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Firearm Retention Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Matt MacPherson

Senate Sponsor: Daniel McCay

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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; and

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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

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

Section 1. 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.

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- 31 (ii) "Explosive" is the same as defined for "explosive, chemical, or incendiary
32 device" in Section 76-10-306.
- 33 (iii) "Law enforcement officer" means the same as that term is defined in Section
34 53-13-103.
- 35 (b) Terms defined in Sections 76-1-101.5 and 76-10-501 apply to this section.
- 36 (2)(a) Within a secure area of an airport established pursuant to this section, an actor,
37 including an actor licensed to carry a concealed firearm under Title 53, Chapter 5,
38 Part 7, Concealed Firearm Act, is guilty of:
- 39 (i) a class A misdemeanor if the actor knowingly or intentionally possesses a firearm
40 or other dangerous weapon;
- 41 (ii) subject to Subsection (5), an infraction if the actor recklessly or with criminal
42 negligence possesses a firearm or other dangerous weapon; or
- 43 (iii) a violation of Section 76-10-306 if the actor transports, possesses, distributes, or
44 sells an explosive, chemical, or incendiary device.
- 45 (b) Subsection (2)(a) does not apply to:
- 46 (i) individuals exempted under Section 76-10-523; and
- 47 (ii) a member of the state or federal military forces while engaged in the performance
48 of the member's official duties.
- 49 (3) An airport authority, county, municipality, or other entity regulating an airport may:
- 50 (a) establish a secure area located beyond the main area where the public generally buys
51 tickets, checks and retrieves luggage; and
- 52 (b) use reasonable means, including mechanical, electronic, x-ray, or another device, to
53 detect firearms, other dangerous weapons, or explosives concealed in baggage or
54 upon the person of an individual attempting to enter the secure area.
- 55 (4) At least one notice shall be prominently displayed at each entrance to a secure area in
56 which a firearm, other dangerous weapon, or explosive is restricted.
- 57 (5)(a) An actor who violates Subsection (2)(a)(ii) on a first offense may receive a
58 written warning for the offense and may not receive a citation or any other form of
59 punishment.
- 60 (b) An actor who violates Subsection (2)(a)(ii) on a second or subsequent offense may
61 receive a written warning or a citation.
- 62 (6)(a) Except as provided in Subsection (6)(d), if a law enforcement officer issues a
63 citation to an actor for an infraction as a result of the actor's conduct described in
64 Subsection (2)(a)(ii), or provides an oral or written warning for that conduct, the law

- 65 enforcement officer shall:
- 66 (i) if the law enforcement officer is able to confirm that the actor may lawfully
- 67 possess the firearm or other dangerous weapon, allow the actor, at the actor's
- 68 option, to:
- 69 (A) temporarily surrender custody of the firearm or other dangerous weapon into
- 70 the custody of the law enforcement agency so that the firearm or other
- 71 dangerous weapon may be retrieved by the actor at a later date; or
- 72 (B) exit the secure area of the airport with the firearm or other dangerous weapon;
- 73 or
- 74 (ii) if the law enforcement officer is unable to confirm that the actor may lawfully
- 75 possess the firearm or other dangerous weapon, or the airport authority under
- 76 Subsection (6)(d) prohibits the procedure described in Subsection (6)(a)(i), take
- 77 temporary custody of the firearm or other dangerous weapon so that the firearm or
- 78 other dangerous weapon may be retrieved by the actor at a later date if legally
- 79 permitted to do so.
- 80 (b) If a law enforcement officer takes temporary custody of a firearm or other dangerous
- 81 weapon under Subsection (6)(a):
- 82 (i) at the time the firearm or other dangerous weapon is obtained from the actor, the
- 83 law enforcement officer, or another law enforcement officer, or an employee who
- 84 works in the secure area of the airport, shall provide the actor with written
- 85 instructions on how, when, and where the actor may retrieve the actor's firearm or
- 86 other dangerous weapon; and
- 87 (ii) within three business days from the time when the law enforcement officer
- 88 receives the firearm or other dangerous weapon, the law enforcement agency shall
- 89 determine whether the actor is legally permitted to possess the firearm or other
- 90 dangerous weapon, and if so, ensure that the firearm or other dangerous weapon is
- 91 available for the actor to retrieve.
- 92 (c) An unclaimed firearm or other dangerous weapon that is surrendered into the custody
- 93 of a law enforcement agency under this Subsection (6) may be disposed of pursuant
- 94 to Section 77-11d-105, disposition of unclaimed property.
- 95 (d) An airport authority may implement a policy that prohibits the law enforcement
- 96 agency with jurisdiction over the airport from utilizing the procedure described in
- 97 Subsection (6)(a)(i).
- 98 (7)(a) An actor's firearm that is confiscated based on a violation of Subsection (2)(a)(i)

- 99 shall be returned to the actor in accordance with Subsection [~~77-11a-402(1)(b)~~].
100 77-11a-402(2).
- 101 (b) In accordance with Subsection 77-11b-102(5), a firearm seized under Subsection
102 (2)(a)(i) is not subject to forfeiture if the actor may lawfully possess the firearm.
- 103 (c) In a prosecution brought under this section, a prosecutor may not condition a plea on
104 the forfeiture of a firearm.
- 105 (8) An airport authority, county, municipality, or other entity regulating an airport or with
106 local jurisdiction over an airport may not:
- 107 (a) charge, cite, or prosecute an actor with a different offense under the Utah Code, local
108 ordinance, or another state or local law or regulation for conduct described in
109 Subsection (2)(a)(ii);
- 110 (b) assess a civil penalty for conduct described in Subsection (2)(a)(i) or (ii); or
111 (c) enact a regulation, ordinance, or law covering conduct described in Subsection (2).
- 112 (9) A law enforcement agency that issues a written warning, citation, or referral for
113 prosecution under this section shall record and report the information as required under
114 Section 53-25-103.

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

116 **77-2a-2 . Plea in abeyance agreement -- Negotiation -- Contents -- Terms of**
117 **agreement -- Waiver of time for sentencing.**

- 118 (1) At any time after acceptance of a plea of guilty or no contest but before entry of
119 judgment of conviction and imposition of sentence, the court may, upon motion of both
120 the prosecuting attorney and the defendant, hold the plea in abeyance and not enter
121 judgment of conviction against the defendant nor impose sentence upon the defendant
122 within the time periods contained in Rule 22(a), Utah Rules of Criminal Procedure.
- 123 (2) A defendant shall be represented by counsel during negotiations for a plea in abeyance
124 and at the time of acknowledgment and affirmation of any plea in abeyance agreement
125 unless the defendant knowingly and intelligently waives the defendant's right to counsel.
- 126 (3) A defendant has the right to be represented by counsel at any court hearing relating to a
127 plea in abeyance agreement.
- 128 (4)(a) Any plea in abeyance agreement entered into between the prosecution and the
129 defendant and approved by the court shall, subject to Subsection (7), include a full,
130 detailed recitation of the requirements and conditions agreed to by the defendant and
131 the reason for requesting the court to hold the plea in abeyance.
- 132 (b) If the plea is to a felony or any combination of misdemeanors and felonies, the

133 agreement shall be in writing and shall, before acceptance by the court, be executed
134 by the prosecuting attorney, the defendant, and the defendant's counsel in the
135 presence of the court.

136 (5)(a) Except as provided in Subsection (5)(b), a plea may not be held in abeyance for a
137 period longer than 18 months if the plea is to any class of misdemeanor or longer
138 than three years if the plea is to any degree of felony or to any combination of
139 misdemeanors and felonies.

140 (b)(i) For a plea in abeyance agreement that the Department of Corrections
141 supervises, the plea may not be held in abeyance for a period longer than the
142 initial term of probation required under the adult sentencing and supervision
143 length guidelines, as defined in Section 63M-7-401.1, if the initial term of
144 probation is shorter than the period required under Subsection (5)(a).

145 (ii) Subsection (5)(b)(i) does not:

146 (A) apply to a plea that is held in abeyance in a drug court created under Title
147 78A, Chapter 5, Part 2, Drug Court, or a problem solving court approved by
148 the Judicial Council; or

149 (B) prohibit court supervision of a plea in abeyance agreement after the day on
150 which the Department of Corrections supervision described in Subsection
151 (5)(b)(i) ends and before the day on which the plea in abeyance agreement ends.

152 (6) Notwithstanding Subsection (5), a plea may be held in abeyance for up to two years if
153 the plea is to any class of misdemeanor and the plea in abeyance agreement includes a
154 condition that the defendant participate in a problem solving court approved by the
155 Judicial Council.

156 (7) A plea in abeyance agreement may not:

157 (a) [-]be approved unless the defendant, before the court, and any written agreement,
158 knowingly and intelligently waives time for sentencing as designated in Rule 22(a),
159 Utah Rules of Criminal Procedure; or

160 (b) include as part of the requirements and conditions agreed to by the defendant that the
161 defendant will forfeit a firearm owned by the defendant if the offense the defendant
162 will plea to is not an offense that would make the defendant a restricted person under
163 Section 76-10-503.

164 Section 3. Section **77-11a-402** is amended to read:

165 **77-11a-402 . Disposition of seized property and contraband -- Return of seized**
166 **property.**

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

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

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

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

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

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

179 ~~[(A)]~~ (i) the property may be returned to the owner in accordance with Section
180 77-11a-301 if the owner may lawfully possess the property; or

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

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

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

193 ~~[(2)]~~ (3) Before returning a firearm to an individual, the agency returning the firearm shall
194 confirm, through the Bureau of Criminal Identification, that the individual is eligible to
195 lawfully possess and receive firearms.

196 ~~[(3)]~~ (4)(a) Except as provided in Subsection ~~[(3)(b)]~~ (4)(b), if the agency is unable to
197 locate the owner of the property or the owner is not entitled to lawfully possess the
198 property, the agency may:

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

200 (ii) sell the property at public auction and apply the proceeds of the sale to a public

201 interest use; or

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

203 (b) If the property described in Subsection [~~(3)~~(a)] (4)(a) is a firearm, the agency shall

204 dispose of the firearm in accordance with Section 77-11a-403.

205 [~~(4)~~] (5) Before applying the property or the proceeds from the sale of the property to a

206 public interest use, the agency shall obtain from the legislative body of the agency's

207 jurisdiction:

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

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

210 [~~(5)~~] (6) If a peace officer seizes property that at the time of seizure is held by a pawn or

211 secondhand business in the course of the pawn or secondhand business's business, the

212 provisions of Section 13-32a-116 shall apply to the disposition of the property.

213 Section 4. **Effective date.**

214 This bill takes effect on May 7, 2025.