



SPONSOR: Rep. Spence & Rep. Schwartzkopf & Sen. Sokola;  
Reps. Hocker, Miro, D. Short; Sen. Bunting

HOUSE OF REPRESENTATIVES  
144th GENERAL ASSEMBLY

HOUSE BILL NO. 499

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO POSSESSION OR DEALING WITH A DEADLY WEAPON OR DANGEROUS INSTRUMENT IN A SAFE SCHOOL ZONE.

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

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by striking § 1457 in its entirety and inserting a new “§ 1457A” to read as follows:

“§ 1457A. Unlawful Possession or Dealing with a Deadly Weapon or Dangerous Instrument in a Safe School Zone.

(a) A person is guilty of unlawfully possessing or dealing with a deadly weapon or dangerous instrument in a Safe School Zone if while in or on a ‘Safe School Zone’, as defined in this Section, the person carries (whether openly or concealed), exhibits, possesses, sells, deals, buys, transfers, receives, offers for sale or, in any manner, has control of:

(1) A deadly weapon as defined in § 222(5);

(2) A destructive weapon as defined in § 1444;

(3) A dangerous weapon as defined in § 1445;

(4) A switchblade knife as defined in § 1446;

(5) An undetectable knife as defined in § 1446A;

(6) A knuckles-combination knife as defined in § 1452;

(7) A martial arts throwing star as defined in § 1453;

(8) An instrument that expels a projectile through the force of air pressure, CO2 pressure, or spring action, including any spot marker gun, air soft gun, pellet gun or BB gun;

(9) Any imitation firearm. ‘Imitation firearm’ as used herein means any device, toy gun or replica of a firearm that is substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm;

(10) A taser or stun gun;

(11) A starter gun;

(12) A dangerous instrument as defined in § 222(4);

(13) Ammunition for a firearm. The word 'ammunition' as used herein shall mean one (1) or more rounds of ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle, but shall not mean inert rounds or expended shells, hulls or casings;

(14) Disabling chemical spray as defined in § 222(6); or

(15) A folding knife having a blade not more than three (3) inches in length which is in the open position, or has been manufactured or altered in such a way as to be capable of inflicting serious physical injury or death as a result of enhancements including but not limited to: the shape of the blade, the width of the blade, a serrated blade, grip handle, locking blade, or levers and springs which enhance the ability to flick the knife open quickly.

(b) This subsection does not apply to:

(1) A duly appointed law enforcement or police officer, any security officer as defined in Chapter 13 of Title 24 of the Delaware Code, or a paid law enforcement or police officer of another state or the federal government who is carrying out official duties while in this State, a person summoned by an officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces or national guard of this State or the United States who is engaged in the performance of his or her duties, and acting under orders requiring him or her to carry arms or weapons.

(2) Civil officers of the United States in the discharge of their official duties.

(3) A person who openly brings or openly possesses an ice pick or knife for lawful use in food preparation or consumption, as long as the person is at a college or university or is a non-student adult in any other Safe School Zone.

(4) A person who brings or possesses a knife or razor for lawful use in maintenance of school property or of their own property on a college or university campus, as authorized by the district superintendent, head of school, the governing board of education for the school or their designees.

(5) A person who is a member of the reserve officers training corps, enrolled in a military school or enrolled in a course of instruction or member of a club or team and who is required to carry arms or weapons in the discharge of their official class or team duties, but only as necessary to discharge their official duties.

(6) A person authorized by the district superintendent, head of school, the governing school board or their designee for the purpose of guarding school property, who meets the requirements set by the board or governing body and is discharging official duties.

(7) A person receiving instruction in a school zone who openly possesses or openly carries, receives, or exhibits an ice pick, knife or razor provided by an instructor, while the person is actually engaged in an authorized school zone activity under the supervision of an instructor, and in a manner authorized by the district superintendent, head of school, the governing board of education or their designee.

(8) A person providing instruction who brings or possesses an ice pick, knife or razor at the request of a school staff member for an authorized school-sponsored activity or class but only as necessary for that activity.

(9) A person providing instruction who brings or possesses an ice pick, knife or razor for a lawful purpose within the scope of the person's employment.

(10) A person who provides instruction, who brings any of the listed weapons other than an ice pick, knife or razor for a lawful purpose within the scope of the person's employment if the person has the written permission of the district superintendent, head of school, the governing board of education or their designees.

(11) An adult who is not a student and who is in a privately-owned vehicle where the weapon is properly displayed or stored as required by law, but only when that vehicle is being lawfully used to provide transportation of students to and from school or school activities, and provided that such weapon is contained within the private vehicle operated by the non-student adult and is not handled by such non-student adult or by another person acting with the express or implied consent of such non-student adult while such vehicle is on school property and such vehicle does not remain unattended on school property.

(12) A person is in a ceremonial color guard or parade, when authorized by the district superintendent, head of school, governing body of a school zone or their designees, and only as required by their official duties in the color guard or parade.

