

# Delaware State Firearms Laws

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The information provided here is intended to give you a good starting point on the topic of open and concealed carry of a firearm in Delaware and where to look for authoritative information on same. The compiler of this document is not a lawyer, nor does he play one on television. For definitive information, hire an attorney Also, visit: <http://deloc.org>

**Compiled by  
Rob Wiltbank**

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# Delaware Firearms Law

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## Delaware State Constitution

### § 20. Right to keep and bear arms.

A person has the right to keep and bear arms for the defense of self, family, home and State, and for hunting and recreational use.

### § 20 Annotations

**Burden of proving right to carry a concealed deadly weapon.** - Although Del. Const. art. I, § 20 confirmed the constitutional right to keep and bear arms, 11 Del.C. § 1441 denied any person the right to carry a concealed deadly weapon without a license to do so; consequently, the trial court did not err in imposing on defendant the burden to prove a license to carry a concealed weapon. *Smith v. State*, - A.2d - (Del. Aug. 17, 2005).

## Delaware State Law

### Title 9, Part I, Chapter 3, Subchapter II. County Governments

#### County Firearms Preemption

### § 330. General powers and duties.

(c) The county governments shall enact no law or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated; provided any law, ordinance or regulation incorporates the justification defenses as found in Title 11 of the Delaware Code.

### Title 11, Part I, Chapter 2. General Provisions Concerning Offenses

### § 202. All offenses defined by statute.

(a) No conduct constitutes a criminal offense unless it is made a criminal offense by this Criminal Code or by another law.

(b) This section does not affect the power of a court to punish for civil contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

### § 222. General definitions.

(4) "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury, or any disabling chemical spray, as defined in subdivision (6) of this section.

(5) "Deadly weapon" includes a firearm, as defined in subdivision (11) of this section, a bomb, a knife of any sort (other than an ordinary pocketknife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain or ice pick or any dangerous instrument, as defined in subdivision (4) of this section, which is used, or attempted to be used, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocketknife shall be a folding knife having a blade not more than 3 inches in length.

(6) "Disabling chemical spray" includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in the air, or any canister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

(11) "Firearm" includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. It does not include a BB gun.

(15) "Lawful" means in accordance with law or, where the context so requires, not prohibited by law.

#### **§ 231. Definitions relating to state of mind.**

(a) "Intentionally". A person acts intentionally with respect to an element of an offense when:

(1) If the element involves the nature of the person's conduct or a result thereof, it is the person's conscious object to engage in conduct of that nature or to cause that result; and

(2) If the element involves the attendant circumstances, the person is aware of the existence of such circumstances or believes or hopes that they exist.

(b) "Knowingly". A person acts knowingly with respect to an element of an offense when:

(1) If the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that the conduct is of that nature or that such circumstances exist; and

(2) If the element involves a result of the person's conduct, the person is aware that it is practically certain that the conduct will cause that result.

(c) "Recklessly". A person acts recklessly with respect to an element of an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

(d) "Criminal negligence". A person acts with criminal negligence with respect to an element of an offense when the person fails to perceive a risk that the element exists or will result from the conduct.

The risk must be of such a nature and degree that failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(e) "Negligence". A person acts with negligence with respect to an element of an offense when the person fails to exercise the standard of care which a reasonable person would observe in the situation.

## **Title 11, Part I, Chapter 4. Defenses to Criminal Liability**

### **§ 464. Justification - Use of force in self-protection.**

(a) The use of force upon or toward another person is justifiable when the defendant believes that such force is immediately necessary for the purpose of protecting the defendant against the use of unlawful force by the other person on the present occasion.

(b) Except as otherwise provided in subsections (d) and (e) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as the person believes them to be when the force is used, without retreating, surrendering possession, doing any other act which the person has no legal duty to do or abstaining from any lawful action.

(c) The use of deadly force is justifiable under this section if the defendant believes that such force is necessary to protect the defendant against death, serious physical injury, kidnapping or sexual intercourse compelled by force or threat.

(d) The use of force is not justifiable under this section to resist an arrest which the defendant knows or should know is being made by a peace officer, whether or not the arrest is lawful.

(e) The use of deadly force is not justifiable under this section if:

(1) The defendant, with the purpose of causing death or serious physical injury, provoked the use of force against the defendant in the same encounter; or

(2) The defendant knows that the necessity of using deadly force can be avoided with complete safety by retreating, by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that the defendant abstain from performing an act which the defendant is not legally obligated to perform except that:

a. The defendant is not obliged to retreat in or from the defendant's dwelling; and

b. The defendant is not obliged to retreat in or from the defendant's place of work, unless the defendant was the initial aggressor; and

c. A public officer justified in using force in the performance of the officer's duties, or a person justified in using force in assisting an officer or a person justified in using force in making an arrest or preventing an escape, need not desist from efforts to perform the duty or make the arrest or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.

### *§464 Annotations*

**Subsection (a) must be read in the light of § 307(a) of this title.** *Coleman v. State*, 320 A.2d 740 (Del. 1974). Text provided here:

§ 307. Jury inference of defendant's intention, recklessness, knowledge or belief.

(a) The defendant's intention, recklessness, knowledge or belief at the time of the offense for which the defendant is charged may be inferred by the jury from the circumstances surrounding the act the defendant is alleged to have done. In making the inference permitted by this section, the jury may consider whether a reasonable person in the defendant's circumstances at the time of the offense would have had or lacked the requisite intention, recklessness, knowledge or belief.

**Person attacked is under duty to retreat.** - If the deceased first attacked the accused, even though the attack was of such character as to create in the mind of the accused a reasonable belief of danger of death or great bodily harm, it was the accused's duty to retreat, if the accused could safely do so, or to use such other reasonable means as were within the accused's power to avoid killing the assailant. *State v. Reese*, 25 Del. 434, 79 A. 217 (1911); *State v. Lee*, 36 Del. 11, 171 A. 195 (1933).

**But retreat is unnecessary when one is in one's own dwelling.** - When one is in one's own habitation or dwelling place, and is there violently attacked by one who intends to kill the person or do the person some grievous bodily harm, the person need not take any steps to get out of the attacker's way. *State v. Talley*, 14 Del. 417, 33 A. 181 (1886).

When a person is assailed within one's own dwelling house, a person need not retreat, but may make a stand there, even though retreat with safety is possible. *State v. Mills*, 22 Del. 497, 69 A. 841 (1908).

**Essential element is subjective belief of defendant.** - In a claim for self-defense, the essential element is whether the defendant subjectively believed the use of force was necessary for protection, and not whether the victim acted in conformity with a character trait of aggressiveness. *Tice v. State*, 624 A.2d 399 (Del. 1993).

**Reasonable belief is not required;** all that is relevant to the actor's guilt is whether the actor honestly believed it necessary to use force in self-defense. *Moor v. Licciardello*, 463 A.2d 268 (Del. 1983).

**The law of self-defense supposes that the attack was unexpected** by the slayer; for if, in case of combat, the slayer went into it voluntarily, expected to meet an opponent, and prepared beforehand with the means to contend with the opponent, the conflict cannot be distinguished from that of a duel, where, if one party is killed, the other is guilty of murder. *State v. Talley*, 14 Del. 417, 33 A. 181 (1886).

**Law does not recognize right to revenge.** - The law recognizes the right of self-defense for the purpose of preventing, but not of revenging, an injury to the person. *State v. Short*, 25 Del. 491, 82 A. 239 (1911); *Lane v. State*, 222 A.2d 263 (Del. 1966).

**Self-defense is not available to one who deliberately provokes the difficulty** that makes the killing necessary. *Quillen v. State*, 49 Del. 114, 110 A.2d 445.

One who kills another, to be justified or excused on the ground of self-defense, must have been without fault in provoking the difficulty and must not have been the aggressor and must not have provoked, brought on, or encouraged the difficulty or produced the occasion which made it necessary to kill. *State v. Stevenson*, 38 Del. 105, 188 A. 750 (1936).

