

1 **BACKGROUND CHECKS FOR WEAPONS**

2 **PURCHASE**

3 2000 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: A. Lamont Tyler**

6 AN ACT RELATING TO THE CRIMINAL CODE; REQUIRING BACKGROUND CHECKS
7 FOR FIREARM PURCHASES TO INCLUDE JUVENILE RECORDS.

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

9 AMENDS:

10 **76-10-503**, as last amended by Chapter 97, Laws of Utah 1999

11 **76-10-526**, as last amended by Chapter 227, Laws of Utah 1999

12 **78-3a-206**, as last amended by Chapter 377, Laws of Utah 1999

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

14 Section 1. Section **76-10-503** is amended to read:

15 **76-10-503. Purchase or possession of dangerous weapon, firearm, or explosive --**
16 **Persons not permitted to have -- Penalties.**

17 (1) (a) Any person who has been convicted of any crime of violence under the laws of the
18 United States, this state, or any other state, government, or country, or who is addicted to the use
19 of any narcotic drug, or who has been declared mentally incompetent may not own or have in his
20 possession or under his custody or control any dangerous weapon as defined in Section 76-10-501.

21 (b) Any person who violates this subsection is guilty of a class A misdemeanor, and if the
22 dangerous weapon is a firearm or sawed-off shotgun, he is guilty of a third degree felony.

23 (2) (a) Any person who is on parole or probation for a felony may not have in his
24 possession or under his custody or control any explosive, chemical, or incendiary device as those
25 terms are defined in Section 76-10-306 or dangerous weapon as defined in Section 76-10-501.

26 (b) Any person who violates this subsection is guilty of a third degree felony, but if the
27 dangerous weapon is a firearm or an explosive, chemical, or incendiary device he is guilty of a

28 second degree felony.

29 (3) (a) A person may not purchase, possess, or transfer any handgun described in this part
30 who:

31 (i) has been convicted of, or adjudicated delinquent for, any felony offense under the laws
32 of the United States, this state, or any other state;

33 (ii) is under indictment;

34 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

35 (iv) is a drug dependent person as defined in Section 58-37-2;

36 (v) has been adjudicated as mentally defective, as provided in the Brady Handgun Violence
37 Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental
38 institution;

39 (vi) is an alien who is illegally or unlawfully in the United States;

40 (vii) has been discharged from the Armed Forces under dishonorable conditions; or

41 (viii) is a person who, having been a citizen of the United States, has renounced such
42 citizenship.

43 (b) Any person who violates this Subsection (3) is guilty of a third degree felony.

44 Section 2. Section **76-10-526** is amended to read:

45 **76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**
46 **Exemption for concealed firearm permit holders.**

47 (1) A criminal background check required by this section shall only apply to the purchase
48 of a handgun until federal law requires the background check to extend to other firearms.

49 (2) At the time that federal law extends the criminal background check requirement to
50 other firearms, the division shall make rules to extend the background checks required under this
51 section to the other firearms.

52 (3) For purposes of this section, "valid permit to carry a concealed firearm" does not
53 include a temporary permit issued pursuant to Section 53-5-705.

54 (4) To establish personal identification and residence in this state for purposes of this part,
55 a dealer shall require any person receiving a firearm to present:

56 (a) one photo identification on a form issued by a governmental agency of the state; and

57 (b) one other documentation of residence which must show an address identical to that
58 shown on the photo identification form.

59 (5) A criminal history background check is required for the sale of a firearm by a licensed
60 firearm dealer in the state.

61 (6) Any person, except a dealer, purchasing a firearm from a dealer shall consent in writing
62 to a criminal background check, on a form provided by the division. The form shall also contain
63 the following information:

64 (a) the dealer identification number;

65 (b) the name and address of the person receiving the firearm;

66 (c) the date of birth, height, weight, eye color, and hair color of the person receiving the
67 firearm; and

68 (d) the Social Security number or any other identification number of the person receiving
69 the firearm.

70 (7) (a) The dealer shall send the form required by Subsection (6) to the division
71 immediately upon its completion.

72 (b) No dealer shall sell or transfer any firearm to any person until the dealer has provided
73 the division with the information in Subsection (6) and has received approval from the division
74 under Subsection [(8)] (9).

75 (8) The dealer shall make a request for criminal history background information by
76 telephone or other electronic means to the division and shall receive approval or denial of the
77 inquiry by telephone or other electronic means.

