

A Summary of Virginia Firearms Laws

I. DEFINITION OF SELF DEFENSE

A. Self defense is a law of necessity.

B. The amount of force used in self defense must be reasonable under the circumstances.

C. Deadly force cannot be used in self defense unless there is a reasonable fear that the person is in danger of being killed or suffering great bodily harm.

D. Deadly force is most often defined as using a deadly weapon (see section V, Malice), but hands and fists can be deadly weapons when they are repeatedly used against an unresisting or incapacitated person.

E. Self defense is viewed from the mind of the person acting in self defense. (ie. Does this person have a reasonable fear of some harm that justifies his acting in self defense.).

F. Two types of self defense: **Justifiable** (no fault) and **Excusable** (partly to blame for the conflict).

G. The general self defense **jury instruction**:

*THE COURT INSTRUCTS THE JURY THAT **the amount of force used in self-defense must be reasonable in relation to the harm threatened**, and that the defendant is not allowed to use deadly force in self-defense unless he reasonably feared, under the circumstances as they appeared to him, that he was in danger of being killed or that he was in danger of great bodily harm.*

II. JUSTIFIABLE SELF DEFENSE

A. Justifiable self defense occurs where you are not at fault for creating the situation that leads you to use self defense. (example: you are approached by a stranger on the street who pulls out a knife and threatens to kill you if you do not give him your money).

B. No "retreat to the wall" required when the self defense is justified. You may stand your ground and defend yourself.

C. Same principles of self defense from section I apply. (ie., amount of force used must be reasonable, etc.).

D. **Jury instruction**:

*THE COURT INSTRUCTS THE JURY THAT if you believe that the defendant **was without fault in provoking or bringing on the difficulty**, and that the defendant reasonably feared, under the circumstances as they appeared to him, that he was in danger of harm, then the defendant had the right to use such force as was reasonably necessary to protect himself from the threatened harm. If you further believe that the defendant used no more force that was reasonably necessary to protect himself from the threatened harm, then you shall find the defendant not guilty.*

III. EXCUSABLE SELF DEFENSE

A. Excusable self defense occurs when you are partly to blame for the conflict which causes you to use self defense. (example. You get mad at a man and hit him with your fist in a parking lot. He goes to his car, pulls out a knife, and comes back towards you threatening to kill you.)

B. You must first cease any assault you are committing.

C. You must declare that you desire peace.

D. You must "retreat to the wall" and do everything possible to avoid having to defend yourself.

E. If you cannot retreat and are forced to defend yourself, then the same principles of self defense from section I apply. (ie., amount of force used must be reasonable, etc.).

G. Jury instruction:

THE COURT INSTRUCTS THE JURY THAT if the evidence showed the defendant was to some degree at fault in provoking or bringing on the difficulty, and if you further find that when attacked:

- 1. He retreated as far as he safely could under the circumstances;*
- 2. In a good faith attempt to abandon the fight;*
- 3. Made known his desire for peace by word or act;*
- 4. He reasonably feared, under the circumstances as they appeared to him, that he was in danger of bodily harm; and*
- 5. He used no more force that was reasonably necessary to protect himself from the threatened harm, then you shall find the defendant not guilty.*

IV. DEFENSE OF OTHERS

A Self defense applies to the defense of others.

B. Force used to defend others must be reasonable under the circumstances.

C. Deadly force cannot be used to defend others unless you reasonably fear that the person you are defending is in danger of being killed or suffering great bodily harm.

D. Defense of others is viewed from the mind of the person acting to defend another. When defending another, you must reasonably believe that the person you are defending is a faultless victim of the assault you are defending against.

