

2nd Sub. S.B. 122

AMENDMENTS FOR DANGEROUS WEAPONS

HOUSE FLOOR AMENDMENTS

AMENDMENT 9

FEBRUARY 24, 1999 9:15 AM

Representative **Jones** proposes the following amendments:

1. Page 1, Line 16: After "WORSHIP" delete "AND" and insert a comma and after "RESIDENCES" insert ", AND IN ELEMENTARY AND SECONDARY SCHOOLS"
2. Page 1, Line 22: After line 22 insert:
"53A-3-502, as enacted by Chapter 2, Laws of Utah 1988
53A-11-904, as last amended by Chapter 74, Laws of Utah 1996
76-3-203.2, as last amended by Chapter 289, Laws of Utah 1997"
3. Page 1, Line 23: After line 23 insert:
"76-10-505.5, as last amended by Chapters 10 and 289, Laws of Utah 1997
78-3a-603, as last amended by Chapter 365, Laws of Utah 1997"
4. Page 5, Line 126
Corrected Goldenrod
2-23-99: After "76-10-530;" delete "or"
5. Page 5, Line 127
Corrected Goldenrod
2-23-99: After "76-10-531" insert "; or
(5) on school premises in violation of Section 76-10-505.5"
6. Page 6, Line 167b
Corrected Goldenrod
2-23-99: After line 167b insert:
"Section 4. Section **53A-3-502** is amended to read:
53A-3-502. Dangerous materials in the public schools -- Class B misdemeanor -- Exceptions.
(1) A person who possesses a weapon, explosive, flammable material, or other material dangerous to persons or property, other than a dangerous weapon restricted under Section 76-10-505.5, in a public or private elementary or secondary school, on the grounds of the school, or in those parts of a building, park, or stadium which

are being used for an activity sponsored by or through the school is guilty of a class B misdemeanor, unless a higher penalty is prescribed in Title 76, Criminal Code, in which case the penalty provisions of that title control.

(2) Subsection (1) does not apply under the following circumstances:

- (a) possession is approved by the responsible school administrator; or
- (b) the item or material is present or to be used in connection with a lawful, approved activity and is in the possession or under the control of the person responsible for its possession or use.

Section 5. Section **53A-11-904** is amended to read:

53A-11-904. Grounds for suspension or expulsion from a public school.

(1) A student may be suspended or expelled from a public school for any of the following reasons:

- (a) frequent or flagrant willful disobedience, defiance of proper authority, or disruptive behavior, including the use of foul, profane, vulgar, or abusive language;
- (b) willful destruction or defacing of school property;
- (c) behavior or threatened behavior which poses an immediate and significant threat to the welfare, safety, or morals of other students or school personnel or to the operation of the school;
- (d) possession, control, or use of an alcoholic beverage as defined in Section 32A-1-105; or
- (e) behavior proscribed under Subsection (2) which threatens harm or does harm to the school or school property, to a person associated with the school, or property associated with any such person, regardless of where it occurs.

(2) (a) A student shall be suspended or expelled from a public school for any of the following reasons:

- (i) any serious violation affecting another student or a staff member, or any serious violation occurring in a school building, in or on school property, or in conjunction with any school activity, including the possession, control, or actual or threatened use of a real, look alike, or pretend weapon, explosive, or noxious or flammable material under Section 53A-3-502 or 76-10-505.5, or the sale, control, or distribution of a drug or controlled substance as defined in Section 58-37-2, an imitation controlled substance defined in Section 58-37b-2, or drug paraphernalia as defined in Section 58-37a-3; or

(ii) the commission of an act involving the use of force or the threatened use of force which if committed by an adult would be a felony or class A misdemeanor.

(b) A student who commits a violation of Subsection (a) involving a real, look alike, or pretend firearm, explosive, or flammable material shall be expelled from school for a period of not less than one year, unless the district superintendent determines, on a case-by-case basis, that a lesser penalty would be more appropriate.

(3) A student may be denied admission to a public school on the basis of having been expelled from that or any other school during the preceding 12 months.

(4) A suspension or expulsion under this section is not subject to the age limitations under Subsection 53A-11-102(1)."

7. Page 6, Line 175
Corrected Goldenrod
2-23-99:

After line 175 insert:

"Section 8. Section **76-3-203.2** is amended to read:

76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or about school premises -- Enhanced penalties.

For purposes of this section:

(1) (a) "On or about school premises" [~~as used in this section and Section 76-10-505.5~~] means any of the following:

- (i) in a public or private elementary, secondary, or on the grounds of any of those schools;
- (ii) in a public or private vocational school or postsecondary institution or on the grounds of any of those schools or institutions;
- (iii) in those portions of any building, park, stadium, or other structure or grounds which are, at the time of the act, being used for an activity sponsored by or through a school or institution under Subsections (1)(a)(i) and (ii);
- (iv) in or on the grounds of a preschool or child-care facility; and
- (v) within 1,000 feet of any structure, facility, or grounds included in Subsections (1)(a)(i), (ii), (iii), and (iv).

