

Office of Attorney General

# NORTH DAKOTA CONCEALED WEAPON LICENSE



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# NOTICE

IT IS THE RESPONSIBILITY OF THE APPLICANT / RENEWAL APPLICANT TO COMPLY FULLY WITH ALL RULES, REGULATIONS, AND PROCESSES RELATING TO APPLYING FOR A LICENSE TO CARRY A CONCEALED WEAPON.

IT IS THE CONCEALED WEAPON LICENSE HOLDER'S DUTY AND RESPONSIBILITY TO KNOW, UNDERSTAND, AND COMPLY WITH ALL APPLICABLE STATE AND FEDERAL LAWS.

A LICENSE HOLDER MAY NOT CARRY CONCEALED UNDER HIS/HER CONCEALED WEAPON LICENSE IF THE LICENSE HAS EXPIRED, EVEN IF THE RENEWAL APPLICATION IS BEING PROCESSED. TIMELY RENEWAL IS THE RESPONSIBILITY OF THE LICENSE HOLDER.

THE OFFICE OF ATTORNEY GENERAL AND THE BCI ARE PROHIBITED BY LAW FROM PROVIDING LEGAL ADVICE OR ASSISTANCE TO THE PUBLIC. FOR AN INTERPRETATION OF STATE OR FEDERAL LAWS AND THEIR APPLICABILITY, CONTACT AN ATTORNEY IN PRIVATE PRACTICE.

# THE CONCEALED WEAPON WEBSITE

It is *extremely important* that all initial and renewal applicants review the information under the Concealed Weapon License section of the Attorney General's website:

<https://attorneygeneral.nd.gov/public-safety/concealed-weapon-licenses/>

## Why?

Because ... your license is good for five years BUT the legislature meets every two years. If, during a legislative session, any of the laws that affect possession of weapons or concealed weapons are changed ...

AS A LICENSE HOLDER, YOU HAVE AN OBLIGATION TO BE AWARE OF, AND COMPLY WITH, THE LAWS, *EVEN* IF THEY HAVE CHANGED SINCE YOUR LICENSE WAS ISSUED.

That means between the time you get your license and the time to renew it, the laws may have been changed twice or even three times – and the application and renewal process may have changed, too.

As a service to our license holders, the information on our website is **always** current. When the laws, forms, procedures, or rules change, we update the information on our website. If you have a question about the application or renewal process – what you need to do, where to do it, or how long it takes – go to the website. The answers are there!

Please do not call the BCI to inquire about the status of your application – we are prohibited by law from providing status information, even to the applicant.

# QUESTIONS

ISSUE	INFORMATION
Address Change	You must notify the BCI of an address change within 30 days, by completing the Change Request form, available on the website. You are not required to have your license updated but you can choose to do so. There is no charge.
Application Attachments	Before submitting the application to the BCI, make sure you have all required documents attached. You can review the checklist online.
Application Fee	\$60 cashier's check or money order (no personal checks), payable to North Dakota Attorney General.
Application Status Check	It takes up to 60 days after we receive a properly completed application that has all required documentation. If it has been more than 60 days since you submitted a properly completed application, you can submit a status check inquiry by following the instructions on the "Application Status" page of the website.
Class 1 Renewal – Testing	To renew a class 1 license, you must retake all the training and testing as if you were a new applicant.
Class 2 Renewal – Testing	Testing is not required to renew a class 2 license.
Expired License	An expired license is not valid and cannot be renewed.
Lost License	To replace a lost or stolen license, complete and submit a Change Request form, available on the website. There is no charge for the replacement.
Name Change	You must notify the BCI of a name change by completing the Change Request form, available on the website. Your license must be returned and reissued in your new name. There is no charge.
Renewal Notice	The renewal reminder notice is sent to the last address the BCI has on file. Please ensure you notify us of a change of address. Timely renewal is the responsibility of the license holder.
Testing Site – Where?	Go to "Find a Test Administrator" on the CWL website.

# RECIPROCITY

North Dakota has reciprocity with many, but not all, other states. This means that a North Dakota concealed weapon license is valid while in those states, and licenses from those states are recognized as valid in North Dakota.

The BCI maintains a list of states with which North Dakota has reciprocity on the Concealed Weapon Licensing page online.

If you are travelling, you must follow the law of the jurisdiction you are visiting.

It is the responsibility of the license holder to review the laws of both the issuing state and reciprocal state to ensure full compliance.

# THE TEST & THE LAWS

The questions on the open book test are taken from the information in the manual and the relevant chapters of the North Dakota Century Code (NDCC), which are listed below.

Please carefully review this information. All applicants must score 100% on Part 1 (questions 1-28) and 70% on Part 2 (questions 29-35 – at least 5 correct answers) in order to pass the test.

The full text of the chapters of the North Dakota Century Code referenced is available for view and download, at no charge, on the Legislative Council's website:

<https://ndlegis.gov/general-information/north-dakota-century-code/index.html>

## WEAPONS LAW

### TITLE 62.1 - WEAPONS

CHAPTER 62.1-01 DEFINITIONS – GENERAL PROVISIONS

CHAPTER 62.1-02 POSSESSION OF WEAPONS

CHAPTER 62.1-03 HANDGUNS

CHAPTER 62.1-04 CONCEALED WEAPONS

CHAPTER 62.1-05 MACHINE GUNS, AUTOMATIC RIFLES, SILENCERS, BOMBS

## SELF DEFENSE

### TITLE 12.1 – CRIMINAL CODE

CHAPTER 12.1-01 GENERAL DEFINITIONS

CHAPTER 12.1-05 JUSTIFICATION

# BASIC HANDGUN USE

## FIREARMS SAFETY

YOU are ultimately responsible for your weapons, at home, at a shooting range and everywhere else. This includes cleaning, dry-firing, and storage of the weapons. There is no such thing as an “accidental discharge,” only an unintentional/negligent discharge. It wasn’t an accident; someone didn’t practice safety.

## SAFETY RULES

### 1. TREAT EVERY WEAPON AS IF IT IS LOADED.

**Never** point any weapon at anything you do not intend to shoot. Most unintentional discharges occur as a result of someone thinking the weapon was unloaded (but it goes off anyway).

### 2. KEEP THE FIREARM POINTED IN A SAFE DIRECTION.

Should an unintentional discharge occur, having your firearm pointed in a safe direction offers an additional layer of safety.

### 3. KEEP YOUR FINGER OUTSIDE THE FIREARM’S TRIGGER GUARD AND OFF THE TRIGGER UNTIL YOU ARE READY TO FIRE THE WEAPON.

Many have had a gun discharge when not expected because they placed their finger on the trigger when handling the weapon.

### 4. BE CERTAIN THAT YOUR TARGET AND SURROUNDING AREA ARE SAFE BEFORE FIRING.

### 5. A LOADED WEAPON IN THE HOME HAS A GREATER DANGER POTENTIAL THAN AN UNLOADED WEAPON.

Many people feel that they need to have loaded weapons within reach in their homes for security reasons. Weapons should be secured, unloaded and/or locked to prevent children or untrained adults from being able to access them.

### 6. NEVER FULLY DEPEND ON THE MECHANICAL SAFETY DEVICE.

Just like everything else that is mechanical, safeties can fail. Having the safety on is a good practice but never depend on it entirely. Keep the weapon pointed in a safe direction at all times and unload and secure it when you are not planning on using it.

### 7. ANYTIME A WEAPON IS GIVEN TO YOU, CHECK THE WEAPON TO SEE IF IT IS LOADED.

Open the cylinder or action. Look and feel to make sure the weapon is empty – most semi-automatic handguns will fire even if the magazine is out.



8. IF A COCKED WEAPON IS GIVEN TO YOU, POINT THE WEAPON IN A SAFE DIRECTION.

The proper procedure to follow:

Revolver: Hold the hammer with the thumb of one hand. Pull the trigger slowly to release the hammer. Once the hammer is released, let go of the trigger and slowly let the hammer down to the rest position. Open the cylinder to ensure there is nothing in the cylinder.

Note: Some revolvers have hidden or partially concealed hammers or have been made unable to be cocked.

Pistol: Remove the magazine from the magazine well. Work the slide to the rear and, if possible, lock it in the open position. Look and feel to ensure there is nothing in the chamber.

Note: Some pistols do not have hammers and some work on a “double action only” mechanism and cannot be cocked. Of those that have external exposed hammers, there may be several ways to lower the hammer – by the action of a “decocker” or manually (as with a revolver).

9. IF YOU ARE GOING TO PASS A WEAPON TO SOMEONE ELSE, PASS IT TO THEM WITH THE MAGAZINE OUT AND THE ACTION LOCKED BACK OR WITH THE CYLINDER OPEN.

Be courteous to others. Show them that you are practicing safety in your actions. Then make sure that they check the weapon anyway.

10. INSPECT YOUR WEAPONS FOR PROPER CARE AND MAINTENANCE.

Follow the manufacturer’s specifications for care and maintenance. If you have any questions or concerns, seek the assistance of a professional (certified armorer or reputable gun smith).

# TYPES OF HANDGUNS

## REVOLVERS

Single Action – hammer must be cocked by hand to fire.

Double Action – may be fired after manually cocking the hammer, or trigger pulled with the hammer at the rest position for every shot.

Double Action Only – hidden hammer design or may have trigger/hammer made to not allow cocking.

## SEMI-AUTOMATIC (PISTOLS)

Single Action – hammer must be in cocked position to fire.

Double/Single – the first round fired is double action and subsequent shots are single action. Weapon may have manual decocking levers.

Full Double Action – for every shot the hammer returns to the at rest position.

Striker Fired – no external hammer; all actions take place internally.

# BASIC INSPECTION GUIDE

## EXTERIOR

Make sure that there are no spots of rust or corrosion.

Make sure there are no bulges or bent parts.

Make sure that the weapon is clean.

Make sure that the sights are not loose.

## BARREL

Look to see that there is nothing lodged in the barrel.

Look for any deposits and that the barrel is clean.

## FUNCTION

Make sure that the weapon functions properly mechanically:

For a revolver

- Cylinder opens and closes properly.
- Cylinder rotates without binding.

For a pistol

- Slide locks back (if design allows).
- Slide stop works (if design includes).
- Magazine locks in and releases properly.

IF ANY MECHANICAL PROBLEM IS FOUND, take the weapon to a qualified armorer or gunsmith.

# SHOOTING FUNDAMENTALS

## BREATH CONTROL

There are many schools of thought with hunters and competition shooters depending on the weapon. The key is to keep breathing. The first visible sign of the lack of oxygen to the brain is trembling.

## STANCE

Many different stances are available and have been taught in the past including Isosceles, Point Shoulder, Weaver and Modified Weaver/Modern Isosceles.

A proper shooting stance must provide a Stable Shooting Platform. It should offer good mobility and, for your body type and mechanics, be a stance you are comfortable in.

A more aggressive stance with a forward lean will aid in allowing the recoil to move through your body to the ground.

## GRIP

The proper grip will help with recoil control.

### REVOLVER

The hand is placed high up on the back strap with the webbing between thumb and trigger finger at the very top of the grip – handshake grip strength.

### PISTOL

The hand is placed high, right under the tang. Grip strength must be appropriate with a very firm grip needed to allow action to cycle.

In regards to the support hand:

- The support hand should not exert uneven pressure causing the firearm to be pulled off alignment.
- Should provide support to function the firearm.
- Both thumbs should be on the same side of the weapon and should not impede the weapon's function.
- Watch the position of the support hand index finger.

The hands should offer 360 degrees of support to the pistol.

The master grip should be created from the holster, allowing sights to be aligned from the draw. This will reduce the time when drawing, coming on target and firing a shot.

Depending on the firearm type and trigger pull, the trigger finger typically should make contact with the trigger between the tip of the finger and the first joint.

- Revolver grips may be changed to fit hand.
- Pistol grips may or may not be adjustable, so hand position can be important.

## TRIGGER PRESS

Depending on your level of experience, you may not know exactly when the gun will fire.

