SPONSOR: Rep. Schwartzkopf & Rep. Longhurst & Sen. S. McBride
& Rep. Griffith & Rep. Heffernan & Rep. Minor-Brown
& Rep. Romer & Rep. Bush
Reps. Baumbach, K. Williams; Sens. Gay, Hoffner,
Huxtable, Sokola, Sturgeon, Townsend

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 201
AS AMENDED BY
HOUSE AMENDMENT NO. 3
AND
SENATE AMENDMENT NO. 3

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:

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

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

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

(c) For the purpose of this ~~section,~~ section:

(1) "Constable" means an individual who licensed under Chapter 56 of Title 24.

(2) "Firearm" means as defined in § 222 of this title and includes a destructive weapon as defined in § 1444(a) and (c) of this title and includes BB guns.

(3) "Police officer" means as defined in § 8401 of this title.

(4) "Safe ~~School and~~ Recreation Zone" ~~shall mean:~~

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

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

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LC : HVW : CBM : 5081520082

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

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

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

(1) A police officer.

(2) A constable employed by a recreation zone who is acting in that capacity within a Safe Recreation Zone.

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

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

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

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

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

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

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

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

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

(a) As used in this section:

(1) "Constable" means as licensed under Chapter 56 of Title 24.

(2) "Firearm" means as defined in § 222 of this title and includes a destructive weapon as defined in § 1444(a) and (c) of this title and includes BB guns.

(3) "Police officer" means as defined in § 8401 of this title.

(4) "Safe School Zone" means all of the following:

a. Any building, structure, athletic field, sports stadium or real property owned, operated, leased or rented by any public or private school including any kindergarten elementary, secondary, or vocational-technical school.

b. Any motor vehicle owned, operated, leased, or rented by any public or private school including any kindergarten, elementary, secondary, or vocational-technical school.

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

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

(1) A police officer.

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

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

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

(5) Employees of the Department of Services for Children, Youth, and Their Families who are authorized by the Secretary of the Department to carry a firearm while acting in the employee's official capacity."

"(6) Probation and parole officers acting within the officer's official capacity.

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

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

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

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

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

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

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