

RESTRICTED PERSON POSSESSION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Pitcher

House Sponsor: _____

LONG TITLE

General Description:

This bill concerns offenses and penalties related to a restricted person in possession of a dangerous weapon or ammunition.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends offenses related to a restricted person in possession of a dangerous weapon to include ammunition; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-3-203.5, as last amended by Laws of Utah 2022, Chapters 181, 185 and 418

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

76-10-532, as last amended by Laws of Utah 2015, Chapter 37

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



28 Section 1. Section 76-3-203.5 is amended to read:

29 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

30 (1) As used in this section:

31 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
32 United States, or any district, possession, or territory of the United States for which the
33 maximum punishment the offender may be subjected to exceeds one year in prison.

34 (b) "Habitual violent offender" means a person convicted within the state of any violent
35 felony and who on at least two previous occasions has been convicted of a violent felony and
36 committed to either prison in Utah or an equivalent correctional institution of another state or
37 of the United States either at initial sentencing or after revocation of probation.

38 (c) "Violent felony" means:

39 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit
40 any of the following offenses punishable as a felony:

41 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
42 Chapter 6, Part 1, Property Destruction;

43 (B) assault by prisoner, Section 76-5-102.5;

44 (C) disarming a police officer, Section 76-5-102.8;

45 (D) aggravated assault, Section 76-5-103;

46 (E) aggravated assault by prisoner, Section 76-5-103.5;

47 (F) mayhem, Section 76-5-105;

48 (G) stalking, Subsection 76-5-106.5(2);

49 (H) threat of terrorism, Section 76-5-107.3;

50 (I) aggravated child abuse, Subsection 76-5-109.2(3)(a) or (b);

51 (J) commission of domestic violence in the presence of a child, Section 76-5-114;

52 (K) abuse or neglect of a child with a disability, Section 76-5-110;

53 (L) abuse or exploitation of a vulnerable adult, Section 76-5-111, 76-5-111.2,
54 76-5-111.3, or 76-5-111.4;

55 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

56 (N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;

57 (O) kidnapping, child kidnapping, and aggravated kidnapping under Chapter 5, Part 3,
58 Kidnapping, Trafficking, and Smuggling;

- 59 (P) rape, Section 76-5-402;
- 60 (Q) rape of a child, Section 76-5-402.1;
- 61 (R) object rape, Section 76-5-402.2;
- 62 (S) object rape of a child, Section 76-5-402.3;
- 63 (T) forcible sodomy, Section 76-5-403;
- 64 (U) sodomy on a child, Section 76-5-403.1;
- 65 (V) forcible sexual abuse, Section 76-5-404;
- 66 (W) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child,
67 Section 76-5-404.3;
- 68 (X) aggravated sexual assault, Section 76-5-405;
- 69 (Y) sexual exploitation of a minor, Section 76-5b-201;
- 70 (Z) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- 71 (AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- 72 (BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2, Burglary
73 and Criminal Trespass;
- 74 (CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;
- 75 (DD) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 76 (EE) tampering with a witness under Subsection 76-8-508(1);
- 77 (FF) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 78 (GG) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 79 (HH) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any
80 threat or by use of force theft by extortion has been committed pursuant to Subsections
81 76-6-406(2)(a), (b), and (i);
- 82 (II) possession, use, or removal of explosive, chemical, or incendiary devices under
83 Subsections 76-10-306(3) through (6);
- 84 (JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section
85 76-10-307;
- 86 (KK) purchase or possession of a dangerous weapon [~~or handgun~~] or ammunition by a
87 restricted person under Section 76-10-503;
- 88 (LL) unlawful discharge of a firearm under Section 76-10-508;
- 89 (MM) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

90 (NN) bus hijacking under Section 76-10-1504; and
91 (OO) discharging firearms and hurling missiles under Section 76-10-1505; or
92 (ii) any felony violation of a criminal statute of any other state, the United States, or
93 any district, possession, or territory of the United States which would constitute a violent
94 felony as defined in this Subsection (1) if committed in this state.

