

1 **PRIVATE PROPERTY OWNERS AND HOUSES**
2 **OF WORSHIP RIGHT TO PROHIBIT**
3 **DANGEROUS WEAPONS**

4 1998 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Robert H. M. Killpack**

7 AN ACT RELATING TO PUBLIC SAFETY AND JUDICIAL CODE; PROVIDING CROSS
8 REFERENCES TO RESTRICTED AREAS; AMENDING WHEN THE DIVISION MAY
9 TAKE ACTION REGARDING A CONCEALED FIREARM PERMIT; PROVIDING
10 DEFINITIONS; SEPARATING INTO TWO SECTIONS PROVISIONS RELATING TO
11 DEFINITIONS AND UNIFORM LAW TO FACILITATE THE ADDITION OF
12 DEFINITIONS IN THE FUTURE; RESTRICTING CONCEALED WEAPONS IN HOUSES
13 OF WORSHIP AND ON PRIVATE PROPERTY IN CERTAIN CIRCUMSTANCES;
14 PRESCRIBING PENALTIES; AND MAKING TECHNICAL CORRECTIONS.

15 This act affects sections of Utah Code Annotated 1953 as follows:

16 AMENDS:

17 **53-5-704**, as last amended by Chapter 280, Laws of Utah 1997

18 **53-5-710**, as enacted by Chapter 117, Laws of Utah 1997

19 **76-8-311.3**, as last amended by Chapter 288, Laws of Utah 1997

20 **76-10-501**, as last amended by Chapters 80 and 285, Laws of Utah 1995

21 ENACTS:

22 **76-10-501.5**, Utah Code Annotated 1953

23 **76-10-530**, Utah Code Annotated 1953

24 **76-10-531**, Utah Code Annotated 1953

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

26 Section 1. Section **53-5-704** is amended to read:

27 **53-5-704. Division duties -- Permit to carry concealed firearm -- Requirements for**

1 **issuance -- Violation -- Denial, suspension, or revocation -- Appeal procedure.**

2 (1) The division or its designated agent shall issue a permit to carry a concealed firearm
3 for lawful self defense to an applicant who is 21 years of age or older within 60 days after
4 receiving an application and upon proof that the person applying is of good character. The permit
5 is valid for two years throughout the state, without restriction, [~~for two years~~] except in the areas
6 listed in Section 53-5-710.

7 (2) An applicant satisfactorily demonstrates good character if he:

8 (a) has not been convicted of a felony;

9 (b) has not been convicted of any crime of violence;

10 (c) has not been convicted of any offenses involving the use of alcohol;

11 (d) has not been convicted of any offense involving the unlawful use of narcotics or other
12 controlled substances;

13 (e) has not been convicted of any offenses involving moral turpitude;

14 (f) has not been convicted of any offense involving domestic violence;

15 (g) has not been adjudicated by a court of a state or of the United States as mentally
16 incompetent, unless the adjudication has been withdrawn or reversed.

17 (3) (a) The division may deny, suspend, or revoke a concealed firearm permit if the
18 licensing authority has reasonable cause to believe that the applicant has been or is a danger to self
19 or others as demonstrated by evidence including, but not limited to:

20 (i) past pattern of behavior involving unlawful violence or threats of unlawful violence;

21 (ii) past participation in incidents involving unlawful violence or threats of unlawful
22 violence; or

23 (iii) conviction of any offense in violation of Title 76, Chapter 10, Part 5, Weapons.

24 (b) The division may not deny, suspend, or revoke a concealed firearm permit solely for
25 a single conviction for an infraction violation of Title 76, Chapter 10, Part 5, Weapons.

26 [~~(b)~~] (c) In determining whether the applicant has been or is a danger to self or others, the
27 division may inspect:

28 (i) expunged records of arrests and convictions of adults as provided in Section 77-18-15;
29 and

30 (ii) juvenile court records as provided in Section 78-3a-206.

31 [~~(c)~~] (d) (i) If a person granted a permit under this part has been charged with a crime of

1 violence in Utah or any other state, the division shall suspend the permit.

2 (ii) Upon notice of the acquittal of the person charged, or notice of the charges having been
3 dropped, the division shall immediately reinstate the suspended permit.

4 (4) A former peace officer who departs full-time employment as a peace officer, in an
5 honorable manner, shall be issued a concealed firearm permit within five years of that departure
6 if the officer meets the requirements of this section.

7 (5) In assessing good character under Subsection (2), the licensing authority shall consider
8 mitigating circumstances.

9 (6) The licensing authority shall also require the applicant to provide:

10 (a) letters of character reference;

11 (b) two recent dated photographs;

12 (c) two sets of fingerprints;

13 (d) a five-year employment history;

14 (e) a five-year residential history; and

15 (f) evidence of general familiarity with the types of firearms to be concealed as defined
16 in Subsection (7).

