A defendant shall be represented by counsel during negotiations for a plea in abeyance
 129 and at the time of acknowledgment and affirmation of any plea in abeyance agreement
 130 unless the defendant knowingly and intelligently waives the defendant's right to counsel.

- 131 (3) A defendant has the right to be represented by counsel at any court hearing relating to a
132 plea in abeyance agreement.
- 133 (4)(a) Any plea in abeyance agreement entered into between the prosecution and the
134 defendant and approved by the court shall, subject to Subsection (7), include a full,
135 detailed recitation of the requirements and conditions agreed to by the defendant and
136 the reason for requesting the court to hold the plea in abeyance.
- 137 (b) If the plea is to a felony or any combination of misdemeanors and felonies, the
138 agreement shall be in writing and shall, before acceptance by the court, be executed
139 by the prosecuting attorney, the defendant, and the defendant's counsel in the
140 presence of the court.
- 141 (5)(a) Except as provided in Subsection (5)(b), a plea may not be held in abeyance for a
142 period longer than 18 months if the plea is to any class of misdemeanor or longer
143 than three years if the plea is to any degree of felony or to any combination of
144 misdemeanors and felonies.
- 145 (b)(i) For a plea in abeyance agreement that the Department of Corrections
146 supervises, the plea may not be held in abeyance for a period longer than the
147 initial term of probation required under the adult sentencing and supervision
148 length guidelines, as defined in Section 63M-7-401.1, if the initial term of
149 probation is shorter than the period required under Subsection (5)(a).
- 150 (ii) Subsection (5)(b)(i) does not:
- 151 (A) apply to a plea that is held in abeyance in a drug court created under Title
152 78A, Chapter 5, Part 2, Drug Court, or a problem solving court approved by
153 the Judicial Council; or
- 154 (B) prohibit court supervision of a plea in abeyance agreement after the day on
155 which the Department of Corrections supervision described in Subsection
156 (5)(b)(i) ends and before the day on which the plea in abeyance agreement ends.
- 157 (6) Notwithstanding Subsection (5), a plea may be held in abeyance for up to two years if
158 the plea is to any class of misdemeanor and the plea in abeyance agreement includes a
159 condition that the defendant participate in a problem solving court approved by the
160 Judicial Council.
- 161 (7) A plea in abeyance agreement may not:
- 162 (a) [-]be approved unless the defendant, before the court, and any written agreement,
163 knowingly and intelligently waives time for sentencing as designated in Rule 22(a),
164 Utah Rules of Criminal Procedure; or

165 (b) ~~It~~ **notwithstanding any other provision of law,** ~~it~~ include as part of the requirements and
 165a conditions agreed to by the defendant that the
 166 defendant will forfeit a firearm owned by the defendant if the offense the defendant
 167 will plea to is not an offense that would make the defendant a restricted person under
 168 Section 76-10-503.

169 *The following section is affected by a coordination clause at the end of this bill.*

170 Section 4. Section **77-11a-402** is amended to read:

171 **77-11a-402 . Disposition of seized property and contraband -- Return of seized**
 172 **property.**

173 (1)~~(a)~~ Except as provided in Subsection ~~[(1)(b)]~~ (2), if a prosecuting attorney
 174 determines that seized property no longer needs to be retained as evidence under
 175 Chapter 11c, Retention of Evidence, the prosecuting attorney may:

176 ~~[(i)]~~ (a) petition the court to apply the property that is money towards restitution, fines,
 177 fees, or monetary judgments owed by the owner of the property;

178 ~~[(ii)]~~ (b) petition the court for an order transferring ownership of weapons to the agency
 179 with custody for the agency's use and disposal in accordance with Section 77-11a-403
 180 if the owner:

181 ~~[(A)]~~ (i) is the individual who committed the offense for which the weapon was
 182 seized; or

183 ~~[(B)]~~ (ii) may not lawfully possess the weapon; or

184 ~~[(iii)]~~ (c) notify the agency with custody of the property or contraband that:

185 ~~[(A)]~~ (i) the property may be returned to the owner in accordance with Section
 186 77-11a-301 if the owner may lawfully possess the property; or

187 ~~[(B)]~~ (ii) the contraband may be disposed of or destroyed.

188 ~~[(b)]~~ (2)(a) If [a] an individual is charged with a crime that would not make the individual
 189 a restricted person under Section 76-10-503 if convicted and the prosecuting attorney
 190 determines that [a] any firearm seized from [an] the individual as a result of [an] the
 191 offense [committed under Subsection 76-10-529(2)(a)(i)-] allegedly committed by the
 192 individual no longer needs to be retained for court proceedings, the prosecuting
 193 attorney shall notify the agency with custody of the firearm that the ~~[property]~~ firearm
 194 shall be returned to the individual if the individual may lawfully possess the firearm.

195 (b) This Subsection (2) does not prohibit a law enforcement agency from performing a
 196 background check on an individual described in Subsection (2)(a) to determine if the
 197 individual may lawfully possess firearms.

198 ~~[(2)]~~ (3) Before returning a firearm to an individual, the agency returning the firearm shall
199 confirm, through the Bureau of Criminal Identification, that the individual is eligible to
200 lawfully possess and receive firearms.

201 ~~[(3)]~~ (4)(a) Except as provided in Subsection ~~[(3)(b)]~~ (4)(b), if the agency is unable to
202 locate the owner of the property or the owner is not entitled to lawfully possess the
203 property, the agency may:

204 (i) apply the property to a public interest use;

205 (ii) sell the property at public auction and apply the proceeds of the sale to a public
206 interest use; or

207 (iii) destroy the property if the property is unfit for a public interest use or for sale.

208 (b) If the property described in Subsection ~~[(3)(a)]~~ (4)(a) is a firearm, the agency shall
209 dispose of the firearm in accordance with Section 77-11a-403.

210 ~~[(4)]~~ (5) Before applying the property or the proceeds from the sale of the property to a
211 public interest use, the agency shall obtain from the legislative body of the agency's
212 jurisdiction:

213 (a) permission to apply the property or the proceeds to public interest use; and

214 (b) the designation and approval of the public interest use of the property or the proceeds.

215 ~~[(5)]~~ (6) If a peace officer seizes property that at the time of seizure is held by a pawn or
216 secondhand business in the course of the pawn or secondhand business's business, the
217 provisions of Section 13-32a-116 shall apply to the disposition of the property.

218 Section 2. **Effective date.**

219 This bill takes effect on May 7, 2025.

220 Section 7. **Coordinating H.B. 195 with H.B. 133 and H.B. 21.**

221 If H.B. 195, Firearm Retention Amendments, passes and becomes law, and if either
222 or both H.B. 21, Criminal Code Recodification and Cross References, or H.B. 133, Dangerous
223 Weapons Amendments, also pass and become law, the amendments to Section 77-11a-402 in
224 H.B. 195 supersede the amendments to Section 77-11a-402 in H.B. 133 and H.B. 21.