- The shot going off may be a “surprise break”
- Don’t anticipate
- Don’t make the gun shoot when you want it to (jerk)

## PISTOL

Follow-through:

- What your finger does after the shot
- Hold trigger back until recoil is over and gun is back on line

## TRIGGER RESET

- How far you let the trigger go forward for the next shot
- Should go forward only far enough to re-engage the sear
- FINGER MUST STAY IN CONTACT WITH THE TRIGGER FROM THE TIME IT GOES ON UNTIL NO MORE SHOTS WILL BE TAKEN

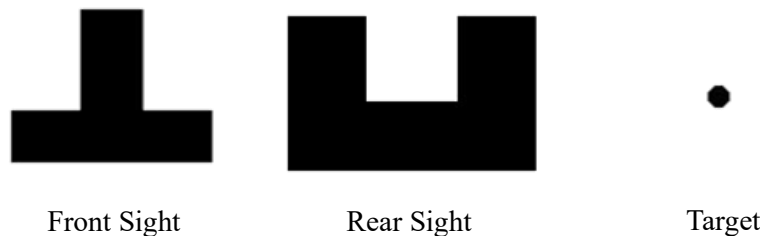
## SIGHTING A FIREARM

Which eye should be used for aiming?

- Right-handed, right eye?
- Left-handed, left eye?
- Dominant eye?
  - Cross-eye dominant
- Both eyes?

## SIGHT ALIGNMENT

There are three components used for sighting:



The relationship between the front sight, rear sight and where you want the bullet to strike is called **SIGHT ALIGNMENT**.

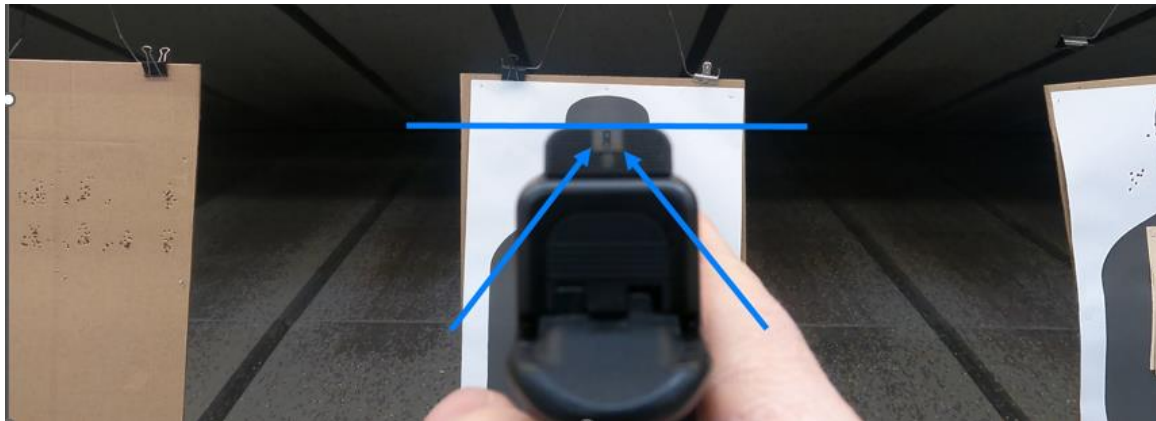
## PROPER SIGHT ALIGNMENT

Front sight is centered in rear sight.

Top of front sight is level with the top of the rear sight.

Equal light coming through the rear sight.

Front sight is in focus; target and rear sight should not be in focus.

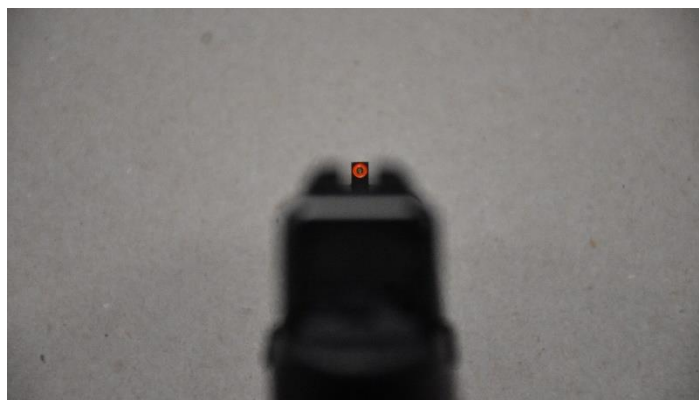


## SIGHT PICTURE

Sight picture is what you will see or how you will see the sights.

Vision should be focused on the front sight.

The rear sight and where the bullet will strike will look a little blurry.



## ADJUSTING THE SIGHTS

Weapons should come from the manufacturer with the sights adjusted properly.

A weapon does not shoot where it has not been pointed.

Sight alignment and sight picture are key.

Unless the sights are damaged or have been moved, there usually is no reason to adjust the sights. People sometimes adjust the sights to cover for improper shooting technique.

If the sights have been damaged or previously moved, it is typically the rear sight that is adjusted.

Move the rear sight in the same direction you want the bullet impact to move.

- If bullet impact is low, move rear sight up.
- If bullet impact is left, move rear sight right.
- If bullet impact is high and right, move rear sight down and left.

## FIREARM FUNCTION

There are four distinct operations of a firearm:

1. Feed
2. Fire
3. Extract
4. Eject

Depending on the type of firearm, these operations may be manual or automatic.

If there is an interruption in these operations, a malfunction may occur.

## LOADING A HANDGUN

Prior to loading a handgun that is completely empty it should be inspected to ensure it is clean, in good repair and a function check done.

### REVOLVER

A revolver may be loaded by pointing the weapon in a safe direction, opening the cylinder, and placing a round into each charge hole in the cylinder.

Once fully charged, properly close the cylinder of the revolver.

### PISTOL

A pistol may be loaded by pointing the weapon in a safe direction and inserting a loaded magazine into the magazine well of the weapon, seating the magazine by pushing it in until a click is heard/felt.

Once the magazine is properly seated, continuing to keep the pistol pointed in a safe direction, move the slide to the rear and release the slide in order to chamber a round.

If you wish to “top off” your magazine, the best practice is to holster your pistol, then activate the magazine catch and remove the magazine. Load one round into the magazine, then reinsert the magazine into the magazine well of the pistol.

You can make sure the magazine is properly seated by pulling on the floor plate.

## ADMINISTRATIVE UNLOADING

### REVOLVER

A revolver may be unloaded by pointing the weapon in a safe direction, activating the thumb piece to open the cylinder, then pointing the muzzle up to allow the rounds to fall out of the charge holes.

### PISTOL

A pistol may be unloaded by pointing the pistol in a safe direction, pressing the magazine button to allow the magazine to fall free of the magazine well, then, using your support hand and keeping your fingers clear of the muzzle and ejection port, pull back on and lock the slide to the rear.

Do no attempt to catch the loose round; the loose round should fall on the floor.

## RELOADING

### REVOLVER

To reload a revolver, empty (unload) just as with the administrative unloading process; however, you may need to press the extractor rod to remove the empty brass while the muzzle is pointed up. Allow the brass/rounds to fall to the ground.

Once unloaded, point the muzzle downward and new ammunition may be placed into the weapon (as with the loading process). Close the cylinder properly.

### PISTOL

To reload a pistol, the slide may lock back on an empty magazine. With your support hand, obtain the spare magazine and while holding it properly, bring it towards the weapon while simultaneously releasing the magazine from the pistol, allowing it to fall to the ground.

Insert the new magazine into the magazine well. Use the support hand to retract and release the slide allowing it to chamber a fresh round.

## MALFUNCTIONS WITH A HANDGUN

Anything mechanical may fail at some time. It is important that handguns be inspected, cleaned, and maintained regularly.

### REVOLVER

It is rare that a revolver will malfunction.

Bad ammunition may cause a problem but anything else will probably be something that has broken in the weapon, and it must be fixed.



To Fix: If the ammunition is the cause, simply remove the ammunition from the cylinder and recharge with appropriate rounds.

## PISTOL

There are several reasons a pistol may fail. The vast majority of malfunctions are caused by the shooter including the lack of cleaning, poor maintenance and improper grip while shooting.

Bad magazines are the next leading cause – clean and check the magazines on a regular basis just as you do with the pistol (except no oil).

Bad ammunition may also cause malfunctions.

Some manufacturer's warranties will be void if reloaded ammunition is used – follow manufacturer guidelines as it relates to the type of ammunition used (new vs reloaded; lead vs jacketed).

To Fix: The first step in the process to clear a basic malfunction of a pistol is called “tap-rack.” To properly perform the tap-rack, the finger must come off the trigger.

## TAP

The flat open support hand slaps the bottom of the magazine.

## RACK

The slide is racked just as when initially loading the weapon - do not cover the ejection port.

The weapon may be canted to the right to let gravity assist in removing anything from the pistol.

## DOUBLE FEED

If either a fail to extract or fail to eject occurs, it is likely that a double feed condition will be created – one empty and one live round, both trying to occupy the same space.

The slide will probably not be in battery and a simple “tap-rack” will not alleviate your problem.

The remedy for a double feed is called “rip-work-tap-rack.”

## RIP

Remove the magazine.

- There will be one round partially in the weapon and partially in the magazine so it may be difficult to rip the magazine out.
- Point the weapon in a safe direction and the finger must be off the trigger.
- Press the magazine catch and grab the floor plate of the magazine to pull it out.

## WORK

Work the action back and forth rapidly several times.

## TAP-RACK

Same as before but now includes inserting a magazine into the weapon and rack means to chamber a round by cycling the slide.

- The finger comes off of the trigger. The flat open support hand slaps the bottom of the magazine, and the slide is racked (just as when initially loading the weapon) – do not cover the ejection port.
- The weapon may be canted to the right to let gravity assist in removing anything from the pistol.

# INTERACTING WITH LAW ENFORCEMENT

Law Enforcement Officers are hired by a community and specifically tasked for the purpose of keeping the peace and investigating violations of law. Officers have sworn to uphold the Constitution and seek to provide an impartial perspective of incidents.

When an officer comes on scene, they are often responding to a chaotic, unknown, or uncertain situation where they may not know the full threat.

Officers are trained to take control of the situation to ensure everyone's safety so they can investigate to determine what is going on and who is committing a crime if one is being committed.

When law enforcement arrives, present yourself in a calm demeanor.

Lower or even better, put away weapons prior to their arrival if at all possible.

Immediately do as the officer tells you.

Do not reach for a weapon.

If you or someone else calls law enforcement to report a situation, describe your appearance (clothing, physical description, etc.); you may also wish to tell the call taker if you have a weapon.

If you are carrying a weapon and need to tell officers that you are armed, keep your hands visible and DO NOT reach for the weapon.

Do not make sudden movements. If possible, announce your intent to do something or request that the officer allow you.

If it is dark, turn on lights if possible (interior lighting, etc.).

Be aware that an officer may decide to disarm you.

Be honest.

If you are nervous or emotional, say so and ask for a moment to collect yourself.

If you invoke your rights, be cordial. If you are able, be helpful.

Officers may wish to separate everyone or even might want to move to another location to go over what happened.

If you are unhappy about a decision an officer makes, understand that this is not the time to argue the point. The goal is to secure the situation and assess what has happened.