95 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
96 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
97 under this section, the penalty for a:

98 (a) third degree felony is as if the conviction were for a first degree felony;
99 (b) second degree felony is as if the conviction were for a first degree felony; or

100 (c) first degree felony remains the penalty for a first degree penalty except:

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

102 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
103 habitual violent offender as an aggravating factor in determining the length of incarceration.

104 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall
105 provide notice in the information or indictment that the defendant is subject to punishment as a
106 habitual violent offender under this section. Notice shall include the case number, court, and
107 date of conviction or commitment of any case relied upon by the prosecution.

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

110 (A) the defendant is the person who was convicted or committed;
111 (B) the defendant was represented by counsel or had waived counsel; or
112 (C) the defendant's plea was understandingly or voluntarily entered.

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

115 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to
116 a jury, the jury may not be told, until after [it] the jury returns [~~its~~] jury's verdict on the
117 underlying felony charge, of the:

118 (i) defendant's previous convictions for violent felonies, except as otherwise provided
119 in the Utah Rules of Evidence; or

120 (ii) allegation against the defendant of being a habitual violent offender.

121 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of
122 being an habitual violent offender by the same jury, if practicable, unless the defendant waives
123 the jury, in which case the allegation shall be tried immediately to the court.

124 (c) (i) Before or at the time of sentencing the trier of fact shall determine if this section
125 applies.

126 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
127 and the defendant shall be afforded an opportunity to present any necessary additional
128 evidence.

129 (iii) Before sentencing under this section, the trier of fact shall determine whether this
130 section is applicable beyond a reasonable doubt.

131 (d) If any previous conviction and commitment is based upon a plea of guilty or no
132 contest, there is a rebuttable presumption that the conviction and commitment were regular and
133 lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the
134 conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution
135 to establish by a preponderance of the evidence that the defendant was then represented by
136 counsel or had lawfully waived the right to have counsel present, and that the defendant's plea
137 was understandingly and voluntarily entered.

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

142 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the
143 provisions of this section.

144 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in
145 Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part 4, Sexual
146 Offenses, to determine if the convicted person is a habitual violent offender.

147 (6) The sentencing enhancement described in this section does not apply if:

148 (a) the offense for which the person is being sentenced is:

149 (i) a grievous sexual offense;

150 (ii) child kidnapping, Section 76-5-301.1;

151 (iii) aggravated kidnapping, Section 76-5-302; or

152 (iv) forcible sexual abuse, Section 76-5-404; and
153 (b) applying the sentencing enhancement provided for in this section would result in a
154 lower maximum penalty than the penalty provided for under the section that describes the
155 offense for which the person is being sentenced.

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

157 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
158 **dangerous weapons or ammunition by certain persons -- Exceptions.**

159 (1) ~~[For purposes of]~~ As used in this section:

160 (a) "Ammunition" means a bullet, a cartridge case, primer, propellant powder, or other
161 ammunition designed for use in any firearm, either as an individual component part or in a
162 completely assembled cartridge.

163 (b) A Category I restricted person is a person who:

- 164 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;
- 165 (ii) is on probation or parole for any felony;
- 166 (iii) is on parole from secure care, as defined in Section 80-1-102;
- 167 (iv) within the last 10 years has been adjudicated under Section 80-6-701 for an offense
168 which if committed by an adult would have been a violent felony as defined in Section
169 76-3-203.5;

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

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

- 172 (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;
- 173 (B) a controlled substance analog; or
- 174 (C) a substance listed in Section 58-37-4.2.

