

Representative Brian S. King proposes the following substitute bill:

DOMESTIC VIOLENCE -- WEAPONS RESTRICTIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: Deidre M. Henderson

LONG TITLE

General Description:

This bill amends provisions relating to certain weapons restrictions relating to domestic violence.

Highlighted Provisions:

This bill:

- ▶ expands the scope of a Category II restricted person to include:
 - a person who is subject to a protective order or child protective order; and
 - a person who has been convicted of assault or aggravated assault against a cohabitant.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-503, as last amended by Laws of Utah 2015, First Special Session, Chapter 1

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



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

27 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
28 **dangerous weapons by certain persons -- Exceptions.**

29 (1) For purposes of this section:

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

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

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

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

34 (iv) within the last 10 years has been adjudicated delinquent for an offense which if
35 committed by an adult would have been a violent felony as defined in Section 76-3-203.5;

36 (v) is an alien who is illegally or unlawfully in the United States; or

37 (vi) is on probation for a conviction of possessing:

38 (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;

39 (B) a controlled substance analog; or

40 (C) a substance listed in Section 58-37-4.2.

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

42 (i) has been convicted of any felony;

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

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

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

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

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

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

53 (viii) has been dishonorably discharged from the armed forces; [or]

54 (ix) has renounced [his] the individual's citizenship after having been a citizen of the
55 United States[-];

56 (x) is a respondent or defendant subject to a protective order or child protective order

57 that $\hat{H} \rightarrow [z$
58 ~~_____~~ $(A) \leftarrow \hat{H}$ is issued after a hearing for which the respondent or defendant received actual
59 notice and at which the respondent or defendant has an opportunity to participate $\hat{H} \rightarrow [z] , \hat{S} \rightarrow [$
59a ~~and] $\leftarrow \hat{S}$ that~~
60 $(B) \hat{S} \rightarrow (A) \leftarrow \hat{S} \leftarrow \hat{H}$ restrains the respondent or defendant from harassing, stalking,
60a threatening, or
61 engaging in other conduct that would place an intimate partner, as defined in 18 U.S.C. Sec.
62 921, or a child of the intimate partner, in reasonable fear of bodily injury to the intimate partner
63 or child of the intimate partner $\hat{S} \rightarrow [z] , \text{and that: } \leftarrow \hat{S}$
64 $\hat{H} \rightarrow (C) \hat{S} \rightarrow (B) \leftarrow \hat{S} \leftarrow \hat{H} \hat{S} \rightarrow (A) \leftarrow \hat{S}$ includes a finding that the respondent or
64a defendant represents a credible
64a threat to
65 the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C.
66 Sec. 921 or the child of the individual; or
67 $\hat{H} \rightarrow (D) \hat{S} \rightarrow (C) \leftarrow \hat{S} \leftarrow \hat{H} \hat{S} \rightarrow (B) \leftarrow \hat{S}$ explicitly prohibits the use, attempted use, or
67a threatened use of physical
67a force that
68 would reasonably be expected to cause bodily harm against an intimate partner or the child of
69 an intimate partner; or
70 (xi) has been convicted of the commission or attempted commission of assault under
71 Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or former
72 spouse, parent, guardian, individual with whom the restricted person shares a child in common,
73 individual who is cohabitating or has cohabitated with the restricted person as a spouse, parent,
74 or guardian, or against an individual similarly situated to a spouse, parent, or guardian of the
75 restricted person.
76 (c) As used in this section, a conviction of a felony or adjudication of delinquency for
77 an offense which would be a felony if committed by an adult does not include:
78 (i) a conviction or adjudication of delinquency for an offense pertaining to antitrust
79 violations, unfair trade practices, restraint of trade, or other similar offenses relating to the
80 regulation of business practices not involving theft or fraud; or
81 (ii) a conviction or adjudication of delinquency which, according to the law of the
82 jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by
83 court order, pardoned or regarding which the person's civil rights have been restored unless the
84 pardon, reduction, expungement, or restoration of civil rights expressly provides that the person
85 may not ship, transport, possess, or receive firearms.
86 (d) It is the burden of the defendant in a criminal case to provide evidence that a
87 conviction or adjudication of delinquency is subject to an exception provided in Subsection

88 (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the
89 conviction or adjudication of delinquency is not subject to that exception.

90 (2) A Category I restricted person who intentionally or knowingly agrees, consents,
91 offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or
92 control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under
93 the person's custody or control:

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

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

96 (3) A Category II restricted person who intentionally or knowingly purchases, transfers,
97 possesses, uses, or has under the person's custody or control:

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

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

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

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

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

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

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

110 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon
111 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

112 (i) was possessed by the person or was under the person's custody or control before the
113 person became a restricted person;

114 (ii) was not used in or possessed during the commission of a crime or subject to
115 disposition under Section [24-3-103](#);

116 (iii) is not being held as evidence by a court or law enforcement agency;

117 (iv) was transferred to a person not legally prohibited from possessing the weapon; and

118 (v) unless a different time is ordered by the court, was transferred within 10 days of the

119 person becoming a restricted person.

120 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person
121 of a firearm or other dangerous weapon by a restricted person.

122 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or
123 dangerous weapon to any person, knowing that the recipient is a person described in
124 Subsection (1)(a) or (b).

125 (b) A person who violates Subsection (8)(a) when the recipient is:

126 (i) a person described in Subsection (1)(a) and the transaction involves a firearm, is
127 guilty of a second degree felony;

128 (ii) a person described in Subsection (1)(a) and the transaction involves any dangerous
129 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
130 the weapon for any unlawful purpose, is guilty of a third degree felony;

131 (iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is
132 guilty of a third degree felony; or

133 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous
134 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
135 the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

136 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or
137 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under
138 circumstances which the person knows would be a violation of the law.

139 (b) A person may not provide to a dealer or other person any information that the
140 person knows to be materially false information with intent to deceive the dealer or other
141 person about the legality of a sale, transfer or other disposition of a firearm or dangerous
142 weapon.

143 (c) "Materially false information" means information that portrays an illegal transaction
144 as legal or a legal transaction as illegal.

145 (d) A person who violates this Subsection (9) is guilty of:

146 (i) a third degree felony if the transaction involved a firearm; or

147 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a
148 firearm.