**Mere words or threats, however offensive, will never justify even a slight assault.** *State v. Roe*, 30 Del. 95, 103 A. 16 (1918).

No looks or gestures, however insulting, and no words, however offensive they may be, can amount in law to a provocation sufficient to justify an assault. *State v. Stevenson*, 38 Del. 105, 188 A. 750 (1936).

**Person in danger may strike first blow.** - The law accords to everyone the right to protect one's person from assault and injury by opposing force to force, and one is not obliged to wait until struck by an impending blow; for if a weapon be raised in order to shoot or strike, or the danger of other personal violence be imminent, one in such danger may protect oneself by striking the first blow for the purpose of repelling and preventing the attempted injury. *State v. McKinney*, 28 Del. 128, 90 A. 1067 (1914).

If a weapon be raised to shoot or strike, or the danger of other personal violence be imminent, the person in such danger may protect their person by striking the first blow, but only for the purpose of repelling and preventing the attempted injury. *State v. Stevenson*, 38 Del. 105, 188 A. 750 (1936).

**Degree of force.** - In repelling or resisting an assault no more force may be used than is necessary for the purpose, and if the person assailed uses in self-defense greater force than is necessary, the person becomes the aggressor. *State v. Honey*, 22 Del. 148, 65 A. 764 (1906); *State v. Reese*, 25 Del. 434, 79 A. 217 (1911); *State v. Short*, 25 Del. 491, 82 A. 239 (1911); *State v. Creste*, 27 Del. 118, 86 A. 214 (1913); *State v. McKinney*, 28 Del. 128, 90 A. 1067 (1914); *State v. Stevenson*, 38 Del. 105, 188 A. 750 (1936).

A slight assault will not excuse or justify the killing of the assailant with a deadly weapon. *State v. Reese*, 25 Del. 434, 79 A. 217 (1911).

A slight assault will not justify a person in using more force or violence than is necessary to protect the person from bodily harm. *State v. Roe*, 30 Del. 95, 103 A. 16 (1918).

Delaware's self-protection within a dwelling defense required that an occupant be placed in immediate peril, at the time of the use of deadly force, and did not apply where the intruder was totally subdued, and was pleading with defendants to stop attacking; although having no duty to retreat, under subdivision (e)(2) of this section, 11 Del.C. § 469 did not grant the occupant of a dwelling a license to kill. *Warrington v. State*, 818 A.2d 151 (Del. 2003).

#### **§ 465. Same - Use of force for the protection of other persons.**

(a) The use of force upon or toward the person of another is justifiable to protect a third person when:

(1) The defendant would have been justified under § 464 of this title in using such force to protect the defendant against the injury the defendant believes to be threatened to the person whom the defendant seeks to protect; and

(2) Under the circumstances as the defendant believes them to be, the person whom the defendant seeks to protect would have been justified in using such protective force; and

(3) The defendant believes that intervention is necessary for the protection of the other person.

(b) Although the defendant would have been obliged under § 464 of this title to retreat, to surrender the possession of a thing or to comply with a demand before using force in self-protection, there is no obligation to do so before using force for the protection of another person, unless the defendant knows that the defendant can thereby secure the complete safety of the other person.

(c) When the person whom the defendant seeks to protect would have been obliged under § 464 of this title to retreat, to surrender the possession of a thing or to comply with a demand if the person knew that the person could obtain complete safety by so doing, the defendant is obliged to try to cause the person to do so before using force in the person's protection if the actor knows that complete safety can be secured in that way.

(d) Neither the defendant nor the person whom the defendant seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in their own.

#### **§ 466. Same - Use of force for the protection of property.**

(a) The use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary:

(1) To prevent the commission of criminal trespass or burglary in a building or upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

(2) To prevent entry upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

(3) To prevent theft, criminal mischief or any trespassory taking of tangible, movable property in the defendant's possession or in the possession of another person for whose protection the defendant acts.

(b) The defendant may in the circumstances named in subsection (a) of this section use such force as the defendant believes is necessary to protect the threatened property, provided that the defendant first requests the person against whom force is used to desist from interference with the property, unless the defendant believes that:

- (1) Such a request would be useless; or
- (2) It would be dangerous to the defendant or another person to make the request; or
- (3) Substantial harm would be done to the physical condition of the property which is sought to be protected before the request could effectively be made.

(c) The use of deadly force for the protection of property is justifiable only if the defendant believes that:

- (1) The person against whom the force is used is attempting to dispossess the defendant of the defendant's dwelling otherwise than under a claim of right to its possession; or
- (2) The person against whom the deadly force is used is attempting to commit arson, burglary, robbery or felonious theft or property destruction and either:
  - a. Had employed or threatened deadly force against or in the presence of the defendant; or
  - b. Under the circumstances existing at the time, the defendant believed the use of force other than deadly force would expose the defendant, or another person in the defendant's presence, to the reasonable likelihood of serious physical injury.

(d) Where a person has used force for the protection of property and has not been convicted for any crime or offense connected with that use of force, such person shall not be liable for damages or be otherwise civilly liable to the one against whom such force was used.

#### ***§466 Annotations***

**Retreat unnecessary where one is in own dwelling.** - When one is in one's own habitation or dwelling place, and is there violently attacked by one who intends to kill the person or do the person some grievous bodily harm, the person need not take any steps to get out of the attacker's way. *State v. Talley*, 14 Del. 417, 33 A. 181 (1886).

When a person is assailed within one's own dwelling house, a person need not retreat, but may make a stand there, even though retreat with safety is possible. *State v. Mills*, 22 Del. 497, 69 A. 841 (1908).

**Entry upon land does not warrant incommensurably violent response.** - A forcible entry onto a tract of land, by opening a closed gate, or pulling down fence bars, or cutting through a hedge or breaking a wall, as it does not denote of itself an intention to do any act of personal violence, does not warrant the possessor in resorting to any violence to expel the intruder incommensurate with or out of just proportion to that used or threatened. The law furnishes an adequate remedy for this offense. *State v. Talley*, 14 Del. 417, 33 A. 181 (1886).

Where the trespass of the wrongdoer is not to the habitation or dwelling, but upon or to the land only, the law states that before the possessor can use any violence to the trespasser - much less resort to a deadly weapon - the possessor must, if the possessor wishes to get rid of the wrongdoer, endeavor to

do so by the use of gentle means, such as persuasion or moderate application of force. Should resistance be offered, the possessor has the right to oppose that resistance and use sufficient force to overcome it, but never resort to the use of a deadly or dangerous weapon until it is absolutely necessary to defend one's person against such in the hands of the wrongdoer. *State v. Talley*, 14 Del. 417, 33 A. 181 (1886).

## **Title 11, Part I, Chapter 5, Subchapter VII. Crimes Against Public Health, Order and Decency**

### **§ 1301. Disorderly conduct; unclassified misdemeanor.**

A person is guilty of disorderly conduct when:

(1) The person **intentionally** causes public inconvenience, annoyance or alarm to any other person, or creates a risk thereof by:

- a. Engaging in fighting or in violent, tumultuous or threatening behavior; or
- b. Making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language to any person present; or
- c. Disturbing any lawful assembly or meeting of persons without lawful authority; or
- d. Obstructing vehicular or pedestrian traffic; or
- e. Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse; or
- f. Creating a hazardous or physically offensive condition which serves **no legitimate purpose**; or
- g. Congregating with other persons in a public place while wearing masks, hoods or other garments rendering their faces unrecognizable, for the purpose of and in a manner likely to imminently subject any person to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States of America.

(2) The person engages with at least 1 other person in a course of disorderly conduct as defined in subdivision (1) of this section which is likely to cause substantial harm or serious inconvenience, annoyance or alarm, and refuses or knowingly fails to obey an order to disperse made by a peace officer to the participants.

### **§ 1301 Annotations**

**Expression "public place" is not restricted in its scope to places of public gatherings**, but extended to all places that are public in contradistinction to places that are purely private. *Lofland v. State*, 26 Del. 333, 83 A. 1033 (1912).

**Swearing at a police officer.** - Person lawfully being questioned by a police officer who directs the phrase "son-of-a-bitch" at the police officer in the presence of others can reasonably be found to have created a risk of public annoyance or alarm. *Johnson v. Campbell*, 215 F. Supp. 2d 423 (D. Del. 2002).

**§ 1441. License to carry concealed deadly weapons.**

(a) A person of full age and good moral character desiring to be licensed to carry a concealed deadly weapon for personal protection or the protection of the person's property may be licensed to do so when the following conditions have been strictly complied with:

(1) The person shall make application therefor in writing and file the same with the Prothonotary of the proper county, at least 15 days before the then next term of the Superior Court, clearly stating that the person is of full age and that the person is desirous of being licensed to carry a concealed deadly weapon for personal protection or protection of the person's property, or both, and also stating the person's residence and occupation. The person shall submit together with such application all information necessary to conduct a criminal history background check. The Superior Court may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any person pursuant to this section.

(2) At the same time the person shall file, with the Prothonotary, a certificate of 5 respectable citizens of the county in which the applicant resides at the time of filing the application. The certificate shall clearly state that the applicant is a person of full age, sobriety and good moral character, that the applicant bears a good reputation for peace and good order in the community in which the applicant resides, and that the carrying of a concealed deadly weapon by the applicant is necessary for the protection of the applicant or the applicant's property, or both. The certificate shall be signed with the proper signatures and in the proper handwriting of each such respectable citizen.

(3) Every such applicant shall file in the office of the Prothonotary of the proper county the application verified by oath or affirmation in writing taken before an officer authorized by the laws of this State to administer the same, and shall under such verification state that the applicant's certificate and recommendation were read to or by the signers thereof and that the signatures thereto are in the proper and genuine handwriting of each. Prior to the issuance of an initial license the person shall also file with the Prothonotary a notarized certificate signed by an instructor or authorized representative of a sponsoring agency, school, organization or institution certifying that the applicant: (i) has completed a firearms training course which contains at least the below described minimum elements; and (ii) is sponsored by a federal, state, county or municipal law enforcement agency, a college, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The firearms training, course shall include the following elements:

- a. Instruction regarding knowledge and safe handling of firearms;

- b. Instruction regarding safe storage of firearms and child safety;
- c. Instruction regarding knowledge and safe handling of ammunition;
- d. Instruction regarding safe storage of ammunition and child safety;
- e. Instruction regarding safe firearms shooting fundamentals;
- f. Live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition;
- g. Identification of ways to develop and maintain firearm shooting skills;
- h. Instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms;
- i. Instruction regarding the laws of this State pertaining to the use of deadly force for self defense; and
- j. Instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

(4) At the time the application is filed, the applicant shall pay a fee of \$65 to the Prothonotary issuing the same.

(5) The license issued upon initial application shall be valid for 3 years. On or before the date of expiration of such initial license, the licensee, without further application, may renew the same for the further period of 5 years upon payment to the Prothonotary of a fee of \$65, and upon filing with said Prothonotary an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for personal protection or protection of the person's property, or both, and that the person possesses all the requirements for the issuance of a license and may make like renewal every 5 years thereafter; provided, however, that the Superior Court, upon good cause presented to it, may inquire into the renewal request and deny the same for good cause shown. No requirements in addition to those specified in this paragraph may be imposed for the renewal of a license.

(b) The Prothonotary of the county in which any applicant for a license files the same shall cause notice of every such application to be published once, at least 10 days before the next term of the Superior Court. The publication shall be made in a newspaper of general circulation published in the county. In making such publication it shall be sufficient for the Prothonotary to do the same as a list in alphabetical form stating therein simply the name and residence of each applicant respectively.

(c) The Prothonotary of the county in which the application for license is made shall lay before the Superior Court, at its then next term, all applications for licenses, together with the certificate and recommendation accompanying the same, filed in the Prothonotary's office, on the 1st day of such application.

(d) The Court may or may not, in its discretion, approve any application, and in order to satisfy the Judges thereof fully in regard to the propriety of approving the same, may receive remonstrances and hear evidence and arguments for and against the same, and establish general rules for that purpose.

(e) If any application is approved, as provided in this section, the Court shall endorse the word "approved" thereon and sign the same with the date of approval. If not approved, the Court shall endorse the words "not approved" and sign the same. The Prothonotary, immediately after any such application has been so approved, shall notify the applicant of such approval, and following receipt of the notarized certification of satisfactory completion of the firearms training course requirement as set forth in paragraph (a)(3) of this section above shall issue a proper license, signed as other state licenses are, to the applicant for the purposes provided in this section and for a term to expire on June 1 next succeeding the date of such approval.

(f) The Secretary of State shall prepare blank forms of license to carry out the purposes of this section, and shall issue the same as required to the several Prothonotaries of the counties in this State. The Prothonotaries of all the counties shall affix to the license, before lamination, a photographic representation of the licensee.

(g) The provisions of this section do not apply to the carrying of the usual weapon by the police or other peace officers.

(h) Notwithstanding any provision to the contrary, anyone retired as a police officer, as "police officer" is defined by § 1911 of this title, who is retired after having served at least 20 years in any law-enforcement agency within this State, or who is retired and remains currently eligible for a duty-connected disability pension, may be licensed to carry a concealed deadly weapon for the protection of that retired police officer's person or property after that retired police officer's retirement, if the following conditions are strictly complied with:

(1) If that retired police officer applies for the license within 90 days of the date of that retired police officer's retirement, the retired police officer shall pay a fee of \$65 to the Prothonotary in the county where that retired police officer resides and present to the Prothonotary both:

a. A certification from the Attorney General's office, in a form prescribed by the Attorney General's office, verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; and

b. A letter from the chief of the retired officer's agency verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; or

(2) If that retired police officer applies for the license more than 90 days, but within 20 years, of the date of that retired police officer's retirement, the retired police officer shall pay a fee of \$65 to the Prothonotary in the county where the retired police officer resides and present to the

Prothonotary certification forms from the Attorney General's office, or in a form prescribed by the Attorney General's office, that:

- a. The retired officer is in good standing with the law-enforcement agency from which that retired police officer is retired;
- b. The retired officer's criminal record has been reviewed and that the retired police officer has not been convicted of any crime greater than a violation since the date of the retired police officer's retirement; and
- c. The retired officer has not been committed to a psychiatric facility since the date of the retired police officer's retirement.

(i) Notwithstanding anything contained in this section to the contrary, an adult person who, as a successful petitioner seeking relief pursuant to Part D, subchapter III of Chapter 9 of Title 10, has caused a protection from abuse order containing a firearms prohibition authorized by § 1045(a)(8) of Title 10 or a firearms prohibition pursuant to § 1448(a)(6) of this title to be entered against a person for alleged acts of domestic violence as defined in § 1041 of Title 10, shall be deemed to have shown the necessity for a license to carry a deadly weapon concealed for protection of themselves pursuant to this section. In such cases, all other requirements of subsection (a) of this section must still be satisfied.

(j) Notwithstanding any other provision of this Code to the contrary, the State of Delaware shall give full faith and credit and shall otherwise honor and give full force and effect to all licenses/permits issued to the citizens of other states where those issuing states also give full faith and credit and otherwise honor the licenses issued by the State of Delaware pursuant to this section and where those licenses/permits are issued by authority pursuant to state law and which afford a reasonably similar degree of protection as is provided by licensure in Delaware. For the purpose of this subsection "reasonably similar" does not preclude alternative or differing provisions nor a different source and process by which eligibility is determined. Notwithstanding the forgoing, if there is evidence of a pattern of issuing licenses/permits to convicted felons in another state, the Attorney General shall not include that state under the exception contained in this subsection even if the law of that state is determined to be "reasonably similar." The Attorney General shall communicate the provisions of this section to the Attorneys General of the several states and shall determine those states whose licensing/permit systems qualify for recognition under this section. The Attorney General shall publish on January 15th of each year a list of all States which have qualified for reciprocity under this subsection. Such list shall be valid for one year and any removal of a State from the list shall not occur without 1 year's notice of such impending removal. Such list shall be made readily available to all State and local law-enforcement agencies within the State as well as to all then-current holders of licenses issued by the State of Delaware pursuant to this Section.

(k) The Attorney General shall have the discretion to issue, on a limited basis, a temporary license to carry concealed a deadly weapon to any individual who is not a resident of this State and whom the Attorney General determines has a short-term need to carry such a weapon within this State in conjunction with that individual's employment for the protection of person or property. Said temporary license shall automatically expire 30 days from the date of issuance and shall not be subject to renewal,

and must be carried at all times while within the State. However, nothing contained herein shall prohibit the issuance of a 2nd or subsequent temporary license. The Attorney General shall have the authority to promulgate and enforce such regulations as may be necessary for the administration of such temporary licenses. No individual shall be issued more than 3 temporary licenses.

(l) All applications for a temporary license to carry a concealed deadly weapon made pursuant to subsection (k) of this section shall be in writing and shall bear a notice stating that false statements therein are punishable by law.

(m) Notwithstanding any other law or regulation to the contrary, any license issued pursuant to this section shall be void, and is automatically repealed by operation of law, if the licensee is or becomes prohibited from owning, possessing or controlling a deadly weapon as specified in § 1448 of this title. § 1441.

### **§ 1441. Annotations**

**License limited to Delaware residents.** - In adopting this section the General Assembly intended to limit eligibility to carry a concealed weapon to residents of Delaware. In re Ware, 474 A.2d 131 (Del. 1984).

**Authority of Superior Court.** - In considering applications for permits to carry concealed weapons, the Superior Court is engaging in an administrative function delegated by the General Assembly, which does not involve the resolution of disputes between private parties in the first instance nor does the exercise of judicial authority in such instances resolve controversies between litigants; the gun permit proceeding is essentially ex parte and discretionary, although the Superior Court "may" receive evidence in opposition to the application, and the statute fixes no standard for the granting or denial of an application. In re Buresch, 672 A.2d 64 (Del. 1996).

**Appeal from Superior Court ruling.** - There is no right of appeal to the Supreme Court from a discretionary Superior Court ruling denying renewal of license to carry a concealed deadly weapon. In re Wolynetz, 545 A.2d 1194 (Del. 1988).

A judicial ruling on a license application is not considered a judgment entered in a civil cause for the purposes of appellate review. In re Buresch, 672 A.2d 64 (Del. 1996).

In the absence of the exercise of a judicial function by the Superior Court in ruling on an application for a permit, the Supreme Court lacks the power to review. In re Buresch, 672 A.2d 64 (Del. 1996).

**State must demonstrate good cause to deny renewal.** - At a hearing scheduled upon a renewal, the initial burden shall be upon the State to demonstrate "good cause" why the renewal should not be approved. The petitioner then would be entitled to rebut that evidence. In re McIntyre, 552 A.2d 500 (Del. Super. Ct. 1988).

Where a renewal is pending before the court, such renewal will be approved unless good cause is presented which will justify further inquiry into the renewal. In re McIntyre, 552 A.2d 500 (Del. Super. Ct. 1988).

**Burden of proving right to carry a concealed deadly weapon.** - Although Del. Const. art. I, § 20 confirmed the constitutional right to keep and bear arms, 11 Del.C. § 1441 denied any person the right to carry a concealed deadly weapon without a license to do so; consequently, the trial court did not err in imposing on defendant the burden to prove a license to carry a concealed weapon. *Smith v. State*, - A.2d - (Del. Aug. 17, 2005).

**§ 1442. Carrying a concealed deadly weapon; class G felony; class D felony.**

A person is guilty of carrying a concealed deadly weapon when the person carries concealed a deadly weapon upon or about the person without a license to do so as provided by § 1441 of this title.

Carrying a concealed deadly weapon is a class G felony, unless the deadly weapon is a firearm, in which case it is a class D felony.

It shall be a defense that the defendant has been issued an otherwise valid license to carry a concealed deadly weapon pursuant to terms of § 1441 of this title, where:

- (1) The license has expired,
- (2) The person had applied for renewal of said license within the allotted time frame prior to expiration of the license, and
- (3) The offense is alleged to have occurred while the application for renewal of said license was pending before the court.

**Cross references.** - As to searching questioned person for weapons, see § 1903 of this title.

**§ 1442. Annotations**

**Purpose.** - The object of this section is to prevent the carrying of concealed deadly weapons about the person, because persons becoming suddenly angered, and having such a weapon in their pocket, would be likely to use it, which in their sober moments they would not have done, and which could not have been done had not the weapon been upon their person. *State v. Chippey*, 14 Del. 583, 33 A. 438 (1892).

Legislative purpose behind this section, originally and presently, seems to be the avoidance of a deadly attack against another by surprise. *Dubin v. State*, 397 A.2d 132 (Del. 1979).

Purpose of the General Assembly in enacting this section was to remove the "temptation and tendency" to use concealed deadly weapons under conditions of "excitement." *Dubin v. State*, 397 A.2d 132 (Del. 1979).

**It is quite immaterial whether a revolver is loaded or not**, because such an instrument is commonly regarded as a deadly weapon without regard to its condition. If the absence of bullets would make the weapon a harmless one, then any condition that would prevent its being used at the time injuriously would have a like effect. *State v. Quail*, 28 Del. 310, 92 A. 859 (1914).

**Whether concealed deadly weapon may be deemed to be "about" the person** should be determined by considering the immediate availability and accessibility of the weapon to the person, which is a factual question. *Dubin v. State*, 397 A.2d 132 (Del. 1979).

**Factors determinative of accessibility.** - Three factors are to be considered by the fact-finder in deciding the issue of whether a deadly weapon was accessible to the defendant and, hence, "about the person": (1) Would the defendant have to appreciably change position in order to reach the weapon? (2) could the defendant reach the weapon while driving? and (3) how long would it take for a defendant to reach the weapon, if the defendant were provoked? *Dubin v. State*, 397 A.2d 132 (Del. 1979).

**Pistol in glove compartment.** - The factual question of whether a pistol in a glove compartment of the automobile being driven by a defendant is "about the person" must be determined by a finding of whether the gun is available and accessible to a defendant for immediate use. *Dubin v. State*, 397 A.2d 132 (Del. 1979).

**"Concealed" weapon may be in "plain view" of police officer.** - A weapon may be "concealed" within the meaning of this section, and still be in "plain view" for purposes of the search and seizure doctrine. *Robertson v. State*, 794 A.2d 267 (Del. 1997).

A weapon is "concealed" if it is hidden from the ordinary sight of another person, i.e., the casual and ordinary observation of another in the normal associations of life; however, since "ordinary observations" are not the same as the observations of an investigating police officer, a weapon concealed from an ordinary person may be in the plain view of a police officer. *Robertson v. State*, 794 A.2d 267 (Del. 1997).

**Knowledge of presence of weapon and control over it may be proved by circumstantial evidence.** *Ross v. State*, 232 A.2d 97 (Del. 1967).

Possession of revolver shells, coupled with the presence of the revolver directly under the part of the seat where defendant had been sitting, is sufficient to justify the finding of possession of a concealed deadly weapon. *Ross v. State*, 232 A.2d 97 (Del. 1967).

**That weapon was carried only in defendant's house held no defense.** - It was no defense to a prosecution for carrying a concealed deadly weapon that defendant only carried the weapon in the defendant's house. *State v. Gagliota*, 32 Del. 360, 123 A. 183 (1923).

**Burden of proving concealment.** - Since an element of this offense is concealment by the defendant of a deadly weapon "on or about the person," the State must prove this element beyond a reasonable doubt. *Dubin v. State*, 397 A.2d 132 (Del. 1979).

**The burden is upon the accused to establish that accused had a license to carry a concealed deadly weapon.** *Modesto v. State*, 258 A.2d 287 (Del. Super. Ct. 1969).

If accused had a license, it was peculiarly within the accused's knowledge and was a matter of defense; the prosecution need neither allege nor prove that the accused had no license to carry concealed a deadly weapon. *State v. Sockum*, 29 Del. 350, 99 A. 833 (1917).

In a prosecution under this section, the burden is upon the defendant to establish that the defendant had a license to carry a concealed deadly weapon. This rule is based upon the practical consideration that possession of a license is best viewed as a defense to a charge of carrying a concealed deadly weapon, since it is a matter more immediately within the knowledge of the defendant, and more readily proven by the defendant. *Lively v. State*, 427 A.2d 882 (Del. 1981).

It was not for an accused to require the State to prove that defendant was licensed to carry such weapons - it was a matter of defense. *State v. Holland*, 55 Del. 565, 189 A.2d 79.

**State must prove intent.** - Where neither this section nor § 1448 of this title prescribes any state of mind as an element of the crime, the State, under § 251(b) of this title, must prove intent, knowledge or recklessness. *Upshur v. State*, 420 A.2d 165 (Del. 1980).

#### **§ 1443. Carrying a concealed dangerous instrument; class A misdemeanor.**

(a) A person is guilty of carrying a concealed dangerous instrument when the person carries concealed a dangerous instrument upon or about the person.

(b) **It shall be a defense that the defendant was carrying the concealed dangerous instrument for a specific lawful purpose and that the defendant had no intention** of causing any physical injury or threatening the same.

(c) For the purposes of this section, **disabling chemical spray, as defined in § 222 of this title, shall not be considered to be a dangerous instrument.**

(d) Carrying a concealed dangerous instrument is a class A misdemeanor.

#### **§ 1451. Theft of a firearm; class F felony.**

(a) A person is guilty of theft of a firearm when the person takes, exercises control over or obtains a firearm of another person intending to deprive the other person of it or appropriate it.

(b) Theft of a firearm is a class F felony.

#### **§ 1454. Giving a firearm to person prohibited; class F felony.**

A person is guilty of giving a firearm to certain persons prohibited when the person sells, transfers, gives, lends or otherwise furnishes a firearm to a person knowing that said person is a person prohibited as is defined in § 1448 of this title.

Giving a firearm to certain persons prohibited is a class F felony.

#### **§ 1456. Unlawfully permitting a minor access to a firearm; class A misdemeanor.**

(a) A person is guilty of unlawfully permitting a minor access to a firearm when the person intentionally or recklessly stores or leaves a loaded firearm within the reach or easy access of a minor and where the

minor obtains the firearm and uses it to inflict serious physical injury or death upon the minor or any other person.

(b) It shall be an affirmative defense to a prosecution under this section if:

- (1) The firearm was stored in a locked box or container or in a location which a reasonable person would have believed to be secure from access to a minor; or
- (2) The minor obtains the firearm as the result of an unlawful entry by any person; or
- (3) The serious physical injuries or death to the minor or any other person results from a target or sport shooting accident or hunting accident.

(c) Unlawfully permitting a minor access to a firearm is a class A misdemeanor.

**§ 1457. Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F: 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 in a Safe School and Recreation Zone.

(b) The underlying offenses in Title 11 shall be:

- (1) Section 1442. Carrying a concealed deadly weapon; class G felony; class E felony.
- (2) Section 1444. Possessing a destructive weapon; class E felony.
- (3) Section 1446. Unlawfully dealing with a switchblade knife; unclassified misdemeanor.
- (4) Section 1448. Possession and purchase of deadly weapons by persons prohibited; class F felony.
- (5) Section 1452. Unlawfully dealing with knuckles-combination knife; class B misdemeanor.
- (6) Section 1453. Unlawfully dealing with martial arts throwing star; class B misdemeanor.

(c) For the purpose of this section, "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

(3) 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.

(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 of possession of a weapon in a Safe School and Recreation Zone and of the underlying offense 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 and Recreation Zone.

(f) It shall be an affirmative defense to a prosecution for a violation of this section that the weapon was possessed pursuant to an authorized course of school instruction, or for the purpose of engaging in any legitimate sporting or recreational activity. 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.

(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.

(h) This section shall not apply to any law enforcement or police officer, or to any security officer as defined in Chapter 13 of Title 24.

(i) For purposes of this section only, "deadly weapon" shall include any object described in § 222(6) or § 222(11) of this title or BB guns.

(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) In the event that an elementary or secondary school student possesses a firearm or other deadly weapon 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.

**§ 1460. Possession of a firearm while under the influence.**

(a) A person is guilty of possession of a firearm while under the influence of alcohol or drugs when the person possesses a firearm in a public place while under the influence of alcohol or drugs. It shall be an affirmative defense to prosecution under this section that, the firearm was not readily operable, or that the person was not in possession of ammunition for the firearm. The Superior Court shall have original and exclusive jurisdiction over a violation of this section.

(b) For purposes of this section, the following definitions shall apply:

(1) "Not readily operable" means that the firearm is disassembled, broken down, or stored in a manner to prevent its immediate use.

(2) "Possess," "possession" or "possesses" means that the person has the item under his or her dominion and authority, and that said item is at the relevant time physically available and accessible to the person.

(3) "Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds, restaurants, bars, taverns, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

(4) "Under the influence of alcohol or drugs" means:

a. Having an amount of alcohol in a sample of the person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood, or an amount of alcohol in a sample of breath equivalent to .08 or more grams per 210 liters of breath. A person shall be guilty, without regard to the person's alcohol concentration at the time of possession of a firearm in violation thereof, if such person's alcohol concentration is .08 or more within 4 hours after the person was found to be in possession of a firearm, and that alcohol concentration is the result of an amount of alcohol present in, or consumed by such person when that person was in possession of a firearm; or

b. Being manifestly under the influence of alcohol or any illicit or recreational drug, as defined in § 4177(c)(8) of Title 21, or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity, provided that no person shall be "under the influence of alcohol or drugs" for purposes of this section when the person has not used or consumed an illicit or recreational drug prior to or during an alleged violation, but has only used or consumed such drug after the person has allegedly violated this section and only such use or consumption after such alleged violation caused the person's blood to contain an amount of alcohol or drug or an

amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of the alleged violation thereof.

(c) A law-enforcement officer who has probable cause to believe that a person has violated this section may, with or without the consent of the person, take reasonable steps to conduct chemical testing to determine the person's alcohol concentration or the presence of illicit or recreational drugs. A person's refusal to submit to chemical testing shall be admissible in any trial arising from a violation of this section.

(d)(1) Except as provided in paragraph (d)(2) of this section, possession of a firearm while under the influence is a class A misdemeanor.

(2) Possession of a firearm while under the influence is a class G felony if the conviction is for an offense that was committed after a previous conviction for possession of a firearm while under the influence.

## **Title 11, Part II, Chapter 19, Subchapter I. Arrest and Commitment**

### **§ 1902. Questioning and detaining suspects.**

(a) A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.

(b) Any person so questioned who fails to give identification or explain the person's actions to the satisfaction of the officer may be detained and further questioned and investigated.

(c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

### **§ 1902 Annotations**

**Constitutionality.** - This section is constitutional. *De Salvatore v. State*, 52 Del. 550, 163 A.2d 244 (1960).

This section is clearly a reasonable exercise of the police power and is constitutional. *Cannon v. State*, 53 Del. 284, 168 A.2d 108 (1961).

**"Reasonable ground."** - Term "reasonable ground" as used in 11 Del.C. § 1902(a) has the same meaning as "reasonable and articulable suspicion;" a determination of reasonable suspicion must be evaluated in the context of the totality of the circumstances as viewed through the eyes of a reasonable, trained, police officer in the same or similar circumstances, combining objective facts with such an officer's subjective interpretation of those facts. *State v. Milianny-Ojeda*, - A.2d - (Del. Super. Ct. Feb. 18, 2004).

Defendant's stop, detention, and arrest were not without reasonable grounds under 11 Del.C. § 1902(a), U.S. Const., amend. 4, U.S. Const., amend. 14, and the Delaware Constitution as: (1) it was police procedure to call in a pedestrian stop when an officer was riding alone and exited the vehicle to speak to

citizens; (2) the officer did not immediately detain the individuals upon exiting the vehicle, but was merely continuing a conversation with defendant and defendant's companions when the officer learned that both of the companions were wanted on warrants/capiases; (3) it was not unreasonable for the officer to be concerned for safety at that point and to request a search; (4) the search was proper as defendant consented to be searched; and (5) an officer found four bags of illegal drugs on defendant. State v. W.L., - A.2d - (Del. Fam. Ct. Jan. 19, 2006).

**This section permits forcible detention.** Cannon v. State, 53 Del. 284, 168 A.2d 108 (1961).

**Detention must be in compliance with section.** - If a detention is indicated by the circumstances, there must be strict compliance with the express requirements of this section. State v. Bowden, 273 A.2d 481 (Del. 1971).

**The thrust of this section** is that a detention is authorized if a person fails to adequately give identification or, in a limited way, explain the person's actions. Buckingham v. State, 482 A.2d 327 (Del. 1984).

**Detention of defendant was unlawful** where there was no reasonable basis to suspect the defendant had committed, was committing or was about to commit a crime. State v. Wrightson, 391 A.2d 227 (Del. Super. Ct. 1978).

Although a police officer had reasonable suspicion that a crime had just occurred with respect to the women; because of the complaint and his observations as to their disheveled appearance, he saw no illegal activity by defendant that could warrant the intrusion of a stop. State v. Mitchell, - A.2d - (Del. Super. Ct. Nov. 27, 2001).

Police lacked reasonable suspicion to stop and search defendant's vehicle, as it was not sufficient that defendant was driving in an industrial area where a number of crimes had been reported, given that the arresting officer observed neither any potential criminal activity nor a traffic violation. State v. Perkins, - A.2d - (Del. Super. Ct. Sept. 16, 2002).

As police officers testified that the facts they possessed at the time of their stop of defendant did not provide a proper legal basis for detaining the defendant, and given that the record reflected that the police stopped defendant without first formulating the reasonable articulable suspicion of criminal activity which permitted such a stop, the Superior Court erroneously denied defendant's motion to suppress the physical evidence that was seized as a result of the illegal stop. Riley v. State, 892 A.2d 370 (Del. 2006).

**Probable cause to detain not established - seizure illegal.** - There was no reasonable and articulable suspicion of criminal activity and the seizure of cocaine was illegal where a police officer, based only on an anonymous 911 call that there was a "suspicious black male wearing a blue coat" in a particular vicinity, ordered the defendant to stop and remove his hands from his pockets. Jones v. State, 745 A.2d 856 (Del. 1999).

**Probable cause to detain established.** - Where the police officer was able to point to specifically articulable facts, or reasonable grounds, which gave rise to a suspicion that defendant had committed a crime, there was probable cause for the police to detain defendant. *Byrd v. State*, 458 A.2d 23 (Del. 1983).

Defendant's motion to suppress was denied where there was sufficient reasonable suspicion for the initial detention under this section, as well as sufficient probable cause under 11 Del.C. § 1904(b)(1) to effect an arrest within two hours of the detention. *Barrow v. State*, 749 A.2d 1230 (Del. 2000).

Where defendant was observed swerving across traffic lanes at least three times, and there was a strong smell of alcohol, the officers had reasonable articulable suspicion that the defendant was driving under the influence; therefore, the officers were justified in asking defendant if defendant had been drinking. *State v. Powell*, - A.2d - (Del. Super. Ct. June 4, 2002).

Probable cause to believe that defendant had in fact committed the crime in question developed where police officers who were investigating a robbery had a reasonable articulable suspicion based on defendant's description matching that of the perpetrator, defendant's evasive actions upon seeing the officers, that defendant gave the officers a fictitious name and that defendant had an outstanding robbery warrant; at that point, 11 Del.C. § 1902 was no longer controlling and a longer detention of 13 hours (until defendant confessed) was not improper. *Bunting v. State*, - A.2d - (Del. Oct. 5, 2004).

**Informant's tip as probable cause.** - Motion to suppress was partially denied where information provided by a confidential informant was found to be reliable, as the informant had provided past proven reliable information; since the informant's tip was sufficiently corroborated, there was at least reasonable articulable suspicion of criminal activity that warranted the police intrusion in the instant case. *State v. Giles*, - A.2d - (Del. Super. Ct. May 31, 2002), *aff'd*, 822 A.2d 396 (Del. 2003).

**Pat-down search held reasonable.** - It was reasonable to conduct a pat-down search of a person whose behavior made a police officer apprehensive for the officer's own safety, as long as the person searched was first detained pursuant to the requirements and consistent with the scope of this subchapter and as long as the officer possessed a reasonable belief that the detainee was armed and dangerous. *Hicks v. State*, 631 A.2d 6 (Del. 1993).

After a bus driver reported that a passenger acted suspiciously after being dropped off at a hospital, an investigatory stop and frisk of the passenger was appropriate. *Atamian v. Hawk*, - A.2d - (Del. Super. Ct. Nov. 26, 2002).

**Permissible scope of safety search exceeded.** - Although defendant's menacing conduct justified the initial detention, the officer's decision to reexamine the contents of the pouch seized from the defendant without articulating any reasonable basis to believe it contained a weapon exceeded the permissible scope of the safety search authorized under § 1903 of this title and *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). *Hicks v. State*, 631 A.2d 6 (Del. 1993).

**Standard of "reasonable ground to suspect" was intended as a lesser standard** than "probable cause to arrest." State v. Deputy, 433 A.2d 1040 (Del. 1981).

**Subsection (b) of this section makes clear that seizure contemplated may be investigatory.** State v. Deputy, 433 A.2d 1040 (Del. 1981).

**Subsection (c) of this section expressly contemplates that there may not be sufficient grounds to arrest the person detained.** State v. Deputy, 433 A.2d 1040 (Del. 1981).

**Race.** - The use of race as an identifying factor for detention or arrest may be legitimate when it is one among several factors suggestive of criminality. Coleman v. State, 562 A.2d 1171 (Del. 1989).

**Delaware Memorial Bridge guards have the right to detain and arrest.** De Salvatore v. State, 52 Del. 550, 163 A.2d 244 (1960).

**Evidence showing arrest rather than detention.** - Where a police officer stopped the defendant after observing the defendant driving in an erratic manner and swerving on the highway and took the defendant to the police station, the defendant was arrested rather than detained. State v. Klinehoffer, 53 Del. 550, 173 A.2d 478 (1961).

### **§ 1903. Searching questioned person for weapon.**

A peace officer may search for a dangerous weapon any person whom the officer has stopped or detained to question as provided in § 1902 of this title, whenever the officer has reasonable ground to believe that the officer is in danger if the person possesses a dangerous weapon. If the officer finds a weapon, the officer may take and keep it until the completion of the questioning, when the officer shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon.

### **§ 1903 Annotations**

**Cross references.** - As to carrying deadly or dangerous concealed weapons, see §§ 1441 to 1448 of this title.

**Reasonableness of protective search.** - The issue of existence or nonexistence of actual fear by a police officer for the officer's own safety is not relevant to the reasonableness of the protective search. Nash v. State, 295 A.2d 715 (Del. 1972).

The actual experiencing and admission of fear by the police officer, for the officer's own safety or for the safety of others, are not prerequisites to the reasonableness of a protective prearrest search or to the admission in evidence of the fruits thereof. Brown v. State, 295 A.2d 575 (Del. 1972); Nash v. State, 295 A.2d 715 (Del. 1972).