**TITLE 62.1  
WEAPONS**

**CHAPTER 62.1-01  
DEFINITIONS - GENERAL PROVISIONS**

**62.1-01-01. General definitions.**

As used in this title, unless the context otherwise requires:

1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more; any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas, including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN, also known as alpha-chloroacetophenone; or other irritating agent intended for use in the defense of an individual, nor does the term include a device that uses voltage for the defense of an individual, unless the device uses a projectile and voltage or the device uses a projectile and may be used to apply multiple applications of voltage during a single incident, then the term includes the device for an individual who is prohibited from possessing a firearm under this title.
2. "Direct supervision of an adult" means that an adult is present in such close proximity so as to be capable of observing and directing the actions of the individual supervised.
3. "Firearm" or "weapon" means any device that expels or is readily capable of expelling a projectile by the action of an explosive and includes any such device, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
4. "Gaming site" means any room or premises licensed by the attorney general or by a city or county governing body to conduct legal gaming operations.
5. "Government building" means a building which is owned, possessed, or used by or leased to the state of North Dakota, or any of its political subdivisions.
6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].
7. "Law enforcement officer" means:
  - a. A public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law; or
  - b. A retired public servant in good standing who:
    - (1) Was authorized by law or by a government agency or branch for at least ten years to enforce the law and to conduct or engage in investigations or prosecutions for violations of law or who was separated from service due to a service-related physical disability;
    - (2) Maintains the same level of firearms proficiency as is required by the peace officers standards and training board for law enforcement officers, maintains the standards for qualifications in firearms training for active law enforcement officers as determined by the former agency of the individual in the state in which the individual resides, or maintains the standards used by a certified firearms instructor qualified to conduct a firearms qualification test for active duty officers in the state in which the individual resides;

- (3) Has a photo identification card issued by a local law enforcement agency which identifies the individual as having been employed by a government agency or branch as a law enforcement officer and indicates the individual has passed the firearms proficiency test within twelve months from the date of issue; and
  - (4) Has not been found by a qualified medical professional to be unqualified for reasons relating to mental health or entered an agreement with a government agency or branch in which the public servant acknowledges a lack of qualifications for reasons relating to the mental health of the public servant.
8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism, or instrument not requiring that the trigger be pressed for each shot, and having a reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second. The term does not include a binary trigger that fires one round upon the pull of the trigger and one round upon release of the trigger.
9. "Mentally deficient individual" means any individual, minor or adult other than a mentally ill individual, who is so mentally defective as to be incapable of managing that individual's affairs and to require supervision, control, and care for that individual's own or the public welfare.
10. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.
11. "Possession" means an individual has:
  - a. Direct physical control of something on or around the individual's person; or
  - b. The power and intention to exercise control over something accessible to but not on or around the individual's person.
12. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
13. "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.
14. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
15. "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].
16. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.
17. "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.
18. "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell.

**62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and convicted of crime.**

1. Any firearm or dangerous weapon used or possessed while in the commission of a felony or a misdemeanor involving violence or intimidation must be seized and, upon conviction and by motion, forfeited to the jurisdiction in which the arrest was made or the jurisdiction in which the charge arose. Except as provided in chapter 29-01 for stolen property, the forfeited dangerous weapon may be, pursuant to court order, sold at public auction, sold or traded to other law enforcement agencies or dealers, retained for use, or destroyed.
2. Notwithstanding any other provision of law; and subject to the duty to return firearms to innocent owners under this section, section 29-31.1-02, and as provided in chapter 29-01 for stolen property; all firearms, as defined in section 62.1-01-01, which are forfeited, recovered as stolen and unclaimed, or abandoned to any law enforcement agency of this state or a political subdivision of this state, including the game and fish department, or that are otherwise acquired by the state or a political subdivision of the state and are no longer needed, shall be disposed of as provided in this section. Except as provided in chapter 29-01 for stolen property, this section does not apply to firearms that are seized or confiscated and disposed of under chapter 20.1-10.
3.
  - a. Before the disposal of any firearm under this section, the agency with custody of the firearm shall use its best efforts to determine if the firearm has been lost by, or stolen or otherwise unlawfully obtained from, an innocent owner and, if so, shall provide notification to the innocent owner of its custody of the firearm. An innocent owner may also notify the agency to claim a firearm.
  - b. After notification, the agency shall return the firearm to its innocent owner provided the owner submits sufficient proof of ownership, as determined by the agency, and pays the costs, if any, of returning the firearm to the innocent owner. Costs are limited to the actual costs of shipping to the innocent owner and associated costs from any transfer and background check fees charged when delivering the firearm to the innocent owner.
  - c. If six months elapse after notification to the innocent owner of the custody of the firearm by an agency and the innocent owner fails to bear the costs of return of his or her firearm or fails to respond to the agency notification, or if six months elapse after notice of a claim by an innocent owner and the innocent owner fails to bear the costs of return of the innocent owner's firearm or take away the innocent owner's firearm, then the agency shall dispose of the firearm as provided in this section.
4.
  - a. Except as provided in subdivision b of subsection 3 or subsection 5, the agency shall dispose of the firearms that it receives under subsection 2 by sale at public auction to persons that may lawfully possess a firearm and persons licensed as firearms collectors, dealers, importers, or manufacturers under the provisions of 18 U.S.C. section 921 et seq., and authorized to receive such firearms under the terms of the licenses.
  - b. The auction required by this subsection may occur online on a rolling basis or at live events, but in no event may the auction occur less frequently than once every year during any time the agency has an inventory of saleable firearms. The agency shall establish a procedure to notify persons of its auctions.
  - c. The agency may not retain proceeds above that which are necessary to cover the costs of administering this subsection, with any surplus to be transferred to the general fund of the jurisdiction in which the agency is located, provided that an agency may be reimbursed for any firearms formerly in use by the agency that are sold under this section.
  - d. Employees of the agency are not eligible to bid on the firearms at an auction conducted under this subsection, and except for the amounts authorized under subdivision c of this subsection, neither the agency nor its employees may retain any proceeds from any sale required by this subsection, nor may the agency or its employees retain any firearm required to be sold under this subsection.

5. a. The requirements of subsection 4 do not apply to a firearm if there are not any bids from eligible persons received within six months from when bidding opened on the firearm, or if the agency director, sheriff, chief of police, or a designee of the official certifies that the firearm is unsafe for use because of wear, damage, age, or modification or because any federal or state law prohibits the sale or distribution of the firearm. The agency director, sheriff, chief of police, or a designee of the official, may transfer any of these firearms to the attorney general's crime laboratory for training or experimental purposes, or to a museum or historical society that displays these items to the public and is lawfully eligible to receive the firearm, or the firearm may be destroyed. The requirements of subsection 4 do not apply to a firearm and an agency director, sheriff, chief of police, or a designee of the official may destroy the firearm, if:
  - (1) The firearm was used in a violent crime, in an accidental shooting, or a self-inflicted shooting resulting in the death of an individual;
  - (2) There is not a claim for the firearm by an innocent owner; and
  - (3) A family member of the deceased individual makes a written request for the destruction of the firearm.
- b. Agencies subject to the provisions of this subsection may establish a procedure to destroy firearms and may expend necessary funds for that purpose.
6. All agencies subject to the provisions of this section shall keep records of the firearms acquired and disposed of as provided in this section, as well as the proceeds of the sales and the disbursement of the proceeds, and shall maintain these records for not less than ten years from the date on which a firearm is disposed of or on which a disbursement of funds is made, as the case may be.
7. Neither the state nor any political subdivision of the state, nor any of their officers, agents, and employees, is liable to any person, including the purchaser of a firearm, for personal injuries or damage to property arising from the sale or disposal of a firearm under subsection 4 or 5 of this section, unless an officer, agent, or employee of the state or political subdivision acted with gross negligence or recklessness.
8. As used in this section, the term "innocent owner" means a person who:
  - a. Did not beforehand know or in the exercise of ordinary care would not have known of the conduct which caused that person's firearm to be forfeited, seized, or abandoned to any law enforcement agency of the state or any political subdivision of the state, including the game and fish department;
  - b. Did not participate in the commission of a crime or delinquent act involving that person's firearm;
  - c. Legally owned and presently owns the firearm forfeited, seized, or abandoned; and
  - d. Is authorized by state and federal law to receive and possess his or her firearm.

**62.1-01-03. Limitation on authority of political subdivision regarding firearms - Civil action.**

1. A political subdivision, including home rule cities or counties, may not enact any ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.
2. A political subdivision, including home rule cities or counties, may not enact a zoning ordinance relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition. All such existing ordinances are void.
3. This section does not limit the ability of a political subdivision, including home rule cities or counties, to enforce an ordinance or zoning regulation relating to a business operation if the restriction in the ordinance or regulation:
  - a. Applies equally to all persons engaging in commerce within the area subject to the ordinance or regulation; and

- b. Is not specifically related to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.
4. The absence of a state law restriction relating to the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition may not be construed to allow a political subdivision, including a home rule city or county, to enact an ordinance restricting the purchase, sale, ownership, possession, transfer of ownership, registration, or licensure of firearms and ammunition.
5. A person aggrieved under this section may bring a civil action against a political subdivision for damages as a result of an unlawful ordinance.

**62.1-01-03.1. Federal firearms laws - Limitations on enforcement.**

1. As used in this section, "firearm accessory" means an item used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm. The term includes a detachable firearm magazine.
2. An agency or political subdivision of the state and a law enforcement officer or individual employed by an agency or political subdivision of the state may not provide assistance to a federal agency or official or act independently with respect to the investigation, prosecution, or enforcement of a violation of a federal statute, order, rule, or regulation purporting to regulate a firearm, firearm accessory, or firearm ammunition enacted after January 1, 2021, if the federal statute, order, rule, or regulation is more restrictive than state law, unless:
  - a. The federal agency appeals to the federal district court of the federal district in which the violation or possible violation occurred or would occur and the court finds probable cause that a national security threat exists;
  - b. The violation also is a violation under this title; or
  - c. The violation also is a violation of chapter 12.1-16, 12.1-17, 12.1-18, 12.1-20, 12.1-41, or 19-03.1.
3. This section does not prohibit an agency or political subdivision of the state or a law enforcement officer or individual employed by an agency or political subdivision of the state from providing assistance to a federal agency or official for an offense not related to firearms or an offense to which firearms are incidental, including a drug offense, homicide, assault, kidnapping, sex offense, or human trafficking.
4. This section does not prohibit law enforcement from providing assistance to a federal agency or official if the investigation also pertains to a felony violation of state law.

**62.1-01-04. Firearm buyback program - Prohibited.**

1. As used in this section, "firearm buyback program" means a program to purchase privately owned firearms, firearm parts, or ammunition from private individuals or organizations for the purpose of providing cash, gifts, or vouchers; or reducing the number of firearms, firearm parts, or ammunition owned by civilians; or permitting a civilian to sell a firearm to the government without fear of prosecution. The term does not include the purchase of firearms, firearm parts, or ammunition from a licensed firearms dealer, or a program to purchase firearms, firearm parts, or ammunition for law enforcement purposes.
2. A state agency, political subdivision, or any law enforcement agency of this state may not conduct a firearm buyback program or participate in the implementation, administration, or operation of a firearm buyback program.
3. A state agency, political subdivision, or any law enforcement agency of this state may not expend any taxpayer dollars for the purpose of implementing, administering, or otherwise operating a firearm buyback program.
4. A violation of this section is a class A misdemeanor.



**CHAPTER 62.1-02  
POSSESSION OF WEAPONS**

**62.1-02-01. Persons who are not to possess firearms - Penalty.**

1.
  - a. A person who has been convicted anywhere of a felony offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent felony offense of another state or the federal government is prohibited from owning a firearm or having one in possession from the date of conviction and continuing for ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
  - b. A person who has been convicted anywhere of a felony offense of this or another state or the federal government not provided for in subdivision a or who has been convicted of a class A misdemeanor offense involving violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another state or the federal government and the offense was committed while using or possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession from the date of conviction and continuing for five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
  - c. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient individual, is prohibited from purchasing a firearm or having one in possession. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 62.1-02-01.2.
  - d. A person under the age of eighteen years may not possess a handgun except that such a person, while under the direct supervision of an adult, may possess a handgun for the purposes of firearm safety training, target shooting, or hunting.  
A person who violates subdivision a or b is guilty of a class C felony, and a person who violates subdivision c or d is guilty of a class A misdemeanor.
2. For the purposes of this section, "conviction" means a determination that the person committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere even though:
  - a. The court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02;
  - b. The court deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02;
  - c. The court placed the person on probation;
  - d. The person's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1;
  - e. Sentence dispositions, sentence reductions, or offense determinations equivalent to this section were imposed or granted by a court, board, agency, or law of another state or the federal government; or
  - f. The person committed an offense equivalent to an offense described in subdivision a or b of subsection 1 when that person was subject to juvenile adjudication or proceedings and a determination of a court under chapter 27-20.4 or of a court of another state or the federal government was made that the person committed the delinquent act or offense.
3. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:

- a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.
- b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.
- c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or a black powder substitute and which cannot use fixed ammunition.

**62.1-02-01.1. Restoration of right to possess firearm.**

1. An individual prohibited from possessing a firearm due to a conviction of a felony under subdivision b of subsection 1 of section 62.1-02-01 may petition the district court for restoration of the individual's firearm rights. If the felony offense was committed in this state, the petition must be filed with the district court in the county where the offense occurred. If the offense was a felony of another state or the federal government, the petition must be filed in the venue where the rights of the individual were revoked. A copy of the petition must be served on the state's attorney's office in the county where the petition is filed in accordance with Rule 5 of the North Dakota Rules of Civil Procedure. The state's attorney's office has twenty days to file a written response to the petition with the district court.
2. The district court may restore the right of an individual to possess a firearm if the court determines, by clear and convincing evidence, that all of the following circumstances exist:
  - a. The individual has paid all fines imposed for the violation resulting in the prohibition;
  - b. The individual has served all terms of imprisonment imposed for the violation resulting in the prohibition;
  - c. The individual has successfully completed all conditions of probation or parole imposed for the violation resulting in the prohibition; and
  - d. The individual's record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of others.

**62.1-02-01.2. Mental disability and the possession of firearms.**

1. A court shall make a finding as to whether the provisions of 18 U.S.C. 922(d)(4) and (g)(4) apply to the subject of a following proceeding in which the court:
  - a. Finds that a person, as a result of mental disease or defect, may not be held criminally responsible in any case pursuant to chapter 12.1-04 or 12.1-04.1;
  - b. Finds that a person is a mentally deficient individual;
  - c. Orders involuntary hospitalization or commitment to a treatment facility or involuntary treatment pursuant to chapter 25-03.1;
  - d. Orders involuntary commitment or involuntary treatment under chapter 25-03.3;
  - e. Appoints a guardian ad litem under section 28-03-04;
  - f. Appoints a guardian under chapter 30.1-28; or
  - g. Appoints a conservator under chapter 30.1-29.
2. If the court finds that the provisions apply, the clerk of the court shall forward the individual's name and nonclinical identifying information to the bureau of criminal investigation, which shall forward the information to the federal bureau of investigation, or its successor agency, for inclusion in the national instant criminal background check system database. The court also shall notify the individual of the prohibitions of 18 U.S.C. 922(d)(4) and (g)(4), and, if relevant, of subdivision c of subsection 1 of section 62.1-02-01.
3. If a court of this state has found an individual under subsection 1 to be subject to the provisions of 18 U.S.C. 922(d)(4) and (g)(4), that individual may petition the court that issued the finding or the district court of the county where the individual resides to remove that individual's firearms-related disabilities, as provided in Public Law

No. 110-180, 105(a). A copy of the petition for relief must be served on the director of the treatment facility that treated the individual pursuant to court order and the prosecuting attorney of the county in which the original finding, order, or appointment occurred. The director of the treatment facility that treated the individual pursuant to court order and the prosecuting attorney may appear, support, object to, and present evidence relevant to the relief sought by the petitioner. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner, concerning:

- a. The circumstances of the original order, appointment, or finding;
  - b. The petitioner's mental health and criminal history records, if any;
  - c. The petitioner's reputation; and
  - d. Changes in the petitioner's condition or circumstances relevant to the relief sought.
4. The court shall grant the petition for relief if the court finds by a preponderance of the evidence that the petitioner likely will not act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. A record must be kept of the proceedings. The record is confidential and may be disclosed only to a court in the event of an appeal. An individual may file a petition for relief under this section no more than once every two years.
  5. When a magistrate or court issues an order granting a petition for relief under subsection 3, the clerk of the court immediately shall forward a copy of the order to the bureau of criminal investigation in the format and medium specified by the bureau after consultation with the state court administrator. The bureau immediately shall forward a copy to the federal bureau of investigation, or its successor agency, for updating of the national instant criminal background check system database.

**62.1-02-02. Sale of handgun regulated - Penalty.**

No person may transfer a handgun to any person who the transferor knows or has reasonable cause to believe is a person prohibited by section 62.1-02-01 from possessing a firearm. Any person who violates this section is guilty of a class A misdemeanor.

**62.1-02-03. Possession or sale of short-barreled rifle or shotgun - Penalty - Application.**

A person who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun is guilty of a class C felony. This section does not apply to a law enforcement officer who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun in the course of or in connection with the officer's official duties, to a member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations who possesses or uses a short-barreled rifle or short-barreled shotgun issued to the member by that organization and while on official duty, or to any person who complies with the National Firearms Act [26 U.S.C. 5801-5872].

**62.1-02-04. Possession of firearm or dangerous weapon in liquor establishment prohibited - Penalty - Exceptions.**

1. An individual who enters or remains in that part of the establishment set aside for the retail sale of alcoholic beverages and the consumption of purchased alcoholic beverages or used as a gaming site at which bingo is the primary gaming activity while that individual knowingly possesses a firearm or dangerous weapon is guilty of an infraction. In addition, an individual is guilty of an offense under this section for the knowing possession of a device that uses a projectile and voltage or a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident in the part of an establishment set aside for the retail sale and consumption of alcoholic beverages.
2. This section does not apply to:
  - a. A law enforcement officer.

- b. The proprietor.
- c. The proprietor's employee.
- d. A designee of the proprietor when the designee is displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.
- e. Private security personnel while on duty for the purpose of delivering or receiving moneys used at the liquor establishment or at the gaming site at which bingo is the primary gaming activity.
- f. The restaurant part of an establishment if an individual under twenty-one years of age is not prohibited in that part of the establishment.

**62.1-02-05. Possession of a firearm or dangerous weapon at a public gathering - Penalty - Application.**

- 1. An individual may not possess a firearm or dangerous weapon at:
  - a. A school or school-sponsored event on school property;
  - b. A church or other place of worship; or
  - c. A publicly owned or operated building.
- 2. This section does not apply to:
  - a. A law enforcement officer, or a correctional officer employed by the department of corrections and rehabilitation or by a correctional facility governed by chapter 12-44.1. A correctional officer employed by the department of corrections and rehabilitation may carry a firearm only as authorized in section 12-47-34. A correctional officer employed by a correctional facility governed by chapter 12-44.1 may carry a firearm or dangerous weapon only as authorized in section 12-44.1-30;
  - b. An individual who is on an ambulance or firefighter crew while the individual is on duty if:
    - (1) The individual has written permission from the governing body or owner of the fire department or ambulance service;
    - (2) The individual possesses a valid class 1 concealed weapons license;
    - (3) The individual has successfully completed a weapons training course developed by the North Dakota private investigative and security board; and
    - (4) The governing body or owner of the fire department or ambulance crew provides written notice to the bureau of criminal investigation of the individuals authorized or no longer authorized to carry a firearm or dangerous weapon under this section, including that all training and certification requirements have been satisfied;
  - c. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
  - d. A competitor participating in an organized sport shooting event;
  - e. A gun or antique show;
  - f. A participant using a blank cartridge firearm at a sporting or theatrical event;
  - g. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;
  - h. A student and an instructor at a hunter safety class;
  - i. Private and public security personnel while on duty;
  - j. A state or federal park;
  - k. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;
  - l. An individual in a publicly owned or operated rest area or restroom;
  - m. An individual who is authorized under section 62.1-04-02 to carry a firearm or dangerous weapon concealed or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a firearm or dangerous weapon concealed if the individual is in a church building or other place of worship and the primary religious leader or the governing body of the church or other place of worship

- approves the individual or group of individuals to carry a firearm or dangerous weapon through a policy or any other means;
- n. A state, federal, or municipal court judge, a district court magistrate judge or judicial referee, and a staff member of the office of attorney general if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient;
  - o. An individual's storage of a firearm or dangerous weapon in a building that is owned or managed by the state or a political subdivision, provided:
    - (1) The individual resides in the building;
    - (2) The storage is inside the individual's assigned residential unit; and
    - (3) The storage has been consented to by the state, the governing board, or a designee; and
  - p. An individual authorized to carry a concealed weapon on school property under section 62.1-02-14.
- 3. This section does not prevent any political subdivision from enacting an ordinance that is less restrictive than this section relating to the possession of firearms or dangerous weapons at a public gathering. An enacted ordinance supersedes this section within the jurisdiction of the political subdivision.
  - 4. Notwithstanding any other provision of law, a church or place of worship may not be held liable for any injury or death or damage to property caused by an individual permitted to carry a dangerous weapon concealed under this section.
  - 5. This section does not prevent the governing body of a school or the entity exercising control over a publicly owned or operated building or property from authorizing the use of a less than lethal weapon as part of the security plan for the school, building, or property.
  - 6. An individual who knowingly violates this section is guilty of an infraction.

**62.1-02-05.1. Brandishing a dangerous weapon.**

Unless otherwise provided by law and subject to sections 12.1-17-04, 12.1-17-05, and 12.1-31-01, an individual may brandish a dangerous weapon while on property owned or leased by the individual.

**62.1-02-06. Discharge of firearm within city - Penalty - Application.**

A person who discharges a firearm within a city is guilty of a class B misdemeanor. This section does not apply to the lawful discharge of firearms by law enforcement officers, by citizens in defense of person or property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity, including shooting galleries and ranges.

**62.1-02-07. Use of firearm by certain minors prohibited - Penalty.**

Any parent, guardian, or other person authorized by the parent or guardian of any minor under fifteen years of age who permits that minor to carry or use any firearm of any description loaded with powder and projectile in public, is guilty of a class B misdemeanor. This section does not apply if the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian.

**62.1-02-08. Illegal firearms, ammunition, or explosive materials business.**

- 1. A person is guilty of an offense if the person supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive material for, a person prohibited by this title from receiving it if the transferor knows or has reasonable cause to believe that such person is prohibited by section 62.1-02-01 from receiving or possessing it.
- 2. The offense is a class C felony if the actor:

- a. Was not licensed or otherwise authorized by law to handle, transfer, or engage in transactions with respect to the firearm, destructive device, or explosive material; or
- b. Engaged in the forbidden transaction under circumstances manifesting the actor's readiness to supply or procure on other occasions in disregard of lawful restrictions.

Otherwise the offense is a class A misdemeanor.

**62.1-02-09. Possession of explosive and destructive device in government building - Penalty.**

A person, except for a law enforcement officer while on official business, is guilty of a class C felony if the person possesses an explosive or destructive device in a government building without the written consent of the government agency or person responsible for the management of the building.

**62.1-02-10. Carrying loaded firearm in certain vehicles prohibited - Penalty - Exceptions.**

An individual may not keep or carry a loaded firearm in or on any motor vehicle, including an off-highway vehicle or snowmobile in this state. An individual violating this section is guilty of an infraction. This prohibition does not apply to:

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.
2. A law enforcement officer.
3. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 with a handgun.
4. An individual who possesses a rifle or shotgun, is not in the field hunting or trapping, and possesses a valid concealed weapons license from this state or has reciprocity under section 62.1-04-03.1.
5. An individual in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.
6. A security guard or private investigator properly licensed to carry firearms.
7. An individual possessing a valid special permit issued pursuant to section 20.1-02-05.
8. An individual with a handgun who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and who possesses a valid driver's license or nondriver identification card issued by the department of transportation or by the individual's state or territory of residence.
9. An individual who possesses a rifle or shotgun, is not in the field hunting or trapping, and is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and possesses a valid driver's license or nondriver identification card issued by the department of transportation or by the individual's state or territory of residence.

**62.1-02-10.1. Carrying a loaded firearm in vehicle while hunting - Penalty.**

An individual who is in the field engaged in the lawful hunting of big game or small game and who violates section 62.1-02-10 is not subject to a criminal penalty but is guilty of a class 2 noncriminal offense under chapter 20.1-01.

**62.1-02-11. Possessing explosive prohibited - Exception - Penalty.**

No person may have in custody, possession, or control any nitroglycerin, dynamite, or any other dangerous or violent explosive, unless the explosive is carried in the prosecution of or to effect a lawful and legitimate purpose. Any person violating this section is guilty of a class C felony.

**62.1-02-12. Resident may purchase rifle or shotgun in contiguous state - Application - Definitions.**

Repealed by S.L. 2005, ch. 598, § 2.

