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HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 201

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO POSSESSION OF A FIREARM IN A SAFE SCHOOL AND RECREATION ZONE.

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

1 Section 1. Amend Subchapter VII, Title 11 of the Delaware Code by making deletions as shown by strike though  
2 and additions as shown by underline as follows:

3 § 1457. ~~Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B~~  
4 ~~misdemeanor.~~ [Repealed.]

5 (a) ~~Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who~~  
6 ~~possesses a firearm or other deadly weapon, and does so while in or on a “Safe School and Recreation Zone” shall be guilty~~  
7 ~~of the crime of possession of a weapon in a Safe School and Recreation Zone.~~

8 (b) ~~The underlying offenses in Title 11 shall be:~~

9 (1) ~~Section 1442. — Carrying a concealed deadly weapon; class G felony; class D felony.~~

10 (2) ~~Section 1444. — Possessing a destructive weapon; class E felony.~~

11 (3) ~~Section 1446. — Unlawfully dealing with a switchblade knife; unclassified misdemeanor.~~

12 (4) ~~Section 1448. — Possession and purchase of deadly weapons by persons prohibited; class F felony.~~

13 (5) ~~Section 1452. — Unlawfully dealing with knuckles combination knife; class B misdemeanor.~~

14 (6) ~~Section 1453. — Unlawfully dealing with martial arts throwing star; class B misdemeanor.~~

15 (7) ~~Section 1466. — Manufacture, sale, transport, transfer, purchase, receipt, and possession of assault~~  
16 ~~weapons; class E or F felony.~~

17 (c) For the purpose of this section, “Safe School and Recreation Zone” shall mean:

18 (1) ~~Any building, structure, athletic field, sports stadium or real property owned, operated, leased or rented by~~  
19 ~~any public or private school including, but not limited to, any kindergarten, elementary, secondary or vocational~~  
20 ~~technical school or any college or university, within 1,000 feet thereof; or~~

21           (2) Any motor vehicle owned, operated, leased or rented by any public or private school including, but not  
22 limited to, any kindergarten, elementary, secondary, or vocational-technical school or any college or university; or

23           (3) Any building or structure owned, operated, leased or rented by any county or municipality, or by the State,  
24 or by any board, agency, commission, department, corporation or other entity thereof, or by any private organization,  
25 which is utilized as a recreation center, athletic field or sports stadium.

26           (d) Nothing in this section shall be construed to preclude or otherwise limit a prosecution of or conviction for a  
27 violation of this chapter or any other provision of law. A person may be convicted both of the crime of possession of a  
28 weapon in a Safe School and Recreation Zone and of the underlying offense as defined elsewhere by the laws of the State.

29           (e) It shall not be a defense to a prosecution for a violation of this section that the person was unaware that the  
30 prohibited conduct took place on or in a Safe School and Recreation Zone.

31           (f) It shall be an affirmative defense to a prosecution for a violation of this section that the weapon was possessed  
32 pursuant to an authorized course of school instruction, or for the purpose of engaging in any school-authorized sporting or  
33 recreational activity. The affirmative defense established in this section shall be proved by a preponderance of the evidence.  
34 Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for any offense defined  
35 in any other section of this chapter.

36           (g) It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place  
37 entirely within a private residence, and that no person under the age of 18 was present in such private residence at any time  
38 during the commission of the offense. The affirmative defense established in this section shall be proved by the defendant  
39 by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a  
40 prosecution for an offense defined in any other section of this chapter.

41           (h) This section shall not apply to any law enforcement or police officer, or to any "private security guard" defined  
42 in § 1302(20) of Title 24.

43           (i) For purposes of this section only, "deadly weapon" shall include any object described in § 222(6) or (13) of  
44 this title or BB guns.

45           (j) The penalty for possession of a weapon in a Safe School and Recreation Zone shall be:

46               (1) If the underlying offense is a class B misdemeanor, the crime shall be a class A misdemeanor;

47               (2) If the underlying offense is an unclassified misdemeanor, the crime shall be a class B misdemeanor;

48               (3) If the underlying offense is a class E, F, or G felony, the crime shall be one grade higher than the  
49 underlying offense.

50               (4) If the underlying offense is a class D felony, the crime shall also be a class D felony.

51           ~~(5) In the event that an elementary or secondary school student possesses a firearm in a Safe School and~~  
52 ~~Recreation Zone in addition to any other penalties contained in this section, the student shall be expelled by the local~~  
53 ~~school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in~~  
54 ~~federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify~~  
55 ~~the terms of the expulsion.~~

56           ~~(6) In the event that an elementary or secondary school student possesses a deadly weapon other than a~~  
57 ~~firearm in a Safe School and Recreation Zone in addition or as an alternative to any other penalties contained in this~~  
58 ~~section, the student may be suspended for a period of not less than 30 days unless otherwise provided for in federal or~~  
59 ~~state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of~~  
60 ~~the suspension.~~

61           § 1457A. Possession of a firearm in a Safe School and Recreation Zone; class E felony.

