

Office of Attorney General

NORTH DAKOTA CONCEALED WEAPON LICENSE



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GENERAL INFORMATION

APPLICATION FORMS

Application forms are available from the local police department, sheriff's office or the civilian certified test administrators. A list of certified test administrators is online at <http://www.ag.nd.gov/BCI/CW/CW.htm>.

The same (06/2011) form is used for both NEW applications and RENEWAL applications.

- Out of state residents may send a written request to the BCI to receive an application form.

APPLICANT STATUS

An applicant for licensure or renewal **must be a citizen of the United States.**

TYPE OF LICENSE

There are two types of licenses: **Class 1** and **Class 2**. The licenses cost the same and are equally valid within North Dakota, but because of the additional testing requirements, the holders of a Class 1 license have reciprocity in many more states than those who have a Class 2 license.

Licenses issued before August 1, 2009, regardless of the age of the license holder, automatically converted to a Class 2 license.

MINIMUM AGE

An applicant must be at least 21 years old to apply for a Class 1 License, or at least 18 years old to apply for a Class 2 License.

PROHIBITED APPLICANTS

Concealed weapon licenses may only be issued to those who legally may possess a firearm or dangerous weapon. Individuals may be prohibited by state or federal law from owning, possessing, or having a firearm under their control.

WHAT'S THE BIG DEAL ABOUT THE WEBSITE?

It is *extremely important* that applicants and renewal applicants review the information on the Concealed Weapon License website, <http://www.ag.nd.gov/BCI/CW/index.htm>.

Why?

Because the 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, then the forms, application/renewal process and the rules all change too.

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.

As a license holder, you have an obligation to be aware of, and comply with, those laws, *even* if they have changed since your license was issued.

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. We also provide “advance notice” of upcoming changes.

- IF YOU HAVE A QUESTION ABOUT THE APPLICATION OR RENEWAL PROCESS, WHAT YOU NEED TO DO, *HOW LONG THE PROCESS TAKES TO COMPLETE*, OR WHEN YOU NEED TO RENEW, GO TO THE WEBSITE – **YOU WILL FIND THE ANSWERS ARE RIGHT THERE!**
- Go to www.ag.nd.gov then click on the “Concealed Weapon Licenses” link.
- If you don't have access to the internet, you can find answers to the most frequently asked questions by calling the automated Concealed Weapon License Hotline, toll free at 1-855-562-4946.

TESTING

TESTING

The concealed weapon testing may only be administered by a certified law enforcement or civilian test administrator. Contact your local law enforcement agency to inquire about testing or go to the website to download a list of civilian test administrators in your area.

- All classroom instruction and testing must be completed within the State of North Dakota and cannot be held in conjunction with any other state's concealed weapons laws or procedures.

TESTING FEE

A test administrator may charge a maximum of \$50.00 (plus range fees, if applicable). The fee *includes* a complete copy of the current ND Concealed Weapon License Manual for the applicant to keep. Range fees (if applicable) may not be paid directly to the test administrator.

TESTING REQUIREMENTS FOR CLASS 1 LICENSE

An applicant for a Class 1 license shall successfully participate in a classroom instruction that sets forth weapon safety rules and the deadly force law of North Dakota, successfully complete an open book test based upon this manual, demonstrate familiarity with a firearm or dangerous weapon, and successfully complete an actual shooting or certified proficiency exercise.

Evidence of familiarity with a firearm or dangerous weapon to be concealed may be satisfied by one of the following:

- Certification of familiarity with a firearm or dangerous weapon by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, hunter safety instructor, or dangerous weapons instructor;
- Evidence of equivalent experience with a firearm or dangerous weapon through participation in an organized shooting competition, law enforcement, military service, or dangerous weapon course of training;
- Possession of a license from another state to carry a firearm or dangerous weapon, concealed or otherwise, which is granted by that state upon completion of a course described above; or
- Evidence that the applicant, during military service, was found to be qualified to operate a firearm or dangerous weapon.

TESTING REQUIREMENTS FOR CLASS 2 LICENSE

An applicant for a Class 2 license shall successfully complete an open book test based upon this manual.

APPLICATIONS

THE FORM

The same form (06/2011) is used for both new and renewal applications.

Provide all requested information. If something is not applicable to you, put N/A in the box. Make sure you answer EVERY question. Provide ALL information about arrests, convictions, dismissals, etc. Failure to make full disclosure will result in denial. Sign and date the form.

- If you are applying for a Class 1 license, make sure you also sign and date the Authorization to Disclose Health Information form, which is the last page of the application packet.
- If you are applying for a Class 2 license, you only need to sign and date the Authorization form if you answer “yes” to one of the relevant questions (see the instructions on the application form).

SIGNATURES REQUIRED

- The applicant must sign and date the form.
- The test administrator must complete, sign and date the form.
- All application forms must be signed by the Sheriff of the county in which the applicant resides. If the applicant lives in a city with a police department, the application also must be signed by the Chief of Police. Therefore, applicants living within city limits should first deliver the completed packet to the Chief of Police. The Chief will forward the application to the county Sheriff. Rural applicants may deliver the application directly to the sheriff in the county of residence.
 - **ND Residents: The sheriff is responsible for submitting applications directly to the BCI. Do not submit it yourself.**
 - Non-residents: You must obtain the approval and signatures of the law enforcement agency(ies) in the city/county in which you reside. If directed by your local law enforcement agency, you may submit the complete application packet to the BCI. Ensure correct postage – postage due items are not accepted.

APPLICANT FEES/ PHOTOS/FINGERPRINTS

After you have completed testing but BEFORE you deliver your completed application form to the Chief or Sheriff, you will need:

1. TWO color passport photographs. Check your phone book to find a local business that takes passport photos.
2. A cashier’s check or money order (NO PERSONAL CHECKS) for \$45 made payable to the “ND Attorney General.”

- **You also will need 2 sets of fingerprints** – these are taken by the law enforcement agency when you deliver the Application packet. The law enforcement agency may charge a separate fee for the fingerprints.

APPLICATION PROCESSING TIME

How long does it take to process your application? **It takes about 90 days (12 weeks)** from the date you deliver a SATISFACTORILY COMPLETED application or renewal application form to the local law enforcement agency. By law,

- The Chief of Police has 10 working days (2 weeks) to process the application (plus mailing time);
- The Sheriff has 30 days to process the application (plus mailing time); and
- The BCI has 45 days (plus mailing time).

It will take longer than 90 days if the application form is not properly completed or any of the required attachments are missing. Incomplete application forms may be denied or returned to the applicant to correct.

The processing time for BCI begins **after** we receive the *satisfactorily completed* application form.

- TO AVOID UNNECESSARY DELAYS IN PROCESSING YOUR APPLICATION, DOUBLE CHECK THE APPLICATION FORM AND ATTACHMENTS BEFORE DELIVERING TO LAW ENFORCEMENT.

“SATISFACTORILY COMPLETED”

An application/renewal form must be *satisfactorily completed* before it can be accepted as submitted to BCI. This means that all requested information has been provided, all applicable questions have been answered, applicant has signed and dated the form, the test administrator section is properly completed, and the fee, photographs and fingerprints are attached and the application is delivered to law enforcement within the applicable time period(s).

INCOMPLETE APPLICATIONS

EFFECTIVE January 1, 2012: An incomplete application will be returned to the applicant for completion. An incomplete application is not deemed submitted to the BCI until it is returned satisfactorily completed

The satisfactorily completed application must be returned to the agency no later than twenty days from the post-mark date the incomplete application was returned to the applicant. Failure to return the satisfactorily completed application within the time required may result in denial of the application and the applicant will be required to recommence the entire application process.

Renewal applicants must return the satisfactorily completed renewal form to the BCI prior to the date of expiration of the license or the application may be denied and applicant will be required to recommence the entire application process.

STATUS OF APPLICATION / RENEWAL

If you completed the form correctly and it has all necessary signatures and all required attachments, it takes 90 days (12 weeks) to complete the processing of your application.

If your form is not correctly completed, or you are missing information/signatures/attachments, your application will be returned to you for correction. The time for processing your application does not begin until after the properly completed, corrected, form is returned to the BCI.

- **PLEASE NOTE: The BCI is prohibited by law from providing information about the status of a concealed weapon license application, EVEN to the applicant. DO NOT CALL WITH INQUIRIES.** If the license is not received within 90 days of submitting a *satisfactorily completed application*, applicant may send written notification (via US Mail) to the BCI that it has not been received. The BCI cannot accept notification by telephone or e-mail.

WEAPON PURCHASE/NICS ALTERNATIVE

A National Instant Check System (NICS) background check is completed during the application process and the NICS number printed on the license for a North Dakota resident. The requirement for an NICS check for a firearm purchase by a Class 1 or Class 2 license holder may be waived at the dealer's discretion. The NICS number is not printed on a non-resident's license, so it cannot be used to purchase firearms.

NONRESIDENTS

An individual who is not a resident of North Dakota may apply for a North Dakota concealed weapon license but cannot use the license as an alternate to a NICS check when purchasing firearms.

LICENSE PERIOD

Licenses issued prior to July 1, 2011, are valid for three years. Licenses issued on or after July 1, 2011, are valid for five years.

APPLICATION SUBMISSION – ND RESIDENTS

Before delivering the application to law enforcement, check that your form it is properly completed, dated, signed, and has all required attachments.

The application is delivered to the appropriate law enforcement agency for review and approval, and then submitted by law enforcement to the BCI.

- **Applications may not be submitted to the BCI by the applicant.**

Applicants within city limits must deliver the application to the Chief of Police. The Chief of Police forwards the applications to the Sheriff. Residents outside city limits deliver applications directly to the Sheriff. The Sheriff submits all applications directly to the BCI.

APPLICATION SUBMISSION – OUT OF STATE RESIDENTS

The application is delivered to the appropriate law enforcement agency/agencies in the applicant's city and/or county of residence. If directed by the law enforcement agency/agencies, a non-resident applicant may submit the approved application directly to the BCI.

BCI RECORD CHECKS

The BCI performs state and national records checks and processes applicant fingerprints through the regional Automated Fingerprint Identification System (AFIS).

INVALID APPLICATIONS

The BCI will destroy invalid applications. The applicant will receive a notification by mail that the application/renewal was invalid and has been destroyed. The attachments (including the fee) will be returned to applicant.

An application is invalid if:

- It is not the current form. The current form has an issue date of (06/2011).
- It is not an original form issued by the BCI.
- The law enforcement official(s) who signed the application is/are not from the applicant's city and/or county of residence.
- The applicant waited more than 30 days after completion of testing before delivering the application to law enforcement.

Through December 31, 2011, an application is also invalid if:

- Applicant began the renewal process more than 90 days prior to the license expiration or more than 90 days after the license expired.

Effective January 1, 2012, an application is also invalid if:

- Applicant delivered the form to the local law enforcement agency more than 180 DAYS PRIOR to the license expiration date or after the date of expiration of the license.
- Applicant submitted a satisfactorily completed renewal application to the BCI **after** the date of expiration of the license.

The BCI encourages applicants to ensure the application/renewal form is valid and satisfactorily completed before submitting it.

RENEWAL - TESTING

No testing is required for timely renewal of a Class 2 license. A Class 2 license may be upgraded to a Class 1 license upon successful completion of all Class 1 requirements. A Class 1 license may be renewed upon successful completion of all class 1 testing requirements (including the proficiency test) within one year before submission to the BCI of a satisfactorily completed renewal application.

RENEWAL PROCESS - BEGINNING JANUARY 1, 2012

Timely renewal is the responsibility of the license holder.

THE LICENSE IS INVALID THE DAY AFTER IT EXPIRES. THERE IS NO GRACE PERIOD. An invalid license cannot be renewed.

- **Beginning January 1, 2012, the license renewal period begins 180 days prior to the license expiration date and continues until the date of expiration.**

If an applicant wants to be assured of an uninterrupted ability to carry concealed, applicant must complete and deliver to law enforcement all requirements necessary to renew prior to 90 days before the expiration date on the permit.

If the applicant completes the renewal requirements fewer than 90 days before the license expiration date, the license may still be renewed, however, the applicant's license to carry concealed will be invalid from the date of its expiration until the renewed license is issued.

- An incomplete renewal application will be returned by the BCI to the applicant. An incomplete application is **not** deemed to have been submitted to the BCI until after it has been returned satisfactorily completed. Therefore, the BCI recommends the applicant start the renewal process as soon as allowed to avoid the risk of the license expiring before the applicant can return a satisfactorily completed application. If that happens, the applicant will have to start over as a new applicant and retake the required testing.
- Renewal applications may not be submitted to law enforcement after the date the current license expires. Renewal applications received by law enforcement after the current license expires are invalid. Invalid application forms may be destroyed by the law enforcement agency or BCI. The license holder will be required to reapply as a new applicant and complete all required testing.

EXPIRED LICENSE

IF YOUR LICENSE HAS EXPIRED, DO NOT CARRY CONCEALED!

If the license has expired, it is not a valid license. It is a criminal offense to carry a concealed weapon without a valid license. A license holder must be able to produce a valid concealed weapon license upon demand at all times while carrying concealed.

Even if you have already submitted a renewal application, once your license has expired you cannot carry concealed until you receive the new license.

DENIAL

An application for, or renewal of, a concealed weapon license may be denied if the applicant is prohibited by state or federal law from possessing any weapon or if the applicant made a material false statement on the application.

REVOICATIONS

Once issued, a concealed weapon license may be revoked if an individual becomes prohibited by state or federal law from possessing a firearm, or if another valid reason to revoke a license exists. Examples include: a criminal violation while the permit holder was in the possession of a concealed weapon, a conviction of any weapons law, false statements on the renewal application, etc.

ADDRESS CHANGE

License holders are required to submit a change of address in writing via regular mail to the BCI within 30 days after an address change. The notification must include license holder's name, license number, old address and new address.

Upon request of the license holder, the BCI will issue an updated license. There is no charge for an updated license, but the old license must be returned to the BCI before the updated one can be issued. Generally it takes about 2 – 3 weeks for a license to be reissued. For security reasons, the BCI will not accept change of address notification by e-mail or telephone.

LOST OR DESTROYED LICENSES

If a license is lost or destroyed, a replacement may be obtained from BCI. Send a written request to the BCI indicating the license holder's name, address, date of birth, and the reason a replacement is needed. There is no charge for a replacement license. It generally takes 2 – 3 weeks for the replacement license to be issued.

RESTORATION OF FIREARM PRIVILEGES

Beginning August 1, 2011, an individual who has been convicted of a non-violent felony offense or a misdemeanor offense may petition the court for restoration of firearm privilege. The petition may be granted only if the individual has (1) paid all fines & fees, (2) served all terms of imprisonment, (3) successfully completed all conditions of parole & probation and (4) the individual's record and reputation do not indicate he would be a danger to the safety of others.

- For more information, or to initiate a petition, contact an attorney in private practice. The Office of Attorney General (and the BCI) are prohibited from providing legal advice or assistance to the public and therefore cannot provide any further information about this process.

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. BCI maintains a list of states with which North Dakota has reciprocity on the Concealed Weapon License page online at www.ag.nd.gov.

Reciprocity with another state may be conditional; for example, if the other state has a residency requirement, that state may recognize ND licenses held by ND residents but not those held by non-residents.

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

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 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.

FEDERAL PROHIBITIONS ON POSSESSION OF WEAPONS

Section 62.1-04-03 of the North Dakota Century Code (N.D.C.C.) provides that a concealed weapon license may not be issued to any applicant who is prohibited under federal law from owning, possessing, or having a firearm under that person's control. Because federal law may change after the printing and distribution of this manual, it is the responsibility of the concealed weapon license holder or applicant to be familiar with, and to comply with, all current federal laws regarding the purchase, possession, and use of firearms and dangerous weapons.

The following explanation is provided for convenience and is current as of June 2011.

A person prohibited from owning, possessing, or having a firearm under that person's control under Title 18 USC 922(g) (1) through (9) and subsection (n) if the person:

1. has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
 2. is a fugitive from justice;
 3. is an unlawful user of or addicted to any controlled substance;
 4. has been adjudicated mentally defective or who has been committed to a mental institution;
 5. is an illegal or unlawful alien or was admitted to the United States under a non-immigrant visa;
 6. has been discharged from the Armed Forces under dishonorable conditions;
 7. has renounced US citizenship;
 8. is the subject of a protection or restraining order;
 9. has been convicted in any court of a misdemeanor crime of domestic violence; or
 - Subsection (n): is under indictment or information for a crime punishable by imprisonment for a term exceeding one year.
-

NOTE:

Items 1 and subsection (n): in many states this refers to "felony" offenses but it can also apply to specific misdemeanors in some states.

Item 2: The person has an active misdemeanor or felony warrant in any state.

Item 3: The person has been convicted for use or possession of a controlled substance within the past year; or has multiple arrests for use or possession of a controlled substance within the past five years and the most recent arrest occurred within the past year; or has been arrested for use or possession of a controlled substance within the past year and the substance tested positive for a controlled substance.

Item 4: It has been determined by a court, board, commission or other lawful authority that the person, as a result of marked subnormal intelligence, or mental illness, incompetence, condition or disease, (1) is a danger to self or others, or (2) lacks the mental capacity to contract or manage their own affairs.

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 discharge! It wasn’t an accident; someone didn’t practice safety.

THE EIGHT CARDINAL RULES OF SAFETY

(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 it was unloaded, but it goes off anyway.

(2) **A loaded weapon in the home has a much 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. This is close to paranoia! Weapons should be unloaded and locked to prevent children from being able to operate them. It doesn’t take long to load a weapon for use.

