

PROHIBITION ON FIREARM MODIFICATION DEVICES

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: _____

LONG TITLE

General Description:

This bill prohibits buying, selling, or possessing a device that modifies a semiautomatic firearm.

Highlighted Provisions:

This bill:

- ▶ prohibits the import, sale, manufacture, and possession of devices that modify a semiautomatic firearm to significantly increase the rate at which the firearm fires;
- ▶ allows a law enforcement officer to confiscate any such device; and
- ▶ provides for a law enforcement officer to destroy the device.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

76-3-203.8, as last amended by Laws of Utah 2004, Chapter 276

76-5-202 (Effective 07/01/19), as last amended by Laws of Utah 2018, Chapter 343

ENACTS:

76-10-533, Utah Code Annotated 1953



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

29 Section 1. Section **76-3-203.8** is amended to read:

30 **76-3-203.8. Increase of sentence if dangerous weapon or firearm used.**

31 (1) As used in this section, "dangerous weapon" has the same definition as in Section
32 [76-1-601](#).

33 (2) If the trier of fact finds beyond a reasonable doubt that a dangerous weapon or a
34 firearm fitted with a device described in Section [76-10-533](#) was used in the commission or
35 furtherance of a felony, the court:

36 (a) (i) shall increase by one year the minimum term of the sentence applicable by law;
37 and

38 (ii) if the minimum term applicable by law is zero, shall set the minimum term as one
39 year; and

40 (b) may increase by five years the maximum sentence applicable by law in the case of a
41 felony of the second or third degree.

42 (3) A defendant who is a party to a felony offense shall be sentenced to the increases in
43 punishment provided in Subsection (2) if the trier of fact finds beyond a reasonable doubt that:

44 (a) a dangerous weapon or a firearm fitted with a device described in Section
45 [76-10-533](#) was used in the commission or furtherance of the felony; and

46 (b) the defendant knew that the dangerous weapon or firearm fitted with a device
47 described in Section [76-10-533](#) was present.

48 (4) If the trier of fact finds beyond a reasonable doubt that a person has been sentenced
49 to a term of imprisonment for a felony in which a dangerous weapon was used in the
50 commission of or furtherance of the felony and that person is subsequently convicted of
51 another felony in which a dangerous weapon was used in the commission of or furtherance of
52 the felony, the court shall, in addition to any other sentence imposed including those in
53 Subsection (2), impose an indeterminate prison term to be not less than five nor more than 10
54 years to run consecutively and not concurrently.

55 Section 2. Section **76-5-202 (Effective 07/01/19)** is amended to read:

56 **76-5-202 (Effective 07/01/19). Aggravated murder.**

57 (1) Criminal homicide constitutes aggravated murder if the actor intentionally or
58 knowingly causes the death of another under any of the following circumstances:

- 59 (a) the homicide was committed by a person who is confined in a jail or other
60 correctional institution;
- 61 (b) the homicide was committed incident to one act, scheme, course of conduct, or
62 criminal episode during which two or more persons were killed, or during which the actor
63 attempted to kill one or more persons in addition to the victim who was killed;
- 64 (c) the actor knowingly created a great risk of death to a person other than the victim
65 and the actor;
- 66 (d) the homicide was committed incident to an act, scheme, course of conduct, or
67 criminal episode during which the actor committed or attempted to commit aggravated robbery,
68 robbery, rape, rape of a child, object rape, object rape of a child, forcible sodomy, sodomy upon
69 a child, forcible sexual abuse, sexual abuse of a child, aggravated sexual abuse of a child, child
70 abuse as defined in Subsection 76-5-109(2)(a), or aggravated sexual assault, aggravated arson,
71 arson, aggravated burglary, burglary, aggravated kidnapping, or kidnapping, or child
72 kidnapping;
- 73 (e) the homicide was committed incident to one act, scheme, course of conduct, or
74 criminal episode during which the actor committed the crime of abuse or desecration of a dead
75 human body as defined in Subsection 76-9-704(2)(e);
- 76 (f) the homicide was committed for the purpose of avoiding or preventing an arrest of
77 the defendant or another by a peace officer acting under color of legal authority or for the
78 purpose of effecting the defendant's or another's escape from lawful custody;
- 79 (g) the homicide was committed for pecuniary gain;
- 80 (h) the defendant committed, or engaged or employed another person to commit the
81 homicide pursuant to an agreement or contract for remuneration or the promise of remuneration
82 for commission of the homicide;
- 83 (i) the actor previously committed or was convicted of:
- 84 (i) aggravated murder under this section;
- 85 (ii) attempted aggravated murder under this section;
- 86 (iii) murder, Section 76-5-203;
- 87 (iv) attempted murder, Section 76-5-203; or
- 88 (v) an offense committed in another jurisdiction which if committed in this state would
89 be a violation of a crime listed in this Subsection (1)(i);

