

28 prohibited and notice of the prohibition posted;

29 [(2)] (3) in any airport secure area as provided in Section 76-10-529;

30 [(3)] (4) in any house of worship or in any private residence where dangerous weapons are
31 prohibited as provided in Section 76-10-530; or

32 [(4)] (5) at an Olympic venue secure area in violation of Section 76-10-531.

33 Section 2. Section **53A-3-502** is amended to read:

34 **53A-3-502. Dangerous materials in the public schools -- Class B misdemeanor --**
35 **Exceptions.**

36 (1) A person who possesses [~~a weapon, explosive, flammable material, or other~~] material
37 dangerous to persons or property, other than a dangerous weapon restricted under Section
38 76-10-505.5 or an explosive, chemical, or incendiary device restricted under Section 76-10-306,
39 in a public or private elementary or secondary school, on the grounds of the school, or in those
40 parts of a building, park, or stadium which are being used for an activity sponsored by or through
41 the school is guilty of a class B misdemeanor, unless a higher penalty is prescribed in Title 76,
42 Criminal Code, in which case the penalty provisions of that title control.

43 (2) Subsection (1) does not apply under the following circumstances:

44 (a) possession is approved by the responsible school administrator; or

45 (b) the item or material is present or to be used in connection with a lawful, approved
46 activity and is in the possession or under the control of the person responsible for its possession
47 or use.

48 Section 3. Section **53A-11-904** is amended to read:

49 **53A-11-904. Grounds for suspension or expulsion from a public school.**

50 (1) A student may be suspended or expelled from a public school for any of the following
51 reasons:

52 (a) frequent or flagrant willful disobedience, defiance of proper authority, or disruptive
53 behavior, including the use of foul, profane, vulgar, or abusive language;

54 (b) willful destruction or defacing of school property;

55 (c) behavior or threatened behavior which poses an immediate and significant threat to the
56 welfare, safety, or morals of other students or school personnel or to the operation of the school;

57 (d) possession, control, or use of an alcoholic beverage as defined in Section 32A-1-105;

58 or

59 (e) behavior proscribed under Subsection (2) which threatens harm or does harm to the
60 school or school property, to a person associated with the school, or property associated with any
61 such person, regardless of where it occurs.

62 (2) (a) A student shall be suspended or expelled from a public school for any of the
63 following reasons:

64 (i) any serious violation affecting another student or a staff member, or any serious
65 violation occurring in a school building, in or on school property, or in conjunction with any
66 school activity, including the possession, control, or actual or threatened use of a real, look alike,
67 or pretend weapon, explosive, or noxious or flammable material under [Section] Sections
68 53A-3-502, 76-10-306, or 76-10-505.5, or the sale, control, or distribution of a drug or controlled
69 substance as defined in Section 58-37-2, an imitation controlled substance defined in Section
70 58-37b-2, or drug paraphernalia as defined in Section 58-37a-3; or

71 (ii) the commission of an act involving the use of force or the threatened use of force
72 which if committed by an adult would be a felony or class A misdemeanor.

73 (b) A student who commits a violation of Subsection (2)(a) involving a real, look alike,
74 or pretend firearm, explosive, or flammable material shall be expelled from school for a period of
75 not less than one year, unless the district superintendent determines, on a case-by-case basis, that
76 a lesser penalty would be more appropriate.

77 (3) A student may be denied admission to a public school on the basis of having been
78 expelled from that or any other school during the preceding 12 months.

79 (4) A suspension or expulsion under this section is not subject to the age limitations under
80 Subsection 53A-11-102(1).

81 Section 4. Section **76-3-203.2** is amended to read:

82 **76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or**
83 **about school premises -- Enhanced penalties.**

84 (1) For purposes of this section:

85 (a) "On or about school premises" as used in this section [~~and Section 76-10-505.5~~] means
86 any of the following:

87 (i) in a public or private elementary, secondary, or on the grounds of any of those schools;

88 (ii) in a public or private vocational school or postsecondary institution or on the grounds
89 of any of those schools or institutions;

90 (iii) in those portions of any building, park, stadium, or other structure or grounds which
91 are, at the time of the act, being used for an activity sponsored by or through a school or institution
92 under Subsections (1)(a)(i) and (ii);

93 (iv) in or on the grounds of a preschool or child-care facility; and

94 (v) within 1,000 feet of any structure, facility, or grounds included in Subsections (1)(a)(i),
95 (ii), (iii), and (iv).

96 (b) As used in this section:

97 (i) "Educator" means any person who is employed by a public school district and who is
98 required to hold a certificate issued by the State Board of Education in order to perform duties of
99 employment.

100 (ii) "Within the course of employment" means that an educator is providing services or
101 engaging in conduct required by the educator's employer to perform the duties of employment.

102 (2) Any person who, on or about school premises, commits any offense and uses or
103 threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the
104 offense is subject to an enhanced degree of offense as provided in [Subsection] Subsections (4)
105 and (5).

106 (3) (a) Any person who commits an offense against an educator when the educator is
107 acting within the course of employment is subject to an enhanced degree of offense as provided
108 in [Subsection] Subsections (4) and (5).

109 (b) As used in Subsection (3)(a), "offense" means [~~an~~] any offense;

110 (i) under Title 76, Chapter 5, Offenses Against The Person; [~~and~~] or
111 [~~(c) an offense~~] (ii) under Title 76, Chapter 6, Part 3, Robbery.

112 (4) The enhanced degree of offense for offenses committed under this section are:

113 (a) if the offense is otherwise a class B misdemeanor, it is a class A misdemeanor;

114 (b) if the offense is otherwise a class A misdemeanor, it is a third degree felony;

115 (c) if the offense is otherwise a third degree felony, it is a second degree felony; or

116 (d) if the offense is otherwise a second degree felony, it is a first degree felony.

117 (5) The enhanced penalty for a first degree felony offense of a convicted person:

118 (a) shall be imprisonment for a term of not less than five years and which may be for life,
119 and imposition or execution of the sentence may not be suspended unless the court;

120 (i) finds that the interests of justice would be best served; and

121 (ii) states the specific circumstances justifying the disposition on the record; and

122 (b) shall [be] subject the person also to the dangerous weapon enhancement provided in
 123 Section 76-3-203 except for an offense committed under Subsection (3) that does not involve a
 124 firearm.

125 (6) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide
 126 notice upon the information or indictment that the defendant is subject to the enhanced degree of
 127 offense or penalty under Subsection (4) or (5).

128 (b) The notice shall be in a clause separate from and in addition to the substantive offense
 129 charged.

130 [(b)] (c) If the notice is not included initially, the court may subsequently allow the
 131 prosecutor to amend the charging documents to include the notice if the court finds:

132 (i) the charging document, including any statement of probable cause, provide notice to
 133 the defendant of the allegation he committed the offense on or about school premises[;]; or [if the
 134 court finds]

135 (ii) the defendant has not otherwise been substantially prejudiced by the omission.

136 (7) [It] The convicted person may not be subject to the dangerous weapon enhancement
 137 in Section 76-3-203:

138 (a) in cases where an offense is enhanced pursuant to Subsection (4)(a), (b), (c), or (d)[;];
 139 or

140 (b) under Subsection (5)(a) for an offense committed under Subsection (2) that does not
 141 involve a firearm[~~the convicted person shall not be subject to the dangerous weapon enhancement~~
 142 ~~in Section 76-3-203].~~

143 Section 5. Section **76-10-505.5** is amended to read:

144 **76-10-505.5. Possession of a dangerous weapon or firearm on school premises --**

145 **Penalties -- Exceptions -- Concealed firearm provisions.**

146 (1) For purposes of this section:

147 (a) "On school premises" means:

148 (i) in a public or private elementary or secondary school building;

149 (ii) the clearly identifiable grounds of the school; or

150 (iii) those parts of any other building, facility, or real property that may be used for other
 151 functions but are, at the time in question, being used exclusively for an activity sponsored by or

152 through the school.

153 (b) "Regular school day" includes one hour before the beginning of regularly scheduled
154 classroom instruction through one hour after the end of regularly scheduled classroom instruction.

155 ~~[(1) A]~~ (2) Except as provided in Subsection (4), a person may not knowingly and
156 intentionally possess any dangerous weapon, including a firearm, [or sawed-off shotgun,] as those
157 terms are defined in Section 76-10-501, at a place that the person knows, or has reasonable cause
158 to believe, is on [or about] school premises.

159 ~~[(2)]~~ (3) (a) Possession of a dangerous weapon which is not a firearm on [or about] school
160 premises is a class B misdemeanor.

161 (b) Possession of a firearm [or sawed-off shotgun] on [or about] school premises is a class
162 A misdemeanor, except as provided in Subsection (6).