(3) **Never put your finger on the trigger until you are ready to fire.**

Many people have had a gun discharge in the holster because they place their finger on the trigger as they are drawing or holstering the weapon. The weapon can’t go off without the trigger being pulled.

(4) **Every time a weapon is given to you, check that weapon to see if it is loaded.**

Open the cylinder or action, then look and feel to make sure it is empty. Many semi-automatic pistols can shoot even if the magazine is out. Open the cylinder or action, then look and feel to make sure it is empty.

(5) **Never depend on the mechanical safety device.**

Just like everything else that is mechanical, safeties may fail. For hunting and sporting activities, 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 with your finger off the trigger and unload and secure it when you are not planning on using it.

(6) **If a cocked weapon is given to you, the proper procedure to follow is to point the muzzle in a safe direction and carefully let the hammer down.**

To accomplish this with a revolver, the hammer must be held with the thumb of one hand. Once a good grip is on the hammer, 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.

With the current semi-automatic handguns, this may be easily accomplished. First, keep the weapon pointed in a safe direction and remove the magazine from the magazine well. Then work the slide to the rear and lock it in the open position. Look and feel to ensure there is nothing in the chamber.

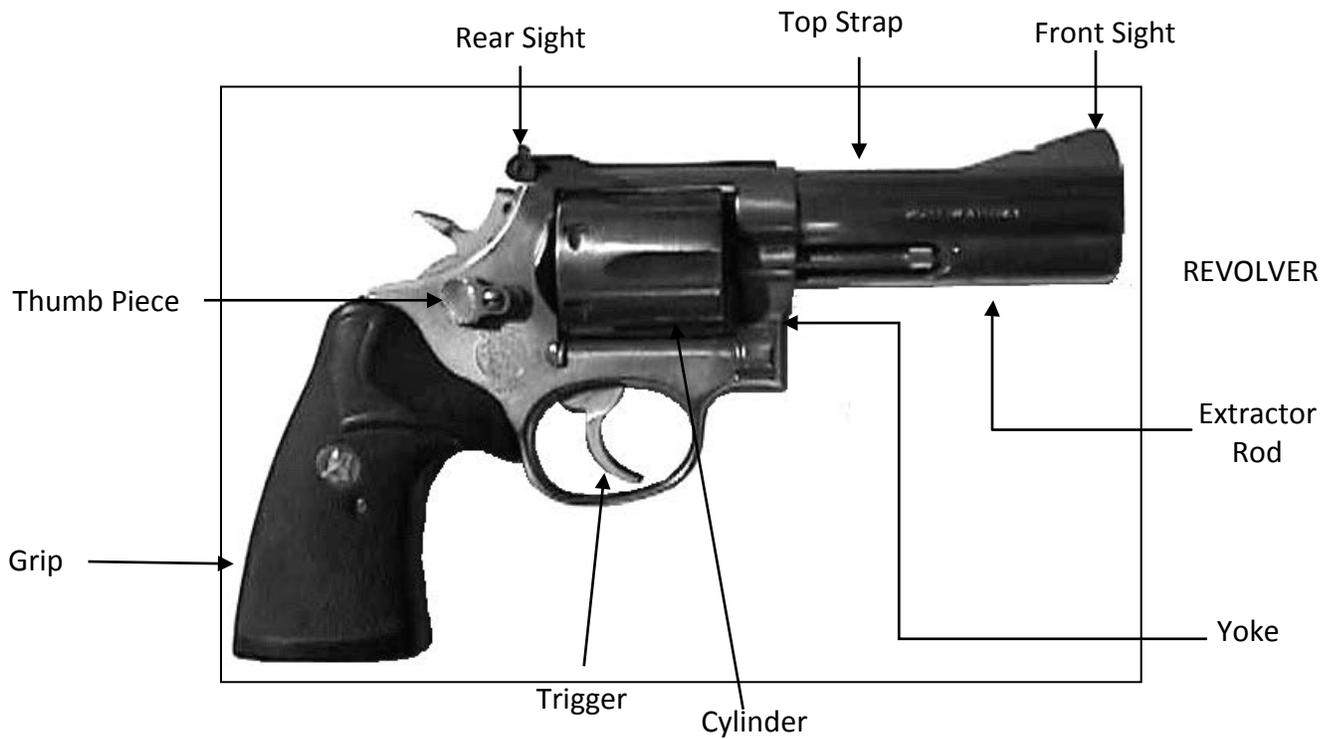
- (7) If you are going to give a weapon to someone else, pass it to them with the magazine out and the action locked back or with the cylinder open.**

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

- (8) For your own safety, you should inspect your own weapons for proper care and maintenance.**

Follow the manufacturer's specifications for care, maintenance and cleaning. Weapons will last a long time if they are cared for properly.

NOMENCLATURE



BASIC INSPECTION GUIDES

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 pistol
 - Slide locks back
 - Slide release works
 - Magazine locks in and releases properly
 - For a revolver
 - Cylinder opens and closes properly
 - Cylinder rotates without binding

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 and the type of shooting. The key is not to hold your breath while shooting. The first visible sign of the brain not having enough oxygen is trembling. This does not support good weapon control.

STANCE

Many different stances are available and have been taught in the past including Point shoulder, Weaver and Modified weaver. No matter what the situation, any shooting stance must provide a stable shooting platform.

GRIP

The proper grip differs with the type of handgun being used. For a pistol the hand is placed high on the back of weapon, right under the tang. For a pistol to operate properly the grip strength must be appropriate, otherwise the functioning may be impaired. To find the proper grip strength, grip the weapon until the hand starts to shake, then back off the pressure just until the shaking stops. That is how hard to grip the pistol.

For a revolver, the hand is placed high up on the back strap or grip with the webbing between thumb and trigger finger at very top. The revolver is held just like a friendly hand shake and no more pressure need be applied.

For either handgun, the support hand provides only support and no pressure should be exerted. It provides only support or stability.