**62.1-02-13. Possession of secured firearm - Prohibition by employer prohibited.**

1. A public or private employer may not:
  - a. Prohibit any customer, employee, or invitee from possessing any legally owned firearm, if the firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and if the customer, employee, or invitee is lawfully in the area.
  - b. Make a verbal or written inquiry regarding the presence of a firearm inside or locked to a private motor vehicle in a parking lot or make an actual search of a private motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle. In addition, a public or private employer may not take any action against a customer, employee, or invitee based upon verbal or written statements of any party concerning possession of a firearm stored inside a private motor vehicle in a parking lot for lawful purposes. A search of a private motor vehicle in the parking lot of a public or private employer to ascertain the presence of a firearm within the vehicle may only be conducted by an on-duty law enforcement officer.
  - c. Condition employment upon the fact that an employee or prospective employee holds or does not hold a concealed weapons license or any agreement by an employee or a prospective employee that prohibits an employee from keeping a legal firearm locked inside or locked to a private motor vehicle in a parking lot, if the firearm is kept for lawful purposes.
  - d. Prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot or the employer's place of business because the customer's, employee's, or invitee's private motor vehicle contains a legal firearm being carried for lawful purposes, that is out of sight within the customer's, employee's, or invitee's private motor vehicle.
  - e. Terminate the employment of or otherwise discriminate against an employee, or expel a customer or invitee for exercising the constitutional right to keep and bear arms or for exercising the right of self-defense as long as a firearm is never exhibited on company property for any reason other than lawful defensive purposes.
2. A public or private employer has no duty of care related to the actions prohibited under this section.
3. A public or private employer is not liable in a criminal or civil action based on actions or inactions taken in compliance with this section. The immunity provided in this subsection does not apply to civil actions based on actions or inactions of public or private employers that are unrelated to compliance with this section.
4. This section does not expand any existing duty, or create any additional duty, on the part of a public or private employer, property owner, or property owner's agent.
5. A person aggrieved under this section may bring a civil action for violation of rights protected under this section. In any successful action brought by a customer, employee, or invitee aggrieved under this section, the court shall award all reasonable personal costs and losses suffered by the aggrieved person as a result of the violation of rights under this section. In any action brought under this section, the court shall award all court costs and attorney's fees to the prevailing party.
6. The prohibitions in subsection 1 do not apply to:
  - a. Any public or nonpublic elementary school, middle school, or high school property, except as otherwise provided in subsection 2 of section 62.1-02-05.
  - b. Any correctional facility or institution.
  - c. Property owned or leased by a public or private employer or the landlord of a public or private employer upon which are conducted substantial activities involving national defense, aerospace, or homeland security.

- d. Property owned or leased by a public or private employer or the landlord of a public or private employer upon which the primary business conducted is the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law, or property owned or leased by an employer who has obtained a permit required under 18 U.S.C. 842 to engage in the business of importing, manufacturing, or dealing in explosive materials on the property.
- e. A motor vehicle owned, leased, or rented by a public or private employer or the landlord of a public or private employer.
- f. Any other property owned or leased by a public or private employer or the landlord of a public or private employer upon which possession of a firearm or other legal product by a customer, employee, or invitee is prohibited under any federal law, contract with a federal governmental entity, or other law of this state.
- g. The state hospital.

**62.1-02-14. Armed first responder in schools - Possession of a concealed weapon - Liability.**

1. The superintendent of public instruction, in consultation with the department of emergency services and the attorney general, shall adopt rules to administer this section and develop criteria for approval of plans under this section.
2. The superintendent of public instruction may accept a proposal from a public school, upon approval by the school board or governing board, indicating the intention by the school to participate in an armed first responder program.
3. Within ninety days of informing the superintendent of public instruction of the intent to participate in the program, the school shall:
  - a. Identify the individual selected by the school to participate in the program and attend training to become the school's armed first responder;
  - b. Submit a plan to the superintendent of public instruction specifying how the school will implement the program; and
  - c. Participate in a comprehensive emergency operations assessment for the purpose of identifying school crisis and emergency threats and risks.
4. The plan submitted by the school to the superintendent of public instruction is a security system plan as defined in section 44-04-24 and a public health and security plan as defined in section 44-04-25. The plan continues to be an exempt record after the required disclosures of the plan under this section.
5. The plan submitted by the school to the superintendent of public instruction must show response time from law enforcement.
6. The plan submitted by the school to the superintendent of public instruction must be approved by local law enforcement and the department of homeland security.
7. The plan submitted by the school to the superintendent of public instruction must require the selected individual to complete the course established by the private investigative and security board. The private investigative and security board shall establish standards equivalent to the South Dakota school sentinel program and may license and certify course instructors, audit the course, and set administrative fees for licensure and certification.
8. An individual selected to become an armed first responder for a school participating in the program:
  - a. Must be a retired law enforcement officer or meet the requirements of subsection 7;
  - b. Must be a citizen of the United States;
  - c. Must be at least twenty-one years old;
  - d. Shall complete a criminal background check successfully and be approved by the local law enforcement agencies with jurisdiction over the school premises where the individual will be an armed first responder;
  - e. Must be a high school graduate or meet equivalency standards;



- f. Shall complete successfully a physical performed by a physician or an advanced practice registered nurse and a mental evaluation by a qualified mental health provider who certifies the individual is capable of performing the duties of an armed first responder;
  - g. Shall complete successfully a faculty and administrator safety training and emergency response program in addition to the requirements under subsection 7;
  - h. Must be approved by the school board or governing board to carry a firearm concealed on school property;
  - i. Shall possess a valid class 1 firearm license from this state; and
  - j. May not be directly responsible for the supervision of children while serving as an armed first responder.
9. An individual selected to become an armed first responder at a school participating in the program shall cooperate in training with local law enforcement for school emergencies to provide a coordinated response to building lockdown and active killer events. The individual shall attend annual training and recertification courses consisting of a minimum of ten hours of instruction and a skills evaluation assessment.
  10. The school board or governing board of any school participating in the program shall inform local law enforcement, in writing, of the name of the individual authorized by the school to participate in the program.
  11. The school board or governing board of any school participating in the program shall ensure the district participates in annual active shooter training.
  12. An individual selected as an armed first responder may not carry a firearm concealed or a dangerous weapon on school premises unless:
    - a. The individual has been approved by the school board or governing board under subsection 8;
    - b. The individual has completed the armed first responder curriculum requirements under subsections 7 and 8; and
    - c. The individual completes the armed first responder recertification course requirements every twelve months.
  13. A firearm or dangerous weapon carried by an armed first responder on school premises must remain concealed and under the direct control of the certified armed first responder or stored in a lockbox accessible only by the armed first responder.
  14. The school board or governing board shall approve a posttraumatic stress disorder treatment program for armed first responders.
  15. The school board or governing board may withdraw a school from participation in the program at any time.
  16. A school participating in the program shall provide program evaluation data to the superintendent of public instruction at the time and in the manner requested by the superintendent of public instruction.
  17. The board of a school district or the governing body of a nonpublic school may establish a program for providing a plan to establish a school first responder which includes authorizing an individual to conceal and carry a weapon if the individual has received education and training in accordance with this section.
  18. A staff member may choose not to function in the capacity of a school first responder.
  19. An individual authorized to work as a first responder under subsection 17, a school district, the board of a school district, or the governing body of a nonpublic school that establishes a first responder program is not civilly or criminally liable for any act or omission of the first responder if the first responder is acting in good faith while providing protection to a student or the school, except if the first responder's conduct amounts to gross negligence.

## **CHAPTER 62.1-03 HANDGUNS**

### **62.1-03-01. Carrying handgun - Limitations - Exceptions.**

1. Unless otherwise prohibited by law, an individual may carry a handgun if the handgun is unloaded and in plain view or secured.
2. A limitation under subsection 1 does not apply to:
  - a. An individual possessing a valid concealed weapons license from this state, an individual not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and who possesses a valid driver's license or nondriver identification card issued by the department of transportation or by the individual's state or territory of residence, or an individual who has reciprocity under section 62.1-04-03.1.
  - b. An individual on that person's land, or in that individual's permanent or temporary residence, or fixed place of business.
  - c. An individual while lawfully engaged in target shooting.
  - d. An individual while in the field engaging in the lawful pursuit of hunting or trapping. However, nothing in this exception authorizes the carrying of a loaded handgun in a motor vehicle.
  - e. An individual permitted by law to possess a firearm while carrying the handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair or back from those locations.
  - f. Any North Dakota law enforcement officer.
  - g. Any law enforcement officer of any other state or political subdivision of another state who possesses active law enforcement credentials.
  - h. Any armed security guard or investigator as authorized by law when on duty or going to or from duty.
  - i. Any member of the armed forces of the United States when on duty or going to or from duty and when carrying the handgun issued to the member.
  - j. Any member of the national guard, organized reserves, state defense forces, or state guard organizations, when on duty or going to or from duty and when carrying the handgun issued to the member by the organization.
  - k. Any officer or employee of the United States duly authorized to carry a handgun.
  - l. An individual engaged in manufacturing, repairing, or dealing in handguns or the agent or representative of that individual possessing, using, or carrying a handgun in the usual or ordinary course of the business.
  - m. Any common carrier, but only when carrying the handgun as part of the cargo in the usual cargo carrying portion of the vehicle.

### **62.1-03-02. Selling handgun to minors prohibited - Penalty.**

Any person who sells, barter, hires, lends, or gives any handgun to any minor is guilty of a class A misdemeanor. This section does not prohibit a person from lending or giving a handgun to a minor if the minor will be using the handgun under the direct supervision of an adult and for the purpose of firearm safety training, target shooting, or hunting.

### **62.1-03-03. Copy of federal license submitted to law enforcement officials.**

A retail dealer licensed to sell handguns by the federal government shall send a copy of the license, within seven days after receiving it, to the chief of police of the city and the sheriff of the county in which the dealer is licensed to sell handguns.

### **62.1-03-04. False information prohibited.**

No person, in purchasing or otherwise securing delivery of a handgun or in applying for a license to carry the handgun concealed, may give false information or offer false evidence of the person's identity.

**62.1-03-05. Prohibited alterations to firearms.**

A person may not change, alter, remove, or obliterate any mark of identification on a firearm, including the name of the maker, model, or manufacturer's number or knowingly possess a firearm on which these alterations have been made. Possession of any firearm upon which any identification mark has been changed, altered, removed, or obliterated creates a rebuttable presumption that the possessor made the alterations.

**62.1-03-06. General penalty.**

Any person who violates any provision of this chapter, for which another penalty is not specifically provided, is guilty of a class A misdemeanor.

## **CHAPTER 62.1-04 CONCEALED WEAPONS**

### **62.1-04-01. Definition of concealed.**

A firearm or dangerous weapon is concealed if it is carried in such a manner as to not be discernible by the ordinary observation of a passerby. There is no requirement that there be absolute invisibility of the firearm or dangerous weapon, merely that it not be ordinarily discernible. A firearm or dangerous weapon is considered concealed if it is not secured, and is worn under clothing or carried in a bundle that is held or carried by the individual, or transported in a vehicle under the individual's control or direction and available to the individual, including beneath the seat or in a glove compartment. A firearm or dangerous weapon is not considered concealed if it is:

1. Carried in a belt holster which is wholly or substantially visible or carried in a case designed for carrying a firearm or dangerous weapon and which is wholly or substantially visible;
2. Locked in a closed trunk or luggage compartment of a motor vehicle;
3. Carried in the field while lawfully engaged in hunting, trapping, or target shooting, whether visible or not;
4. Carried by any person permitted by law to possess a handgun unloaded and in a secure wrapper from the place of purchase to that person's home or place of business, or to a place of repair, or back from those locations; or
5. A bow and arrow, rifle, shotgun, unloaded handgun, or a weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon commonly referred to as a BB gun, air rifle, or CO<sub>2</sub> gun, while carried in a motor vehicle.