(b) As used in this section:

(i) "Educator" means any person who is employed by a public school district and who is required to hold a certificate issued by the State Board of Education in order to perform duties of employment.

(ii) "Within the course of employment" means that an educator is providing services or engaging in conduct required by the

educator's employer to perform the duties of employment.

(2) Any person who, on or about school premises, commits any offense and uses or threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the offense is subject to an enhanced degree of offense as provided in ~~[Subsection]~~ Subsections (4) and (5).

(3) (a) Any person who commits an offense against an educator when the educator is acting within the course of employment is subject to an enhanced degree of offense as provided in Subsection (4).

(b) As used in Subsection (3)(a), "offense" means ~~[an]~~ any offense:

(i) under Title 76, Chapter 5, Offenses Against The Person; ~~[and]~~ or

~~[(c) an offense]~~ (ii) under Title 76, Chapter 6, Part 3, Robbery.

(4) The enhanced degree of offense for offenses committed under this section are:

(a) if the offense is otherwise a class B misdemeanor it is a class A misdemeanor;

(b) if the offense is otherwise a class A misdemeanor it is a third degree felony;

(c) if the offense is otherwise a third degree felony it is a second degree felony; or

(d) if the offense is otherwise a second degree felony it is a first degree felony.

(5) The enhanced penalty for a first degree felony offense of a convicted person:

(a) shall be imprisonment for a term of not less than five years and which may be for life, and imposition or execution of the sentence may not be suspended unless the court:

(i) finds that the interests of justice would be best served; and

(ii) states the specific circumstances justifying the disposition on the record; and

(b) shall ~~[be]~~ subject the person also to the dangerous weapon enhancement provided in Section 76-3-203 except for an offense committed under Subsection (3) that does not involve a firearm.

(6) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice upon the information or indictment that the defendant is subject to the enhanced degree of offense or penalty under Subsection (4) or (5).

(b) The notice shall be in a clause separate from and in addition to

the substantive offense charged.

~~[(b)]~~ (c) If the notice is not included initially, the court may subsequently allow the prosecutor to amend the charging documents to include the notice if the court finds:

(i) the charging document, including any statement of probable cause, provide notice to the defendant of the allegation he committed the offense on or about school premises~~[-];~~; or ~~[if the court finds]~~

(ii) the defendant has not otherwise been substantially prejudiced by the omission.

(7) ~~[(h)]~~ The convicted person shall not be subject to the dangerous weapon enhancement in Section 76-3-203:

(a) in cases where an offense is enhanced pursuant to Subsection (4)(a), (b), (c), or (d)~~[-];~~ or

(b) under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve a firearm~~[-, the convicted person shall not be subject to the dangerous weapon enhancement in Section 76-3-203].~~"

8. Page 8, Line 232:

After line 232 insert:

"(m)(i) "On school premises" means

(A) in a public or private elementary or secondary school building;

or

(B) on school grounds made readily identifiable by enclosure or posting of signs.

(ii) "On school premises" does not include the outdoor areas of implied access to the school, which area consists of roadways, parking lots, and walkways and sidewalks which are adjacent to a roadway or parking lot."

Renumber remaining subsections accordingly.

9. Page 9, Line 249
Goldenrod 2-23-99:

After line 249 insert:

"Section 10. Section **76-10-505.5** is amended to read:

76-10-505.5. Possession of a dangerous weapon, firearm, on school premises -- Penalties -- Exceptions.

(1) A person, including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapon Act, may not knowingly or intentionally possess any dangerous weapon, including a firearm~~[-, or sawed-off shotgun],~~ as those terms are

defined in Section 76-10-501, at a place that the person knows, or has reasonable cause to believe, is on [~~or about~~] school premises.

(2) (a) [~~Possession~~] Except as provided in Subsection (2)(c), possession of a dangerous weapon which is not a firearm on [~~or about~~] school premises is a class B misdemeanor.

(b) [~~Possession~~] Except as provided in Subsection (2)(c), possession of a firearm [~~or sawed-off shotgun~~] on [~~or about~~] school premises is a class A misdemeanor.

(c) A person licensed to carry a concealed firearm pursuant to Title 53, Chapter 5, Part 7, Concealed Weapon Act, who violates Subsection (1) is guilty of a class C misdemeanor.

