

Representative Phil Lyman proposes the following substitute bill:

FIREARM POSSESSION REVISIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Phil Lyman

Senate Sponsor: Kirk A. Cullimore

LONG TITLE

General Description:

This bill amends the definition of a restricted person.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the definition of a restricted person; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-501, as last amended by Laws of Utah 2015, Chapters 212, 406

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:



26 Section 1. Section **76-10-501** is amended to read:

27 **76-10-501. Definitions.**

28 As used in this part:

29 (1) (a) "Antique firearm" means:

30 (i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or
31 similar type of ignition system, manufactured in or before 1898; [or]

32 (ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the
33 replica:

34 (A) is not designed or redesigned for using rimfire or conventional centerfire fixed
35 ammunition; or

36 (B) uses rimfire or centerfire fixed ammunition which is:

37 (I) no longer manufactured in the United States; and

38 (II) is not readily available in ordinary channels of commercial trade; or

39 (iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

40 (B) is designed to use black powder, or a black powder substitute, and cannot use fixed
41 ammunition.

42 (b) "Antique firearm" does not include:

43 (i) a weapon that incorporates a firearm frame or receiver;

44 (ii) a firearm that is converted into a muzzle loading weapon; or

45 (iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by
46 replacing the:

47 (A) barrel;

48 (B) bolt;

49 (C) breechblock; or

50 (D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

51 (2) "Bureau" means the Bureau of Criminal Identification created in Section [53-10-201](#)
52 within the Department of Public Safety.

53 (3) (a) "Concealed firearm" means a firearm that is:

54 (i) covered, hidden, or secreted in a manner that the public would not be aware of its
55 presence; and

56 (ii) readily accessible for immediate use.

57 (b) A firearm that is unloaded and securely encased is not a concealed firearm for the
58 purposes of this part.

59 (4) "Criminal history background check" means a criminal background check
60 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal
61 Firearms Licensee, through the bureau or the local law enforcement agency where the firearms
62 dealer conducts business.

63 (5) "Curio or relic firearm" means a firearm that:

64 (a) is of special interest to a collector because of a quality that is not associated with
65 firearms intended for:

66 (i) sporting use;

67 (ii) use as an offensive weapon; or

68 (iii) use as a defensive weapon;

69 (b) (i) was manufactured at least 50 years before the current date; and

70 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);

71 (c) is certified by the curator of a municipal, state, or federal museum that exhibits
72 firearms to be a curio or relic of museum interest;

73 (d) derives a substantial part of its monetary value:

74 (i) from the fact that the firearm is:

75 (A) novel;

76 (B) rare; or

77 (C) bizarre; or

78 (ii) because of the firearm's association with an historical:

79 (A) figure;

80 (B) period; or

81 (C) event; and

82 (e) has been designated as a curio or relic firearm by the director of the United States
83 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.

84 (6) (a) "Dangerous weapon" means:

85 (i) a firearm; or

86 (ii) an object that in the manner of its use or intended use is capable of causing death or
87 serious bodily injury.

88 (b) The following factors are used in determining whether any object, other than a
89 firearm, is a dangerous weapon:

- 90 (i) the location and circumstances in which the object was used or possessed;
- 91 (ii) the primary purpose for which the object was made;
- 92 (iii) the character of the wound, if any, produced by the object's unlawful use;
- 93 (iv) the manner in which the object was unlawfully used;
- 94 (v) whether the manner in which the object is used or possessed constitutes a potential
95 imminent threat to public safety; and
- 96 (vi) the lawful purposes for which the object may be used.

97 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device
98 as defined by Section [76-10-306](#).

99 (7) "Dealer" means a person who is:

- 100 (a) licensed under 18 U.S.C. Sec. 923; and
- 101 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
102 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

103 (8) "Domestic violence" means the same as that term is defined in Section [77-36-1](#).

104 (9) "Domestic violence felony" means a domestic violence offense that is a felony.

105 [~~(8)~~] (10) "Enter" means intrusion of the entire body.

106 [~~(9)~~] (11) "Federal Firearms Licensee" means a person who:

- 107 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and
- 108 (b) is engaged in the activities authorized by the specific category of license held.

109 [~~(10)~~] (12) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle
110 or short barreled rifle, or a device that could be used as a dangerous weapon from which is
111 expelled a projectile by action of an explosive.

112 (b) As used in Sections [76-10-526](#) and [76-10-527](#), "firearm" does not include an
113 antique firearm.

114 [~~(11)~~] (13) "Firearms transaction record form" means a form created by the bureau to
115 be completed by a person purchasing, selling, or transferring a handgun from a dealer in the
116 state.

117 [~~(12)~~] (14) "Fully automatic weapon" means a firearm which fires, is designed to fire,
118 or can be readily restored to fire, automatically more than one shot without manual reloading

119 by a single function of the trigger.

120 [~~(13)~~] (15) (a) "Handgun" means a pistol, revolver, or other firearm of any description,
121 loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of
122 which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

123 (b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol
124 or revolver" do not include an antique firearm.

125 [~~(14)~~] (16) "House of worship" means a church, temple, synagogue, mosque, or other
126 building set apart primarily for the purpose of worship in which religious services are held and
127 the main body of which is kept for that use and not put to any other use inconsistent with its
128 primary purpose.

129 [~~(15)~~] (17) "Prohibited area" means a place where it is unlawful to discharge a firearm.

130 [~~(16)~~] (18) "Readily accessible for immediate use" means that a firearm or other
131 dangerous weapon is carried on the person or within such close proximity and in such a manner
132 that it can be retrieved and used as readily as if carried on the person.

133 [~~(17)~~] (19) "Residence" means an improvement to real property used or occupied as a
134 primary or secondary residence.