78 (9) When the dealer calls for or requests a criminal history background check, the division
79 shall:

80 (a) review the criminal history files, including juvenile court records, to determine if the
81 person is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

82 (b) inform the dealer that:

83 (i) the [~~criminal record indicates~~] records indicate the person is so prohibited; or

84 (ii) the person is approved for purchasing, possessing, or transferring a firearm;

85 (c) provide the dealer with a unique transaction number for that inquiry; and

86 (d) provide a response to the requesting dealer during the call for a criminal background,
87 or by return call, or other electronic means, without delay, except in case of electronic failure or
88 other circumstances beyond the control of the division, the division shall advise the dealer of the
89 reason for such delay and give the dealer an estimate of the length of [~~such~~] the delay.

90 (10) The division shall not maintain any records of the criminal history background check
91 longer than 20 days from the date of the dealer's request if the division determines that the person
92 receiving the gun is not prohibited from purchasing, possessing, or transferring the firearm under
93 state or federal law. However, the division shall maintain a log of requests containing the dealer's
94 federal firearms number, the transaction number, and the transaction date for a period of 12
95 months.

96 (11) If the criminal history background check discloses information indicating that the
97 person attempting to purchase the firearm is prohibited from purchasing, possessing, or
98 transferring a firearm, the division shall inform the law enforcement agency in the jurisdiction
99 where the person resides.

100 (12) If a person is denied the right to purchase a firearm under this section, the person may
101 review his criminal history information and may challenge or amend the information as provided
102 in Section 53-10-108.

103 (13) The division shall make rules as provided in Title 63, Chapter 46a, Utah
104 Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records
105 provided by the division pursuant to this part are in conformance with the requirements of the
106 Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

107 (14) (a) All dealers shall collect a criminal history background check fee which is \$7.50.
108 This fee remains in effect until changed by the division through the process under Section
109 63-38-3.2.

110 (b) The dealer shall forward at one time all fees collected for criminal history background
111 checks performed during the month to the division by the last day of the month following the sale
112 of a firearm. The division shall deposit the fees in the General Fund as dedicated credits to cover
113 the cost of administering and conducting the criminal history background check program.

114 (15) A person with a concealed firearm permit issued pursuant to Title 53, Chapter 5, Part
115 7, Concealed Weapon Act, shall be exempt from the background check and corresponding fee
116 required in this section for the purchase of a firearm if:

117 (a) the person presents his concealed firearm permit to the dealer prior to purchase of the
118 firearm; and

119 (b) the dealer verifies with the division that the person's concealed firearm permit is valid.

120 Section 3. Section **78-3a-206** is amended to read:

121 **78-3a-206. Court records -- Inspection.**

122 (1) The court and the probation department shall keep records as required by the board and
123 the presiding judge.

124 (2) Court records shall be open to inspection by:

125 (a) the parents or guardian, other parties in the case, the attorneys, and agencies to which
126 custody of a minor has been transferred;

127 (b) for information relating to adult offenders alleged to have committed a sexual offense,
128 a felony or class A misdemeanor drug offense, or an offense against the person under Title 76,
129 Chapter 5, Offenses Against the Person, the State Office of Education for the purpose of evaluating
130 whether an individual should be permitted to obtain or retain a license as an educator or serve as
131 an employee or volunteer in a school, with the understanding that the office must provide the
132 individual with an opportunity to respond to any information gathered from its inspection of the
133 records before it makes a decision concerning licensure or employment; and

134 (c) the Division of Criminal Investigations and Technical Services, established in Section
135 53-10-103, for the purpose of a criminal history background check for the purchase of a firearm
136 and establishing good character for issuance of a concealed firearm permit as provided in Section
137 53-5-704.

138 (3) With the consent of the judge, court records may be inspected by the minor, by persons
139 having a legitimate interest in the proceedings, and by persons conducting pertinent research
140 studies.

141 (4) If a petition is filed charging a minor 14 years of age or older with an offense that
142 would be a felony if committed by an adult, the court shall make available to any person upon
143 request the petition, any adjudication or disposition orders, and the delinquency history summary
144 of the minor charged unless the records are closed by the court upon findings on the record for
145 good cause.

146 (5) Probation officers' records and reports of social and clinical studies are not open to
147 inspection, except by consent of the court, given under rules adopted by the board.

148 (6) (a) Any juvenile delinquency adjudication or disposition orders and the delinquency
149 history summary of any person charged as an adult with a felony offense shall be made available
150 to any person upon request.

151 (b) This provision does not apply to records that have been destroyed or expunged in

152 accordance with court rules.

153 (c) The court may charge a reasonable fee to cover the costs associated with retrieving a

154 requested record that has been archived.

Legislative Review Note

as of 10-21-99 4:56 PM

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

Office of Legislative Research and General Counsel

Committee Note

The Judiciary Interim Committee recommended this bill.