(3) This section [~~applies~~] does not apply to any person[~~, except persons authorized to possess a firearm as provided under Sections 53-5-704, 53-5-705, 53A-3-502, 76-10-511, 76-10-523, Subsection 76-10-504(2), and as otherwise authorized by law.~~] whose possession of the dangerous weapon or firearm is lawful and:

(a) the possession is approved by the responsible school administrator, including for self-protection on a case-by-case basis;
or

(b) the item or material is present or to be used in connection with a lawful, approved activity and is in the possession or under the control of the person responsible for its possession or use.

(4) This section does not prohibit prosecution of a more serious weapons offense that may occur on [~~or about~~] school premises."

10. Page 10, Line 287:

After line 287 insert:

"Section 11. Section **78-3a-603** is amended to read:

78-3a-603. Certification hearings -- Juvenile court to hold preliminary hearing -- Factors considered by juvenile court for waiver of jurisdiction to district court.

(1) If a criminal information filed in accordance with Subsection 78-3a-502(3) alleges the commission of an act which would constitute a felony if committed by an adult, the juvenile court shall conduct a preliminary hearing.

(2) At the preliminary hearing the state shall have the burden of going forward with its case and the burden of establishing:

(a) probable cause to believe that a crime was committed and that the defendant committed it; and

(b) by a preponderance of the evidence, that it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction.

(3) In considering whether or not it would be contrary to the best interests of the minor or of the public for the juvenile court to retain jurisdiction, the juvenile court shall consider, and may base its decision on, the finding of one or more of the following factors:

(a) the seriousness of the offense and whether the protection of the community requires isolation of the minor beyond that afforded by juvenile facilities;

(b) whether the alleged offense was committed by the minor in concert with two or more persons under circumstances which would subject the minor to enhanced penalties under Section 76-3-203.1 were he an adult;

(c) whether the alleged offense was committed in an aggressive, violent, premeditated, or willful manner;

(d) whether the alleged offense was against persons or property, greater weight being given to offenses against persons, except as provided in Section 76-8-418;

(e) the maturity of the minor as determined by considerations of his home, environment, emotional attitude, and pattern of living;

(f) the record and previous history of the minor;

(g) the likelihood of rehabilitation of the minor by use of facilities available to the juvenile court;

(h) the desirability of trial and disposition of the entire offense in one court when the minor's associates in the alleged offense are adults who will be charged with a crime in the district court;

(i) whether the minor used a firearm in the commission of an offense; and

(j) whether the minor possessed a dangerous weapon on ~~or about~~ school premises as provided in Section 76-10-505.5.

(4) The amount of weight to be given to each of the factors listed in Subsection (3) is discretionary with the court.

(5) (a) Written reports and other materials relating to the minor's mental, physical, educational, and social history may be considered by the court.

(b) If requested by the minor, the minor's parent, guardian, or other interested party, the court shall require the person or agency preparing the report and other material to appear and be subject to both direct and cross-examination.

(6) At the conclusion of the state's case, the minor may testify under oath, call witnesses, cross-examine adverse witnesses, and present evidence on the factors required by Subsection (3).

(7) If the court finds the state has met its burden under Subsection

(2), the court may enter an order:

(a) certifying that finding; and

(b) directing that the minor be held for criminal proceedings in the district court.

(8) If an indictment is returned by a grand jury, the preliminary examination held by the juvenile court need not include a finding of probable cause, but the juvenile court shall proceed in accordance with this section regarding the additional consideration referred to in Subsection (2)(b).

(9) The provisions of Section 78-3a-116, Section 78-3a-913, and other provisions relating to proceedings in juvenile cases are applicable to the hearing held under this section to the extent they are pertinent.

(10) A minor who has been directed to be held for criminal proceedings in the district court is not entitled to a preliminary examination in the district court.

(11) A minor who has been certified for trial in the district court shall have the same right to bail as any other criminal defendant and shall be advised of that right by the juvenile court judge. The juvenile court shall set initial bail in accordance with Title 77, Chapter 20, Bail.

(12) When a minor has been certified to the district court under this section or when a criminal information or indictment is filed in a court of competent jurisdiction before a committing magistrate charging the minor with an offense described in Section 78-3a-602, the jurisdiction of the Division of Youth Corrections and the jurisdiction of the juvenile court over the minor is terminated regarding that offense, any other offenses arising from the same criminal episode, and any subsequent misdemeanors or felonies charged against him, except as provided in Subsection (14).

(13) A minor may be convicted under this section on the charges filed or on any other offense arising out of the same criminal episode.

(14) The juvenile court under Section 78-3a-104 and the Division of Youth Corrections regain jurisdiction and any authority previously exercised over the minor when there is an acquittal, a finding of not guilty, or dismissal of the charges in the district court."

Renumber remaining sections accordingly.