



LEGISLATIVE
RESEARCH &
GENERAL COUNSEL

Airport Firearm Legislation

Staff Presentation

August 2023

HB 461 – 2023 General Session

145 Section 3. Section **76-10-529** is amended to read:

146 **76-10-529. Possession of dangerous weapons, firearms, or explosives in airport**
147 **secure areas prohibited -- Penalty.**

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

160 (i) a class A misdemeanor if the person knowingly or intentionally possesses any
161 dangerous weapon or firearm;

162 (ii) an infraction if the person recklessly ~~[or with criminal negligence]~~ possesses any
163 dangerous weapon or firearm; or

164 (iii) a violation of Section **76-10-306** if the person transports, possesses, distributes, or
165 sells any explosive, chemical, or incendiary device.

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186 (6)(a) An individual who is prosecuted for a violation of this section based on the
187 possession of a firearm shall have the individual's firearm returned to the individual in
188 accordance with Subsection 24-3-103(1)(b) if the individual may lawfully possess the firearm.

189 (b) In accordance with Subsection 24-4-102(5), a firearm seized under this section is
190 not subject to forfeiture if the charged individual may lawfully possess the firearm.

191 (c) In a prosecution brought under this section, a prosecutor may not condition a plea
192 on the forfeiture of a firearm.



Mental States—Existing Law

76-2-103. Definitions.

A person engages in conduct:

- (1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.
- (2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.
- (3) Recklessly with respect to circumstances surrounding his conduct or the result of his conduct when he is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.
- (4) With criminal negligence or is criminally negligent with respect to circumstances surrounding his conduct or the result of his conduct when he ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.

Difference Between Mental States— MUJI

CR307 Comparing Recklessness with Criminal Negligence.

The concepts of "recklessness" and "criminal negligence" are similar in that both require the presence of a substantial and unjustifiable risk. They differ in that it is reckless to act if one *is* aware of the risk, while it is criminally negligent to act if one *should be aware* of the risk. In either event, the behavior must be a gross deviation from what an ordinary person would do under the same circumstances.

References

Utah Code Ann. sect. 76-2-103(3).

Utah Code Ann. sect. 76-2-103(4).

Model Utah Jury Instructions, Second Edition (MUJI 2d)

Remainder of HB461

31 24-3-103. Disposition of property.

32 (1) (a) ~~If~~ Except as provided in Subsection (1)(b), a prosecuting attorney determines
33 that seized property no longer needs to be retained for court proceedings, the prosecuting
34 attorney may:

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

37 ~~(b)~~ (ii) petition the court for an order transferring ownership of any weapons to the
38 agency with custody for the agency's use and disposal in accordance with Section 24-3-103.5, if
39 the owner:

40 ~~(f)~~ (A) is the individual who committed the offense for which the weapon was seized;
41 or

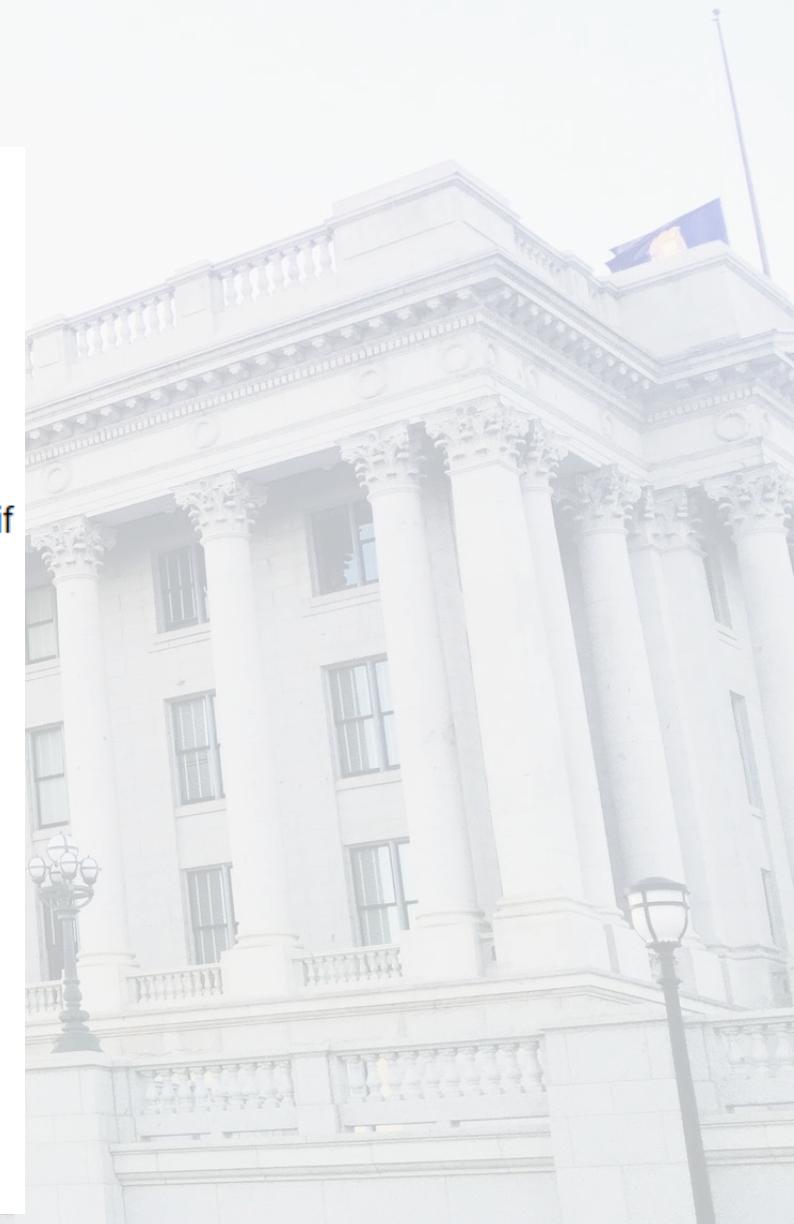
42 ~~(ii)~~ (B) may not lawfully possess the weapon; or

