

76-3-203.2 Definitions -- Use of dangerous weapon in offenses committed on or about school premises -- Enhanced penalties.

- (1)
 - (a) As used in this section "on or about school premises" means:
 - (i)
 - (A) in a public or private elementary or secondary school; or
 - (B) on the grounds of any of those schools;
 - (ii)
 - (A) in a public or private institution of higher education; or
 - (B) on the grounds of a public or private institution of higher education;
 - (iii) within 1,000 feet of any school, institution, or grounds included in Subsections (1)(a)(i) and (ii); and
 - (iv) in or on the grounds of a preschool or child care facility.
 - (b) As used in this section:
 - (i) "Dangerous weapon" has the same definition as in Section 76-1-601.
 - (ii) "Educator" means a person who is:
 - (A) employed by a public school district; and
 - (B) required to hold a certificate issued by the State Board of Education in order to perform duties of employment.
 - (iii) "Within the course of employment" means that an educator is providing services or engaging in conduct required by the educator's employer to perform the duties of employment.
- (2) A person who, on or about school premises, commits an offense and uses or threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the offense is subject to an enhanced degree of offense as provided in Subsection (4).
- (3)
 - (a) A person who commits an offense against an educator when the educator is acting within the course of employment is subject to an enhanced degree of offense as provided in Subsection (4).
 - (b) As used in Subsection (3)(a), "offense" means:
 - (i) an offense under Title 76, Chapter 5, Offenses Against the Person; and
 - (ii) an offense under Title 76, Chapter 6, Part 3, Robbery.
- (4) If the trier of fact finds beyond a reasonable doubt that the defendant, while on or about school premises, commits an offense and in the commission of the offense uses or threatens to use a dangerous weapon, or that the defendant committed an offense against an educator when the educator was acting within the course of the educator's employment, the enhanced penalty for a:
 - (a) class B misdemeanor is a class A misdemeanor;
 - (b) class A misdemeanor is a third degree felony;
 - (c) third degree felony is a second degree felony; or
 - (d) second degree felony is a first degree felony.
- (5) The enhanced penalty for a first degree felony offense of a convicted person:
 - (a) is imprisonment for a term of not less than five years and which may be for life, and imposition or execution of the sentence may not be suspended unless the court finds that the interests of justice would be best served and states the specific circumstances justifying the disposition on the record; and
 - (b) is subject also to the dangerous weapon enhancement provided in Section 76-3-203.8, except for an offense committed under Subsection (3) that does not involve a firearm.

- (6) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice upon the information or indictment that the defendant is subject to the enhanced degree of offense or penalty under Subsection (4) or (5).
- (7) In cases where an offense is enhanced under Subsection (4), or under Subsection (5)(a) for an offense committed under Subsection (2) that does not involve a firearm, the convicted person is not subject to the dangerous weapon enhancement in Section 76-3-203.8.
- (8) The sentencing enhancement described in this section does not apply if:
 - (a) the offense for which the person is being sentenced is:
 - (i) a grievous sexual offense;
 - (ii) child kidnapping under Section 76-5-301.1;
 - (iii) aggravated kidnapping under Section 76-5-302; or
 - (iv) forcible sexual abuse under Section 76-5-404; and
 - (b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Amended by Chapter 91, 2011 General Session