The trigger finger should make contact with the trigger with the first segment of the finger. If right handed, the right edge of the trigger should be touching the first joint. If left-handed, the left edge of the trigger should be touching the first joint. Revolver grips may be changed easily and many styles are available so the handgun can be made to fit your hand. Pistol grips are not interchangeable so the placement of the hand may need to be changed in order to get the trigger finger in the proper place.

TRIGGER PULL

You should not know the exact instant a handgun will fire. There are two most common mistakes made while shooting that affect accuracy. The first is to anticipate the gun going off. This is a

“flinch” and will cause the bullets to go high. The second and more common mistake is to make the gun go off when you want it to. This is called a “jerk” and will cause the bullets to go low.

The trigger pull for a revolver should be smooth and the end must be a squeeze. For double action take up the first part of the trigger pull, acquire sights, and then squeeze. (pull-sight-squeeze) For single action it is squeeze only. (sight-squeeze) Follow-through is what your trigger finger does after the shot. The proper follow-through is to hold the trigger to the rear until the weapon recovers from recoil.

For single action only pistols the trigger pull is the same as for revolvers. For double/single and full double action pistols, trigger reset should be used. Trigger reset is how far the trigger needs to be let forward in order to reengage the sear so it may be fired again. This is all the farther the trigger need be let forward. The first round fired will be the pull-sight-squeeze but the subsequent shots will be reset-sight-squeeze.

SIGHTING A FIREARM

Which eye should be used for aiming? It is more fundamentally sound that a right-handed shooter use the right eye and a left-handed shooter use the left eye to sight a handgun. For close distances it is also possible to use both eyes.

Most people will have one dominant eye. This does not mean that the other is weaker, only that one will be chosen from habit or preference. If there is a large difference between the eyes, it may not be possible to sight a handgun with both eyes open and not possible to close the dominant eye while keeping the other one open. However, It is possible to learn how to use either eye.

SIGHT ALIGNMENT

There are three components used for sighting

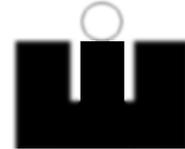


The relationship between the front sight, rear sight and where you want the bullet to strike is called sight alignment. Proper sight alignment is: the front sight is centered in the rear sight and level with the top and positioned just below where you want the bullet to strike the target. The slang term for proper sight alignment is pumpkin on a post.



SIGHT PICTURE

Sight picture is what you will see or how you will see the sights. Human vision cannot focus on three different items at three different distances so we must pick one to focus on. The other two will appear a little blurry. Which one should we focus our vision on? 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

Every weapon comes from the manufacture with the sights adjusted properly. No weapon has ever shot where it has not been aimed. Sight alignment and sight picture are the keys. Unless the sights are damaged, there should be no reason to adjust the sights. Many people adjust their sights to cover for bad sight alignment or improper trigger control.

If the sights have been damaged and need to be adjusted, it is the rear sight that is adjustable. The rear sight should be moved in the same direction that you want the bullet strike to move. For example, if the handgun is shooting to the left you want the strike to move to the right so move the rear sight to the right.

LOADING A HANDGUN

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

- **REVOLVER:** A revolver may then be loaded by placing a round into each charge hole in the cylinder and the weapon properly closed.
- **PISTOL:** The pistol is completely empty and a magazine is fully loaded but not in weapon. There is also one extra loose round available. With weapon pointed in a safe direction insert the magazine into the magazine well. The finger should not be touching the trigger.

Seat the magazine into the magazine well by pushing it in until a click is heard. There is no need to slam the magazine into pistol as damage to the weapon or the magazine will occur. Rack the slide to insert one round into the chamber. Activate the magazine catch and remove magazine. The loose round may now be inserted into the top of the magazine. Re-insert the magazine into

the pistol without slamming it in. You can make sure the magazine is properly seated by pulling on the floor plate. The pistol is now completely loaded.

ADMINISTRATIVE UNLOADING

A revolver may be unloaded by pointing the weapon in a safe direction and activating the thumb piece to open the cylinder. The muzzle should be pointed up and the rounds will fall out of the charge holes.

To unload a pistol, remember that there is a live round in the chamber. With pistol pointed in a safe direction, lock slide to the rear. The support hand must not cover the ejection port and the loose round should fall on the floor, etc. Do not attempt to catch the loose round.

RELOADING

To reload a revolver it should be emptied just as with the administrative unloading. The extractor rod should be pressed to remove the empty brass while the muzzle is pointed up. The muzzle should now be pointed downward and new ammunition may be placed into the weapon and it closed properly.

For a pistol, when it is empty the slide should lock back. Obtain the spare magazine and while holding it properly, bring it towards the weapon. As it nears the weapon, release the empty magazine. The empty magazine will drop and it goes on the ground. Insert the new magazine into the pistol (do not slam it in) and using the support hand, release the slide forward just as when initially loading.

MALFUNCTIONS WITH A HANDGUN

Anything mechanical may fail at some time so it is important that handguns be inspected regularly. It is very rare that a revolver will malfunction while shooting. Bad ammunition may cause a problem but anything else will probably be something that has broken in the weapon and it must be fixed.

For a pistol it is another matter. There are many reasons a pistol may fail while shooting. 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 the pistol.

Bad ammunition may also cause some malfunctions. Factory ammunition is recommended for use in pistols. Some manufacturer's warranties will be void if reloaded ammunition is used. Do not use lead bullets in a pistol. Metal jacketed rounds should be used.

Each time the trigger is pulled on a revolver, the cylinder rotates and a new round is struck by the firing pin. A pistol has four distinct operations that must be completed for each shot. Those four operations are to feed, fire, extract and eject. If any of these fail, it will cause a malfunction. The process to clear any malfunction while shooting a pistol is called “tap - rack.”

- To properly perform the tap-rack the finger must come 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. It is important not to cover the ejection port as a bad round or an empty case has to leave the weapon. The weapon may be canted to the right to let gravity assist in removing anything from the pistol.

If either a fail to extract or fail to eject occurs, it is likely that a double feed condition will be created. There is one empty and one live round, both trying to occupy the same space. When this happens the slide will probably not be in battery and you will not be able to tap and rack. 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 at least twice.
- Tap-rack = same as above, but includes re-inserting the magazine into the weapon. ■

NEW APPLICANT CHECKLIST

1. **COMPLETE THE FORM.** Provide all requested information (if something is not applicable to you, put N/A in the box). Make sure you answer EVERY question. Provide ALL information about arrests, convictions, dismissals, etc. Sign and date the form. If you are applying for a Class 1 license, make sure you also sign and date the Authorization to Disclose Health Information form, which is the last page of this application packet. If you are applying for a Class 2 license, you only need to sign and date the Authorization form if you answer “yes” to one of the relevant questions (see the application form).
2. **COMPLETE TESTING.** Contact your local law enforcement agency or a civilian certified test administrator (download the list of civilian test administrators on the Concealed Weapon page at www.ag.nd.gov). After testing is successfully completed, make sure the test administrator has signed and dated the form.
3. **COMPILE THE APPLICATION PACKET.** Double-check the form again. Make sure it is signed and dated by the test administrator, that you have provided all requested information (or responded N/A), answered all 17 questions, provided all additional information as required, and have signed and dated the form. You will need:
 - a. TWO color passport photographs. Contact any local business that takes passport photos.
 - b. A cashier’s check or money order (NO PERSONAL CHECKS) for \$45 made payable to the ND Attorney General.
 - c. Fingerprints - these are taken by the local law enforcement agency when you deliver the packet. The law enforcement agency may charge a separate fee.
4. **DELIVER THE PACKET TO LAW ENFORCEMENT.** You must deliver the application packet to the appropriate law enforcement agency within thirty (30) days of your testing date. Applications delivered to law enforcement more than 30 days after the testing date may be denied by the BCI as untimely and invalid. The law enforcement agency submits the application packet directly to the BCI.

RENEWAL APPLICANT CHECKLIST

1. **CHECK THE LICENSE CLASS AND EXPIRATION DATE.** Timely renewal is the responsibility of the license holder. Licenses issued prior to August 1, 2009, automatically converted to a Class 2. For licenses issued August 1, 2009 or later, the Class is printed on the front of the license. The expiration date is on the front of the license. If you are outside the applicable renewal period, you cannot renew the license. Start as a new applicant and complete all testing.
 - a. Until December 31, 2011, the license renewal period begins 90 days prior to license expiration and continues until 90 days after the license expiration date. If it is more than 90 days after the license expiration date, the license cannot be renewed.
 - b. **Beginning January 1, 2012**, the license renewal period begins **180 days prior to the license expiration date and continues only until the date of expiration**. An expired license cannot be renewed.
2. **COMPLETE THE FORM.** Provide all requested information (if something is not applicable to you, put N/A in the box). Make sure you answer EVERY question. Provide all information about arrests, convictions, dismissals, etc. as required. Sign and date the form. If you are renewing a Class 1 license, make sure you also sign and date the Authorization to Disclose Health Information form (last page).
3. **COMPLETE TESTING, if applicable.** If you are renewing a Class 2 license within the applicable renewal time period, you do NOT need to complete testing. Testing IS required in order to renew a Class 1 license (see New Applicant Instructions, above) even if you are within the license renewal period.
4. **COMPILE THE APPLICATION PACKET.** Double-check the form again. Make sure you have provided all requested information (or responded N/A), answered all 17 questions, provided additional information as required, and have signed and dated the form. Class 1 renewal applicant-make sure the form has been signed and dated by the test administrator.

Fingerprints are not required for timely renewals, but you WILL need:

 - a. TWO color passport photographs. Contact any local business that takes passport photos.
 - b. A Cashier's check or money order (NO PERSONAL CHECKS) for \$45 made payable to the ND Attorney General.
5. **DELIVER THE PACKET TO LAW ENFORCEMENT.** You must deliver the application packet to the appropriate law enforcement agency within thirty (30) days of your testing date (if applicable) and within the renewal time period. Applications delivered to law enforcement more than 30 days after the testing date or outside the renewal time period will be denied by the BCI as untimely and invalid. The law enforcement agency submits the application packet directly to the BCI.

INFORMATION ABOUT THE TEST

The questions on the open book test are taken from the information appearing in the relevant chapters of the North Dakota Century Code (N.D.C.C.). These chapters of the North Dakota Century Code (N.D.C.C.) are contained in entirety in the appendix at the end of this Manual. Please carefully review this information. All applicants must achieve a score of 70% overall and 100% on the deadly force law in order to pass the test.

This information also available from the Legislative Council's website, <http://www.legis.nd.gov/information/statutes/cent-code.html>. For convenience, the web address for each chapter is provided below.

TITLE 62.1, WEAPONS

CHAPTER 62.1-01 DEFINITIONS – GENERAL PROVISIONS

<http://www.legis.nd.gov/cencode/t62-1c01.pdf>

CHAPTER 62.1-02 POSSESSION OF WEAPONS

<http://www.legis.nd.gov/cencode/t62-1c02.pdf>

CHAPTER 62.1-03 HANDGUNS

<http://www.legis.nd.gov/cencode/t62-1c03.pdf>

CHAPTER 62.1-04 CONCEALED WEAPONS

<http://www.legis.nd.gov/cencode/t62-1c04.pdf>

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

<http://www.legis.nd.gov/cencode/t62-1c05.pdf>

CHAPTER 12.1-05 (JUSTIFICATION)

CHAPTER 12.1-05 JUSTIFICATION

<http://www.legis.nd.gov/cencode/t12-1c05.pdf>

APPENDIX

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 stun gun; 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.

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 which will expel, 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. For a felon who is not sentenced under section 12.1-32-09.1, the term does not include a firearm or weapon that is a rifle that has a barrel sixteen inches [40.64 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 that is designed to use black powder, or a black powder substitute, and cannot use fixed ammunition.

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 the Thompson contender forty-five caliber single-shot center-fire with a pistol grip or similar firearm, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].

7. "Law enforcement 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.

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.

9. "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.

