

RESTRICTED PERSONS AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Marsha Judkins

Senate Sponsor: Stephanie Pitcher

LONG TITLE

General Description:

This bill amends the definition of restricted person.

Highlighted Provisions:

This bill:

- ▶ changes an alien illegally or unlawfully in the United States from a Category I restricted person to a Category II restricted person;
- ▶ changes the following individual from a Category II restricted person to a Category I restricted person:
 - an individual with a protective order for domestic violence; and
 - an individual with a qualifying domestic violence conviction; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-10-208.1, as last amended by Laws of Utah 2023, Chapters 184, 328 and 397

76-10-503, as last amended by Laws of Utah 2023, First Special Session, Chapter 2



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

29 Section 1. Section **53-10-208.1** is amended to read:

30 **53-10-208.1. Magistrates and court clerks to supply information.**

31 (1) Every magistrate or clerk of a court responsible for court records in this state shall,
32 within 30 days after the day of the disposition and on forms and in the manner provided by the
33 division, furnish the division with information pertaining to:

34 (a) all dispositions of criminal matters, including:

35 (i) guilty pleas;

36 (ii) convictions;

37 (iii) dismissals;

38 (iv) acquittals;

39 (v) pleas in abeyance;

40 (vi) judgments of not guilty by reason of insanity;

41 (vii) judgments of guilty with a mental condition;

42 (viii) finding of mental incompetence to stand trial; and

43 (ix) probations granted;

44 (b) orders of civil commitment under the terms of Section [26B-5-332](#);

45 (c) the issuance, recall, cancellation, or modification of all warrants of arrest or
46 commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section [78B-6-303](#),
47 within one day of the action and in a manner provided by the division; and

48 (d) protective orders issued after notice and hearing, pursuant to:

49 (i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

50 (ii) Title 78B, Chapter 7, Part 4, Dating Violence Protective Orders;

51 (iii) Title 78B, Chapter 7, Part 5, Sexual Violence Protective Orders;

52 (iv) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders; or

53 (v) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

54 (2) When transmitting information on a criminal matter under Subsection (1)(a)(i), (ii),
55 (v), or (vii) for a conviction of misdemeanor assault under Section [76-5-102](#), the magistrate or
56 clerk of a court shall include available information regarding whether the conviction for assault
57 resulted from an assault against an individual:

58 (a) who is included in at least one of the relationship categories described in

59 Subsection [~~76-10-503(1)(b)(xi)~~] ~~Ĥ~~→ [~~76-10-503(1)(a)(vii)~~] 76-10-503(1)(a)(vi) ←~~Ĥ~~ ; or
 60 (b) with whom none of the relationships described in Subsection [~~76-10-503(1)(b)(xi)~~]
 61 ~~Ĥ~~→ [~~76-10-503(1)(a)(vii)~~] 76-10-503(1)(a)(vi) ←~~Ĥ~~ apply.

62 (3) The court in the county where a determination or finding was made shall transmit a
 63 record of the determination or finding to the bureau no later than 48 hours after the
 64 determination is made, excluding Saturdays, Sundays, and legal holidays, if an individual is:

65 (a) adjudicated as a mental defective; or
 66 (b) involuntarily committed to a mental institution in accordance with Subsection

67 26B-5-332(16).

68 (4) The record described in Subsection (3) shall include:

69 (a) an agency record identifier;
 70 (b) the individual's name, sex, race, and date of birth; and
 71 (c) the individual's social security number, government issued driver license or
 72 identification number, alien registration number, government passport number, state
 73 identification number, or FBI number.

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

75 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
 76 **dangerous weapons by certain persons -- Exceptions.**

77 (1) For purposes of this section:

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

79 (i) has been convicted of:

80 (A) a violent felony; or

81 (B) a domestic violence offense that is a felony;

82 (ii) is on probation or parole for a felony;

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

84 (iv) within the last 10 years has been adjudicated under Section 80-6-701 for an offense
 85 which if committed by an adult would have been a violent felony as defined in Section
 86 76-3-203.5;

87 [~~(v) is an alien who is illegally or unlawfully in the United States; or~~]

88 [~~(vi)~~] (v) is on probation for a conviction of possessing:

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

90 (B) a controlled substance analog; or

91 (C) a substance listed in Section 58-37-4.2[-]; ~~Ĥ→~~ or ~~←Ĥ~~

92 ~~Ĥ→ [(vi) is a respondent or defendant subject to a protective order or child protective order~~
93 ~~that:~~

94 ~~—— (A) is issued after a hearing for which the respondent or defendant received actual~~
95 ~~notice and at which the respondent or defendant has an opportunity to participate;~~

96 ~~—— (B) restrains the respondent or defendant from harassing, stalking, threatening, or~~
97 ~~engaging in other conduct that would place an intimate partner, as defined in 18 U.S.C. Sec.~~
98 ~~921, or a child of the intimate partner, in reasonable fear of bodily injury to the intimate partner~~
99 ~~or child of the intimate partner; and~~

100 ~~—— (C) includes a finding that the respondent or defendant represents a credible threat to~~
101 ~~the physical safety of an intimate partner or a child of the intimate partner, or a finding that~~
102 ~~explicitly prohibits the use, attempted use, or threatened use of physical force that would~~
103 ~~reasonably be expected to cause bodily harm against an intimate partner or a child of the~~
104 ~~intimate partner; or~~

105 ~~—— (vii) [(vi) ←Ĥ~~ except as provided in Subsection (1)(d), has been convicted of the
105a ~~commission or~~
106 ~~attempted commission of misdemeanor assault under Section 76-5-102 or aggravated assault~~
107 ~~under Section 76-5-103 against an individual:~~

108 (A) who is a current or former spouse, parent, or guardian;

109 (B) with whom the restricted person shares a child in common;

110 (C) who is cohabitating or has cohabitated with the restricted person as a spouse,
111 parent, or guardian;

112 (D) involved in a dating relationship with the restricted person within the last five
113 years; or

114 (E) similarly situated to a spouse, parent, or guardian of the restricted person.

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

116 (i) has been convicted of:

117 [~~(A) a domestic violence offense that is a felony;~~

118 ~~(B)] (A) a felony that is not a domestic violence offense or a violent felony and within~~
119 ~~seven years after completing the sentence for the conviction, has been convicted of or charged~~
120 ~~with another felony or class A misdemeanor;~~

121 ~~[(C)]~~ (B) multiple felonies that are part of a single criminal episode and are not
 122 domestic violence offenses or violent felonies and within seven years after completing the
 123 sentence for the convictions, has been convicted of or charged with another felony or class A
 124 misdemeanor; or

125 ~~[(D)]~~ (C) multiple felonies that are not part of a single criminal episode;

126 (ii) (A) within the last seven years has completed a sentence for:

127 (I) a conviction for a felony that is not a domestic violence offense or a violent felony;

128 or

129 (II) convictions for multiple felonies that are part of a single criminal episode and are
 130 not domestic violence offenses or violent felonies; and

131 (B) within the last seven years and after the completion of a sentence for a conviction
 132 described in Subsection (1)(b)(ii)(A), has not been convicted of or charged with another felony
 133 or class A misdemeanor;

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

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

137 (v) is in possession of a dangerous weapon and is knowingly and intentionally in

138 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

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

140 (vii) has been found mentally incompetent to stand trial for a felony offense;

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

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

145 (x) has renounced the individual's citizenship after having been a citizen of the United
 146 States; ~~H→~~ or

147 ~~—————~~ ~~H←~~ (xi) is a respondent or defendant subject to a protective order or child protective
 147a order

148 that is issued after a hearing for which the respondent or defendant received actual notice and
 148a at

149 which the respondent or defendant has an opportunity to participate, that restrains the
 150 respondent or defendant from harassing, stalking, threatening, or engaging in other conduct
 150a that

151 would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate

152 partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate
 153 partner, and that:]

154 [(A) includes a finding that the respondent or defendant represents a credible threat to
 155 the physical safety of an individual who meets the definition of an intimate partner in 18
 155a U.S.C.

156 Sec. 921 or the child of the individual; or]

157 [(B) explicitly prohibits the use, attempted use, or threatened use of physical force that
 158 would reasonably be expected to cause bodily harm against an intimate partner or the child of
 159 an intimate partner; or ~~Ĥ~~ → [†] ← ~~Ĥ~~

160 [~~(xii) except as provided in Subsection (1)(d), has been convicted of the commission or
 161 attempted commission of misdemeanor assault under Section 76-5-102 or aggravated assault
 162 under Section 76-5-103 against an individual:]~~

163 [~~(A) who is a current or former spouse, parent, or guardian;]~~

164 [~~(B) with whom the restricted person shares a child in common;]~~

165 [~~(C) who is cohabitating or has cohabitated with the restricted person as a spouse,
 166 parent, or guardian;]~~

167 [~~(D) involved in a dating relationship with the restricted person within the last five
 168 years; or]~~

169 [~~(E) similarly situated to a spouse, parent, or guardian of the restricted person:]~~

170 ~~Ĥ~~ → [(xi)] (xii) ← ~~Ĥ~~ is an alien who is illegally or unlawfully in the United States.