The test for justifiable search is not whether the police officer actually experienced fear, but whether the officer had good cause, as a reasonably prudent person, to experience personal fear or fear for others under the circumstances. Nash v. State, 295 A.2d 715 (Del. 1972).

Both this section and Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 29 L. Ed. 2d 889 (1968) provide the police with an absolute right to search a person for weapons if that person has been legitimately detained and

if the officer has a reasonable belief that the detainee is presently armed and dangerous. *Hicks v. State*, 631 A.2d 6 (Del. 1993).

Although defendant's menacing conduct justified the initial detention, the officer's decision to reexamine the contents of the pouch seized from the defendant without articulating any reasonable basis to believe it contained a weapon exceeded the permissible scope of the safety search authorized under this section and *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). *Hicks v. State*, 631 A.2d 6 (Del. 1993).

Officers were justified in conducting a protective search of defendant based on: the nature of the neighborhood; the hour of the night; defendant's entry into an alleyway known to be frequented by drug dealers and adjacent to a known drug house; his nervous behavior indicating that a "fight or flight" response was imminent; and his repeated recalcitrance in the face of clear instructions. *State v. Matos*, - A.2d - (Del. Super. Ct. Oct. 2, 2001).

In plaintiff's civil rights case, the motions for summary judgment by defendants, a state trooper, a hospital, and a hospital security guard, were granted because the assault and battery claims against the state trooper and the security guard could not survive where the state trooper's contact with plaintiff was privileged as a valid search pursuant to this section; and plaintiff failed to allege any physical contact by the security guard. *Atamian v. Hawk*, 842 A.2d 654 (Del. Super. Ct. 2003).

## **Title 11, Chapter 1, General Provisions.**

### **Municipal Firearms Preemption**

#### **§ 111. Limitation on firearm regulations.**

The municipal governments shall enact no law, ordinance or regulation prohibiting, restricting or licensing the ownership, transfer, possession or transportation of firearms or components of firearms or ammunition except that the discharge of a firearm may be regulated; provided any law, ordinance or regulation incorporates the justification defenses as found in [tit. 11, §§ 461-471]. Nothing contained herein shall be construed to invalidate municipal ordinances existing before July 4, 1985, and any ordinance enacted after July 4, 1985, is hereby repealed. Notwithstanding the provisions of this section to the contrary, the City of Wilmington may, in addition to the nature and extent of regulation permitted by this section, enact any law or ordinance governing the possession or concealment of a paintball gun within its corporate limits as it deems necessary to protect the public safety.

"Municipal governments" include all cities, towns and villages created under any general or special law for general governmental purposes, which possess legislative, administrative and police powers for the general exercise of municipal functions and which carry on such functions through a set of officials, and all unincorporated towns. Tit. 22, Chapter 1.

## New Castle County Code

### Chapter 22. Offences and Miscellaneous Provisions, Article 3. Weapons.

#### Sec. 22.03.001. Possession by persons under sixteen (16) years of age.

Possession of firearms, air pressure guns, including BB guns, bows and metal tipped arrows, by anyone sixteen (16) years of age or younger is prohibited, unless under direct supervision of a person twenty-one (21) years of age or over.

#### Sec. 22.03.002. Discharge on, across public roads.

Discharge of any firearm or other deadly weapon on, upon, across, in or into a public road is prohibited.

#### Sec. 22.03.007. Exemptions generally.

Sections 22.03.001 through 22.03.006 shall not apply to State, County and Municipal Police Officers nor shall they apply to persons employed as security guards while they are traveling to and from their places of employment or acting within the scope of their employment **nor shall they apply to persons duly licensed to carry concealed a deadly weapon within the State** nor shall they apply within any State or federally owned hunting areas.

### Chapter 24. Parks and Recreation.

#### Sec. 24.01.014. Possession of certain knives; discharge of weapons.

**\*\*\*ILLEGAL ORDINANCE \*\*\*: This ordinance violates state preemption which prohibits ordinances that regulate the carry of firearms. County Councilman Dave Tackett has conferred with County Attorney Gregg Wilson who wrote:**

*“The Law Department has reviewed the County ordinance on gun possession and agree that it is in conflict with the state statute limiting the County's authority to prohibit possession of firearms. Therefore, the Law Department would not prosecute anyone for violation of that section of the ordinance. As a housekeeping measure, the County ordinance should be revised when there is an opportunity.”*

**At this time, Councilman Tackett has essentially stated that there are other conflicting laws that are taking precedence and it may be some time before this is resolved.**

No person shall carry a knife upon his or her person having a blade three (3) inches or longer in length or have possession of or discharge a BB gun, air rifle, pistol, firearm, paint ball gun, bow and arrow or any other type of lethal weapon in any park.

## Wilmington Code

### Chapter 36, Article V, Division 2. Weapons and Related Offenses

#### Sec. 36-156. Armor-piercing bullets.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

(1) *Armor-piercing bullet* means any bullet which is coated with a nonstick fluoropolymer finish, such as the registered trademark finishes, Teflon, Halon, Halar, Flvon, Soreflon or Algoflon.

(2) *Bullet* means a round or elongated missile designed to be fired from a firearm.

(3) *Bulletproof vest* means any commercially available, soft, lightweight body armor, usually consisting of several layers of a polyaramid fiber tradenamed "Kevlar."

(b) *Offenses.* It shall be unlawful for any person to bring into the city or to manufacture, sell, distribute, possess or use armor-piercing bullets or any other bullets similarly coated with a nonstick fluoropolymer finish. It shall further be unlawful for any person which is in the business of manufacturing firearms to possess the component parts of any armor-piercing bullet.

(c) *Penalties.* Any person who violates the provisions of this section shall upon conviction be subject to a minimum fine of \$100.00 and a maximum fine of \$500.00, or to imprisonment not exceeding 90 days, or both, for each offense.

#### Sec. 36-162. Discharge of firearms on street, etc.

(a) Whoever, except in lawful self-defense, and notwithstanding intent or lack of intent, discharges any firearm on any public street, sidewalk, alley, roadway or other public place within the city, or in any nonpublic place, if such discharge results in a projectile entering into, over or upon a public place, shall be guilty of a misdemeanor.

(b) Any person convicted of such an offense shall upon conviction be fined up to \$2,300.00 for an individual or \$5,750.00 for a corporation, and be required to make restitution or meet other conditions deemed appropriate in accordance with the provisions of 11 Del. C. §§ 4206 and 4208 and, in the discretion of the court, may be imprisoned for not more than one year.

(c) The prohibitions of this section shall not apply, however, to the implementation of a firearm use training program for police officers and for harbor officers at the Port of Wilmington; provided, however, that such training sessions shall be conducted solely under the supervision of the chief of police or his designee.

**Sec. 36-166. Certain uses of laser beam pointers prohibited.**

(a) It shall be unlawful for any person to focus, point or shine a laser beam directly or indirectly on another person or animal in such a manner as intended to harass or annoy, or place another person in fear of imminent physical injury. This section shall not prohibit or prevent use of a laser beam pointer by persons responsible for an audio presentation or in a controlled setting for medical or scientific purposes. The penalty for violation of this section shall be a fine in an amount not more than \$500.00 or imprisonment for up to 30 days, or both such fine and imprisonment.

(b) The term "laser beam pointer" used in this section means any hand-held device capable of projecting a coherent beam of light amplified by stimulated emission of radiation.

**Chapter 38. Parks and Recreation, Article III. Park Rules.**

**Sec. 38-58. Obedience to police officers.**

It shall be unlawful for any person upon any park property owned by the city, whether maintained by the city or by the county, to disregard any instructions of a police officer.

**Sec. 38-66. Discharge of weapons.**

It shall be unlawful for any person upon any park property owned by the city, whether maintained by the city or by the county, to discharge a firearm or air gun, BB gun or slingshot, or use bow and arrow except at designated locations and under approved supervision.