10. "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.

11. "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.

12. "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].

13. "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].

14. "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.

15. "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.

16. "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.

Handguns with a removable magazine or clip must have the magazine or clip removed from the firearm if the magazine or clip contains any loaded shells.

62.1-01-02. Forfeiture of dangerous weapon or firearm by person arrested and convicted of crime. 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 firearm or dangerous weapon may be, pursuant to court order, sold at public auction, sold or traded to other law enforcement agencies or authorized firearm dealers, retained for use, or destroyed.

62.1-01-03. Limitation on authority of political subdivision regarding firearms. No political subdivision, including home rule cities or counties, may enact any ordinance relating to the purchase, sale, ownership, transfer of ownership, registration, or licensure of firearms and ammunition which is more restrictive than state law. All such existing ordinances are void.

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 or under control from the date of conviction and continuing for a period of 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 subsections 7 and 8 of section 12.1-01-04, a destructive device or an explosive, is prohibited from owning a firearm or having one in possession or under control from the date of conviction and continuing for a period of 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 person as defined in section 25-01-01, is prohibited from purchasing a firearm or having one in possession or under control. 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 or of a court of another state or the federal government was made that the person committed the delinquent act or offense.

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

- 1. An individual who is 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 in the district where the individual resides for restoration of the individual's firearm rights.
- 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 person", as defined in subsection 3 of section 25-01-01;
 - 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 or gaming site prohibited - Penalty - Exceptions. Any person who enters or remains in that part of the establishment that is set aside for the retail sale in an establishment engaged in the retail sale of alcoholic beverages or used as a gaming site while in the possession of a firearm or dangerous weapon is guilty of a class A misdemeanor. This section does not apply to:

1. A law enforcement officer.
2. The proprietor.
3. The proprietor's employee.
4. 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.
5. Private security personnel while on duty for the purpose of delivering or receiving moneys used at the liquor establishment or gaming site.

62.1-02-05. Possession of a firearm at a public gathering - Penalty - Application.

1. A person who possesses a firearm at a public gathering is guilty of a class B misdemeanor. For the purpose of this section, "public gathering" includes athletic or sporting events, schools or school functions, churches or church functions, political rallies or functions, musical concerts, and individuals in publicly owned parks where hunting is not allowed by proclamation and publicly owned or operated buildings. The term "public gathering" does not apply to a state or federal park.

2. This section does not apply to law enforcement officers; members of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty; competitors participating in organized sport shooting events; gun and antique shows; participants using blank cartridge firearms at sporting or theatrical events; any firearms carried in a temporary residence or motor vehicle; students and instructors at hunter safety classes; or private security personnel while on duty. In addition, a municipal court judge licensed to practice law in this state, a district court judge, a staff member of the office of

attorney general, and a retired North Dakota law enforcement officer are exempt from the prohibition and penalty in subsection 1 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.

3. This section does not prevent any political subdivision from enacting an ordinance which is less restrictive than this section relating to the possession of firearms at a public gathering. Such an ordinance supersedes this section within the jurisdiction of the political subdivision.

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 having charge or custody of any minor under fifteen years of age who permits that minor to carry or use in public any firearm of any description loaded with powder and projectile, except when the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian, is guilty of a class B misdemeanor.

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 vehicle - Penalty - Exceptions. No person may keep or carry a loaded firearm in or on any motor vehicle in this state. Any person violating this section is guilty of a class B misdemeanor. 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, except while the officer is engaged in hunting or trapping activities with a rifle or shotgun.
3. Any person possessing a valid North Dakota concealed weapons license or a valid license issued by another state authorizing the person to carry a dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a dangerous weapon concealed in that state without obtaining a similar license from that state, except while that person is in the field engaged in hunting or trapping activities.
4. Any person in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.
5. A security guard or private investigator licensed to carry firearms by the attorney general.
6. Any person possessing a valid special permit issued pursuant to section 20.1-02-05.

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, high school, college, or university property.

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.

CHAPTER 62.1-03

HANDGUNS

62.1-03-01. Carrying handgun - Restrictions - Exceptions.

1. A handgun may be carried by a person not prohibited from possessing one by section 62.1-02-01 or any other state statute, in a manner not prohibited by section 62.1-02-10 if:

a. Between the hours of one hour before sunrise and one hour after sunset, the handgun is carried unloaded and either in plain view or secured.

b. Between the hours of one hour after sunset and one hour before sunrise, the handgun is carried unloaded and secured.

2. The restrictions provided in subdivisions a and b of subsection 1 do not apply to:

a. Any person possessing a valid North Dakota concealed weapons license or a valid license issued by another state authorizing the person to carry a dangerous weapon concealed if that state permits a holder of a valid North Dakota concealed weapons license to carry a dangerous weapon concealed in that state without obtaining a similar license from that state.

b. Any person on that person's land, or in that person's permanent or temporary residence, or fixed place of business.

c. Any person while lawfully engaged in target shooting.

d. Any person 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. Any person permitted by law to possess a handgun 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 thereof if on official duty within this state.

h. Any armed security guard or investigator as authorized by the attorney general 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. Any person engaged in manufacturing, repairing, or dealing in handguns or the agent or representative of such person possessing, using, or carrying a handgun in the usual or ordinary course of such 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 in handgun. No person may change, alter, remove, or obliterate any mark of identification on a handgun, such as the name of the maker, model, or manufacturer's number or knowingly possess a handgun on which such alterations have been made. Possession of any handgun upon which any such 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; or
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.
5. A bow and arrow, an unloaded rifle or shotgun, or an unloaded 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 CO2 gun, while carried in a motor vehicle.

62.1-04-02. Carrying concealed firearms or dangerous weapons prohibited. No person, other than a law enforcement officer, may carry any firearm or dangerous weapon concealed unless the person is licensed to do so or exempted pursuant to this chapter. For purposes of this chapter, dangerous weapon does not mean a spray or aerosol containing CS (ortho-chlorobenzamalonitrile), CN (alpha-chloroacetophenone), or other irritating agent intended for use in the defense of a person.

