



SPONSOR: Sen. Delcollo & Sen. Lavelle & Sen. Lopez & Sen. Poore
& Rep. Mitchell & Rep. Smyk & Rep. K. Williams

DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 203

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO OFFENSES INVOLVING DEADLY WEAPONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 1447, Title 11 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 1447. Possession of a deadly weapon during commission of a felony; class B felony.

4 (a)(1) A person who is in possession of a deadly weapon during the commission of a felony is guilty of possession
5 of a deadly weapon during commission of a felony.

6 (2) Possession of a deadly weapon during commission of a felony is a class B felony. A person convicted
7 under this subsection must receive a minimum sentence of 5 years at Level V, notwithstanding § 4205(b)(2) of this
8 title.

9 (b) Any sentence imposed for a violation of this section shall not be subject to suspension and no person convicted
10 for a violation of this section shall be eligible for good time, parole or probation during the period of the sentence imposed.

11 (c) Any sentence imposed upon conviction for possession of a deadly weapon during the commission of a felony
12 shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony, together with a
13 conviction for the possession of a deadly weapon during the commission of such felony, such person shall serve the
14 sentence for the felony itself before beginning the sentence imposed for possession of a deadly weapon during such felony.

15 (d) Every person charged under this section over the age of 16 years may be tried as an adult pursuant to §§ 1010
16 and 1011 of Title 10, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

17 (e) A person may be found guilty of violating this section notwithstanding that the felony for which the person is
18 convicted and during which the person possessed the deadly weapon is a lesser included felony of the one originally
19 charged.

20 Section 2. Amend § 1447A, Title 11 of the Delaware Code by making deletions as shown by strike through and
21 insertions as shown by underline as follows:

22 § 1447A. Possession of a firearm during commission of a felony; class B felony.

(a) A person who is in possession of a firearm during the commission of a felony is guilty of possession of a firearm during the commission of a felony. Possession of a firearm during the commission of a felony is a class B felony.

(b) A person convicted under subsection (a) of this section shall receive a minimum sentence of ~~3 years~~ 6 years at Level V, notwithstanding the provisions of § 4205(b)(2) of this title.

(c) A person convicted under subsection (a) of this section, and who has been at least twice previously convicted of a felony in this State or elsewhere, shall receive a minimum sentence of ~~5 years~~ 10 years at Level V, notwithstanding the provisions of §§ 4205(b)(2) and 4215 of this title.

(d) Any sentence imposed for a violation of this section shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for good time, parole or probation during the period of the sentence imposed.

(e) Any sentence imposed upon conviction for possession of a firearm during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony together with a conviction for the possession of a firearm during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a firearm during such felony.

Section 3. Amend § 1448, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly weapon or ammunition for a firearm by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, and the violation is one of paragraphs (a)(1)-(8) of this section, in which case it is a class D felony, or unless the person is eligible for sentencing pursuant to subsection (e) of this section, in which case it is a ~~class C felony~~ class B felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

(e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:

a. ~~Three~~ Six years at Level V, if the person has previously been convicted of a violent felony;

b. ~~Five~~ Ten years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. ~~Ten~~ Twelve years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class B felony and shall receive a minimum sentence of:

a. ~~Four~~ Seven years at Level V; or

b. ~~Six~~ Twelve years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. ~~Ten~~ Twenty years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

SYNOPSIS

This Act increases the penalties for certain offenses involving deadly weapons as follows:

1. For possession of a deadly weapon during the commission of a felony, from 2 to 5 years.
2. For possession of a firearm during the commission of a felony, generally, from 3 to 6 years.
3. For possession of a firearm during the commission of a felony, if the defendant has been convicted of 2 or more prior felonies, from 5 to 10 years.
4. For possession of a firearm or destructive weapon by a person prohibited who has been convicted of a violent felony, from 3 to 6 years.

5. For possession of a firearm or destructive weapon by a person prohibited who engages in the possession within 10 years of the conviction of a violent felony, from 5 to 10 years.

6. For possession of a firearm or destructive weapon by a person prohibited who has been convicted of 2 or more violent felonies, from 10 to 12 years.

7. For possession of a firearm by a person prohibited who negligently causes serious physical injury or death of another person through the use of the firearm, from 4 to 7 years.

8. For possession of a firearm by a person prohibited who negligently causes serious physical injury or death of another person through the use of the firearm and does so within 10 years of a conviction of a violent felony, from 6 to 12 years.

9. For possession of a firearm by a person prohibited who negligently causes serious physical injury or death of another person through the use of the firearm and has been convicted of 2 or more violent felonies, from 10 to 20 years.

This Act increases the class of felony assigned to possession of a deadly weapon by a person prohibited under § 1448(e) of Title 11 to insure that the minimum sentence required by this Act does not exceed the maximum sentence for the class of felony assigned to the crime.

Author: Senator Delcollo