175 ~~[(b)]~~ (c) A Category II restricted person is a person who:

- 176 (i) has been convicted of any felony;
- 177 (ii) within the last seven years has been adjudicated delinquent for an offense which if
178 committed by an adult would have been a felony;
- 179 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;
- 180 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in
181 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;
- 182 (v) has been found not guilty by reason of insanity for a felony offense;

- 183 (vi) has been found mentally incompetent to stand trial for a felony offense;
- 184 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
185 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
186 to a mental institution;
- 187 (viii) has been dishonorably discharged from the armed forces;
- 188 (ix) has renounced the individual's citizenship after having been a citizen of the United
189 States;
- 190 (x) is a respondent or defendant subject to a protective order or child protective order
191 that is issued after a hearing for which the respondent or defendant received actual notice and at
192 which the respondent or defendant has an opportunity to participate, that restrains the
193 respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that
194 would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate
195 partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate
196 partner, and that:
 - 197 (A) includes a finding that the respondent or defendant represents a credible threat to
198 the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C.
199 Sec. 921 or the child of the individual; or
 - 200 (B) explicitly prohibits the use, attempted use, or threatened use of physical force that
201 would reasonably be expected to cause bodily harm against an intimate partner or the child of
202 an intimate partner; or
- 203 (xi) has been convicted of the commission or attempted commission of assault under
204 Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or former
205 spouse, parent, guardian, individual with whom the restricted person shares a child in common,
206 individual who is cohabitating or has cohabitated with the restricted person as a spouse, parent,
207 or guardian, or against an individual similarly situated to a spouse, parent, or guardian of the
208 restricted person.
- 209 ~~(e)~~ (d) As used in this section, a conviction of a felony or adjudication of delinquency
210 for an offense which would be a felony if committed by an adult does not include:
 - 211 (i) a conviction or an adjudication under Section 80-6-701 for an offense pertaining to
212 antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to
213 the regulation of business practices not involving theft or fraud; or

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

219 ~~[(d)]~~ (e) It is the burden of the defendant in a criminal case to provide evidence that a
220 conviction or an adjudication under Section 80-6-701 is subject to an exception provided in
221 Subsection ~~[(1)(c)]~~ (1)(d), after which it is the burden of the state to prove beyond a reasonable
222 doubt that the conviction or the adjudication is not subject to that exception.

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

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

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

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

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

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

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

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

237 (6) It is an affirmative defense to a charge based on the definition in Subsection
238 ~~[(1)(b)(iv)]~~ (1)(c)(iv) that the person was:

239 (a) in possession of a controlled substance ~~[pursuant to]~~ under a lawful order of a
240 practitioner for use of a member of the person's household or for administration to an animal
241 owned by the person or a member of the person's household; or

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

243 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon
244 or ammunition by a person restricted under Subsection (2) or (3) that the firearm, ~~[or]~~ other

245 dangerous weapon, or ammunition:

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

248 (ii) was not used in or possessed during the commission of a crime or subject to
249 disposition under Section 24-3-103;

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

251 (iv) was transferred to a person not legally prohibited from possessing the firearm or
252 other dangerous weapon or ammunition; and

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

255 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person
256 of a firearm or other dangerous ~~[weapon]~~ or ammunition by a restricted person.

257 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or other
258 dangerous weapon or ammunition to any person, knowing that the recipient is a person
259 described in Subsection ~~[(1)(a) or (b)]~~ (1)(b) or (c).

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

261 (i) a person described in Subsection ~~[(1)(a)]~~ (1)(b) and the transaction involves a
262 firearm or ammunition, is guilty of a second degree felony;

263 (ii) a person described in Subsection ~~[(1)(a)]~~ (1)(b) and the transaction involves any
264 dangerous weapon other than a firearm, and the transferor has knowledge that the recipient
265 intends to use the weapon for any unlawful purpose, is guilty of a third degree felony;

266 (iii) a person described in Subsection ~~[(1)(b)]~~ (1)(c) and the transaction involves a
267 firearm or ammunition, is guilty of a third degree felony; or

268 (iv) a person described in Subsection ~~[(1)(b)]~~ (1)(c) and the transaction involves any
269 dangerous weapon other than a firearm, and the transferor has knowledge that the recipient
270 intends to use the dangerous weapon for any unlawful purpose, is guilty of a class A
271 misdemeanor.

272 (9) (a) As used in this Subsection (9), "materially false information" means information
273 that portrays an illegal transaction as legal or a legal transaction as illegal.

274 (b) A person may not knowingly solicit, persuade, encourage or entice a dealer or other
275 person to sell, transfer or otherwise dispose of a firearm or other dangerous weapon or

276 ammunition under circumstances which the person knows would be a violation of the law.