E. Case law:

*Thus, under the majority view, in order to justifiably defend another, the defendant must reasonably believe that the person being defended was free from fault; whether the defended person was, in fact, free from fault is legally irrelevant to the defense in those jurisdictions. **This view is based on the principle that one should not be convicted of a crime for attempting to protect one whom he or she perceives to be a faultless victim from a violent assault.** Under this approach, the policy of the law is to encourage individuals to come to the aid of perceived victims of assault. We find this position to be well-grounded in principle and policy. **Accordingly, we hold that the law pertaining to defense of others is that one may avail himself or herself of the defense only where he or she reasonably believes, based on the attendant circumstances, that the person defended is without fault in provoking the fray.** Foster v. Commonwealth, 13 Va. App. 380, 386, 412 S.E.2d 198, ___ (1991)*

V. MALICE

A. There can be no self defense when the person acts with malice.

B. Malice can be inferred from the deliberate use of a firearm or other deadly weapon in an unjustified attack.

C. Malice is an essential element of murder.

D. Note that self defense (in cases where the judge or jury believes the defendant truly acted in self defense) does constitute a "legal excuse or justification" under the first of the two instructions that follow in this section.

E. Jury Instructions:

*THE COURT INSTRUCTS THE JURY THAT malice is the state of mind which results in the **intentional doing of a wrongful act to another without legal excuse or justification**, at a time when the mind of the actor is under*

the control of reason. **Malice may result from any unlawful or unjustifiable motive including anger, hatred or revenge.** Malice may be inferred from any deliberate willful and cruel act against another, however sudden. **THE COURT INSTRUCTS THE JURY THAT** you may infer malice from the deliberate use of a deadly weapon unless, from all the evidence, you have a reasonable doubt as to whether malice existed. A **deadly weapon** is any object or instrument, not part of the human body, that is likely to cause death or great bodily injury because of the manner and under the circumstances in which it is used.

VI. RIGHT TO ARM

A. A person who reasonably fears that he will suffer serious bodily harm from an imminent attack has the right to arm himself for his self defense.

B. No malice will be inferred from the mere fact that the defendant armed himself under these circumstances.

C. Jury instruction:

The Court instructs the jury that when a person reasonably apprehends that another intends to attack him for the purpose of doing him serious bodily harm, then such person has the right to arm himself for his own necessary self defense and if he has reasonable grounds to believe that an attack will be made upon him then no inference of malice can be drawn from the fact of such preparation.

VII. DEFENSE OF PROPERTY

A. **A person has NO RIGHT TO USE DEADLY FORCE solely to defend his property.** This applies where you are only defending your property and NOT defending yourself or your family. (example, you CANNOT shoot someone in the back while they are running across your yard with your TV)

B. **A person has NO RIGHT TO THREATEN THE USE OF DEADLY FORCE solely to defend his property.** (This is a recent change in the law). (Example, you CANNOT brandish a firearm to run someone off who is breaking into your unoccupied car in a parking lot)

C. The policy behind the law of defending property holds that human life is far more important than your TV or your car.

D. But remember that most home burglary situations involve defending not only your property but yourself, your spouse, and your children who are in the home.

E. Also, there is case law that *suggests* the "castle doctrine" exists in Virginia. This doctrine holds that one may use deadly force to defend his home to keep aggressors out of the home. **CAUTION:** there is NO CASE in Virginia which directly holds that Virginia recognizes the "castle doctrine" defense. (For those of you who recently moved out of Washington, this means there is "no controlling legal authority" which holds the "castle doctrine" exists in Virginia.) It was only mentioned, in passing, in a case in which the defendant did not raise the "castle doctrine" defense.

F. Case law:

1. Defense of property

*Even if [the] actions [of the person threatening the defendant's property] were unwarranted or illegal, **the defendant, as an owner of personal property, did not have the right to assert or defend his possessory rights thereto by the use of deadly force.** In *Montgomery v. Commonwealth*, 98 Va. 840, 842-43, 36 S.E. 371, 372 (1900), we said:*

*The law is clearly stated by a learned judge in *State v. Morgan*, 3 Ired. 186, 38 Am. Dec. 714, as follows:*

"When it is said that a man may rightfully use as much force as is necessary for the protection of his person and property, it should be recollected that this rule is subject to this most important modification, that he shall not, except in extreme cases, endanger human life or do great bodily harm.

