

SHORT TITLE: Weapons; stating community service in lieu of imprisonment for certain minors; prohibiting auction of forfeited weapons; prohibiting minor from selling, purchasing, owning, trading or possessing certain weapons and firearms; changing misdemeanor penalties to felony penalties; repealing duplicate sections; codification; emergency.

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

SENATE BILL NO. 855

By: Helton

AS INTRODUCED

An Act relating to weapons; amending Section 3, Chapter 309, O.S.L. 1993, 21 O.S. 1991, Sections 1272, as amended by Section 1, Chapter 264, O.S.L. 1993, 1273, as amended by Section 2, Chapter 309, O.S.L. 1993, 1276 and Section 3, Chapter 170, O.S.L. 1992, as amended by Section 2, Chapter 286, O.S.L. 1992 (21 O.S. Supp. 1993, Sections 1271.1, 1272, 1273 and 1280.1), which relate to forfeiture of certain weapons, prohibition to carrying weapons, selling weapons, penalty provisions, and possession of weapons on school property; modifying language; deleting language; criminalizing certain action; setting penalty; requiring district attorney to attempt adult certification of minor on certain offense; stating community service in lieu of imprisonment for certain minors; construing provision; providing procedure for return of stolen weapon; prohibiting auction of forfeited weapons; requiring delivery of certain weapon to State Bureau of Investigation; authorizing lease of firearms; requiring certain weapons be destroyed; construing term; prohibiting school authority from returning weapons and requiring delivery of weapons to law enforcement authority for forfeiture and prosecution; prohibiting minor from selling, purchasing, owning, trading or possessing certain

weapons and firearms; making failure to take reasonable action to prevent or end certain violation a felony; authorizing transportation of rifles and shotguns by minor for recreational purposes; prohibiting furnishing a minor firearms for participating in certain hunting or recreational events after adjudication; changing misdemeanor penalties to felony penalties; setting amounts of fine and terms of imprisonment; increasing community service requirements; repealing 21 O.S. 1991, Sections 1272, as amended by Section 1, Chapter 309, O.S.L. 1993 and 1273, as amended by Section 2, Chapter 264, O.S.L. 1993 (21 O.S. Supp. 1993, Sections 1272 and 1273), which relate to carrying and selling weapons and which are duplicate sections; providing for codification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1273.1 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any custodial parent, legal guardian or other adult living in the home of a child under eighteen (18) years of age when such child commits the crime of possession of a firearm on school property or possesses a firearm in any vehicle used for transportation of students or teachers, as provided in Section 1280.1 of Title 21 of the Oklahoma Statutes, and such parent, guardian or other adult knew of the child's conduct and failed to make reasonable efforts to

prevent such violation, shall, upon conviction, be guilty of a felony punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00) and by imprisonment for one (1) year. The court, in its discretion, may also order the custodial parent, legal guardian or other adult living in the home of such child to perform community service not exceeding one hundred twenty (120) hours in addition to the fine and imprisonment. To satisfy any community service requirement, the court may give preference to work which benefits the school said child attends.

SECTION 2. AMENDATORY Section 3, Chapter 309, O.S.L. 1993 (21 O.S. Supp. 1993, Section 1271.1), is amended to read as follows:

Section 1271.1 A. Whenever a person under eighteen (18) years of age is detained or arrested by a law enforcement officer and is carrying any weapon or firearm prohibited by Section 1272 of ~~Title 21 of the Oklahoma Statutes~~ this title, every prohibited weapon and firearm ~~may~~ shall be confiscated and forfeited to the ~~confiscating~~ State of Oklahoma by the law enforcement authority. Such confiscation and forfeiture shall ~~not~~ require that criminal charges be filed against the minor, and such person shall, upon conviction, be guilty of a felony punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00) and by imprisonment for one (1) year. The district attorney shall be required to attempt adult certification of every child for a violation of this section. In the event adult certification is not affirmed by the court for any child, the imprisonment penalty shall be converted to sixty (60) hours of community service in addition to the requirement for a fine.

B. The rightful owner of, seller of or person who furnished to the minor any weapon or firearm confiscated pursuant to the provisions of this section shall be in violation of the provisions of Section 1273 of this title. However, ~~when~~ if the owner of a

weapon or firearm confiscated pursuant to the provisions of this section declares by sworn affidavit that such weapon or firearm has been taken by ~~a~~ the minor without the permission of the owner, said owner shall be deemed not to be in violation of Section 1273 of this title, and the weapon or firearm shall may be returned to the owner pursuant to the procedures provided in Section 1321 of Title 22 of the Oklahoma Statutes, provided the possession of such weapon or firearm by ~~an adult~~ the owner is not otherwise prohibited by law.

C. Any weapon or firearm forfeited by any law enforcement authority shall not be sold at public auction, but shall be delivered to the State Bureau of Investigation when no longer needed as evidence in the criminal proceeding. The Bureau may lease any firearm forfeited pursuant to this section to any law enforcement agency for a period of one (1) year and such lease may be renewed each year thereafter at the discretion of the Bureau to assist in the enforcement of the laws of this state or its political subdivisions. Any weapon or firearm deemed by the Bureau to be inappropriate for lease shall be destroyed.