17 (7) (a) General familiarity with the types of firearms to be concealed includes training in:

18 (i) the safe loading, unloading, storage, and carrying of the types of firearms to be
19 concealed; and

20 (ii) current laws defining lawful use of a firearm by a private citizen, including lawful
21 self-defense, use of deadly force, transportation, and concealment.

22 (b) Evidence of general familiarity with the types of firearms to be concealed may be
23 satisfied by one of the following:

24 (i) completion of a course of instruction conducted by any national, state, or local firearms
25 training organization approved by the division;

26 (ii) certification of general familiarity by a person who has been approved by the division,
27 which may include a law enforcement officer, military or civilian firearms instructor, or hunter
28 safety instructor; or

29 (iii) equivalent experience with a firearm through participation in an organized shooting
30 competition, law enforcement, or military service.

31 (8) In issuing a permit under this part, the licensing authority is not vicariously liable for

1 damages caused by the permit holder.

2 (9) If any person knowingly and willfully provides false information on an application
3 filed under this part, he is guilty of a class B misdemeanor, and his application may be denied, or
4 his permit may be suspended or revoked.

5 (10) (a) In the event of a denial, suspension, or revocation by the agency, the applicant
6 may file a petition for review with the board within 60 days from the date the denial, suspension,
7 or revocation is received by the applicant by certified mail, return receipt requested.

8 (b) The denial of a permit shall be in writing and shall include the general reasons for the
9 action.

10 (c) If an applicant appeals his denial to the review board, the applicant may have access
11 to the evidence upon which the denial is based in accordance with Title 63, Chapter 2, Government
12 Records Access and Management Act.

13 (d) On appeal to the board, the agency shall have the burden of proof by a preponderance
14 of the evidence.

15 (e) Upon a ruling by the board on the appeal of a denial, the division shall issue a final
16 order within 30 days stating the board's decision. The final order shall be in the form prescribed
17 by Subsection 63-46b-5(1)(i). The final order is final agency action for purposes of judicial review
18 under Section 63-46b-15.

19 [~~12~~] (11) The commissioner may make rules in accordance with Title 63, Chapter 46a,
20 Utah Administrative Rulemaking Act, necessary to administer this chapter.

21 Section 2. Section **53-5-710** is amended to read:

22 **53-5-710. Cross-references to concealed firearm permit restrictions.**

23 [A] As provided in the following cross-referenced sections, a person with a permit to carry
24 a concealed firearm may not carry a concealed firearm in the following locations:

25 (1) any secure area prescribed in Section 76-10-523.5 in which firearms are prohibited and
26 notice of the prohibition posted; [and]

27 (2) in any airport secure area as provided in Section 76-10-529[-];

28 (3) in houses of worship in violation of Section 76-10-530; and

29 (4) on private property in violation of Section 76-10-531.

30 Section 3. Section **76-8-311.3** is amended to read:

31 **76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.**

1 (1) As used in this section:

2 (a) "Contraband" means any item not specifically prohibited for possession by offenders
3 under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

4 (b) "Controlled substance" means any substance defined as a controlled substance under
5 Title 58, Chapter 37, Utah Controlled Substances Act.

6 (c) "Correctional facility" means:

7 (i) any facility operated by the Department of Corrections to house offenders in either a
8 secure or nonsecure setting;

9 (ii) any facility operated by a municipality or a county to house or detain criminal
10 offenders;

11 (iii) any juvenile detention facility; and

12 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
13 municipality, or county for use as a correctional facility.

14 (d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17a, Pharmacy
15 Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37,
16 Utah Controlled Substances Act.

17 (e) "Mental health facility" has the same meaning as defined in Section 62A-12-202.

18 (f) "Offender" means a person in custody at a correctional facility.

19 (g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

20 (2) Notwithstanding any other statute to the contrary, including [~~Subsection 76-10-501(b)~~]
21 Section 76-10-501.5, a correctional or mental health facility may provide by rule that no firearm,
22 ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous
23 or fermented liquor, medicine, or poison in any quantity may be:

24 (a) transported to or upon a correctional or mental health facility;

25 (b) sold or given away at any correctional or mental health facility;

26 (c) given to or used by any offender at a correctional or mental health facility; or

27 (d) knowingly or intentionally possessed at a correctional or mental health facility.

28 (3) It is a defense to any prosecution under this section if the accused in committing the
29 act made criminal by this section:

30 (a) with respect to a correctional facility operated by the Department of Corrections, acted
31 in conformity with departmental rule or policy;

1 (b) with respect to a correctional facility operated by a municipality, acted in conformity
2 with the policy of the municipality;

3 (c) with respect to a correctional facility operated by a county, acted in conformity with
4 the policy of the county; or

5 (d) with respect to a mental health facility, acted in conformity with the policy of the
6 mental health facility.

7 (4) (a) Any person who transports to or upon a correctional facility, or into a secure area
8 of a mental health facility, any firearm, ammunition, dangerous weapon, explosive, or implement
9 of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

10 (b) Any person who provides or sells to any offender at a correctional facility, or any
11 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon,
12 explosive, or implement of escape is guilty of a second degree felony.

13 (c) Any offender who possesses at a correctional facility, or any detainee who possesses
14 at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, explosive,
15 or implement of escape is guilty of a second degree felony.

16 (d) Any person who, without the permission of the authority operating the correctional
17 facility or the secure area of a mental health facility, knowingly possesses at a correctional facility
18 or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, implement
19 of escape, or explosive is guilty of a third degree felony.

20 (5) (a) A person is guilty of a third degree felony who, without the permission of the
21 authority operating the correctional facility or secure area of a mental health facility, knowingly
22 transports to or upon a correctional facility or into a secure area of a mental health facility any:

23 (i) spirituous or fermented liquor;

24 (ii) medicine, whether or not lawfully prescribed for the offender; or

25 (iii) poison in any quantity.

26 (b) A person is guilty of a third degree felony who knowingly violates correctional or
27 mental health facility policy or rule by providing or selling to any offender at a correctional facility
28 or detainee within a secure area of a mental health facility any:

29 (i) spirituous or fermented liquor;

30 (ii) medicine, whether or not lawfully prescribed for the offender; or

31 (iii) poison in any quantity.

1 (c) An inmate is guilty of a third degree felony who, in violation of correctional or mental
2 health facility policy or rule, possesses at a correctional facility or in a secure area of a mental
3 health facility any:

- 4 (i) spirituous or fermented liquor;
- 5 (ii) medicine, other than medicine provided by the facility's health care providers in
6 compliance with facility policy; or
- 7 (iii) poison in any quantity.

8 (d) A person is guilty of a class A misdemeanor who, without the permission of the
9 authority operating the correctional or mental health facility, fails to declare or knowingly
10 possesses at a correctional facility or in a secure area of a mental health facility any:

- 11 (i) spirituous or fermented liquor;
- 12 (ii) medicine; or
- 13 (iii) poison in any quantity.

14 (e) A person is guilty of a class B misdemeanor who, without the permission of the
15 authority operating the facility, knowingly engages in any activity that would facilitate the
16 possession of any contraband by an offender in a correctional facility.

17 (f) Exemptions may be granted for worship for Native American inmates pursuant to
18 Section 64-13-40.

19 (6) The possession, distribution, or use of a controlled substance at a correctional facility
20 or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58,
21 Chapter 37, Utah Controlled Substances Act.

22 Section 4. Section **76-10-501** is amended to read:

23 **76-10-501. Definitions.**

24 ~~[(1)(a) The individual right to keep and bear arms being a constitutionally protected right,
25 the Legislature finds the need to provide uniform laws throughout the state. Except as specifically
26 provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:]~~

27 ~~[(i) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm
28 at his place of residence, property, business, or in any vehicle under his control; or]~~

29 ~~[(ii) required to have a permit or license to purchase, own, possess, transport, or keep a
30 firearm.]~~

31 ~~[(b) This part is uniformly applicable throughout this state and in all its political~~

1 subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state
2 except where the Legislature specifically delegates responsibility to local authorities. Unless
3 specifically authorized by the Legislature by statute, a local authority may not enact or enforce any
4 ordinance, regulation, or rule pertaining to firearms.]

5 [(2)] As used in this part:

6 [(a)(i)] (1) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered,
7 hidden, or secreted in a manner that the public would not be aware of its presence and is readily
8 accessible for immediate use.

9 [(ii)] (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it
10 is a firearm which is unloaded and is securely encased.

11 [(b)] (2) "Crime of violence" means aggravated murder, murder, manslaughter, rape,
12 mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by
13 threats of violence, assault with a dangerous weapon, assault with intent to commit any offense
14 punishable by imprisonment for more than one year, arson punishable by imprisonment for more
15 than one year, or an attempt to commit any of these offenses.

16 [(c)] (3) "Criminal history background check" means a criminal background check
17 conducted by a licensed firearms dealer on every purchaser of a handgun through the division or
18 the local law enforcement agency where the firearms dealer conducts business.

19 [(d)] (4) "Dangerous weapon" means any item that in the manner of its use or intended use
20 is capable of causing death or serious bodily injury. The following factors shall be used in
21 determining whether a knife, or any other item, object, or thing not commonly known as a
22 dangerous weapon is a dangerous weapon:

23 [(i)] (a) the character of the instrument, object, or thing;

24 [(ii)] (b) the character of the wound produced, if any;

25 [(iii)] (c) the manner in which the instrument, object, or thing was used; and

26 [(iv)] (d) the other lawful purposes for which the instrument, object, or thing may be used.

