

CHAPTER 136  
FORMERLY  
SENATE SUBSTITUTE NO. 1 FOR  
SENATE BILL NO. 29  
AS AMENDED BY  
SENATE AMENDMENT NOS. 1 & 3

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE POSSESSION OF DEADLY WEAPONS BY PERSONS PROHIBITED.

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

Section 1. Amend Chapter 5 of Title 11 of the Delaware Code by inserting a new Section 1460 as follows:

“Section 1460. Possession of Firearm While Under The Influence.

(a) A person is guilty of possession of a firearm while under the influence of alcohol or drugs when the person possesses a firearm in a public place while under the influence of alcohol or drugs. It shall be an affirmative defense to prosecution under this section that, the firearm was not readily operable, or that the person was not in possession of ammunition for the firearm. The Superior Court shall have original and exclusive jurisdiction over a violation of this section.

(b) For purposes of this section, the following definitions shall apply:

(1) ‘Under the influence of alcohol or drugs’ means:

(i) Having an amount of alcohol in a sample of the person’s blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood, or an amount of alcohol in a sample of breath equivalent to .08 or more grams per two hundred ten liters of breath. A person shall be guilty, without regard to the person's alcohol concentration at the time of possession of a firearm in violation thereof, if such person’s alcohol concentration is .08 or more within 4 hours after the person was found to be in possession of a firearm, and that alcohol concentration is the result of an amount of alcohol present in, or consumed by such person when that person was in possession of a firearm; or

(ii) Being manifestly under the influence of alcohol or any illicit or recreational drug, as defined in 21 Del. C. §4177(c)(8), or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity,

Provided that no person shall be 'under the influence of alcohol or drugs' for purposes of this section when the person has not used or consumed an illicit or recreational drug prior to or during an alleged violation, but has only used or consumed such drug after the person has allegedly violated this section and only such use or consumption after such alleged violation caused the person’s blood to contain an amount of alcohol or drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of the alleged violation thereof.

(2) 'Possess', Possession or 'Possesses' means that the person has the item under his or her dominion and authority, and that said item is at the relevant time physically available and accessible to the person.

(3) ‘Public place’ means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds, restaurants, bars, taverns, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

(4) ‘Not readily operable’ means that the firearm is disassembled, broken down, or stored in a manner to prevent its immediate use.

(c) A law enforcement officer who has probable cause to believe that a person has violated this section may, with or without the consent of the person, take reasonable steps to conduct chemical testing to determine the

person's alcohol concentration or the presence of illicit or recreational drugs. A person's refusal to submit to chemical testing shall be admissible in any trial arising from a violation of this section.

(d) (1) Except as provided in paragraph (2) of this subsection, Possession of a Firearm While Under the Influence is a class A misdemeanor.

(2) Possession of a Firearm While Under the Influence is a class G felony if the conviction is for an offense that was committed after a previous conviction for Possession of a Firearm While Under the Influence.”

Approved July 13, 2011