SPONSOR: Rep. Atkins & Sen. Cook;
Sen. Bunting

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 115

AN ACT TO AMEND CHAPTER 5, TITLE 11 OF THE DELAWARE CODE RELATING TO OFFENSES INVOLVING THREAT OF WEAPONS.

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

Section 1. Amend § 832(a)(2), Title 11 of the Delaware Code by striking the phrase "deadly weapon" as it appears in that paragraph and by inserting in lieu thereof the phrase:

"deadly weapon or represents by word or conduct that he or she is in possession or control of a deadly weapon".

Section 2. Amend § 836(a)(4), Title 11 of the Delaware Code by striking the wording of that paragraph in its entirety and by inserting in lieu thereof the following:

"(4) While in possession or control of such vehicle or while in the course of taking or attempting to take possession or control of such vehicle the person displays what appears to be a deadly weapon or represents by word or conduct that he or she is in possession or control of a deadly weapon.".

Section 3. Amend § 769, § 772 and § 773, Title 11 of the Delaware Code by striking the phrase "deadly weapon or dangerous instrument" as it appears each time in those Sections and by inserting in lieu thereof the phrase:

"deadly weapon or represents by word or conduct that he or she is in possession or control of a deadly weapon or dangerous instrument".

SYNOPSIS

In 1975, the Delaware Supreme Court interpreted Delaware's Robbery First Degree statute as applying whenever a criminal intimidates a victim by manifesting the presence of a deadly weapon in such a way that it is perceived by any of the victim's senses. *State v. Smallwood*, 346 A2d. 164 (Del. 1975). In 1997, the Court followed the *Smallwood* case when it upheld the conviction of a robber in a case where the only manifestation to the victim of the presence of a deadly weapon was the defendant's verbal threat that he had a gun. *McKamey v. State*, 1997 WL 45060 (Del. Supr.). In 2002, the Court adopted a contrary interpretation of the robbery statute and reversed a bank robbery conviction in a case where the defendant demanded money from a bank teller after handing her a note that read "This is a holdup…I am armed," reasoning that such evidence was insufficient to meet the statutory requirement that the presence of a deadly weapon was made manifest to the victim.

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This Amendment clarifies that any person who represents by word or conduct that they are in possession or control of a deadly weapon is committing a more serious crime than if there was no such representation.

This Act will clarify that it is the General Assembly's intent to ensure that the Robbery First Degree statute will apply whenever a criminal intends to intimidate a robbery victim by threatening the presence of a deadly weapon, regardless of whether the intimidation is accomplished by a physical display of what appears to be a deadly weapon or a verbal threat or other conduct that clearly implies that the criminal is so armed. It is based upon similar statutes from Arkansas, Colorado and Connecticut. See *Clemmons v. State*, 796 S. W. 2d 583 (Ark. 1990). The Act also clarifies the similarly worded portions of Delaware's Rape and Carjacking statutes.