**Newark Code**

**Chapter 22, Article IX. Disorderly Conduct.**

**Sec. 22-74. Disorderly conduct.**

A person is guilty of disorderly conduct when:

(a) He intentionally causes public inconvenience, annoyance, or alarm to any other person or creates a risk thereof by:

- (1) Engaging in fighting or in violent, tumultuous, or threatening behavior; or
- (2) Making an unreasonable noise or an offensively coarse utterance, gesture, or display, or addressing abusive language to any person present; or
- (3) Disturbing any lawful assembly or meeting of persons without lawful authority; or
- (4) Obstructing vehicular or pedestrian traffic; or
- (5) Congregating with other persons in a public place and refusing to comply with the lawful order of the police to disperse; or

(6) Creating a hazardous or physically offensive condition which serves no legitimate purpose.

(7) Tampering with firefighting equipment to include fire alarms, fire hoses, and fire extinguishers, or any other firefighting equipment intended for the purpose of protecting a building or other tangible property.

(b) When he knowingly permits any disorderly conduct as defined in paragraph (a) on any premises owned or controlled by him.

## **Chapter 31, Weapons.**

### **Sec. 31-1. Discharging firearms prohibited; law enforcement agencies excepted.**

No person who is not a member of a law enforcement agency acting in the regular course of duty shall discharge any firearm within the limits of the city.

### **Sec. 31-3. Carrying concealed weapons; display of weapon.**

No person shall, within the city, carry, wear under his clothes, conceal about his person, or display in a threatening manner, any dangerous or deadly weapons, including, but not by way of limitation, any pistol, revolver, dagger, razor, sling shot, knuckles of lead or brass or other metal, any bowie knife or any knife resembling a bowie knife, or any knife with a switch blade or device whereby the blade or blades can be opened by a flick of a button, pressure on the handle, or other mechanical contrivance.

#### ***Sec. 31-3 Annotations***

As to definition of "deadly weapons", see *State v. Jones*, 22 Del. 174 (1906). As to burden of proving license for concealed weapon, see *State v. Sockum*, 29 Del. 350 (1917).

### **Sec. 31-4. Police authority to search persons suspected of concealing deadly weapon; confiscate switchblades.**

(a) Any policeman or peace officer may make a search of any person who is suspected of having concealed upon his person a deadly weapon. Such search of a person so suspected shall be conducted in such fashion as to determine solely the presence of such a weapon.

(b) Any police officer may seize, remove, and confiscate any knife where the blade thereof is released by a spring mechanism, including knives commonly known as "switchblades".

## Smyrna Code

### Chapter 42, Article VI. Weapons.

#### Sec. 42-196. Firearms; discharge prohibited; defense; penalty.

(a) *Definitions.* The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Firearm* means any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas, compressed air, and/or mechanical means, whether operable or inoperable, loaded or unloaded. The term "firearm" includes a "BB gun."

(b) *Discharge prohibited.* It shall be unlawful for any person to shoot or to cause the discharge of any firearm within the town limits.

(c) *Justification defenses.* In any prosecution for a violation of this section, justification, as defined in 11 Del. C. §§ 462--471 (as those statutes may from time to time hereafter be amended, or any future corresponding statute, shall be available as a defense.

(d) *Penalty.* Any person violating this section shall be guilty of a criminal violation and, upon conviction, be subject to criminal penalties as provided under section 1-11 of this Code.

## Dover Code

### Chapter 70 Offenses and Miscellaneous.

#### Sec. 70-2. Weapons generally.

(a) *Prohibited.* It shall be unlawful for any person to have in his possession, carry or use a revolver or pistol of any description, a shotgun or rifle which may be used for the explosion of bullets and cartridges, or any air gun, BB gun, gas-operated gun or spring-operated gun, or any instrument, toy or weapon commonly known as a "peashooter," "slingshot" or "beany," or any bow made for the purpose of throwing or projecting missiles of any kind by any means whatsoever, or any knife, whether that instrument is called by any name set forth above or by any other name.

(b) *License.* The weapons prohibited in subsection (a) of this section **shall be permitted upon the grant of a license** therefor, if required, in the following situations:

(1) *On owner's property.* Possession within the possessor's own domicile or business.

(2) *Other license or permit.* Possession, carrying or use in conformity **with a license issued by the state** for that weapon or a permit issued by the chief of police.

(3) *Shooting ranges.* Possession or use at licensed shooting galleries or ranges when the instrument can be fired, discharged or operated in a manner that shall not endanger persons or

property, and also in a manner that shall prevent the projectile from traversing any grounds or space outside the limits of the gallery or range.

(4) *Unloaded and cased.* Carrying of any type of gun whatsoever, when unloaded and properly cased, to or from any licensed gallery or range or to or from an area where hunting is allowed by law. This subsection shall not limit the permitted carrying of guns allowed by subsection (b)(5) of this section.

(5) *Officers.* Carrying, wearing, possessing and using, by United States marshals, sheriffs, constables and their deputies, and any regular, special or ex officio police officer, or any other law enforcement officer while on duty, or as shall be necessary in the proper discharge of their duties.

(6) *State license.* Possession, carrying or use in conformity **with a license issued by the state** for that purpose in areas approved by the chief of police, and only then when used in such a manner that shall not endanger persons or property.

(7) *Defense.* Persons exercising their legal right of self-defense or defense of property or others.

(c) *Discharge.* It shall be unlawful for any person to discharge any gun, pistol, revolver or other firearm within the city, except lawfully pursuant to subsections (b)(2), (3) and (5)--(7) of this section, and those persons excepted by law.

(d) *Business display.* It shall be unlawful for any pawnbroker, secondhand dealer or other person who engages in business in the city to display, or to place on exhibition in any show window or other window facing upon any street, any pistol, revolver or other firearm with a barrel of less than 12 inches in length, or any switchblade knife, or any brass or metal knuckles, or any club loaded with lead or other weight, or any blackjack or billyclub.

(e) *Furnishing to certain persons.* It shall be unlawful for any person to purchase from, or sell, loan or furnish any weapon to, any person under the influence of any alcoholic beverage or any narcotic drug, stimulant or depressant, to any person in a condition of agitation and excitability or to a minor under the age of 18 years.

(f) *Forfeiture.* Every person convicted of a violation of this section or section 70-3, or any state law relating to weapons shall forfeit to the city the dangerous or deadly weapon concealed or displayed. Upon a finding of guilt, it shall then be the duty of the court, after the expiration of a reasonable time, to declare by written order that the chief of police shall either dispose of the weapon or retain the weapon for official police department use.

(g) *Definition.* As used in subsection (e) and (f) of this section, the term "weapon" shall mean any revolver or pistol, shotgun or rifle which may be used for the explosion of bullets and cartridges, or any air gun, BB gun, or any instrument, toy or weapon commonly known as a "peashooter," "slingshot" or "beany," or any bow made for the purpose of throwing or projecting missiles of any kind, or any knife.

## **Chapter 74 Parks and Recreation, Article I, In General.**

### **Sec. 74-24. Dangerous weapons.**

Carrying or possessing, while in any area covered by this chapter, a gun, air gun, bow and arrow, sling, dart, projectile thrower, knife with a blade more than three inches long, or any other dangerous weapon is prohibited, and nothing in this section shall be construed so as to prevent the use of target ranges, and the use of bows and arrows by park visitors on officially established archery ranges.

### **Change Log**

Jan 16, 2008: First revision released.

Jan 17, 2008: Second revision released. Cleaned up format and erroneous spacings. Added § 222 defining dangerous weapon, instrument, disabling chemical spray, etc.

Feb 18, 2008: Added § 231 defining scienter (states of mind). Added defense of self, other and home justification statutes § 464 - § 468.

March 9, 2012: Added updated 1441, 1442 and added 1460, possession under the influence.

## NOTES