### **62.1-04-02. Carrying concealed firearms or dangerous weapons - License distinctions.**

1. An individual, other than a law enforcement officer, may not carry a firearm or dangerous weapon concealed unless the individual is licensed to do so or exempted under this chapter.
2. An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under this chapter and who possesses a valid driver's license or nondriver identification card issued by the department of transportation or by the individual's state or territory of residence may carry a firearm concealed under this chapter.
3. An individual may carry a firearm concealed under this chapter if the individual qualifies for reciprocity under section 62.1-04-03.1 and the individual has the equivalent of a class 2 firearm and dangerous weapon license from the state in which the individual is a resident.
4. For purposes of this chapter, the difference between a class 1 and class 2 firearm and dangerous weapon license is only the extent to which a holder of either license may be eligible to receive reciprocal rights in other jurisdictions. A class 1 firearm and dangerous weapon licenseholder is eligible to receive reciprocal rights in more jurisdictions than a class 2 firearm and dangerous weapon licenseholder. The rights and privileges conveyed by a class 1 or class 2 firearm and dangerous weapon license within the state are identical.

### **62.1-04-03. License to carry a firearm or dangerous weapon concealed - Class 1 firearm license and class 2 firearm and dangerous weapon license.**

1. The director of the bureau of criminal investigation shall issue a license to carry a firearm or dangerous weapon concealed upon review of an application submitted to the director if the following criteria are met:

- a. The applicant is at least twenty-one years of age for a class 1 firearm license or at least eighteen years of age for a class 2 firearm and dangerous weapon license;
  - b. The applicant can demonstrate that the applicant is a resident of this state by providing a copy of a valid driver's license or state-issued identification card from this state that establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address in this state or the applicant possesses a valid driver's license or nondriver identification from the applicant's state or territory of residence that establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address and a valid concealed weapons license from the applicant's state of residence, which state has reciprocity with this state under section 62.1-04-03.1;
  - c. The applicant is not an individual specified in section 62.1-02-01 and for a class 1 firearm license the applicant:
    - (1) Has not been convicted of a felony;
    - (2) Has not been convicted of a crime of violence;
    - (3) Has not been convicted of an offense involving the use of alcohol within three years prior to the date of application;
    - (4) Has not been convicted of a misdemeanor offense involving the unlawful use of narcotics or other controlled substances within ten years prior to the date of application;
    - (5) Has not been convicted of an offense involving moral turpitude;
    - (6) Has not been convicted of an offense involving domestic violence;
    - (7) Has not been adjudicated by a state or federal court as mentally incompetent, unless the adjudication has been withdrawn or reversed; and
    - (8) Is qualified to purchase and possess a firearm under federal law;
  - d. The applicant has successfully completed the testing procedure conducted by a certified test administrator. The person conducting the testing may assess a charge of up to fifty dollars for conducting this testing. The attorney general may certify a test administrator based upon criteria and guidelines prescribed by the director of the bureau of criminal investigation;
  - e. The applicant satisfactorily completes the bureau of criminal investigation application form and has successfully passed the criminal history records check conducted by the bureau of criminal investigation and the federal bureau of investigation. The applicant shall provide all documentation relating to any court-ordered treatment or commitment for mental health or substance abuse. The applicant shall provide the director of the bureau of criminal investigation written authorizations for disclosure of the applicant's mental health or substance abuse evaluation and treatment records. The bureau may deny approval for a license if the bureau has reasonable cause to believe that the applicant or licenseholder has been or is a danger to self or others as demonstrated by evidence, including past pattern of behavior involving unlawful violence or threats of unlawful violence; past participation in incidents involving unlawful violence or threats of unlawful violence; or conviction of a weapons offense. In determining whether the applicant or licenseholder has been or is a danger to self or others, the bureau may inspect expunged or sealed records of arrests and convictions of adults and juvenile court records; and
  - f. The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that individual's control.
2. The attorney general shall offer class 1 firearm and class 2 firearm and dangerous weapon licenses to carry a firearm or dangerous weapon concealed under the following requirements:
- a. An applicant for a class 1 firearm license shall successfully participate in a classroom instruction that sets forth weapon safety rules and the deadly force law of North Dakota, complete an open book test based upon a manual, demonstrate

familiarity with a firearm, and complete an actual shooting or certified proficiency exercise. Evidence of familiarity with a firearm to be concealed may be satisfied by one of the following:

- (1) Certification of familiarity with a firearm by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor;
  - (2) Evidence of equivalent experience with a firearm through participation in an organized shooting competition, law enforcement, or military service;
  - (3) Possession of a license from another state to carry a firearm, concealed or otherwise, which is granted by that state upon completion of a course described in paragraphs 1 and 2; or
  - (4) Evidence that the applicant, during military service, was found to be qualified to operate a firearm.
- b. An applicant for a class 2 firearm and dangerous weapon license is required to successfully complete the open book test offered for the class 1 firearm license.
  - c. A North Dakota resident who has a valid class 1 firearm license also may carry a class 2 dangerous weapon without any further testing required. Class 1 and class 2 permits are equally valid in this state.
  - d. Additional testing is not required to renew a class 2 firearm and dangerous weapon license. A class 1 firearm license may be renewed upon successful completion of the class 1 firearm requirements within thirty days before submission of the application for renewal.
  - e. An individual who has a valid class 2 firearm license may apply to upgrade to a class 1 firearm license within five years from the date the class 2 firearm license was issued and upon successful completion of the requirements under this chapter. An individual who has a valid class 1 firearm license may request to convert the license to a class 2 firearm license before the expiration of the class 1 firearm license.
3. The director of the bureau of criminal investigation shall send by mail to a holder of a license a notice of the procedures for renewal of the license issued under this section. The director shall give the notice at least one hundred fifty days but not more than one hundred eighty days before the expiration of the license.
  4. The bureau of criminal investigation is required to process the application and make a determination within sixty days of receipt of the properly completed application.
  5. The fee for a concealed weapons license must be credited to the attorney general's operating fund. All fees must be paid before the license application may be processed by the director of the bureau of criminal investigation. The attorney general shall list the fees associated with the license, including the costs of the fingerprint-based federal criminal history record check, in the attorney general's administrative rules.
  6. The director of the bureau of criminal investigation shall prescribe the form of the application and license, which must include the name, address, description, a photograph, and the signature of the individual. The application form must require sufficient information to properly conduct a criminal history record check and be accompanied by:
    - a. A photocopy of a valid driver's license or identification card issued by this state which establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address in this state or a valid state-issued driver's license or nondriver identification from the applicant's state or territory of residence which establishes personal identification through photographic means and shows the applicant's name associated with a valid residential street address and a valid concealed weapons license from the applicant's state of residence, which has reciprocity with this state under section 62.1-04-03.1; and
    - b. Two sets of classifiable fingerprints. The two sets of classifiable fingerprints are not required for a renewal of a concealed weapons license. The license is valid for five years. The original license must be delivered to the licensee and an

electronic copy must be preserved for six years by the director. Access to license information must be available to law enforcement through electronic means for official law enforcement purposes. The applicant or licenseholder shall notify the director of the bureau of criminal investigation of any change of address or any other material fact which would affect the restrictions on or the need for the license.

7. The director of the bureau of criminal investigation may deny an application or revoke or cancel a license after it has been granted for any material misstatement by an applicant in an application for the license or any violation of this title. The director of the bureau of criminal investigation shall disclose to the applicant the specific reason for denial or revocation of the license.
8. The applicant may appeal a denial or revocation of this license to the district court of Burleigh County.
9. Information collected from an applicant under this section is confidential information. However, the information may be disclosed:
  - a. To a governmental agency or court for a law enforcement purpose, including the investigation, prosecution, or punishment of a violation of law.
  - b. To a court to aid in a decision concerning sentence, probation, or release pending trial or appeal.
  - c. Pursuant to a court order or a judicial, legislative, or administrative agency subpoena issued in this state.
10. The attorney general may adopt any rules necessary to implement this title.

#### **62.1-04-03.1. Reciprocity.**

A person who has a valid license issued by another state to carry a concealed firearm or dangerous weapon in that state and whose state grants to residents of this state the right to carry a concealed firearm or dangerous weapon without requiring a separate license to carry a concealed firearm or dangerous weapon issued by that state may carry, subject to the provisions of this state's law, a concealed firearm or dangerous weapon in this state, and the other state's license is valid in this state.

#### **62.1-04-04. Producing license upon request - Penalty.**

1. Every individual while carrying a concealed firearm or dangerous weapon, for which a license to carry concealed is required, shall have on one's person the license issued by this or another state or a digital image of one's concealed firearm or dangerous weapon license issued by this state on an electronic device and shall give it to any active law enforcement officer for an inspection upon request by the officer. The failure of any individual to give the license or digital image of the license to the officer is prima facie evidence the individual is illegally carrying a firearm or dangerous weapon concealed.
2. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 shall inform a law enforcement officer of the individual's possession of a concealed weapon upon the initiation of a traffic stop or any other in-person contact initiated by a law enforcement officer.
3. Every individual carrying a concealed firearm under the authority granted in subsection 2 of section 62.1-04-02 shall have on one's person a valid driver's license or nondriver identification card issued by the department of transportation or by the individual's state or territory of residence, or a digital image of one's valid driver's license or nondriver identification card on a mobile device and shall provide the license or card to any law enforcement officer for inspection upon request by the officer.
4. An individual who violates this section is guilty of a noncriminal offense punishable by a fee of twenty dollars.

#### **62.1-04-05. Penalty.**

Any person who violates this chapter is guilty of a class A misdemeanor.

**CHAPTER 62.1-05**  
**MACHINE GUNS, AUTOMATIC RIFLES, SILENCERS, BOMBS**

**62.1-05-01. Possession and sale of machine guns, automatic rifles, silencers, and bombs - Penalty - Forfeiture.**

1. A person may not purchase, sell, have, or possess a machine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases, or any other federally licensed firearm or dangerous weapon unless that person has complied with the National Firearms Act [26 U.S.C. 5801-5872].
2. A person who violates this section is guilty of a class C felony. Upon arrest of that person, the firearm or dangerous weapon must be seized. Upon conviction of the person and motion to the court in which the conviction occurred, the firearm or dangerous weapon must be forfeited to the jurisdiction in which the arrest was made. The firearm or dangerous weapon may be sold at public auction, retained for use, or destroyed pursuant to the court's order. If a qualified local program as defined under section 12.1-32-02.2 has paid a reward for information that resulted in forfeiture of the item and the item has been sold, the jurisdiction shall, after payment of expenses for forfeiture and sale, repay the qualified local program for the reward that it has paid.

**62.1-05-02. Persons exempt from chapter.**

This chapter does not apply to:

1. The authorized agent and a servant of a person who has a license to purchase, sell, have, or possess a machine gun, submachine gun, fully automatic rifle, silencer, or a bomb loaded with explosives or poisonous or dangerous gases.
2. Any officer or member of a duly authorized military organization while on official duty and using the firearm or dangerous weapon issued to the officer or member by that organization.
3. A North Dakota law enforcement officer.
4. Any federal officer authorized by the federal government to have or possess a machine gun, submachine gun, fully automatic rifle, silencer, or bomb loaded with explosives or poisonous or dangerous gases.

**62.1-05-03. Chief law enforcement officer certification - Certain firearms.**

1. For purposes of this section:
  - a. "Certification" means the participation and assent of the chief law enforcement officer necessary under federal law for the approval of the application to transfer or make a firearm. A chief law enforcement officer is not required to make any certification under this section the officer knows to be untrue, but the officer may not refuse to provide certification based on a generalized objection to private persons or entities making, possessing, or receiving firearms or any certain type of firearm the possession of which is not prohibited by law.
  - b. "Chief law enforcement officer" means any official, or the designee of the official, the bureau of alcohol, tobacco, firearms and explosives, or any successor agency, identified by regulation as eligible to provide any required certification for the making or transfer of a firearm.
  - c. "Firearm" has the same meaning as provided in the National Firearms Act [26 U.S.C. § 5845(a)].
2. When a chief law enforcement officer's certification is required by federal law or regulation for the transfer or making of a firearm, the chief law enforcement officer, within thirty days of receipt of a request for certification, shall provide the certification if the applicant is not prohibited by law from receiving or possessing the firearm or is not the subject of a proceeding that could result in the applicant being prohibited by law from receiving or possessing the firearm. If the chief law enforcement officer is unable to make a certification as required by this section, the officer shall provide the applicant with a written notification of the denial and the reason for this determination.



3. In making the certification required by subsection 2, a chief law enforcement officer or designee may require the applicant to provide only the information as is required by federal or state law to identify the applicant and conduct a criminal background check, including a check of the national instant criminal background check system, or to determine the disposition of an arrest or proceeding relevant to the applicant's eligibility to lawfully possess or receive a firearm. A chief law enforcement officer may not require access to or consent for an inspection of any private premises as a condition of making a certification under this section.
4. Chief law enforcement officers and their employees who act in good faith are immune from liability arising from any act or omission in making a certification as required by this section.
5. An applicant whose request for certification is denied may appeal the chief law enforcement officer's decision to the district court for the county in which the applicant resides in accordance with the procedures provided in section 28-34-01. If the court finds that the applicant is not prohibited by law from receiving or possessing the firearm, or is not the subject of a proceeding that could result in the prohibition, or that there is insufficient evidence to support the chief law enforcement officer's determination that the officer cannot truthfully make the certification, the court shall order the chief law enforcement officer to issue the certification and award court costs and reasonable attorney's fees to the applicant.

**TITLE 12.1  
CRIMINAL CODE**

**CHAPTER 12.1-01  
APPLICATION - PURPOSES - PROOF - DEFINITIONS**

**12.1-01-01. Title - Retroactivity - Application - Contempt power.**

1. Title 12.1 of the Century Code may be cited as the North Dakota Criminal Code.
2. This title, except as provided in subsection 3, shall not apply to offenses committed prior to its effective date. Prosecutions for such offenses shall be governed by prior law, which is continued in effect for that purpose. For the purposes of this section, an offense was committed prior to the effective date of this title if any of the elements of the offense occurred prior thereto.
3. In cases pending on or after the effective date of this title, and involving offenses committed prior thereto:
  - a. The provisions of this title according a defense or mitigation shall apply, with the consent of the defendant.
  - b. The court, with the consent of the defendant, may impose sentence under the provisions of this title which are applicable to the offense and the offender.
4. This section does not affect the power of a court or legislative assembly to punish for contempt, or to employ any enforcement sanction authorized by law, nor does this section affect any power conferred by law upon military authority to impose punishment upon offenders.

**12.1-01-02. General purposes.**

The general purposes of this title are to establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which governmental protection is appropriate. To this end, the provisions of this title are intended, and shall be construed, to achieve the following objectives:

1. To ensure the public safety through: a. vindication of public norms by the imposition of merited punishment; b. the deterrent influence of the penalties hereinafter provided; c. the rehabilitation of those convicted of violations of this title; and d. such confinement as may be necessary to prevent likely recurrence of serious criminal behavior.
2. By definition and grading of offenses, to define the limits and systematize the exercise of discretion in punishment and to give fair warning of what is prohibited and of the consequences of violation.
3. To prescribe penalties which are proportionate to the seriousness of offenses and which permit recognition of differences in rehabilitation possibilities among individual offenders.
4. To safeguard conduct that is without guilt from condemnation as criminal and to condemn conduct that is with guilt as criminal.
5. To prevent arbitrary or oppressive treatment of persons accused or convicted of offenses.
6. To define the scope of state interest in law enforcement against specific offenses and to systematize the exercise of state criminal jurisdiction.

**12.1-01-03. Proof and presumptions.**

1. No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt. An accused is presumed innocent until proven guilty. The fact that the accused has been arrested, confined, or charged with the offense gives rise to no inference of guilt at the accused's trial. "Element of an offense" means:
  - a. The forbidden conduct;

- b. The attendant circumstances specified in the definition and grading of the offense;
  - c. The required culpability;
  - d. Any required result; and
  - e. The nonexistence of a defense as to which there is evidence in the case sufficient to give rise to a reasonable doubt on the issue.
2. Subsection 1 does not require negating a defense:
- a. By allegation in the charging document; or
  - b. By proof, unless the issue is in the case as a result of evidence sufficient to raise a reasonable doubt on the issue.
- Unless it is otherwise provided or the context plainly requires otherwise, if a statute outside this title defining an offense, or a related statute, or a rule or regulation thereunder, contains a provision constituting an exception from criminal liability for conduct which would otherwise be included within the prohibition of the offense, that the defendant came within such exception is a defense.
3. Subsection 1 does not apply to any defense which is explicitly designated an "affirmative defense". An affirmative defense must be proved by the defendant by a preponderance of evidence.
4. When a statute establishes a presumption, it has the following consequences:
- a. If there is sufficient evidence of the facts which gave rise to the presumption, the presumed fact is deemed sufficiently proved to warrant submission of the issue to a jury unless the court is satisfied that the evidence as a whole clearly negates the presumed fact.
  - b. In submitting the issue of the existence of the presumed fact to a jury, the court shall charge that, although the evidence as a whole must establish the presumed fact beyond a reasonable doubt, the jury may arrive at that judgment on the basis of the presumption alone, since the law regards the facts giving rise to the presumption as strong evidence of the fact presumed.
5. When a statute declares that given facts constitute a prima facie case, proof of such facts warrants submission of a case to the jury with the usual instructions on burden of proof and without additional instructions attributing any special probative force to the facts proved.

**12.1-01-03.1. Presumption of age.**

1. In determining an individual's age for purposes of this title, the individual's date of birth as provided by any of the following is presumed to be the individual's legal date of birth:
- a. A state government in the form of a birth certificate, other state-issued identification, or a certified copy of a birth certificate that includes the individual's date of birth;
  - b. The United States government in the form of a tribal identification document, military identification, passport, passport card, permanent resident card, certificate of United States citizenship, certificate of naturalization, border crossing card, visa, or other entry document that includes the individual's date of birth; or
  - c. A foreign government in the form of a passport, driver's license, or other foreign government-issued identity document that includes the individual's date of birth. If there is a conflict between government issued forms, a government issued birth certificate or a certified copy of a birth certificate takes precedence.
2. The presumption in subsection 1 may be rebutted by clear and convincing evidence to the contrary.

**12.1-01-04. General definitions.**

As used in this title, unless a different meaning plainly is required:

1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.

2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions to act".
3. "Actor" includes, where relevant, a person guilty of an omission.
4. "Bodily injury" means any impairment of physical condition, including physical pain.
5. "Court" means any of the following courts: the supreme court, a district court, and where relevant, a municipal court.
6. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO<sub>2</sub> gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.
7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade, mine, rocket, missile, or similar device.
8. "Explosive" means gunpowders, powders used for blasting, all forms of high explosives, blasting materials, fuses (other than electric circuit breakers), detonators and other detonating agents, smokeless powders, and any chemical compounds, mechanical mixture, or other ingredients in such proportions, quantities, or packing that ignition by fire, by friction, by concussion, by percussion, or by detonation of the compound, or material, or any part thereof may cause an explosion.
9. "Firearm" means any weapon that will expel, or is readily capable of expelling, a projectile by the action of an explosive and includes any such weapon, loaded or unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun, bazooka, or cannon.
10. "Force" means physical action.
11. "Government" means:
  - a. The government of this state or any political subdivision of this state;
  - b. Any agency, subdivision, or department of the state or any political subdivision of the state, including the executive, legislative, and judicial branches;
  - c. Any corporation or other entity established by law to carry on any governmental function; and
  - d. Any commission, corporation, or agency established by statute, compact, or contract between or among governments for the execution of intergovernmental programs.
12. "Governmental function" includes any activity that one or more public servants are legally authorized to undertake on behalf of government.
13. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss, disadvantage, or injury to any other person in whose welfare the person affected is interested.
14. "Included offense" means an offense:
  - a. That is established by proof of the same or less than all the facts required to establish commission of the offense charged;
  - b. That consists of criminal facilitation of or an attempt or solicitation to commit the offense charged; or
  - c. That differed from the offense charged only in that it constitutes a less serious harm or risk of harm to the same person, property, or public interest, or because a lesser degree of culpability suffices to establish its commission.
15. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
16. "Law enforcement officer" or "peace officer" means a public servant authorized by law or by a government agency or branch to enforce the law and to conduct or engage in investigations or prosecutions for violations of law.
17. "Local" means of or pertaining to any political subdivision of the state.

18. "Manifest injustice" means a specific finding by the court that the imposition of sentence is unreasonably harsh or shocking to the conscience of a reasonable individual, with due consideration of the totality of circumstances.
19. "Offense" means conduct for which a term of imprisonment or a fine is authorized by statute after conviction.
20. "Official action" includes a decision, opinion, recommendation, vote, or other exercise of discretion by any government agency.
21. "Official proceeding" means a proceeding heard or which may be heard before any government agency or branch or public servant authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or a deposition in connection with any such proceeding.
22. "Omission" means a failure to act.
23. As used in this title and in sections outside this title which define offenses, "person" includes, where relevant, a corporation, limited liability company, partnership, unincorporated association, or other legal entity. When used to designate a party whose property may be the subject of action constituting an offense, the word "person" includes a government that may lawfully own property in this state.
24. "Political subdivision" as used in this title and in any statute outside this title which defines an offense means a county, city, school district, township, and any other local governmental entity created by law.
25. "Possesses" means an individual has:
  - a. Direct physical control of something on or around the individual's person; or
  - b. The power and intention to exercise control over something accessible to but not on or around the individual's person.
26. "Public servant" as used in this title and in any statute outside this title which defines an offense means any officer or employee of government, including law enforcement officers, whether elected or appointed, and any person participating in the performance of a governmental function. The term does not include witnesses.
27. "Risk assessment" means an initial phase with a secondary process approved by the department of health and human services for the evaluation of the likelihood a person that committed an offense will commit another similar offense. The initial phase is an assessment tool that is administered by a trained probation and parole officer. A predetermined score on the initial phase initiates the secondary process that includes a clinical interview, psychological testing, and verification through collateral information or psychophysiological testing, or both. The department of health and human services shall perform the secondary process of the risk assessment.
28. "Serious bodily injury" means bodily injury that creates a substantial risk of death or which causes serious permanent disfigurement, unconsciousness, extreme pain, permanent loss or impairment of the function of any bodily member or organ, a bone fracture, or impediment of air flow or blood flow to the brain or lungs.
29. "Signature" includes any name, mark, or sign written or affixed with intent to authenticate any instrument or writing.
30. "Substantial bodily injury" means a substantial temporary disfigurement, loss, or impairment of the function of any bodily member or organ.
31. "Thing of value" or "thing of pecuniary value" means a thing of value in the form of money, tangible or intangible property, commercial interests, or anything else the primary significance of which is economic gain to the recipient.
32. "Tier 1 mental health professional" has the same meaning as provided under section 25-01-01.

**12.1-01-05. Crimes defined by state law shall not be superseded by city or county ordinance or by home rule city's or county's charter or ordinance.**

Except as provided in section 40-05-06, an offense defined in this title or elsewhere by law may not be superseded by any city or county ordinance, or city or county home rule charter, or by an ordinance adopted pursuant to such a charter, and all such offense definitions shall have full force and effect within the territorial limits and other jurisdiction of home rule cities or

counties. This section does not preclude any city or county from enacting any ordinance containing penal language when otherwise authorized to do so by law.

**CHAPTER 12.1-05**  
**JUSTIFICATION - EXCUSE - AFFIRMATIVE DEFENSES**

**12.1-05-01. Justification.**

1. Except as otherwise expressly provided, justification or excuse under this chapter is a defense.
2. If a person is justified or excused in using force against another, but he recklessly or negligently injures or creates a risk of injury to other persons, the justifications afforded by this chapter are unavailable in a prosecution for such recklessness or negligence.
3. That conduct may be justified or excused within the meaning of this chapter does not abolish or impair any remedy for such conduct which is available in any civil action.

