

28 institution of another state or of the United States either at initial sentencing or after revocation of
29 probation.

30 (c) (i) "Violent felony" means any of the following offenses, or any attempt, solicitation,
31 or conspiracy to commit any of these offenses punishable as a felony:

32 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief under
33 Title 76, Chapter 6, Part 1, Property Destruction;

34 (B) aggravated assault under Title 76, Chapter 5, Part 1, Assault and Related Offenses;

35 (C) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

36 (D) aggravated kidnapping and kidnapping under Title 76, Chapter 5, Part 3, Kidnaping;

37 (E) rape, Section 76-5-402;

38 (F) rape of a child, Section 76-5-402.1;

39 (G) object rape, Section 76-5-402.2;

40 (H) object rape of a child, Section 76-5-402.3;

41 (I) forcible sodomy, Section 76-5-403;

42 (J) sodomy on a child, Section 76-5-403.1;

43 (K) forcible sexual abuse, Section 76-5-404;

44 (L) aggravated sexual abuse of a child and sexual abuse of a child, Section 76-5-404.1;

45 (M) aggravated sexual assault, Section 76-5-405;

46 (N) sexual exploitation of a minor, Section 76-5a-3;

47 (O) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
48 Burglary and Criminal Trespass;

49 (P) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;

50 (Q) theft by extortion under Subsection 76-6-406(2)(a) or (b);

51 (R) tampering with a witness under Subsection 76-8-508(2)(c);

52 (S) tampering with a juror under Subsection 76-8-508.5(2)(c);

53 (T) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or
54 by use of force theft by extortion has been committed pursuant to Subsections 76-6-406(2)(a), (b),
55 and (i);

56 (U) damage or destruction of school or institution of higher education property by
57 explosives or flammable materials under Section 76-8-715;

58 (V) possession, use, or removal of explosive, chemical, or incendiary devices under

59 Subsections 76-10-306(3) through (6);

60 (W) unlawful delivery of explosive, chemical, or incendiary devices under Section
61 76-10-307;

62 (X) [~~purchase or~~] possession, purchase, transfer, and ownership of a dangerous weapon
63 [~~or handgun~~] by a restricted person under Section 76-10-503;

64 (Y) unlawful discharge of a firearm under Section 76-10-508;

65 (Z) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

66 (AA) bus hijacking under Section 76-10-1504; and

67 (BB) discharging firearms and hurling missiles under Section 76-10-1505; or

68 (ii) any felony offense against a criminal statute of any other state, the United States, or
69 any district, possession, or territory of the United States which would constitute a violent felony
70 as defined in this Subsection (1)(c) if committed in this state.

71 (2) (a) The penalty enhancement provisions of this section apply, if during the ten years
72 immediately preceding the commission of the violent felony, the person has been:

73 (i) convicted of any felony;

74 (ii) incarcerated, on parole, or on probation for any felony; or

75 (iii) the subject of an unexecuted felony arrest warrant.

76 (b) The provisions of Subsection (2)(a) include any conviction, incarceration, parole,
77 probation, escape, abscontion, and arrest warrant under the laws of this state, any other state, the
78 United States, or any district, possession, or territory of the United States.

79 (3) If a person is convicted in this state of a violent felony by plea or by verdict and the
80 sentencing court determines the person is a habitual violent offender under this section, the penalty
81 for a:

82 (a) third degree felony shall be as if the conviction were for a first degree felony;

83 (b) second degree felony shall be as if the conviction were for a first degree felony; or

84 (c) first degree felony shall remain the penalty for a first degree penalty except:

85 (i) the convicted person is not eligible for probation; and

86 (ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual
87 violent offender as an aggravating factor to determine the length of incarceration.

88 (4) (a) In all cases, notice that the prosecution intends to seek punishment as a habitual
89 violent offender under this section shall be provided in writing and shall be served upon the

90 defendant or his attorney not later than ten days prior to trial. Notice shall include the case
91 number, court, and date of conviction or commitment of any case relied upon by the prosecution.