62           (a) As used in this section:

63           (1) “Constable” means as licensed under Chapter 56 of Title 24.

64           (2) “Firearm” means as defined in § 222 of this title and includes a destructive weapon as defined in § 1444(a)  
65 and (c) of this title.

66           (3) “Police officer” means as defined in § 8401 of this title.

67           (4) “Safe School and Recreation Zone” means all of the following:

68           a. Any building, structure, athletic field, sports stadium or real property owned, operated, leased or rented  
69 by any public or private school including, but not limited to, any kindergarten, elementary, secondary or  
70 vocational-technical school or within 1,000 feet thereof.

71           b. Any motor vehicle owned, operated, leased or rented by any public or private school including, but not  
72 limited to, any kindergarten, elementary, secondary, or vocational-technical school.

73           c. Any building or structure owned, operated, leased or rented by any county or municipality, or by the  
74 State, or by any board, agency, commission, department, corporation or other entity thereof, or by any private  
75 organization, which is utilized as a recreation center, athletic field or sports stadium.

76           (b) Any person who knowingly possesses a firearm while in or on a Safe School and Recreation Zone shall be  
77 guilty of the crime of possession of a firearm in a Safe School and Recreation Zone.

78           (c) Subsection (b) of this section shall not apply to any of the following:

79           (1) A police officer.

80           (2) A constable employed by a school district who is acting in an official capacity within a Safe School and  
81           Recreation Zone.

82           (3) An active-duty member of the United States Armed Forces or Delaware National Guard who is acting in  
83           an official capacity within a Safe School and Recreation Zone.

84           (4) A holder of a valid license to carry concealed deadly weapons under § 1441 but only if the firearm is in a  
85           vehicle.

86           (d) Subsection (b) of this section does not apply to the possession of a firearm in any of the following  
87           circumstances:

88                   (1) On private property not part of school grounds.

89                   (2) A firearm in a locked container or locked firearms rack that is in or on a motor vehicle.

90                   (3) When engaged in lawful hunting, firearm instruction, or firearm-related sports on public lands, other than  
91           those belonging to a public or private school.

92           (e) A person who violates this section is guilty of a class E felony.

93           (f) In the event that an elementary or secondary school student possesses a firearm in a Safe School and Recreation  
94           Zone, in addition to any other penalties contained in this section, the student shall be expelled by the local school board or  
95           charter school board of directors for a period of not less than 90 days unless otherwise provided for in federal or state law.

96           The local school board or charter school board of directors may, on a case-by-case basis, modify the terms of the expulsion  
97           to less than 90 days.

98           Section 2. This Act does not affect any prosecution under § 1457 of Title 11 if the offense occurred before the effective date  
99           of this repeal.

#### SYNOPSIS

As of April 4, 2023, 74 people have been killed or injured by guns in schools this year in 13 separate school shootings. School shootings hit a record high in 2022 with 46 shootings, surpassing 2021's record of 42 shootings. In 2022, 43,450 children experienced a school shooting. The purpose of this bill is to enable a police officer to act immediately when the officer sees or suspects that a person possesses a firearm in a Safe School and Recreation Zone.

This Act establishes the crime of Possession of a firearm in a Safe School and Recreation Zone as a class E felony. This bill makes it a crime for a person to possess a firearm in a Safe School and Recreation Zone except a police officer or a constable or active-duty member of the armed forces who are acting in an official capacity within for the Safe School and Recreation Zone. The bill also exempts holders of a valid license to carry concealed weapons but only if the firearm is in a vehicle. The possession of a firearm under this bill does not apply if (1) the person is on private property which is not part of school grounds; (2) the firearm is in a locked container or locked firearms rack that is on or in a motor vehicle; or (3) when engaged in lawful hunting, firearms instruction, or firearm-related sports on public lands not belonging to a school. This bill provides that in addition to other penalties, a student who possesses a firearm in a Safe School and Recreation Zone, shall be expelled for a period of not less than 90 days, but the local school board or charter school board of directors may, on a case-by-case basis, modify the terms of the expulsion.

This Act repeals the crime of Possession of a Weapon in a Safe School and Recreation Zone, but provides a Savings Clause which enables a prosecution for such crime if the offense occurred before the repeal is enacted.