**12.1-05-02. Execution of public duty.**

1. Conduct engaged in by a public servant in the course of the person's official duties is justified when it is required or authorized by law.
2. A person who has been directed by a public servant to assist that public servant is justified in using force to carry out the public servant's direction, unless the action directed by the public servant is plainly unlawful.
3. A person is justified in using force upon another to effect that person's arrest or prevent that person's escape when a public servant authorized to make the arrest or prevent the escape is not available if the other person has committed, in the presence of the actor, any crime which the actor is justified in using force to prevent, or if the other person has committed a felony involving force or violence.
4. Conduct engaged in by an individual at the direction of a public servant, known by that individual to be a law enforcement officer, to assist in the investigation of a criminal offense is justified unless the individual knows or has a firm belief, unaccompanied by substantial doubt, that the conduct is not within the law enforcement officer's official duties or authority. For purposes of this subsection, conduct "not within the law enforcement officer's official duties or authority" is conduct in which the law enforcement officer alone could not lawfully engage in that officer's official capacity. When practicable, permission must be obtained from a parent or guardian of a minor who is under the age of eighteen years and is neither married nor in the military service of the United States before the minor may engage in conduct, other than the providing of information, to assist in a criminal investigation under the direct supervision of a public servant.
5. A member of the armed forces is justified in using deadly force when it reasonably appears to be necessary to prevent the loss, theft, destruction, sabotage, or unauthorized control of a nuclear weapon, critical nuclear component, or nuclear explosive device.

**12.1-05-03. Self-defense.**

A person is justified in using force upon another person to defend himself against danger of imminent unlawful bodily injury, sexual assault, or detention by such other person, except that:

1. A person is not justified in using force for the purpose of resisting arrest, execution of process, or other performance of duty by a public servant under color of law, but excessive force may be resisted.
2. A person is not justified in using force if:
  - a. He intentionally provokes unlawful action by another person to cause bodily injury or death to such other person; or
  - b. He has entered into a mutual combat with another person or is the initial aggressor unless he is resisting force which is clearly excessive in the circumstances. A person's use of defensive force after he withdraws from an encounter and indicates to the other person that he has done so is justified if the latter nevertheless continues or menaces unlawful action.

#### **12.1-05-04. Defense of others.**

A person is justified in using force upon another person in order to defend anyone else if:

1. The person defended would be justified in defending himself; and
2. The person coming to the defense has not, by provocation or otherwise, forfeited the right of self-defense.

#### **12.1-05-05. Use of force by persons with parental, custodial, or similar responsibilities.**

The use of force upon an individual is justified under any of the following circumstances:

1. Except as provided in section 15.1-19-02, a parent, guardian, or other person responsible for the care and supervision of a minor, or other person responsible for the care and supervision of a minor for a special purpose, or person acting at the direction of any of the foregoing persons, may use reasonable force upon the minor for the purpose of safeguarding or promoting the minor's welfare, including prevention and punishment of the minor's misconduct, and the maintenance of proper discipline.
  - a. If the person using reasonable force for the prevention and punishment of the minor's misconduct or the maintenance of proper discipline is a paid caregiver, that person must be acting under written direction of the parent or guardian of the minor.
  - b. The reasonable force may be used for this purpose, regardless of whether the reasonable force is "necessary" as required by subsection 1 of section 12.1-05-07.
  - c. The reasonable force used may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
2. A guardian or other person responsible for the care and supervision of an individual who is incompetent, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the individual for the purpose of safeguarding or promoting the welfare of the individual, including the prevention of the individual's misconduct or, if the individual is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution.
  - a. The force may be used for these purposes, regardless of whether the force is "necessary" as required by subsection 1 of section 12.1-05-07.
  - b. The force used may not create a substantial risk of death, serious bodily injury, disfigurement, or gross degradation.
3. A person responsible for the maintenance of order in a vehicle, train, vessel, aircraft, or other carrier, or in a place in which others are assembled, or a person acting at the responsible person's direction, may use force to maintain order.
4. A duly licensed physician, or a person acting at a duly licensed physician's direction, may use force in order to administer a recognized form of treatment to promote the physical or mental health of a patient if the treatment is administered:
  - a. In an emergency;
  - b. With the consent of the patient, or, if the patient is a minor or an individual who is incompetent, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or
  - c. By order of a court of competent jurisdiction.
5. A person may use force upon an individual about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of that individual.

#### **12.1-05-06. Use of force in defense of premises and property.**

Force is justified if it is used to prevent or terminate an unlawful entry or other trespass in or upon premises, or to prevent an unlawful carrying away or damaging of property.

#### **12.1-05-07. Limits on the use of force - Excessive force - Deadly force.**

1. An individual is not justified in using more force than is necessary and appropriate under the circumstances.



2. Deadly force is justified in the following instances:
  - a. When it is expressly authorized by law or occurs in the lawful conduct of war.
  - b. When used in lawful self-defense, or in lawful defense of others, if such force is necessary to protect the actor or anyone else against death, serious bodily injury, or the commission of a felony involving violence. The use of deadly force is not justified if it can be avoided, with safety to the actor and others, by retreat or other conduct involving minimal interference with the freedom of the individual menaced. An individual seeking to protect another individual must, before using deadly force, try to cause the other individual to retreat, or otherwise comply with the requirements of this provision, if safety can be obtained thereby. However, the duty to retreat or avoid force does not apply under the following circumstances:
    - (1) A public servant justified in using force in the performance of the public servant's duties or an individual justified in using force in assisting the public servant need not desist from the public servant's or individual's efforts because of resistance or threatened resistance by or on behalf of the other individual against whom the public servant's or individual's action is directed; and
    - (2) An individual who is not engaged in an unlawful activity that gives rise to the need for the use of deadly force and has not provoked the individual against whom the deadly force is used, unless the circumstances in subdivision b of subsection 2 of section 12.1-05-03 apply, is not required to retreat within or from any place the individual otherwise is legally allowed to be.
  - c. When used by an individual in possession or control of a dwelling, place of work, motor vehicle, or an occupied motor home or travel trailer as defined in section 39-01-01, or by an individual who is licensed or privileged to be there, if the force is necessary to prevent commission of arson, burglary, robbery, or a felony involving violence upon or in the dwelling, place of work, motor vehicle, or occupied motor home or travel trailer, and the use of force other than deadly force for these purposes would expose any individual to substantial danger of serious bodily injury.
  - d. When used by a public servant authorized to effect arrests or prevent escapes, if the force is necessary to effect an arrest or to prevent the escape from custody of an individual who has committed or attempted to commit a felony involving violence, or is attempting to escape by the use of a deadly weapon, or has otherwise indicated that the individual is likely to endanger human life or to inflict serious bodily injury unless apprehended without delay.
  - e. When used by a guard or other public servant, if the force is necessary to prevent the escape of a prisoner from a detention facility, unless the guard or public servant knows that the prisoner is not an individual as described in subdivision d. A detention facility is any place used for the confinement, pursuant to a court order, of an individual charged with or convicted of an offense, charged with being or adjudicated a juvenile delinquent, held for extradition, or otherwise confined under court order.
  - f. When used by a duly licensed physician, or an individual acting at the physician's direction, if the force is necessary to administer a recognized form of treatment to promote the physical or mental health of a patient and if the treatment is administered in an emergency; with the consent of the patient, or, if the patient is a minor or an incompetent person, with the consent of the patient's parent, guardian, or other person entrusted with the patient's care and supervision; or by order of a court of competent jurisdiction.
  - g. When used by an individual who is directed or authorized by a public servant, and who does not know that the public servant is not authorized to use deadly force under the circumstances.

**12.1-05-07.1. Use of deadly force - Presumption of fear of death or serious bodily injury.**

1. An individual is presumed to have held a reasonable fear of imminent peril of death or serious bodily injury to that individual or another when using deadly force if:
  - a. The individual against whom the deadly force was used was in the process of unlawfully and forcibly entering, or had unlawfully and forcibly entered and remains within a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, or if the individual had removed or was attempting to remove another against that individual's will from the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01; and
  - b. The individual who uses deadly force knew or had reason to believe that an unlawful and forcible entry or unlawful and forcible act was occurring or had occurred.
2. The presumption in subsection 1 may be rebutted by proof beyond a reasonable doubt that the individual who used the deadly force did not have a reasonable fear of imminent peril of death or serious bodily injury to that individual or another.
3. The presumption in subsection 1 does not apply if the court finds that any of the following have occurred:
  - a. The individual against whom the deadly force is used has the right to be in or is a lawful resident of the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01, including an owner, lessee, or titleholder, and there is not a temporary or permanent domestic violence protection order or any other order of no contact against that individual;
  - b. The individual removed or sought to be removed is a child or grandchild, or is otherwise in the lawful custody or under the lawful guardianship of, the individual against whom the deadly force is used;
  - c. The individual who uses deadly force is engaged in the commission of a crime or is using the dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 to further the commission of a crime; or
  - d. The individual against whom the deadly force is used is a law enforcement officer who enters or attempts to enter a dwelling, place of work, or occupied motor home or travel trailer as defined in section 39-01-01 in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual entering or attempting to enter was a law enforcement officer.

**12.1-05-07.2. Immunity from civil liability for justifiable use of force.**

1. An individual who uses force as permitted under this chapter is immune from civil liability for the use of the force to the individual against whom force was used or to that individual's estate unless that individual is a law enforcement officer who was acting in the performance of official duties and the officer provided identification, if required, in accordance with any applicable law or warrant from a court, or if the individual using force knew or reasonably should have known that the individual was a law enforcement officer.
2. The court shall award loss of income, reasonable attorney's fees, court costs, and disbursements incurred by the defendant in defense of any civil action brought by a plaintiff if the court finds that the defendant is immune from civil liability as provided in subsection 1.

**12.1-05-08. Excuse.**

A person's conduct is excused if he believes that the facts are such that his conduct is necessary and appropriate for any of the purposes which would establish a justification or excuse under this chapter, even though his belief is mistaken. However, if his belief is negligently or recklessly held, it is not an excuse in a prosecution for an offense for which negligence or recklessness, as the case may be, suffices to establish culpability. Excuse under

this section is a defense or affirmative defense according to which type of defense would be established had the facts been as the person believed them to be.

**12.1-05-09. Mistake of law.**

Except as otherwise expressly provided, a person's good faith belief that conduct does not constitute a crime is an affirmative defense if he acted in reasonable reliance upon a statement of the law contained in:

1. A statute or other enactment.
2. A judicial decision, opinion, order, or judgment.
3. An administrative order or grant of permission.
4. An official interpretation of the public servant or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the crime.

**12.1-05-10. Duress.**

1. In a prosecution for any offense, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by threat of imminent death or serious bodily injury to himself or to another. In a prosecution for an offense which does not constitute a felony, it is an affirmative defense that the actor engaged in the proscribed conduct because he was compelled to do so by force or threat of force. Compulsion within the meaning of this section exists only if the force, threat, or circumstances are such as would render a person of reasonable firmness incapable of resisting the pressure.
2. The defense defined in this section is not available to a person who, by voluntarily entering into a criminal enterprise, or otherwise, willfully placed himself in a situation in which it was foreseeable that he would be subjected to duress. The defense is also unavailable if he was negligent in placing himself in such a situation, whenever negligence suffices to establish culpability for the offense charged.

**12.1-05-11. Entrapment.**

1. It is an affirmative defense that the defendant was entrapped into committing the offense.
2. A law enforcement agent perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of a crime, the law enforcement agent induces or encourages and, as a direct result, causes another person to engage in conduct constituting such a crime by employing methods of persuasion or inducement which create a substantial risk that such crime will be committed by a person other than one who is ready to commit it. Conduct merely affording a person an opportunity to commit an offense does not constitute entrapment.
3. In this section "law enforcement agent" includes personnel of federal and local law enforcement agencies as well as state agencies, and any person cooperating with such an agency.

**12.1-05-12. Definitions.**

In this chapter:

1. "Deadly force" means force which a person uses with the intent of causing, or which he knows creates a substantial risk of causing, death or serious bodily injury. A threat to cause death or serious bodily injury, by the production of a weapon or otherwise, so long as the actor's intent is limited to creating an apprehension that he will use deadly force if necessary, does not constitute deadly force.
2. "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being a person's home or place of lodging.
3. "Force" means physical action, threat, or menace against another, and includes confinement.

4. "Premises" means all or any part of a building or real property, or any structure, vehicle, or watercraft used for overnight lodging of persons, or used by persons for carrying on business therein.