171 (c) (i) [~~As used in this section, a~~] A conviction of a felony or adjudication of
 172 delinquency for an offense which would be a felony if committed by an adult does not include:

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

176 (B) a conviction or an adjudication under Section 80-6-701 which, in accordance with
 177 the law of the jurisdiction in which the conviction or adjudication occurred, has been
 178 expunged, set aside, reduced to a misdemeanor by court order, pardoned or regarding which the
 179 person's civil rights have been restored unless the pardon, reduction, expungement, or
 180 restoration of civil rights expressly provides that the person may not ship, transport, possess, or
 181 receive firearms.

182 (ii) [~~As used in this section, a~~] A conviction for misdemeanor assault under Subsection

183 ~~[(1)(b)(xii)]~~ ~~H~~ → ~~[(1)(a)(vii)]~~ (1)(a)(vi) ← ~~H~~ , does not include a conviction which, in accordance
 183a with the law of the
 184 jurisdiction in which the conviction occurred, has been expunged, set aside, reduced to an
 185 infraction by court order, pardoned, or regarding which the person's civil rights have been
 186 restored, unless the pardon, reduction, expungement, or restoration of civil rights expressly
 187 provides that the person may not ship, transport, possess, or receive firearms.

188 (iii) It is the burden of the defendant in a criminal case to provide evidence that a
 189 conviction or an adjudication under Section 80-6-701 is subject to an exception provided in
 190 this Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable
 191 doubt that the conviction or the adjudication is not subject to that exception.

192 (d) A person is not a restricted person for a conviction under Subsection

193 ~~[(1)(b)(xii)(D)]~~ ~~H~~ → ~~[(1)(a)(vii)(D)]~~ (1)(a)(vi)(D) ← ~~H~~ if:

194 (i) five years have elapsed from the later of:

195 (A) the day on which the conviction is entered;

196 (B) the day on which the person is released from incarceration following the
 197 conviction; or

198 (C) the day on which the person's probation for the conviction is successfully
 199 terminated;

200 (ii) the person only has a single conviction for misdemeanor assault as described in
 201 Subsection ~~[(1)(b)(xii)(D)]~~ ~~H~~ → ~~[(1)(a)(vii)(D)]~~ (1)(a)(vi)(D) ← ~~H~~ ; and

202 (iii) the person is not otherwise a restricted person under Subsection (1)(a) or (b).

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

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

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

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

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

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

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

214 (5) A Category I or Category II restricted person may not use an antique firearm for an
215 activity regulated under Title 23A, Wildlife Resources Act.

216 (6) If a higher penalty than is prescribed in this section is provided in another section
217 for one who purchases, transfers, possesses, uses, or has under this custody or control a
218 dangerous weapon, the penalties of that section control.

219 (7) It is an affirmative defense to a charge based on the definition in Subsection
220 (1)(b)(v) that the person was:

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

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

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

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

229 (ii) was not used in or possessed during the commission of a crime or subject to
230 disposition under Section Title 77, Chapter 11a, Part 4, Disposal of Seized Property and
231 Contraband;

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

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

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

236 (b) Subsection (8)(a) is not a defense to the use, purchase, or possession on the person
237 of a firearm or other dangerous weapon by a restricted person.

238 (9) (a) A person may not sell, transfer, or otherwise dispose of a firearm or dangerous
239 weapon to a person, knowing that the recipient is a person described in Subsection (1)(a) or (b).

240 (b) A person who violates Subsection (9)(a) when the recipient is:

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

243 (ii) a person described in Subsection (1)(a) and the transaction involves a dangerous
244 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use

245 the weapon for any unlawful purpose, is guilty of a third degree felony;

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

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

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

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

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

259 (d) A person who violates this Subsection (10) is guilty of:

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

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

263 Section 3. **Effective date.**

264 This bill takes effect on May 1, 2024.