43 ~~(e)~~ (iii) notify the agency with custody of the property or contraband that:

44 ~~(f)~~ (A) the property may be returned to the rightful owner if the rightful owner may
45 lawfully possess the property; or

46 ~~(ii)~~ (B) the contraband may be disposed of or destroyed.

47 (b) If a prosecuting attorney determines that a firearm seized from an individual as a
48 result of an offense committed under Section 76-10-529 no longer needs to be retained for
49 court proceedings, the prosecuting attorney shall notify the agency with custody of the firearm
50 that the property shall be returned to the individual if the individual may lawfully possess the
51 firearm.



Remainder of HB461 Cont'd

91 **24-4-102. Property subject to forfeiture.**

92 (1) Except as provided in Subsection (2), (3), [or] (4), or (5), an agency may seek to
93 forfeit:

94 (a) seized property that was used to facilitate the commission of an offense that is a
95 violation of federal or state law; and

96 (b) seized proceeds.

142 (5) If a peace officer seizes an individual's firearm as the result of an offense under
143 Section 76-10-529, an agency may not seek to forfeit the individual's firearm if the individual
144 may lawfully possess the firearm.

Current 76-10-529

76-10-529. Possession of dangerous weapons, firearms, or explosives in airport secure areas prohibited -- Penalty.

(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, a person, including a person 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 person knowingly or intentionally possesses any dangerous weapon or firearm;
- (ii) an infraction if the person recklessly possesses any dangerous weapon or firearm; or
- (iii) a violation of Section 76-10-306 if the person transports, possesses, distributes, or sells any explosive, chemical, or incendiary device.

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

- (i) persons exempted under Section 76-10-523; and
- (ii) members of the state or federal military forces while engaged in the performance of their official duties.

(3) An airport authority, county, or municipality regulating the airport may:

- (a) establish any 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 any other device, to detect dangerous weapons, firearms, or explosives concealed in baggage or upon the person of any individual attempting to enter the secure area.

Current 76-10-529 Cont'd

- (4) At least one notice shall be prominently displayed at each entrance to a secure area in which a dangerous weapon, firearm, or explosive is restricted.
- (5) Upon the discovery of any dangerous weapon, firearm, or explosive, the airport authority, county, or municipality, the employees, or other personnel administering the secure area may:
 - (a) require the individual to deliver the item to the air freight office or airline ticket counter;
 - (b) require the individual to exit the secure area; or
 - (c) obtain possession or retain custody of the item until it is transferred to law enforcement officers.
- (6) (a) An individual who is prosecuted for a violation of this section based on the possession of a firearm shall have the individual's firearm returned to the individual in accordance with Subsection 77-11a-402(1)(b) if the individual may lawfully possess the firearm.
 - (b) In accordance with Subsection 77-11b-102(5), a firearm seized under this section is not subject to forfeiture if the charged individual may lawfully possess the firearm.
 - (c) In a prosecution brought under this section, a prosecutor may not condition a plea on the forfeiture of a firearm.