

DRUG POSSESSION PENALTY AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

LONG TITLE

General Description:

This bill amends provisions relating to the possession of a weapon.

Highlighted Provisions:

This bill:

- ▶ amends the definition of a restricted person in possession of a dangerous weapon and a controlled substance; and
- ▶ reduces the penalty, in certain circumstances, for a restricted person in possession of marijuana.

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 2021, Chapter 262

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 dangerous weapons by certain persons -- Exceptions.

(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 secure care, as defined in Section 80-1-102;

(iv) within the last 10 years has been adjudicated under Section 80-6-701 for an offense which if committed by an adult would have been a violent felony as defined in Section

- 33 76-3-203.5;
- 34 (v) is an alien who is illegally or unlawfully in the United States; or
- 35 (vi) is on probation for a conviction of possessing:
- 36 (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;
- 37 (B) a controlled substance analog; or
- 38 (C) a substance listed in Section 58-37-4.2.
- 39 (b) A Category II restricted person is a person who:
- 40 (i) has been convicted of any felony;
- 41 (ii) within the last seven years has been adjudicated delinquent for an offense which if
- 42 committed by an adult would have been a felony;
- 43 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;
- 44 (iv) ~~[is in possession of]~~ knowingly or intentionally:
- 45 (A) possesses a dangerous weapon; and
- 46 (B) ~~[is knowingly and intentionally in unlawful possession of a]~~ possesses an unlawful
- 47 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;
- 54 (ix) has renounced the individual's citizenship after having been a citizen of the United
- 55 States;
- 56 (x) is a respondent or defendant subject to a protective order or child protective order
- 57 that is issued after a hearing for which the respondent or defendant received actual notice and at
- 58 which the respondent or defendant has an opportunity to participate, that restrains the
- 59 respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that
- 60 would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate
- 61 partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate
- 62 partner, and that:
- 63 (A) includes a finding that the respondent or defendant represents a credible threat to

64 the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C.
65 Sec. 921 or the child of the individual; or

66 (B) explicitly prohibits the use, attempted use, or threatened use of physical force that
67 would reasonably be expected to cause bodily harm against an intimate partner or the child of
68 an intimate partner; or

69 (xi) has been convicted of the commission or attempted commission of assault under
70 Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or former
71 spouse, parent, guardian, individual with whom the restricted person shares a child in common,
72 individual who is cohabitating or has cohabitated with the restricted person as a spouse, parent,
73 or guardian, or against an individual similarly situated to a spouse, parent, or guardian of the
74 restricted person.

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

77 (i) a conviction or an adjudication under Section 80-6-701 for an offense pertaining to
78 antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to
79 the regulation of business practices not involving theft or fraud; or

80 (ii) a conviction or an adjudication under Section 80-6-701 which, according to the law
81 of the jurisdiction in which it occurred, has been expunged, set aside, reduced to a
82 misdemeanor by court order, pardoned or regarding which the person's civil rights have been
83 restored unless the pardon, reduction, expungement, or restoration of civil rights expressly
84 provides that the person may not ship, transport, possess, or receive firearms.

85 (d) It is the burden of the defendant in a criminal case to provide evidence that a
86 conviction or an adjudication under Section 80-6-701 is subject to an exception provided in
87 Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt
88 that the conviction or the adjudication is not subject to that exception.

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

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

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

95 (3) A Category II restricted person who intentionally or knowingly purchases, transfers,
96 possesses, uses, or has under the person's custody or control any firearm, is guilty of:

97 (a) [~~any firearm is guilty of~~] a third degree felony; or

98 (b) a class A misdemeanor if:

99 (i) the person is a Category II restricted person solely due to Subsection (1)(b)(iv);

100 (ii) the only controlled substance unlawfully in the restricted person's possession is
101 marijuana;

102 (iii) the restricted person does not unlawfully possess any marijuana with the intent to
103 produce, manufacture, or dispense the marijuana; and

104 (iv) the restricted person does not unlawfully have a controlled substance in the
105 restricted person's body, except 11-nor-9-carboxy-tetrahydrocannabinol.

106 [~~(b)~~] (4) A Category II restricted person who intentionally or knowingly purchases,
107 transfers, possesses, uses, or has under the person's custody or control any dangerous weapon
108 other than a firearm is guilty of a class A misdemeanor.

109 [(4)] (5) A person may be subject to the restrictions of both categories at the same time.

110 [(5)] (6) If a higher penalty than is prescribed in this section is provided in another
111 section for one who purchases, transfers, possesses, uses, or has under this custody or control
112 any dangerous weapon, the penalties of that section control.

113 [(6)] (7) It is an affirmative defense to a charge based on the definition in Subsection
114 (1)(b)(iv) that the person was:

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

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

119 [(7)] (8) (a) It is an affirmative defense to transferring a firearm or other dangerous
120 weapon by a person restricted under Subsection (2) or (3) that the firearm or dangerous
121 weapon:

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

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

126 (iii) is not being held as evidence by a court or law enforcement agency;
127 (iv) was transferred to a person not legally prohibited from possessing the weapon; and
128 (v) unless a different time is ordered by the court, was transferred within 10 days of the
129 person becoming a restricted person.

130 (b) Subsection [~~(7)(a)~~] (8)(a) is not a defense to the use, purchase, or possession on the
131 person of a firearm or other dangerous weapon by a restricted person.

132 [~~(8)~~] (9) (a) A person may not sell, transfer, or otherwise dispose of any firearm or
133 dangerous weapon to any person, knowing that the recipient is a person described in
134 Subsection (1)(a) or (b).

135 (b) A person who violates Subsection [~~(8)(a)~~] (9)(a) when the recipient is:

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

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

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

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

146 [~~(9)~~] (10) (a) A person may not knowingly solicit, persuade, encourage or entice a
147 dealer or other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon
148 under circumstances which the person knows would be a violation of the law.

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

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

155 (d) A person who violates this Subsection [~~(9)~~] (10) is guilty of:

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

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