163 ~~[(3) This section]~~ (4) The prohibition in Subsection (2) applies to any person[,] except
164 [persons authorized to possess a firearm as provided under Sections 53-5-704, 53-5-705,
165 53A-3-502, 76-10-511, 76-10-523, Subsection 76-10-504(2), and as otherwise authorized by law.]
166 as follows:

167 (a) a person who is authorized to possess a firearm at his place of residence by Section
168 76-10-511;

169 (b) a sworn, full-time law enforcement officer defined in Section 53-13-103;

170 (c) a person listed in Subsections 76-10-523(1)(a) through (1)(e), other than a sworn,
171 full-time law enforcement officer, so long as the person immediately upon entering a school
172 building during the regular school day goes to the principal's office to notify the principal, or his
173 designee if the principal is unavailable, that he is carrying a firearm, unless he is a peace officer
174 responding to a public safety need and acting within the scope of his authority under Title 53,
175 Chapter 13, Peace Officer Classifications; and

176 (d) a person licensed to carry a concealed firearm is permitted to possess a firearm:

177 (i) regardless of whether it is during the regular school day, on parking lots, streets,
178 sidewalks, or walkways that:

179 (A) are adjacent to, or cross school property; and

180 (B) are freely accessible to, and intended for use by, the general public for public and
181 private purposes; or

182 (ii) in a school building or on school premises, other than those locations permitted by

183 Subsection (4)(d)(i), during the regular school day so long as the person, immediately upon
184 entering on school premises, goes to the principal's office to notify the principal, or his designee
185 if the principal is unavailable, that he is carrying a concealed firearm.

186 (5) (a) The notification by a person pursuant to Subsection (4) to the school principal or
187 his designee shall be kept confidential by the principal or his designee except that the principal or
188 his designee may notify law enforcement personnel if the principal or his designee reasonably
189 believes it is the intent of the person to bring harm to himself or others.

190 (b) A person employed by the administration of a school or school district who is
191 convicted for identifying or discriminating in any way against any person who has notified the
192 administration pursuant to this section:

193 (i) upon the first conviction of violating this Subsection (5), is guilty of an infraction; and

194 (ii) upon a second conviction of violating this Subsection (5), is guilty of a class C
195 misdemeanor.

196 (6) A person licensed to carry a concealed firearm who is convicted of violating this
197 section shall return his permit, which shall be void upon the person's conviction, within ten days
198 to the division:

199 (a) may not reapply or be approved for a permit to carry a concealed firearm until one year
200 after the person's first conviction;

201 (b) upon a second conviction of violating this section, is guilty of a class C misdemeanor
202 and may not reapply or be approved for a permit to carry a concealed firearm until five years after
203 the person's second conviction; and

204 (c) upon a third conviction of violating this section, is guilty of a class A misdemeanor and
205 may not be approved by the division for another concealed firearm permit.

206 [(4)] (7) This section does not prohibit prosecution of a more serious weapons offense that
207 may occur on or about school premises.

208 Section 6. Section **76-10-523** is amended to read:

209 **76-10-523. Persons exempt from weapons laws.**

210 (1) [This] Except as provided in Section 76-10-505.5, this part and Title 53, Chapter 5,
211 Part 7, Concealed Weapon Act, do not apply to any of the following:

212 (a) a United States marshal while engaged in the performance of his official duties;

213 (b) a federal official required to carry a firearm while engaged in the performance of his

- 214 official duties;
- 215 (c) a peace officer of this or any other jurisdiction while engaged in the performance of his
- 216 official duties;
- 217 (d) a law enforcement official as defined and qualified under Section 53-5-711;
- 218 (e) a judge as defined and qualified in Section 53-5-711;
- 219 (f) a common carrier while engaged in the regular and ordinary transport of firearms as
- 220 merchandise; or
- 221 (g) a nonresident traveling in or through the state, provided that any firearm is:
- 222 (i) unloaded; and
- 223 (ii) securely encased as defined in Section 76-10-501.
- 224 (2) The provisions of Subsections 76-10-504(1)(a), (1)(b), and Section 76-10-505 do not
- 225 apply to any person to whom a permit to carry a concealed firearm has been issued:
- 226 (a) pursuant to Section 53-5-704; or
- 227 (b) by another state whose requirements for issuance of a concealed firearm permit have
- 228 been determined annually by the Department of Public Safety to meet or exceed the requirements
- 229 for issuance of a concealed firearm permit in this state.

Legislative Review Note
as of 1-20-00 10:38 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel