



SPONSOR: Rep. Yearick & Sen. Delcollo  
Reps. Collins, D. Short, Michael Smith; Sens. Bonini,  
Lawson

HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 322

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO FIREARMS.

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

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

§ 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~~ 5 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.

~~(d), (e) [Repealed.]~~

(f) Every person charged under this section over the age of 16 years who, following an evidentiary hearing where the Superior Court finds proof positive or presumption great that the accused used, displayed, or discharged a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in § 4201 (c) of this title, shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law. The provisions of this section notwithstanding, the Attorney General may elect to proceed in Family Court.

23 (g) A person may be found guilty of violating this section notwithstanding that the felony for which the person is  
24 convicted and during which the person possessed the firearm is a lesser included felony of the one originally charged.

#### SYNOPSIS

In 1994 the 137th General Assembly created the crime of Possession of a Firearm During the Commission of a Felony. In the intervening decades, the length of the minimum required sentence of 3 years and 5 years for defendants with 2 prior felonies has not changed. Instead, in 2019 the 150th General Assembly removed the requirement of consecutive sentences and removed the prohibition on suspending portions of the sentence and earned good time. Felony offenses committed with firearms are some of the most dangerous and violent crimes that can be committed by criminals. The trend of leniency is not commensurate with the seriousness of the offense, nor does it adequately protect victims of crime. This Act increases the minimum penalty to 5 years and to 10 years for defendants with 2 prior felonies. This Act also restores the requirements that defendants be sentenced consecutively and prohibits suspension of the sentence. This Act is intended to enhance public safety by appropriately punishing criminal use of firearms.