D. For purposes of this section, the term "confiscate" shall not be construed to prohibit any parent, guardian or other adult person from removing or otherwise seizing from any minor any weapon or firearm in the minor's possession, provided however, no school authority shall return any weapon or firearm removed or otherwise seized from any minor to any person, and shall immediately deliver such weapon or firearm to a law enforcement authority for prosecution and forfeiture.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 1272, as amended by Section 1, Chapter 264, O.S.L. 1993 (21 O.S. Supp. 1993, Section 1272), is amended to read as follows:

Section 1272. A. It shall be unlawful for any person to carry upon or about his person, or in his portfolio or purse, any pistol, revolver, dagger, bowie knife, dirk knife, switchblade knife,

spring-type knife, sword cane, knife having a blade which opens automatically by hand pressure applied to a button, spring, or other device in the handle of the knife, blackjack, loaded cane, billy, hand chain, metal knuckles, or any other offensive weapon, ~~except.~~

B. This section shall not prohibit any adult from carrying an unloaded firearm in a locked container and or any person from carrying an unloaded firearm as otherwise provided in this article title.

C. Provided further, ~~that~~ this section shall not prohibit the carrying and proper use of guns and knives for hunting, fishing, educational or recreational purposes, nor shall this section be construed to prohibit the carrying or any use of weapons in a manner otherwise permitted by statute.

D. Any person convicted of violating ~~the foregoing~~ any provision of this section shall, upon conviction, be guilty of a ~~misdemeanor~~ felony punishable as provided in Section 1276 of this title.

SECTION 4. AMENDATORY 21 O.S. 1991, Section 1273, as amended by Section 2, Chapter 309, O.S.L. 1993 (21 O.S. Supp. 1993, Section 1273), is amended to read as follows:

Section 1273. A. Except as provided in subsection D of this section, it shall be unlawful for any minor to sell, purchase, own, trade or possess any of the firearms or weapons designated in Section 1272 of this title.

B. It shall be unlawful for any person ~~within this state,~~ except as provided in subsection D of this section, to sell, furnish, trade or give to any minor, or allow any minor to sell, purchase, own, trade or possess any of the ~~arms~~ firearms or weapons designated in Section 1272 of this title; ~~provided, the provisions of this.~~

C. It shall be unlawful for any custodial parent, legal guardian or other adult living in the home with a child who knows

the minor child is in violation of subsection A or B of this section to fail to make reasonable efforts to prevent or end such violation.

D. 1. This section shall not prohibit a parent, legal guardian or other adult living in the home with a minor child from giving his or her minor furnishing such child a rifle or shotgun for lawfully authorized and adult supervised participation in hunting animals or fowl, hunter safety classes, target shooting, skeet, trap or other recognized sporting events, including traveling to and from such events with the unloaded rifle or shotgun, if the possession of the rifle or shotgun is not otherwise prohibited by law.

2. The furnishing of a rifle or shotgun to a minor child by an adult, as provided in paragraph 1 of this subsection, shall be unlawful if the minor child has been adjudicated a juvenile delinquent.

E. Any person violating any provision of this section shall, upon conviction, be guilty of a felony punishable as provided in Section 1276 of this title.

SECTION 5. AMENDATORY 21 O.S. 1991, Section 1276, is amended to read as follows:

Section 1276. Any person violating the provisions of ~~any one of the foregoing sections~~ Sections 1271.1 through 1273 of this title, shall ~~on the first, upon conviction, be adjudged~~ guilty of a misdemeanor and be punished felony punishable by a fine ~~of not less than Twenty-five Dollars (\$25.00) nor more than Fifty Dollars (\$50.00)~~ exceeding Five Thousand Dollars (\$5,000.00), or ~~and by~~ imprisonment in the county jail not to exceed thirty (30) days or both at the discretion of the court. On the second and every subsequent conviction, the party offending shall on conviction be fined not less than Fifty Dollars (\$50.00) nor more than Two Hundred Fifty Dollars (\$250.00) or be imprisoned in the county jail not less than thirty (30) days nor more than three (3) months or both, at the discretion of the court for one (1) year.

SECTION 6. AMENDATORY Section 3, Chapter 170, O.S.L. 1992, as amended by Section 2, Chapter 286, O.S.L. 1992 (21 O.S. Supp. 1993, Section 1280.1), is amended to read as follows:

Section 1280.1 A. It shall be unlawful for any person, except a peace officer or other person authorized by the board of education of that district or governing body for any public or private school, to have in his possession on any public or private school property or while in any school bus or vehicle used by any school for transportation of students or teachers any weapon designated in Section 1272 of this title.

B. "School property" means any publicly or privately owned property held for purposes of elementary, secondary or vocational-technical education, and shall not include property owned by public school districts or private educational entities where such property is leased or rented to an individual or corporation and used for purposes other than educational.

C. A gun or knife designed for hunting or fishing purposes kept in a privately owned vehicle and properly displayed or stored as required by law shall not be in violation of this act, provided such vehicle containing said gun or knife is driven onto school property only to transport a student to and from school and such vehicle does not remain unattended on school property. However, for the purposes of participating in the Oklahoma Department of Wildlife certified hunter training education course, the principal or chief administrator of any public or private school where said course is offered may authorize firearms or other weapons to be brought onto school property and used in such training course.

D. Any person violating the provisions of this section shall, upon conviction, be guilty of a felony punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00), and imprisonment for ~~not~~ ~~more than~~ one (1) year. The court, in its discretion, may also order the person to perform community service not exceeding one

hundred twenty (120) hours in addition to the fine and imprisonment.
To satisfy any community service requirement, the court may give
preference to work which benefits the school where the violation
occurred.

SECTION 7. REPEALER 21 O.S. 1991, Sections 1272, as amended by Section 1, Chapter 309, O.S.L. 1993 and 1273, as amended by Section 2, Chapter 264, O.S.L. 1993 (21 O.S. Supp. 1993, Sections 1272 and 1273), are hereby repealed.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

44-2-1628

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