



SPONSOR: Rep. D. Short & Sen. Pettyjohn  
Reps. Briggs King, Dukes, Gray, Hensley, Hilovsky,  
Morris, Osienski, Spiegelman, Vanderwende; Sens.  
Hocker, Wilson

HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 251

AN ACT PROPOSING AN AMENDMENT TO SECTION 12 OF ARTICLE I OF THE DELAWARE CONSTITUTION  
RELATING TO BAIL.

1 WHEREAS, carrying a firearm during the commission of a felony demonstrates a calculated willingness to use a  
2 weapon in the furtherance of their criminal activity; and

3 WHEREAS, someone who chooses to carry a firearm while committing felonies is more likely to use the weapon  
4 to threaten, intimidate, injure, or kill their victims; and

5 WHEREAS, as detailed in Delaware Shootings 2020 - An Analysis of Incidents, Suspects, and Victims, of the 158  
6 people suspected of being involved with a shooting that year, 77% had at least one arrest for a violent felony, with 57%  
7 having at least three such arrests; and

8 WHEREAS, allowing people that have been arrested for possessing a firearm while committing felony crimes to  
9 be quickly released undermines the public faith in the criminal justice system, creates a climate of fear and intimidation,  
10 and facilitates the possibility of additional crimes being committed in the community.

11 NOW, THEREFORE:

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all  
13 members elected to each house thereof concurring therein):

14 Section 1. Amend Article I of the Delaware Constitution by making deletions as shown by strikethrough and  
15 insertions by underline as follows:

16 **§ 12. Right to bail; access to accused.**

17 Section 12. All prisoners shall be bailable by sufficient sureties, unless for capital offenses, or an offense for  
18 possession of a firearm during the commission of a felony offense, when the proof is positive or the presumption great; and  
19 when persons are confined on accusation for such offenses their friends and counsel may at proper seasons have access to  
20 them.

SYNOPSIS

This is the first leg of a constitutional amendment to protect our communities from gun violence.

While there is a legal presumption that people arrested in Delaware will have an opportunity to post bail while awaiting trial, this right is not universal. The state constitution already allows individuals charged with capital offenses (murder) to be held without bail “when the proof is positive or the presumption great” that the defendant committed the crime. This proposed amendment bill would expand this provision to include the charge of possession of a firearm during the commission of a felony.

Crime data statistics reveal that the overwhelming majority of arrests for gun crimes involve individuals that have previously been arrested for other felony offenses.

Carrying a firearm during the commission of a felony demonstrates a calculated willingness by the perpetrator to use a weapon in the furtherance of his or her criminal activity. By virtue of its availability, someone who makes the conscious choice to carry a gun while engaging in serious illicit acts is more likely to use it to threaten, intimidate, injure, or kill their victims.

Allowing people that have been arrested for possession of a firearm during the commission of a felony to be quickly released back into the community undermines the public faith in the criminal justice system and creates a climate of fear and intimidation.

This proposed amendment would deny individuals who have demonstrated a willingness to use a gun in the commission of crimes against their fellow citizens an opportunity to commit additional offenses while awaiting adjudication on their pending charges.