

## Legal Authority Relevant to Felony Convictions, Restoration of Second Amendment Rights, & Utah Concealed Carry

### Utah

### Federal & Other

<p><b>Utah Code Ann. § 53-5a-303(2)</b>  (a) Grants BCI the authority to deny, suspend, or revoked a concealed firearm permit if the applicant or permit holder for:</p> <ul style="list-style-type: none"> <li>• A variety of convictions* (felony, violent, alcohol, narcotics/controlled substances, moral turpitude, &amp; DV) (defined in R722-300-3);</li> <li>• Adjudicated mentally incompetent; or</li> <li>• Cat. I or Cat. II restricted person per state (§ 76-11-301 et. seq.) <u>or federal law</u></li> </ul> <p>(b) In determining whether the applicant or permit holder is qualified to hold a concealed firearm permit, BCI shall consider mitigating circumstances.</p> <p><b>**“Conviction”</b> includes pleas in abeyance &amp; pending diversions. <u>See UCA § 53-5a-301.</u></p>	<p><b>18 U.S.C. § 922(g):</b> Disqualified from possessing firearms</p> <ol style="list-style-type: none"> <li>(1) Convicted felons</li> <li>(2) Fugitives from justice</li> <li>(3) Unlawful users of or persons addicted to controlled substances</li> <li>(4) Persons Adjudicated as mental defectives or committed to mental institutions</li> <li>(5) Aliens illegally or unlawfully in the U.S. and nonimmigrant visa holders</li> <li>(6) Persons dishonorably discharged from the Armed Forces</li> <li>(7) Persons who have renounced U.S. citizenship</li> <li>(8) Persons subject to domestic violence restraining orders</li> <li>(9) Person convicted of domestic violence misdemeanors</li> </ol>
<p><b>Utah Admin. Code R722-300-4(5): Disqualification Due to Conviction(s)</b></p> <p>(a) If a criminal background check reveals that an individual does not qualify for a permit due to §53-5a-302(2)(a) (which involves convictions &amp; other disqualifiers), BCI <b>shall consider</b> any mitigating circumstances.</p> <p>(b) If an individual does not qualify based on a <u>conviction</u>, BCI <b>may find</b> mitigating circumstances exist if:</p> <ul style="list-style-type: none"> <li>• The conviction is not a registerable sex offense; <b>and</b></li> <li>• The following time-periods have passed from conviction, release from incarceration, parole, or probation, whichever occurred last: <ul style="list-style-type: none"> <li>○ Class A = 5 years;</li> <li>○ Class B = 4 years;</li> <li>○ Class C or infraction = 3 years</li> </ul> </li> </ul> <p>Notwithstanding any other provision, BCI may <b>not</b> grant a permit if the individual is disqualified per § 53-5a-303(2)(a)(viii) (restricted per § 76-11-301 et seq. or federal law).</p>	<p><b>18. U.S.C. § 922(n):</b> Disqualified from receiving, shipping, transporting</p> <ul style="list-style-type: none"> <li>• A person under indictment* for a crime punishable by imprisonment &gt;1 year may not ship, transport, or receive any firearm or ammunition that has been shipped or transported in interstate or foreign commerce.</li> <li>• Since virtually all commercially purchased firearms have traveled in interstate commerce, this effectively prohibits a person with a pending felony charge from purchasing or possessing a firearm.</li> </ul> <p><b>18 U.S.C. § 921(a)(14)*:</b> “Indictment” includes “an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding one year may be prosecuted.”</p>

**Utah Code Ann. § 53-5a-102.2:**

Governs both open and concealed carry of a firearm outside of an individual’s residence for individuals who **do not** have a concealed carry permit.

(1)(b) allows an individual age 21 and older to carry a firearm (open or concealed)

- On a public street (loaded or unloaded)
- Any place not prohibited by state or federal statute (loaded or unloaded)
- In a vehicle in which the individual is lawfully present (handgun; loaded or unloaded)
- An unloaded rifle, shotgun, or muzzle-loading rifle in a vehicle (lawfully present)

(2)(a) (**Protected Places**): An individual **without** a concealed carry permit is **prohibited** from carrying a firearm (open or concealed) in the following:

- Secure area (§ 76-8-311.1) where notice is posted prohibiting dangerous weapons;
- Premises of
  - o a public or private elementary or secondary school;
  - o a higher education institution;
  - o a daycare;
- Airport secure area;
- House of worship where dangerous weapons are prohibited;
- Private residence where dangerous weapons are prohibited; or
- Any other place prohibited by another state statute or federal law.