- 90 (j) the actor was previously convicted of:
- 91 (i) aggravated assault, Subsection 76-5-103(2);
- 92 (ii) mayhem, Section 76-5-105;
- 93 (iii) kidnapping, Section 76-5-301;
- 94 (iv) child kidnapping, Section 76-5-301.1;
- 95 (v) aggravated kidnapping, Section 76-5-302;
- 96 (vi) rape, Section 76-5-402;
- 97 (vii) rape of a child, Section 76-5-402.1;
- 98 (viii) object rape, Section 76-5-402.2;
- 99 (ix) object rape of a child, Section 76-5-402.3;
- 100 (x) forcible sodomy, Section 76-5-403;
- 101 (xi) sodomy on a child, Section 76-5-403.1;
- 102 (xii) aggravated sexual abuse of a child, Section 76-5-404.1;
- 103 (xiii) aggravated sexual assault, Section 76-5-405;
- 104 (xiv) aggravated arson, Section 76-6-103;
- 105 (xv) aggravated burglary, Section 76-6-203;
- 106 (xvi) aggravated robbery, Section 76-6-302;
- 107 (xvii) felony discharge of a firearm, Section 76-10-508.1; or
- 108 (xviii) an offense committed in another jurisdiction which if committed in this state
- 109 would be a violation of a crime listed in this Subsection (1)(j);
- 110 (k) the homicide was committed for the purpose of:
- 111 (i) preventing a witness from testifying;
- 112 (ii) preventing a person from providing evidence or participating in any legal
- 113 proceedings or official investigation;
- 114 (iii) retaliating against a person for testifying, providing evidence, or participating in
- 115 any legal proceedings or official investigation; or
- 116 (iv) disrupting or hindering any lawful governmental function or enforcement of laws;
- 117 (l) the victim is or has been a local, state, or federal public official, or a candidate for
- 118 public office, and the homicide is based on, is caused by, or is related to that official position,
- 119 act, capacity, or candidacy;
- 120 (m) the victim is on duty in a verified position or the homicide is based on, is caused

121 by, or is related to the victim's position, and the actor knew, or reasonably should have known,
122 that the victim holds or has held the position of:

123 (i) a law enforcement officer, correctional officer, special function officer, or any other
124 peace officer as defined in Title 53, Chapter 13, Peace Officer Classifications;

125 (ii) an executive officer, prosecuting officer, jailer, or prison official;

126 (iii) a firefighter, search and rescue personnel, emergency medical personnel,
127 ambulance personnel, or any other emergency responder as defined in Section 53-2b-102;

128 (iv) a judge or other court official, juror, probation officer, or parole officer; or

129 (v) a security officer contracted to secure, guard, or otherwise protect tangible personal
130 property, real property, or the life and well-being of human or animal life in the area of the
131 offense;

132 (n) the homicide was committed:

133 (i) by means of a destructive device, bomb, explosive, incendiary device, or similar
134 device which was planted, hidden, or concealed in any place, area, dwelling, building, or
135 structure, or was mailed or delivered;

136 (ii) by means of any weapon of mass destruction as defined in Section 76-10-401 or a
137 firearm fitted with a device described in Section 76-10-533; or

138 (iii) to target a law enforcement officer as defined in Section 76-5-210;

139 (o) the homicide was committed during the act of unlawfully assuming control of any
140 aircraft, train, or other public conveyance by use of threats or force with intent to obtain any
141 valuable consideration for the release of the public conveyance or any passenger, crew
142 member, or any other person aboard, or to direct the route or movement of the public
143 conveyance or otherwise exert control over the public conveyance;

144 (p) the homicide was committed by means of the administration of a poison or of any
145 lethal substance or of any substance administered in a lethal amount, dosage, or quantity;

146 (q) the victim was a person held or otherwise detained as a shield, hostage, or for
147 ransom;

148 (r) the homicide was committed in an especially heinous, atrocious, cruel, or
149 exceptionally depraved manner, any of which must be demonstrated by physical torture, serious
150 physical abuse, or serious bodily injury of the victim before death;

151 (s) the actor dismembers, mutilates, or disfigures the victim's body, whether before or

152 after death, in a manner demonstrating the actor's depravity of mind; or

153 (t) the victim, at the time of the death of the victim:

154 (i) was younger than 14 years of age; and

155 (ii) was not an unborn child.