92 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant
93 intends to deny that:

- 94 (A) the defendant is the person who was convicted or committed;
- 95 (B) the defendant was represented by counsel or had waived counsel; or
- 96 (C) the defendant's plea was understandingly or voluntarily entered.

97 (ii) The notice of denial shall be served not later than five days prior to trial and shall state
98 in detail the defendant's contention regarding the previous conviction and commitment.

99 (c) The court shall determine if this section applies prior to or at the time of sentencing.

100 The court shall consider any evidence presented at trial and shall afford the prosecution and the
101 defendant an opportunity to present any necessary additional evidence. Prior to sentencing under
102 this section, the court shall determine whether this section is applicable by a preponderance of the
103 evidence.

104 (d) If any previous conviction and commitment is based upon a plea of guilty or no contest,
105 there is a rebuttable presumption that the conviction and commitment were regular and lawful in
106 all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and
107 commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a
108 preponderance of the evidence that the defendant was then represented by counsel or had lawfully
109 waived his right to have counsel present, and that his plea was understandingly and voluntarily
110 entered.

111 (e) If the court finds this section applicable, it shall enter that specific finding on the record
112 and shall indicate in the order of judgment and commitment that the defendant has been found by
113 the court to be a habitual violent offender and is sentenced under this section.

114 (5) The habitual violent offender provisions of this section are not an element of the
115 offense, and proof of a defendant's conduct as a habitual violent offender is not necessary at a
116 preliminary hearing or at trial.

117 (6) (a) The sentencing enhancement provisions of Sections 76-3-407 and 76-3-408 shall
118 apply to a felony conviction defined in Title 76, Chapter 5, Part 4, Sexual Offenses, and shall
119 supersede the provisions of this section.

120 (b) Notwithstanding Subsection (6)(a):

121 (i) the convictions under Sections 76-5-404 and 76-5a-3 shall be governed by the
122 enhancement provisions of this section; and

123 (ii) the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual
124 offense violation of Title 76, Chapter 5, Part 4, Sexual Offenses, to determine if the convicted
125 person is a habitual violent offender.

126 Section 2. Section **76-10-501** is amended to read:

127 **76-10-501. Definitions.**

128 As used in this part:

129 (1) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered, hidden,
130 or secreted in a manner that the public would not be aware of its presence and is readily accessible
131 for immediate use.

132 (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a
133 firearm which is unloaded and is securely encased.

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

139 [~~(3)~~] (2) "Criminal history background check" means a criminal background check
140 conducted by a licensed firearms dealer on every purchaser of a handgun through the division or
141 the local law enforcement agency where the firearms dealer conducts business.

142 [~~(4)~~] (3) (a) "Dangerous weapon" means any item that in the manner of its use or intended
143 use is capable of causing death or serious bodily injury. The following factors shall be used in
144 determining whether a knife, or any other item, object, or thing not commonly known as a
145 dangerous weapon is a dangerous weapon:

146 (i) the character of the instrument, object, or thing;

147 (ii) the character of the wound produced, if any;

148 (iii) the manner in which the instrument, object, or thing was used; and

149 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

150 (b) "Dangerous weapon" does not include any explosive, chemical, or incendiary device
151 as defined by Section 76-10-306.

152 ~~[(5)]~~ (4) "Dealer" means every person who is licensed under crimes and criminal
153 procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring
154 a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

155 ~~[(6)]~~ (5) "Division" means the Criminal Investigations and Technical Services Division
156 of the Department of Public Safety, created in Section 53-10-103.

157 ~~[(7)]~~ (6) "Enter" means intrusion of the entire body.

158 ~~[(8)]~~ (7) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
159 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
160 a projectile by action of an explosive.

161 ~~[(9)]~~ (8) "Firearms transaction record form" means a form created by the division to be
162 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

163 ~~[(10)]~~ (9) "Fully automatic weapon" means any firearm which fires, is designed to fire, or
164 can be readily restored to fire, automatically more than one shot without manual reloading by a
165 single function of the trigger.