**18 U.S.C. § 922(d)(1):** Prohibits any person (including a licensed firearms dealer) from selling or otherwise disposing of a firearm to any person “knowingly or having reasonable cause to believe that such person is under indictment for, or has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.”

**Utah Code Ann. § 76-11-304**

Exempts from the designation of a Cat. I “restricted person” (due to a felony conviction)

- An individual whose felony conviction has been expunged, set aside, reduced to a misdemeanor per court order, or pardoned;
- An individual whose civil rights have been restored (in the jurisdiction of the relevant conviction);
- An individual whose felony conviction/adjudication involves antitrust violations, unfair trade practices, etc., not involving theft or fraud.

**18 U.S.C. § 921(a)(20)**

Exempts from considering as “restricting” convictions:

- Any conviction which has been expunged or set aside or for which a person has been pardoned or had civil rights restored.
- Except: if the pardon, expungement, etc. expressly provides that the person may not ship, transport, possess, or receive firearms.

Similar provisions for misdemeanor assault (Cat. II restricted). See UCA § 76-11-304(1)(b).

**Caveat:** The individual **remains** a Cat. I or Cat. II restricted person if the restoration of rights, pardon, etc. expressly provides that the individual may not ship, transport, possess, or receive firearms. See UCA § 76-11-304(1)(c). This mirrors 18 U.S.C. § 921(a)(20)

The individual bears the burden to provide evidence that they meet the exceptions for removing their Cat. I or Cat. II status. See UCA § 76-11-304(3).

**Summary:** If someone has their second amendment rights restored in another jurisdiction, but the conviction at issue has **not** been expunged, the individual may possess and carry a firearm pursuant to UCA § 53-5a-102.2, but is **not** eligible to obtain a Utah concealed carry permit if the conviction at issue is one enumerated in UCA § 53-5a-303(2).

## Other States:

**New York:** Restoration of rights pursuant to a Certificate of Relief from Disabilities (CRD):

- Removes the automatic bar to obtaining a firearms license; **but**
- The NY firearms licensing officer still retains broad discretion to deny the license based on the underlying conviction.

**NY COR §701 (3):** A certificate of relief from disabilities shall not, however, in any way prevent any judicial, administrative, licensing or other body, board or authority from relying upon the conviction specified therein as the basis for the exercise of its discretionary power to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege.

**California:** Quasi-Expungement\*\* statute explicitly does **not** restore firearms rights, even though it allows a person convicted of a crime & who has successfully completed probation to withdraw their plea & have charges dismissed.

### CA Penal Code § 1203.4

**(a)(1)** mandates disclosure of the dismissed conviction in response to any direct question on an application for licensure.

**(a)(2):** Dismissal of an accusation or information pursuant to this section does **not** permit a person to own, possess, or have custody or control of a firearm or to prevent conviction under Chapter 2 (commencing with § 29800) of Division 9 of Title 4 of Part 6.

\*\*The foregoing provision does not literally “expunge”, as convictions dismissed pursuant to 1203.4 may still be used against a person in subsequent prosecutions & professional licensing, & may disqualify a person from possessing firearms or holding public office. See *People v. Allen*, 41 Cal.App.5<sup>th</sup> 312 (2019).

## **Caselaw:**

### ***Fernandez v. BCI*, case no. 240905504 (Third District Court, West Jordan, Utah)**

- Upheld BCI's denial of a concealed carry permit where petitioner Fernandez had a New York felony conviction for Driving While Intoxicated, even though New York had issued Fernandez a Certificate of Relief from Disabilities that restored his right to possess a firearm.
- The court held that BCI complied with its statutory obligation to consider mitigating factors, and that BCI properly declined to issue Fernandez a concealed carry permit based on his New York felony conviction, despite the restoration of rights.

***State v. Willis*, 2004 UT 93, 100 P.3d. 1218 (2004):** The Utah Supreme Court held that Article I, section 6 of the Utah Constitution (right to bear arms) "is not so absolute as to prohibit the legislature from regulating the potentially deadly privilege of firearm possession by convicted felons." *Id.* at ¶6.

