

**DANGEROUS WEAPONS AMENDMENTS**

2003 GENERAL SESSION

STATE OF UTAH

**Sponsor: Michael G. Waddoups**

**This act modifies provisions on dangerous weapons by providing clarification on the restriction of weapons at schools and restricting certain drug offenders from possessing a dangerous weapon.**

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

AMENDS:

**53A-11-904**, as last amended by Chapter 210, Laws of Utah 2002

**76-10-503**, as repealed and reenacted by Chapter 303, Laws of Utah 2000

**76-10-505.5**, as last amended by Chapters 10 and 289, Laws of Utah 1997

REPEALS:

**53A-3-502**, as enacted by Chapter 2, Laws of Utah 1988

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

Section 1. 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



28 (e) behavior proscribed under Subsection (2) which threatens harm or does harm to the  
29 school or school property, to a person associated with the school, or property associated with  
30 that person, regardless of where it occurs.

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

33 (i) any serious violation affecting another student or a staff member, or any serious  
34 violation occurring in a school building, in or on school property, or in conjunction with any  
35 school activity, including:

36 (A) the possession, control, or actual or threatened use of a real weapon, explosive, or  
37 noxious or flammable material [~~under Section 53A-3-502~~];

38 (B) the actual or threatened use of a look alike weapon with intent to intimidate another  
39 person or to disrupt normal school activities; or

40 (C) the sale, control, or distribution of a drug or controlled substance as defined in  
41 Section 58-37-2, an imitation controlled substance defined in Section 58-37b-2, or drug  
42 paraphernalia as defined in Section 58-37a-3; or

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

45 (b) A student who commits a violation of Subsection (2)(a) involving a real or look  
46 alike weapon, explosive, or flammable material shall be expelled from school for a period of  
47 not less than one year subject to the following:

48 (i) within 45 days after the expulsion the student shall appear before the student's local  
49 school board superintendent or the superintendent's designee, accompanied by a parent or legal  
50 guardian; and

51 (ii) the superintendent shall determine:

52 (A) what conditions must be met by the student and the student's parent for the student  
53 to return to school;

54 (B) if the student should be placed on probation in a regular or alternative school  
55 setting consistent with Section 53A-11-907, and what conditions must be met by the student in  
56 order to ensure the safety of students and faculty at the school the student is placed in; and

57 (C) if it would be in the best interest of both the school district and the student to  
58 modify the expulsion term to less than a year, conditioned on approval by the local school

59 board and giving highest priority to providing a safe school environment for all students.

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

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

64 (5) Each local school board shall prepare an annual report for the State Board of  
65 Education on:

66 (a) each violation committed under this section; and

67 (b) each action taken by the school district against a student who committed the  
68 violation.

69 Section 2. Section **76-10-503** is amended to read:

70 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**  
71 **dangerous weapons by certain persons.**

72 (1) For purposes of this section:

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

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

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

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

77 (iv) within the last ten years has been adjudicated delinquent for an offense which if  
78 committed by an adult would have been a violent felony as defined in Section 76-3-203.5.

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

80 (i) has been convicted of or is under indictment for any felony;

81 (ii) within the last seven years has been adjudicated delinquent for an offense which if  
82 committed by an adult would have been a felony;

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

84 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in  
85 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

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

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

88 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun  
89 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed

90 to a mental institution;

91 (viii) is an alien who is illegally or unlawfully in the United States;

92 (ix) has been dishonorably discharged from the armed forces; or

93 (x) has renounced his citizenship after having been a citizen of the United States.

94 (2) A Category I restricted person who purchases, transfers, possesses, uses, or has  
95 under his custody or control:

96 (a) any firearm is guilty of a second degree felony; or

97 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.

98 (3) A Category II restricted person who purchases, transfers, possesses, uses, or has  
99 under his custody or control:

100 (a) any firearm is guilty of a third degree felony; or

101 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.

102 (4) A person may be subject to the restrictions of both categories at the same time.

103 (5) If a higher penalty than is prescribed in this section is provided in another section  
104 for one who purchases, transfers, possesses, uses, or has under this custody or control any  
105 dangerous weapon, the penalties of that section control.

106 (6) It is an affirmative defense to a charge based on the definition in Subsection  
107 (1)(b)(iv) that the person was:

108 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner  
109 for use of a member of the person's household or for administration to an animal owned by the  
110 person or a member of the person's household; or

111 (b) otherwise authorized by law to possess the substance.

112 Section 3. Section **76-10-505.5** is amended to read:

113 **76-10-505.5. Possession of a dangerous weapon, firearm, or sawed-off shotgun on**  
114 **or about school premises -- Penalties.**

115 (1) A person may not possess any dangerous weapon, firearm, or sawed-off shotgun, as  
116 those terms are defined in Section 76-10-501, at a place that the person knows, or has  
117 reasonable cause to believe, is on or about school premises as defined in Subsection  
118 76-3-203.2(1).

119 (2) (a) Possession of a dangerous weapon on or about school premises is a class B  
120 misdemeanor.

121 (b) Possession of a firearm or sawed-off shotgun on or about school premises is a class  
122 A misdemeanor.

123 (3) This section [~~applies to any person, except persons~~] does not apply if:

124 (a) the person is authorized to possess a firearm as provided under Sections 53-5-704,  
125 53-5-705, [~~53A-3-502,~~]76-10-511, 76-10-523, or Subsection [~~76-10-504(2), and~~  
126 76-10-500(1), or as otherwise authorized by law[-];

127 (b) the possession is approved by the responsible school administrator; or

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

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

132 Section 4. **Repealer.**

133 This act repeals:

134 Section **53A-3-502, Dangerous materials in the public schools -- Class B**  
135 **misdemeanor -- Exceptions.**

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**Legislative Review Note**  
**as of 12-18-02 6:33 AM**

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

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0108**

**Dangerous Weapons Amendments**

*24-Jan-03*

*8:47 AM*

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**State Impact**

No fiscal impact

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**Individual and Business Impact**

None

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**Office of the Legislative Fiscal Analyst**