62.1-04-03. License to carry a firearm or dangerous weapon concealed.

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 by a resident or nonresident citizen of the United States if the following criteria are met:
 - a. The applicant is at least twenty-one years of age for a class 1 license or at least eighteen years of age for a class 2 license.
 - b. The applicant has a valid reason for carrying the firearm or dangerous weapon concealed, including self-protection, protection of others, or work-related needs.

c. The applicant is not a person specified in section 62.1-02-01 and for a class 1 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;
- (4) Has not been convicted of an offense involving the unlawful use of narcotics or other controlled substances;
- (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 the written approval for the issuance of a license from the sheriff of the applicant's county of residence, and, if the city has one, the chief of police or a designee of the city in which the applicant resides. The approval by the sheriff may not be given until the applicant has successfully completed a background investigation in that county and has successfully completed the testing procedure conducted by a certified firearm or dangerous weapon instructor. The person conducting the testing may assess a charge of up to fifty dollars for conducting this testing. The attorney general may certify a firearm or dangerous weapon instructor 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 a background investigation or criminal records check conducted by that agency. To pass a background investigation, an applicant shall provide all documentation relating to any court-ordered treatment or commitment for mental health or alcohol or substance abuse or incidents of domestic violence. The applicant shall provide the director of the bureau of criminal investigation written authorizations for disclosure of the applicant's mental health and alcohol or substance abuse evaluation and treatment records. The bureau may deny approval for a class 1 license if the bureau has reasonable cause to believe that the applicant or permitholder 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 permitholder has been or is a danger to self or others, the bureau may inspect expunged records of arrests and convictions of adults and juvenile court records.

f. The applicant is not prohibited under federal law from owning, possessing, or having a firearm under that person's control.

2. The attorney general shall offer class 1 and class 2 licenses to carry a firearm or dangerous weapon concealed pursuant to the following requirements:

a. An applicant for a class 1 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 or dangerous weapon, and complete an actual shooting or certified proficiency exercise. Evidence of familiarity with a firearm or dangerous weapon to be concealed may be satisfied by one of the following:

(1) Certification of familiarity with a firearm or dangerous weapon by an individual who has been certified by the attorney general, which may include a law enforcement officer, military or civilian firearms instructor, hunter safety instructor, or dangerous weapon instructor;

(2) Evidence of equivalent experience with a firearm or dangerous weapon through participation in an organized shooting competition, law enforcement, military service, or dangerous weapon course of training;

(3) Possession of a license from another state to carry a firearm or dangerous weapon, 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 or dangerous weapon.

b. An applicant for a class 2 license is required to successfully complete the open book test offered for the class 1 license.

c. Licenses issued before August 1, 2009, regardless of the age of the licenseholder, convert to a class 2 license upon renewal and no additional testing is required. No additional testing is required to renew a class 2 concealed weapons license. A class 1 license may be renewed upon successful completion of the class 1 requirements within one year before submission of the application for renewal. A license issued under this section before August 1, 2009, and a class 2 license may be upgraded to a class 1 license upon successful completion of the class 1 requirements and satisfaction of the age requirement.

3. The sheriff is required to process the application within thirty days after the completion of the testing portion unless the application is for renewal of a license and in such case the application must be processed within thirty days after its receipt by the sheriff, the chief of police is required to process the application within ten working days of receipt by the agency, and the bureau of criminal investigation is required to process the application and make a determination within forty-five days of receipt from the forwarding agency.

4. The license fee for a concealed weapons license is forty-five dollars, which must be credited to the attorney general's operating fund. The license fee must be paid before the license is issued by the director of the bureau of criminal investigation.

5. 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 background investigation and be accompanied by 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 license must be prepared in triplicate, and the original must be delivered to the licensee, the duplicate must be sent by mail, within seven days after issuance, to the sheriff of the county in which the applicant resides, and the triplicate must be preserved for six years by the director. In those cases in which the licensee resides in a city, an additional copy of the license must be made and sent by mail, within seven days after issuance, to the chief of police of the city in which the applicant resides. The individual 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.

6. 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.

7. The applicant may appeal a denial or revocation of this license to the district court of Burleigh County.

8. 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.

9. The attorney general may adopt any rules necessary to carry out 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 on demand. Every person 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 and shall give it to any law enforcement officer for an inspection upon demand by the officer. The failure of any person to give the license to the officer is prima facie evidence that the person is illegally carrying a firearm or dangerous weapon concealed.

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. No person may 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].

Any federal licensee who purchases, sells, has, or possesses those items for the licensee's protection or for sale must forward a copy of the licensee's federal license along with the required weapons transfer form to the licensee's local county sheriff and to the chief of the bureau of criminal investigation within five days of the receipt of those forms.

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.

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.

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 another person 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 a 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. The force may be used for this purpose, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must 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 incompetent person, or a person acting at the direction of the guardian or responsible person, may use reasonable force upon the incompetent person for the purpose of safeguarding or promoting the incompetent person's welfare, including the prevention of the incompetent person's misconduct or, when the incompetent person is in a hospital or other institution for care and custody, for the purpose of maintaining reasonable discipline in the institution. The force may be used for these purposes, whether or not it is "necessary" as required by subsection 1 of section 12.1-05-07. The force used must 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 where 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 incompetent person, 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 another person, about to commit suicide or suffer serious bodily injury, to prevent the death or serious bodily injury of such other person.

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, if the person using such force first requests the person against whom such force is to be used to desist from his interference with the premises or property, except that a request is not necessary if it would be useless or dangerous to make the request or substantial damage would be done to the property sought to be protected before the request could effectively be made.

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 is not required to retreat within or from that individual's dwelling or place of work or from an occupied motor home or travel trailer as defined in section 39-01-01, unless

the individual was the original aggressor or is assailed by another individual who the individual knows also dwells or works there or who is lawfully in the motor home or travel trailer.

c. When used by an individual in possession or control of a dwelling, place of work, 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, 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 reasonable attorney's fees and 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.