166 ~~[(11)]~~ (10) "Handgun" means a pistol, revolver, or other firearm of any description, loaded
167 or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which,
168 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

169 ~~[(12)]~~ (11) "House of worship" means a church, temple, synagogue, mosque, or other
170 building set apart primarily for the purpose of worship in which religious services are held and the
171 main body of which is kept for that use and not put to any other use inconsistent with its primary
172 purpose.

173 ~~[(13)]~~ (12) "Prohibited area" means any place where it is unlawful to discharge a firearm.

174 ~~[(14)]~~ (13) "Readily accessible for immediate use" means that a firearm or other dangerous
175 weapon is carried on the person or within such close proximity and in such a manner that it can
176 be retrieved and used as readily as if carried on the person.

177 ~~[(15)]~~ (14) "Residence" means an improvement to real property used or occupied as a
178 primary or secondary residence.

179 ~~[(16)]~~ (15) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or
180 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer
181 than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration,
182 modification, or otherwise, if the weapon as modified has an overall length of fewer than 26

183 inches.

184 [(17)] (16) "Securely encased" means not readily accessible for immediate use, such as
185 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
186 storage area of a motor vehicle, not including a glove box or console box.

187 [(18)] (17) "State entity" means each department, commission, board, council, agency,
188 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
189 unit, bureau, panel, or other administrative unit of the state.

190 (18) "Violent felony" means the same as defined in Section 76-3-203.5.

191 (19) "Violent or weapon-related misdemeanor" means a misdemeanor violation of:

192 (a) Title 76, Chapter 5, Offenses Against the Person; or

193 (b) Title 76, Chapter 10, Part 5, Weapons.

194 Section 3. Section **76-10-503** is repealed and reenacted to read:

195 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
196 **dangerous weapons by certain persons.**

197 (1) For purposes of this section:

198 (a) A Category I restricted person is a person who:

199 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;

200 (ii) is on probation or parole for any felony;

201 (iii) is on parole from a secure facility as defined in Section 62A-7-101; or

202 (iv) within the last ten years has been adjudicated delinquent for an offense which if

203 committed by an adult would have been a violent felony as defined in Section 76-3-203.5.

204 (b) A Category II restricted person is a person who:

205 (i) has been convicted of any felony;

206 (ii) within the last seven years has been adjudicated delinquent for an offense which if

207 committed by an adult would have been a felony;

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

209 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in unlawful

210 possession of a controlled substance as defined in Section 58-37-2;

211 (v) has been found not guilty by reason of insanity for a felony offense;

212 (vi) has been found mentally incompetent to stand trial for a felony offense;

213 (vii) has been civilly committed under the terms of Section 62A-12-234;

- 214 (viii) is an alien who is illegally or unlawfully in the United States;
215 (ix) has been dishonorably discharged from the armed forces; or
216 (x) has renounced his citizenship after having been a citizen of the United States.
217 (c) A Category III restricted person is a person who, within the last three years:
218 (i) has been convicted of a class A misdemeanor which is an attempt, conspiracy, or
219 solicitation to commit a felony;
220 (ii) has been convicted of a violent or weapon-related misdemeanor as defined in Section
221 76-10-501; or
222 (iii) has been adjudicated delinquent for an offense which would have been a violent or
223 weapon-related misdemeanor if committed by an adult.
224 (2) A Category I restricted person who purchases, transfers, possesses, uses, or has under
225 his custody or control:
226 (a) any firearm is guilty of a second degree felony; or
227 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.
228 (3) A Category II restricted person who purchases, transfers, possesses, uses, or has under
229 his custody or control:
230 (a) any firearm is guilty of a third degree felony; or
231 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.
232 (4) A Category III restricted person who purchases, transfers, possesses, uses, or has under
233 his custody or control:
234 (a) any firearm is guilty of a class A misdemeanor; or
235 (b) any dangerous weapon other than a firearm is guilty of a class B misdemeanor.
236 (5) A person may be subject to the restrictions of more than one category at the same time.
237 (6) If a higher penalty than is prescribed in this section is provided in another section for
238 one who purchases, transfers, possesses, uses, or has under his custody or control any dangerous
239 weapon, the penalties of that section control.