### ***District of Columbia v. Heller*, 128 S.Ct. 2783 (2008):**

- The Court held unconstitutional a District of Columbia statute that criminalized all handgun possession inside the home and required that any lawful firearm in the home be bound by a trigger lock at all times, rendering it inoperable, even for self-defense.
- The Court held that the Second Amendment protects an individual's right to possess firearms and that the total ban on handguns, as well as the requirement that firearms in the home be kept nonfunctional, even when necessary for self-defense, violated that right.
- While the Court reversed and remanded the case based on specific D.C. statute that banned handgun possession in homes, it explained, "[l]ike most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19<sup>th</sup> century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." *Id.* At 2816.
- Importantly, the Court noted the longstanding practice of prohibiting the possession of firearms by people with certain disqualifiers, as well as in protected places such as schools. "Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 2816-2817.

### ***New York State Rifle & Pistol Assn., Inc. V. Bruen*, 144 S.Ct. 2111 (2022)**

- The Court declared unconstitutional a New York law that required a person applying for a license to carry a firearm in public to demonstrate “proper cause” warranting the license, noting that this extra burden of showing cause prevents law abiding citizens with ordinary self-defense needs from exercising their Second Amendment rights.
- The New York statute at issue did not define “proper cause,” but New York courts had previously held that an applicant shows proper cause only by demonstrating a “special need for self-protection distinguishable from that of the general community.” *Id.* At 2123.
- The Court reviewed Anglo-American history of public carry and noted that, “American governments simply have not broadly prohibited the public carry of commonly used firearms for personal defense. Nor have they generally required law-abiding, responsible citizens to demonstrate a special need for self-protection distinguishable from that of the general community to carry arms in public.” *Id.* At 2121.
- As part of its review of state laws nationwide, the Court specifically noted the 25 states (including Utah) that have permitless concealed carry laws. *Id.* At 2124, fn 1.
- Importantly, the Court did not find fault in New York's requirement to obtain a permit to lawfully carry a handgun in public. Rather, the problematic provision was the applicant’s burden to establish “proper cause” justifying the permit, which the Court ultimately determined violated the Second Amendment.
  - New York argued that its “proper cause” requirement was akin to laws protecting “sensitive places,” which have been consistently upheld by the Supreme Court. *Id.* at 2133.
  - The Court stated that the legality of prohibiting the carrying of firearms in “sensitive places” is settled and consistent with the Second Amendment (*Id.* at 2133), but rejected New York’s argument, as it essentially expanded “sensitive places” to all places where the public congregates. *Id.* At 2134.

### ***United States v. Rahimi*, 144 S.Ct. 1889 (2024)**

- U.S. Supreme Court upheld the constitutionality of the federal statute (18 U.S.C., §922(g)(8)) prohibiting firearm possession by a person subject to a domestic violence restraining order.
- The Court reasoned that the Second Amendment right to keep and bear arms, while fundamental, is not unlimited, and that *Heller* “never established a categorical rule that the Constitution prohibits regulations that forbid firearm possession in the home. Indeed, *Heller* stated that many

such prohibitions, like those on the possession of firearms by ‘felons and the mentally ill,’ are presumptively lawful.” *Id.* at 1902.

- The Court distinguished its earlier decision in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S.Ct. 2111 (2022).
  - *Bruen* held unconstitutional a New York law that broadly restricted firearms use by requiring firearm license applicants to demonstrate a special need for self-protection distinguishable from that of the general public.
  - By contrast, the federal statute at issue in *Rahimi* prohibits possession of a firearm only after a court has found that a person “represents a credible threat to the physical safety of another,” and only so long as they are subject to a restraining order. *Rahimi* at 1893.

***United States v. Ogilvie*, 153 F.4<sup>th</sup> 1098 (10<sup>th</sup> Cir. 2025)**

- The Court upheld Ogilvie’s Utah federal conviction for illegal receipt of a firearm by a person under indictment.
- The Court found that while the Second Amendment presumptively protected Ogilvie’s conduct, the federal statute at issue (18 U.S.C. §922(n)) is constitutional on its face and does not violate the Second Amendment, as the statute is consistent with this country’s historical tradition of firearm regulation. *Id.* at 1102, 1111.
- The Court, relying on *Heller* and *Rahimi*, noted that these “acceptable restrictions underscore the Court’s refrain that the Second Amendment protects the rights of law-abiding citizens.” *Id.* at 1103, citing *Heller* and *Bruen*.