(13) Any employee or law enforcement officer of a public or private school who seizes any of the weapons described in this Section from the possession of any person who is reasonably believed to be in violation of this statute and who turns the weapon seized over to the police or to evidence in a timely manner.

(14) A person who carries a disabling chemical spray as defined in § 222(6) of this Title at a college or university.

(c) For the purpose of this Section, 'Safe School Zone' shall mean:

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

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

(3) Any school function as defined in § 4112(a)(8) of Title 14 of the Delaware Code to include any field trip or any officially sponsored public event in the State.

(d) Nothing in this Section shall be construed to preclude or otherwise limit a prosecution of or conviction for a violation of this Chapter or any other provision of law. A person may be convicted both of the crime or unlawfully dealing with a weapon or dangerous instrument in a Safe School Zone and of other weapons offenses as defined elsewhere by the laws of the State.

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

(f) It is an affirmative defense to prosecution for a violation of this Section that the prohibited conduct took place entirely within a private residence or going to or from a private residence by a resident or guest thereof. 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.

(g) It shall be an affirmative defense to a prosecution for a violation of this Section that the weapon was openly possessed or openly carried for the purpose of lawfully engaging in any school authorized sporting, recreational or theatrical activity but only as necessary to lawfully engage in that school authorized sporting, recreational or theatrical activity at that time and place. The affirmative defense established in this Section shall be proved by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for any offense defined in any other section of this Chapter.

(h) The penalty for dealing with a weapon in a Safe School Zone shall be for:

(1) A violation of (a)(1), a class F felony, unless the accused has been convicted within the previous five (5) years of the same offense or under § 1442 in which case it shall be a class D felony;

(2) A violation of (a)(2) a class D felony;

(3) A violation of (a)(3), a class B misdemeanor;

(4) A violation of (a)(4), a class A misdemeanor;

(5) A violation of (a)(5), a class F felony;

(6) A violation of (a)(6), a class A misdemeanor;

- 112 (7) A violation of (a)(7), a class G felony;  
113 (8) A violation of (a)(8), a class G felony;  
114 (9) A violation of (a)(9), a class B misdemeanor;  
115 (10) A violation of (a)(10), a class G felony;  
116 (11) A violation of (a)(11) a class G felony;  
117 (12) A violation of (a)(12), a class A misdemeanor;  
118 (13) A violation of (a)(13), a class B misdemeanor;  
119 (14) A violation of (a)(14), a class B misdemeanor;  
120 (15) A violation of (a)(15), a class A misdemeanor.

121 (i) In the event that an elementary or secondary school student is determined to have possessed or dealt with  
122 a firearm or other deadly weapon in a Safe School Zone, in addition to any other penalties contained in this Section, the  
123 student shall be expelled by the local school board or charter school board of directors for a period of not less than one (1)  
124 year. Notwithstanding the above, the district superintendent, head of school, governing board of education or their  
125 designees may modify such expulsion requirement for a student on a case-by-case basis if such modification is in writing.  
126 Nothing in this Section shall be construed to prevent a school board or charter school that has expelled a student from such  
127 a student's regular school setting from providing educational services to such student in an alternative setting when  
128 otherwise allowed by the Rules and Regulations promulgated by the Delaware Department of Education. In accordance  
129 with 20 U.S.C.A. Section 7151, and in addition to the requirements of 14 Del. C. 4112 each district or charter school shall  
130 report to the Delaware Department of Education within five (5) working days a description of the circumstances  
131 surrounding any expulsions required under this Section, including:

- 132 (1) the name of the school concerned;  
133 (2) the number of students expelled from such school; and  
134 (3) the type of firearms or deadly weapons concerned.

135 (j) For purposes of this subsection the term 'firearm' means: (A) any weapon (including a starter gun) which  
136 will or is designed to or may readily be converted to expel a shot, projectile or other object by the action of an explosive,  
137 combustion, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded, (B) the frame or receiver of  
138 any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device as defined by 18 U.S.C.A. 921.  
139 Such term does not include an antique firearm as defined by 18 U.S.C.A. 921. The provisions of this Section shall be  
140 construed in a manner consistent with the Individuals with Disabilities Education Act [20 U.S.C.A. § 1400 et seq.].

141 (k) For purposes of this statute the prohibition against an 'imitation firearm' in a Safe School Zone shall not  
142 include any of the following:

143 (1) A non-operational collector's replica of an antique firearm developed prior to 1898.

144 (2) An imitation firearm where the entire exterior surface of the device is white, bright red, bright  
145 orange, bright yellow, bright green, bright blue, bright pink, or in any pattern, as provided by federal regulations  
146 governing imitation firearms, or where the entire device is constructed of transparent or translucent materials  
147 which permits unmistakable observation of the device's complete contents, as provided by federal regulations  
148 governing imitation firearms.

#### SYNOPSIS

This Bill rewrites the current Delaware law relating to weapons and dangerous instruments on school grounds, greatly expanding, clarifying and defining the types of weapons sought to be controlled.