240 Section 4. Section **76-10-504** is amended to read:

241 **76-10-504. Carrying concealed dangerous weapon -- Penalties.**

242 (1) Except as provided in Section 76-10-503 and in Subsections (2) and (3):

243 (a) a person who carries a concealed dangerous weapon, as defined in Section 76-10-501,

244 which is not a firearm on his person or one that is readily accessible for immediate use which is

245 not securely encased, as defined in this part, in a place other than his residence, property, or
246 business under his control is guilty of a class B misdemeanor; and

247 (b) a person without a valid concealed firearm permit who carries a concealed dangerous
248 weapon which is a firearm and that contains no ammunition is guilty of a class B misdemeanor,
249 but if the firearm contains ammunition the person is guilty of a class A misdemeanor.

250 (2) A person who carries concealed a sawed-off shotgun or a sawed-off rifle is guilty of
251 a second degree felony.

252 (3) If the concealed firearm is used in the commission of a [~~crime of violence~~] violent
253 felony as defined in Section [~~76-10-501~~] 76-3-203.5, and the person is a party to the offense, the
254 person is guilty of a second degree felony.

255 (4) Nothing in Subsection (1) shall prohibit a person engaged in the lawful taking of
256 protected or unprotected wildlife as defined in Title 23, [~~Fish and Game~~] Wildlife Resources Code,
257 from carrying a concealed weapon or a concealed firearm with a barrel length of four inches or
258 greater as long as the taking of wildlife does not occur:

259 (a) within the limits of a municipality in violation of that municipality's ordinances; or

260 (b) upon the highways of the state as defined in Section 41-6-1.

261 Section 5. Section **76-10-509.6** is amended to read:

262 **76-10-509.6. Parent or guardian providing firearm to violent minor.**

263 (1) A parent or guardian may not intentionally or knowingly provide a firearm to, or permit
264 the possession of a firearm by, any minor who has been convicted of a [~~crime of violence~~] violent
265 felony as defined in Section 76-3-203.5 or any minor who has been adjudicated in juvenile court
266 for an offense which would constitute a [~~crime of violence~~] violent felony if the minor were an
267 adult.

268 (2) Any person who violates this section is guilty of:

269 (a) a class A misdemeanor upon the first offense; and

270 (b) a third degree felony for each subsequent offense.

271 Section 6. Section **76-10-512** is amended to read:

272 **76-10-512. Target concessions, shooting ranges, competitions, and hunting excepted**
273 **from prohibitions.**

274 The provisions of [~~Sections 76-10-503;~~] Section 76-10-509[;] and Subsection
275 76-10-509.4(1) regarding possession of handguns by minors shall not apply to any of the

276 following:

277 (1) Patrons firing at lawfully operated target concessions at amusement parks, piers, and
278 similar locations provided that the firearms to be used are firmly chained or affixed to the counters.

279 (2) Any person in attendance at a hunter's safety course or a firearms safety course.

280 (3) Any person engaging in practice or any other lawful use of a firearm at an established
281 range or any other area where the discharge of a firearm is not prohibited by state or local law.

282 (4) Any person engaging in an organized competition involving the use of a firearm, or
283 participating in or practicing for such competition.

284 (5) Any minor under 18 years of age who is on real property with the permission of the
285 owner, licensee, or lessee of the property and who has the permission of a parent or legal guardian
286 or the owner, licensee, or lessee to possess a firearm not otherwise in violation of law.

287 (6) Any resident or nonresident hunters with a valid hunting license or other persons who
288 are lawfully engaged in hunting.

289 (7) Any person traveling to or from any activity described in Subsection (2), (3), (4), (5),
290 or (6) with an unloaded firearm in his possession.

Legislative Review Note
as of 2-15-00 10:58 AM

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

Office of Legislative Research and General Counsel