27 [(e)] (5) "Dealer" means every person who is licensed under crimes and criminal
28 procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring
29 a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

30 [(f)] (6) "Division" means the Law Enforcement and Technical Services Division of the
31 Department of Public Safety, created in Section 53-5-103.

1 (7) "Enter" means intrusion of the entire body.

2 [(g)] (8) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
3 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
4 a projectile by action of an explosive.

5 [(i)] (9) "Firearms transaction record form" means a form created by the division to be
6 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

7 [(h)] (10) "Fully automatic weapon" means any firearm which fires, is designed to fire, or
8 can be readily restored to fire, automatically more than one shot without manual reloading by a
9 single function of the trigger.

10 [(j)] (11) "Handgun" means a pistol, revolver, or other firearm of any description, loaded
11 or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which,
12 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

13 (12) "House of worship" means a church, temple, synagogue, mosque, or other building
14 set apart primarily for the purpose of worship in which religious services are held and the main
15 body of which is kept for that use and not put to any other use inconsistent with its primary
16 purpose.

17 (13) "Private property" means property that a reasonable person would assume is not open
18 to the general public, including a residence or other property where the general public has no right
19 to physically access or remain without the specific permission of the owner, lessee, or person with
20 lawful right of possession or use of the property.

21 [(k)] (14) "Prohibited area" means any place where it is unlawful to discharge a firearm.

22 [(t)] (15) "Readily accessible for immediate use" means that a firearm or other dangerous
23 weapon is carried on the person or within such close proximity and in such a manner that it can
24 be retrieved and used as readily as if carried on the person.

25 [(m)] (16) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or
26 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer
27 than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration,
28 modification, or otherwise, if the weapon as modified has an overall length of fewer than 26
29 inches.

30 [(n)] (17) "Securely encased" means not readily accessible for immediate use, such as held
31 in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage

1 area of a motor vehicle, not including a glove box or console box.

2 Section 5. Section **76-10-501.5** is enacted to read:

3 **76-10-501.5. Uniform law.**

4 (1) The individual right to keep and bear arms being a constitutionally protected right, the
5 Legislature finds the need to provide uniform laws throughout the state. Except as specifically
6 provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

7 (a) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm
8 at his place of residence, property, business, or in any vehicle under his control; or

9 (b) required to have a permit or license to purchase, own, possess, transport, or keep a
10 firearm.

11 (2) This part is uniformly applicable throughout this state and in all its political
12 subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state
13 except where the Legislature specifically delegates responsibility to local authorities. Unless
14 specifically authorized by the Legislature by statute, a local authority may not enact or enforce any
15 ordinance, regulation, or rule pertaining to firearms.

16 Section 6. Section **76-10-530** is enacted to read:

17 **76-10-530. Restricting dangerous weapons in a house of worship -- Defense -- Penalty.**

18 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
19 Chapter 5, Part 7, Concealed Weapon Act, may not knowingly or intentionally:

20 (a) transport a dangerous weapon into a house of worship; or

21 (b) enter or remain in a house of worship while in possession of a dangerous weapon.

22 (2) It is a defense to prosecution under this section that the person had permission of the
23 church or organization operating the house of worship to possess the dangerous weapon in or to
24 transport it into the house of worship.

25 (3) A violation of this section is:

26 (a) an infraction; or

27 (b) a class C misdemeanor if notice that dangerous weapons are prohibited has been given
28 by:

29 (i) personal communication to the actor by:

30 (A) the church or organization operating the house of worship; or

31 (B) a person with apparent authority to act for the person or organization; or

1 (ii) posting of signs reasonably likely to come to the attention of persons entering the
2 house of worship.

3 Section 7. Section **76-10-531** is enacted to read:

4 **76-10-531. Restricting dangerous weapons on private property -- Defense -- Penalty.**

5 (1) A person, including a person licensed to carry a concealed weapon pursuant to Title
6 53, Chapter 5, Part 7, Concealed Weapon Act, after having received notice as provided in
7 Subsection (2) that dangerous weapons are prohibited on the private property, may not knowingly
8 or intentionally:

9 (a) transport a dangerous weapon onto private property; or

10 (b) enter or remain on private property while in possession of a dangerous weapon.

11 (2) Notice that dangerous weapons are prohibited on the private property may be made by:

12 (a) personal communication to the actor by:

13 (i) the owner, lessee, or person with lawful right of possession of the private property; or

14 (ii) a person with apparent authority to act for the owner, lessee, or person with lawful
15 right of possession of the private property; or

16 (b) posting of signs reasonably likely to come to the attention of persons entering the
17 private property.

18 (3) A violation of this section is a class C misdemeanor.

Legislative Review Note
as of 12-2-97 3:21 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel