

Delaware Firearm Law (General)

The laws governing the legal use, storage and carrying of firearms are constantly changing. Below are the applicable laws in the State of Delaware as of 4/23/2013. The below information is designed to be a guide and not the final word. If you have specific questions, please refer to the State of Delaware legislation at delcode.delaware.gov.

§ 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.

ELIGIBILITY

(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.

TRAINING REQUIREMENT

(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.

FEES

(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 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
- 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:

- The retired officer is in good standing with the law-enforcement agency from which that retired police officer is retired;
- 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
- 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.

RECIPROCITY

(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 foregoing, 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.

The State of Delaware honors ALL concealed carry permits/license from the states listed below:

Alaska, Arizona, Arkansas, Colorado, Florida, Kentucky, Maine, Michigan, Missouri, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Tennessee, Texas, Utah, Virginia, West Virginia

The Delaware License to Carry is honored by the states listed below:

Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Idaho, Indiana, Iowa, Kentucky, Maine, Michigan, Mississippi, Missouri, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia

NOTE: Virginia reciprocity will be revoked on December 7, 2013

NON-RESIDENT LICENSE

The State of Delaware does not issue a non-resident license. However Delaware will issue a non-resident a temporary License to Carry under the following condition:

(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.

OFF LIMITS

§ 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 D 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 school-authorized 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(5) or (12) 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) If the underlying offense is a class D felony, the crime shall also be a class D felony.

(5) In the event that an elementary or secondary school student possesses a firearm 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. The local

school board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

§ 1256. Promoting prison contraband; class F felony; class A misdemeanor.

(1) "Contraband" means any intoxicating liquor or drug prohibited under Chapter 47 of Title 16, except as prescribed by a physician for medical treatment, any money without the knowledge or consent of the Department of Health and Social Services, any deadly weapon or part thereof or any instrument or article which may be used to effect an escape.

(2) "Custody" means restraint by a public servant pursuant to an arrest, detention or an order of a court.

(3) "Detention facility" means any place used for the confinement of a person:

- a. Charged with or convicted of an offense; or
- b. Charged with being a delinquent child as defined in § 901 of Title 10; or
- c. Held for extradition or as a material witness; or
- d. Otherwise confined pursuant to an order of a court.

(4) "Escape" means departure from the place in which the actor is held or detained with knowledge that such departure is unpermitted.

(5) "Other place having custody of such person" includes, but is not limited to, any building, facility, structure, vehicle or property in which a person may be placed while in custody, whether temporarily or permanently and regardless of whether such building, facility, structure, vehicle or property is owned or controlled by the Department of Correction or any other state agency.

A person is guilty of promoting prison contraband when:

- (1) The person knowingly and unlawfully introduces any contraband into a detention facility; or
- (2) The person possesses with intent to deliver any contraband to any person confined within a detention facility; or
- (3) Being a person confined in a detention facility, the person knowingly and unlawfully makes, obtains or possesses any contraband.

Promoting prison contraband is a class A misdemeanor except that if the prison contraband is a deadly weapon or any mobile, phone, cellular telephone, or other prohibited electronic device of any kind, it is a class F felony.

§ 1460. Possession of 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.

8.3.4 Firearms on Division of Fish and Wildlife Areas.

8.3.4.1 It shall be unlawful for any person to possess a firearm on lands or waters administered by the Division of Fish and Wildlife from March 1 through August 31, except as authorized by the Director in writing.

8.3.4.2 It shall be unlawful for any person to possess a rifled firearm of any description at any time on those lands bordering the Chesapeake and Delaware Canal and licensed to the Department by the Government of the United States for wildlife management purposes, except that muzzleloaders and shotguns with rifle barrels may be used during deer seasons when it is lawful to use those firearms.

8.3.4.5 It shall be unlawful to possess, consume or be under the influence of alcoholic beverages, liquors or drugs while hunting or in the possession of firearms when on lands administered by the Division.

8.3.5 Dikes. It shall be unlawful for any person to be in possession of any firearm on any dike administered by the Division, unless such person is temporarily crossing a dike at a ninety degree angle or traversing a dike to reach a Division authorized deer stand location during a deer firearms hunting season.

Other areas that are off limits include:

Court Houses

Police Stations

Casino's

State/National Forests

State Parks

NOTE: All areas restricted by the Federal Government also apply.

TRANSPORTING FIREARMS

§ 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.

§ 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.

NOTE: The Delaware Attorney General's office suggests placing your firearm on the passenger seat, or the dashboard when traveling through, or in the state of Delaware if you are not in possession of a Delaware Handgun Permit, or a permit/license from a state that Delaware honors. The glove compartment, console compartment, or underneath a seat is not an acceptable place, and is considered concealed in one of those locations.

Rifles and shotguns must be unloaded while in a vehicle.