135 [~~(18)~~] (20) "Securely encased" means not readily accessible for immediate use, such as
136 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
137 storage area of a motor vehicle, not including a glove box or console box.

138 [~~(19)~~] (21) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a
139 barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or
140 barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun
141 by alteration, modification, or otherwise, if the weapon as modified has an overall length of
142 fewer than 26 inches.

143 [~~(20)~~] (22) "Shotgun" means a smooth bore firearm designed to fire cartridges
144 containing pellets or a single slug.

145 [~~(21)~~] (23) "Shoulder arm" means a firearm that is designed to be fired while braced
146 against the shoulder.

147 [~~(22)~~] (24) "Slug" means a single projectile discharged from a shotgun shell.

148 [~~(23)~~] (25) "State entity" means a department, commission, board, council, agency,
149 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,

150 unit, bureau, panel, or other administrative unit of the state.

151 ~~[(24)]~~ (26) "Violent felony" means the same as that term is defined in Section
152 76-3-203.5.

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

154 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
155 **dangerous weapons by certain persons -- Exceptions.**

156 (1) For purposes of this section:

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

158 (i) has been convicted of ~~[any]~~ a violent felony ~~[as defined in Section 76-3-203.5];~~

159 (ii) is on probation or parole for ~~[any]~~ a felony;

160 (iii) is on parole from secure care, as defined in Section 80-1-102;

161 (iv) within the last 10 years has been adjudicated under Section 80-6-701 for an offense
162 which if committed by an adult would have been a violent felony as defined in Section
163 76-3-203.5;

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

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

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

167 (B) a controlled substance analog; or

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

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

170 (i) has been convicted of ~~[any]~~ a domestic violence felony;

171 (ii) within the last three years has been convicted of and completed a sentence for a
172 felony that is not a domestic violence felony or a violent felony;

173 ~~[(ii)]~~ (iii) within the last ~~[seven]~~ three years has been adjudicated delinquent for an
174 offense which if committed by an adult would have been a felony;

175 ~~[(iii)]~~ (iv) is an unlawful user of a controlled substance as defined in Section 58-37-2;

176 ~~[(iv)]~~ (v) is in possession of a dangerous weapon and is knowingly and intentionally in
177 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

178 ~~[(v)]~~ (vi) has been found not guilty by reason of insanity for a felony offense;

179 ~~[(vi)]~~ (vii) has been found mentally incompetent to stand trial for a felony offense;

180 ~~[(vii)]~~ (viii) has been adjudicated as mentally defective as provided in the Brady

181 Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been
182 committed to a mental institution;

183 [~~viii~~] (ix) has been dishonorably discharged from the armed forces;

184 [~~ix~~] (x) has renounced the individual's citizenship after having been a citizen of the
185 United States;

186 [~~x~~] (xi) is a respondent or defendant subject to a protective order or child protective
187 order that is issued after a hearing for which the respondent or defendant received actual notice
188 and at which the respondent or defendant has an opportunity to participate, that restrains the
189 respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that
190 would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate
191 partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate
192 partner, and that:

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

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

199 [~~xi~~] (xii) has been convicted of the [~~commission~~] or attempted commission of assault
200 under Section 76-5-102 or aggravated assault under Section 76-5-103 against a current or
201 former spouse, parent, guardian, individual with whom the restricted person shares a child in
202 common, individual who is cohabitating or has cohabitated with the restricted person as a
203 spouse, parent, or guardian, or against an individual similarly situated to a spouse, parent, or
204 guardian of the restricted person.

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

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

210 (ii) a conviction or an adjudication under Section 80-6-701 which, according to the law
211 of the jurisdiction in which it occurred, has been expunged, set aside, reduced to a

212 misdemeanor by court order, pardoned or regarding which the person's civil rights have been
213 restored unless the pardon, reduction, expungement, or restoration of civil rights expressly
214 provides that the person may not ship, transport, possess, or receive firearms.

215 (d) It is the burden of the defendant in a criminal case to provide evidence that a
216 conviction or an adjudication under Section 80-6-701 is subject to an exception provided in
217 Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt
218 that the conviction or the adjudication is not subject to that exception.

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

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

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

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

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

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

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

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

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

234 [~~(1)(b)(iv)~~] (1)(b)(v) that the person was:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

274 (d) A person who violates this Subsection (9) is guilty of:
275 (i) a third degree felony if the transaction involved a firearm; or
276 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a
277 firearm.

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

279 **76-10-532. Removal from National Instant Check System database.**

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

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

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

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

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

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

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

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

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

299 (v) the length of time the petitioner has been stable;

300 (vi) external factors that may influence the petitioner's stability;

301 (vii) the ability of the petitioner to maintain stability with or without medication; and

302 (viii) whether the petitioner is dangerous to public safety; and

303 (d) a copy of the petitioner's state and federal criminal history record.

304 (3) The petitioner shall serve the petition on the prosecuting entity that prosecuted the

305 case or, if the disability is not based on a criminal case, on the county or district attorney's
306 office having jurisdiction where the petition was filed and the individual who filed the original
307 action which resulted in the disability.

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

312 (5) The court shall consider the following evidence:

313 (a) the facts and circumstances that resulted in the commitment, finding, or
314 adjudication;

315 (b) the person's mental health and criminal history records; and

316 (c) the person's reputation, including the testimony of character witnesses.

317 (6) The court shall grant the relief if the court finds by clear and convincing evidence
318 that:

319 (a) the person is not a danger to the person or to others;

320 (b) the person is not likely to act in a manner dangerous to public safety; and

321 (c) the requested relief would not be contrary to the public interest.

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

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

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

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