277 ~~[(b)]~~ (c) A person may not provide to a dealer or other person any information that the
278 person knows to be materially false information with intent to deceive the dealer or other
279 person about the legality of a sale, transfer or other disposition of a firearm or other dangerous
280 weapon or ammunition.

281 ~~[(c) "Materially false information" means information that portrays an illegal
282 transaction as legal or a legal transaction as illegal.]~~

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

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

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

287 Section 3. Section **76-10-532** is amended to read:

288 **76-10-532. Removal from National Instant Check System database.**

289 (1) A person who is subject to the restrictions in Subsection [~~76-10-503(1)(b)(v)~~]
290 76-10-503(1)(c)(v), (vi), or (vii), or 18 U.S.C. 922(d)(4) and (g)(4) based on a commitment,
291 finding, or adjudication that occurred in this state may petition the district court in the county in
292 which the commitment, finding, or adjudication occurred to remove the disability imposed.

293 (2) The petition shall be filed in the district court in the county where the commitment,
294 finding, or adjudication occurred. The petition shall include:

295 (a) a listing of facilities, with their addresses, where the petitioner has ever received
296 mental health treatment;

297 (b) a release signed by the petitioner to allow the prosecutor or county attorney to
298 obtain the petitioner's mental health records;

299 (c) a verified report of a mental health evaluation conducted by a licensed psychiatrist
300 occurring within 30 days prior to the filing of the petition, which shall include a statement
301 regarding:

302 (i) the nature of the commitment, finding, or adjudication that resulted in the restriction
303 on the petitioner's ability to purchase or possess a dangerous weapon;

304 (ii) the petitioner's previous and current mental health treatment;

305 (iii) the petitioner's previous violent behavior, if any;

306 (iv) the petitioner's current mental health medications and medication management;

307 (v) the length of time the petitioner has been stable;
308 (vi) external factors that may influence the petitioner's stability;
309 (vii) the ability of the petitioner to maintain stability with or without medication; and
310 (viii) whether the petitioner is dangerous to public safety; and
311 (d) a copy of the petitioner's state and federal criminal history record.

312 (3) The petitioner shall serve the petition on the prosecuting entity that prosecuted the
313 case or, if the disability is not based on a criminal case, on the county or district attorney's
314 office having jurisdiction where the petition was filed and the individual who filed the original
315 action which resulted in the disability.

316 (4) The court shall schedule a hearing as soon as practicable. The petitioner may
317 present evidence and subpoena witnesses to appear at the hearing. The prosecuting, county
318 attorney, or the individual who filed the original action which resulted in the disability may
319 object to the petition and present evidence in support of the objection.

320 (5) The court shall consider the following evidence:
321 (a) the facts and circumstances that resulted in the commitment, finding, or
322 adjudication;
323 (b) the person's mental health and criminal history records; and
324 (c) the person's reputation, including the testimony of character witnesses.

325 (6) The court shall grant the relief if the court finds by clear and convincing evidence
326 that:
327 (a) the person is not a danger to the person or to others;
328 (b) the person is not likely to act in a manner dangerous to public safety; and
329 (c) the requested relief would not be contrary to the public interest.

330 (7) The court shall issue an order with its findings and send a copy to the bureau.

331 (8) The bureau, upon receipt of a court order removing a person's disability under
332 Subsection [~~76-10-503(1)(b)(vii)~~] 76-10-503(1)(c)(vii), shall send a copy of the court order to
333 the National Instant Check System requesting removal of the person's name from the database.
334 In addition, if the person is listed in a state database utilized by the bureau to determine
335 eligibility for the purchase or possession of a firearm or to obtain a concealed firearm permit,
336 the bureau shall remove the petitioner's name or send a copy of the court's order to the agency
337 responsible for the database for removal of the petitioner's name.

338 (9) If the court denies the petition, the petitioner may not petition again for relief until
339 at least two years after the date of the court's final order.

340 (10) The petitioner may appeal a denial of the requested relief. The review on appeal
341 shall be de novo.