

1 **WEAPON POSSESSION WHILE UNDER THE INFLUENCE**

2 **AMENDMENTS**

3 2023 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Jason B. Kyle**

6 Senate Sponsor: Chris H. Wilson

7

LONG TITLE

8 **General Description:**

9 This bill amends provisions related to who is considered a restricted person and who
10 can carry a dangerous weapon.
11

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends the definition of a Category II restricted person; and
- 15 ▶ amends provisions related to who can carry a dangerous weapon.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **76-10-503**, as last amended by Laws of Utah 2021, Chapter 262

23 **76-10-528**, as last amended by Laws of Utah 2022, Chapter 159

24

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

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

26 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
27



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 secure care, as defined in Section 80-1-102;

34 (iv) within the last 10 years has been adjudicated under Section 80-6-701 for an offense

35 which if committed by an adult would have been a violent felony as defined in Section

36 76-3-203.5;

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

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

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

40 (B) a controlled substance analog; or

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

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

43 (i) has been convicted of any felony;

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

46 (iii) is an unlawful user of, or addicted to, a controlled substance as defined in Section
47 58-37-2;

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

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

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

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

55 (viii) has been dishonorably discharged from the armed forces;

56 (ix) has renounced the individual's citizenship after having been a citizen of the United
57 States;

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

59 that is issued after a hearing for which the respondent or defendant received actual notice and at
60 which the respondent or defendant has an opportunity to participate, that restrains the
61 respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that
62 would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate
63 partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate
64 partner, and that:

65 (A) includes a finding that the respondent or defendant represents a credible threat to
66 the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C.
67 Sec. 921 or the child of the individual; or

68 (B) explicitly prohibits the use, attempted use, or threatened use of physical force that
69 would reasonably be expected to cause bodily harm against an intimate partner or the child of
70 an intimate partner; or

71 (xi) has been convicted of the commission or attempted commission of assault under
72 Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or former
73 spouse, parent, guardian, individual with whom the restricted person shares a child in common,
74 individual who is cohabitating or has cohabitated with the restricted person as a spouse, parent,
75 or guardian, or against an individual similarly situated to a spouse, parent, or guardian of the
76 restricted person.

77 (c) As used in this section, a conviction of a felony or adjudication of delinquency for
78 an offense which would be a felony if committed by an adult does not include:

79 (i) a conviction or an adjudication under Section 80-6-701 for an offense pertaining to
80 antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to
81 the regulation of business practices not involving theft or fraud; or

82 (ii) a conviction or an adjudication under Section 80-6-701 which, according to the law
83 of the jurisdiction in which it occurred, has been expunged, set aside, reduced to a
84 misdemeanor by court order, pardoned or regarding which the person's civil rights have been
85 restored unless the pardon, reduction, expungement, or restoration of civil rights expressly
86 provides that the person may not ship, transport, possess, or receive firearms.

87 (d) It is the burden of the defendant in a criminal case to provide evidence that a
88 conviction or an adjudication under Section 80-6-701 is subject to an exception provided in
89 Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt

90 that the conviction or the adjudication is not subject to that exception.

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

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

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

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

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

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

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

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

105 (6) It is an affirmative defense to a charge based on the definition in Subsection

106 (1)(b)(iv) that the person was:

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

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

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

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

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

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

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

119 (v) unless a different time is ordered by the court, was transferred within 10 days of the
120 person becoming a restricted person.

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

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

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

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

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

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

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

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

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

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

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

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

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

150 Section 2. Section **76-10-528** is amended to read:

151 **76-10-528. Carrying a dangerous weapon while under influence of alcohol or**

152 **drugs unlawful.**

153 (1) It is a class B misdemeanor for an actor to carry a dangerous weapon while under
154 the influence of:

155 (a) alcohol as determined by the actor's blood or breath alcohol concentration in
156 accordance with Subsections 41-6a-502(1)(a) through (c); or

157 (b) a controlled substance as defined in Section 58-37-2.

158 (2) This section does not apply to:

159 (a) an actor carrying a dangerous weapon that is either securely encased, as defined in
160 this part, or not within such close proximity and in such a manner that it can be retrieved and
161 used as readily as if carried on the person;

162 (b) an actor who uses or threatens to use force in compliance with Section 76-2-402;

163 (c) an actor carrying a dangerous weapon in the actor's residence or the residence of
164 another with the consent of the individual who is lawfully in possession;

165 (d) an actor under the influence of cannabis or a cannabis product, as those terms are
166 defined in Section 26-61a-102, if the actor's use of the cannabis or cannabis product complies
167 with Title 26, Chapter 61a, Utah Medical Cannabis Act; or

168 (e) an actor who is solely under the influence of a controlled substance:

169 (i) for which the actor has a valid prescription [for a medication approved by the
170 federal Food and Drug Administration for the treatment of attention deficit disorder or
171 attention deficit hyperactivity disorder; and];

172 (ii) [takes the medication described in Subsection (2)(e)(i)] that the actor takes as
173 prescribed; and

174 (iii) that does not impair the ability of the actor to safely handle a dangerous weapon.

175 (3) It is not a defense to prosecution under this section that the actor:

176 (a) is licensed in the pursuit of wildlife of any kind; or

177 (b) has a valid permit to carry a concealed firearm.