156 (2) Criminal homicide constitutes aggravated murder if the actor, with reckless

157 indifference to human life, causes the death of another incident to an act, scheme, course of

158 conduct, or criminal episode during which the actor is a major participant in the commission or

159 attempted commission of:

160 (a) child abuse, Subsection [76-5-109\(2\)\(a\)](#);

161 (b) child kidnapping, Section [76-5-301.1](#);

162 (c) rape of a child, Section [76-5-402.1](#);

163 (d) object rape of a child, Section [76-5-402.3](#);

164 (e) sodomy on a child, Section [76-5-403.1](#); or

165 (f) sexual abuse or aggravated sexual abuse of a child, Section [76-5-404.1](#).

166 (3) (a) If a notice of intent to seek the death penalty has been filed, aggravated murder
167 is a capital felony.

168 (b) If a notice of intent to seek the death penalty has not been filed, aggravated murder
169 is a noncapital first degree felony punishable as provided in Section [76-3-207.7](#).

170 (c) (i) Within 60 days after arraignment of the defendant, the prosecutor may file notice
171 of intent to seek the death penalty. The notice shall be served on the defendant or defense
172 counsel and filed with the court.

173 (ii) Notice of intent to seek the death penalty may be served and filed more than 60
174 days after the arraignment upon written stipulation of the parties or upon a finding by the court
175 of good cause.

176 (d) Without the consent of the prosecutor, the court may not accept a plea of guilty to
177 noncapital first degree felony aggravated murder during the period in which the prosecutor may
178 file a notice of intent to seek the death penalty under Subsection (3)(c)(i).

179 (e) If the defendant was younger than 18 years of age at the time the offense was
180 committed, aggravated murder is a noncapital first degree felony punishable as provided in
181 Section [76-3-207.7](#).

182 (4) (a) It is an affirmative defense to a charge of aggravated murder or attempted

183 aggravated murder that the defendant caused the death of another or attempted to cause the
184 death of another under a reasonable belief that the circumstances provided a legal justification
185 or excuse for the conduct although the conduct was not legally justifiable or excusable under
186 the existing circumstances.

187 (b) The reasonable belief of the actor under Subsection (4)(a) shall be determined from
188 the viewpoint of a reasonable person under the then existing circumstances.

189 (c) This affirmative defense reduces charges only as follows:

190 (i) aggravated murder to murder; and

191 (ii) attempted aggravated murder to attempted murder.

192 (5) (a) Any aggravating circumstance described in Subsection (1) or (2) that constitutes
193 a separate offense does not merge with the crime of aggravated murder.

194 (b) A person who is convicted of aggravated murder, based on an aggravating
195 circumstance described in Subsection (1) or (2) that constitutes a separate offense, may also be
196 convicted of, and punished for, the separate offense.

197 Section 3. Section **76-10-533** is enacted to read:

198 **76-10-533. Prohibited devices.**

199 (1) As used in this section:

200 (a) "Machinegun" has the same meaning as in 26 U.S.C. Sec. 5845(b).

201 (b) "Semiautomatic firearm" means any firearm that:

202 (i) uses a portion of the energy of a firing cartridge to extract the fired cartridge case
203 and chamber the next shell or round;

204 (ii) requires a separate function of the trigger to fire each cartridge; and

205 (iii) is not a machinegun.

206 (2) A person may not import, sell, manufacture, transfer, receive, or possess:

207 (a) any manual, power-driven, or electronic device primarily designed, or redesigned,
208 so that when the device is attached to a semiautomatic firearm the device:

209 (i) significantly increases the rate of fire of the firearm; or

210 (ii) approximates the action or rate of fire of a machinegun;

211 (b) any device, part, or combination of parts, that is designed and functions to

212 significantly increase the rate of fire of a firearm, by eliminating the need for the operator of the
213 firearm to make a separate movement for each individual function of the trigger; or

214 (c) a semiautomatic firearm that has been modified in any way that:

215 (i) significantly increases the rate of fire of the firearm; or

216 (ii) approximates the action or rate of fire of a machinegun.

217 (3) A law enforcement officer shall confiscate any device described in Subsection (2)

218 and dispose of it in accordance with Section [24-3-103.5](#).

219 (a) If, at the time of confiscation, the device may be easily detached from the firearm,
220 the law enforcement officer shall separate the device from the firearm and return the firearm to
221 the owner.

222 (b) If, at the time of confiscation, the device cannot be easily separated from the
223 firearm, the law enforcement officer shall confiscate the firearm with the device and provide
224 the owner with a receipt and instructions detailing where and under what conditions the owner
225 may retrieve the firearm.

226 (4) The law enforcement officer and the law enforcement agency are not liable for any
227 damage to the firearm caused by the removal of a device prohibited by this section.

228 Section 4. **Effective date.**

229 This bill takes effect on July 1, 2019.