It is not every right of person, and still less of property, that can lawfully be asserted, or every wrong that may rightfully be redressed by extreme remedies. There is a recklessness and a wanton disregard of humanity and social duty in taking or endeavoring to take, the life of a fellow-being, in order to save one's self from a comparatively slight wrong, which is essentially wicked, and the law abhors.

You may not kill, because you cannot otherwise effect your object, although the object sought to be effected is right. You can only kill to save life or limb, or prevent a great crime, or to accomplish a necessary public duty.

See, also, 1 Bishop on New C. L., secs. 839, 841, 850.

However, ***the defendant contends***, and the Court of Appeals held, ***that these principles do not apply when there is a mere threat to use deadly force in protection of personal property. We do not agree.*** Moreover, ***the owner of land has no right to assault a mere trespasser with a deadly weapon.*** *Montgomery*, 98 Va. at 844, 36 S.E. at 373. For these reasons, we agree with the trial court that ***a deadly weapon may not be brandished solely in defense of personal property.*** *Commonwealth v. Alexander*, 260 Va. 238, 242, 531 S.E.2d 567, ___ (2000).

2. Case mentioning the "Castle Doctrine"

The use of deadly force to prevent threatened harm to property is never justified except in defense of habitation. . . [the remainder of this quote comes from a footnote to the preceding sentence] The use of deadly force, in defense of "property" can also be justifiable, but the classic formulation lists only arson or burglary as crimes against property which can justify the use of deadly force. . . . Even then the use of deadly force must have been necessary.

Defense of habitation and justifiable self-defense overlap in the "castle doctrine" which states that one may, without retreating, use force, to include deadly force if necessary, to keep aggressors out of his own house. This part of the castle doctrine is one aspect of defense of habitation. . . . [T]he justification exists in the curtilage as well as the castle. Roger D. Groot, Criminal Offenses and Defenses in Virginia 114 (3rd ed. 1994). The defense of habitation and the castle doctrine have not been raised in this case. Alexander v. Commonwealth, 28 Va. App. 771, 780, 508 S.E.2d 912, ___ (1999).

LAWS REGULATING POSSESSION AND USE OF FIREARMS IN VIRGINIA

NOTE: THESE STATUTES WHICH FOLLOW ARE NOT THE ONLY STATUTES IN VIRGINIA REGULATING FIREARMS. THEY ARE, HOWEVER, THE STATUTES THAT I AM ASKED ABOUT MOST FREQUENTLY. THESE ARE THE EXACT COPIES OF THE STATUTES.

1. CONCEALED WEAPONS: PERMITS AND PUNISHMENTS FOR VIOLATIONS

18.2-308. Personal protection; carrying concealed weapons; when lawful to carry.

- A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he shall be guilty of a Class 1 misdemeanor.

A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony.

Any weapon used in the commission of a violation of this section shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the

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peace, and the Division of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 18.2-310. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

Except as provided in subsection J1, this section shall not apply to:

1. Any person while in his own place of business;
2. Any police officers, including Capitol Police officers, sergeants, sheriffs, deputy sheriffs or regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1;
3. Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Campus police officers appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;
7. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions; and
8. Any State Police officer retired from the Department of State Police, any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth and any special agent retired from the Alcoholic Beverage Control Board (i) with a service-related disability or (ii) following at least fifteen years of service with any such law-enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or, in the case of special agents, issued by the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer shall not without cause withhold such written proof if the retired law-enforcement officer otherwise meets the requirements of this section.

For purposes of applying the reciprocity provisions of subsection P, any person granted the privilege to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and favorable review required, shall be deemed to have been issued a concealed handgun permit.

C. This section shall also not apply to any of the following individuals while in the discharge of their official duties, or while in transit to or from such duties:

1. Carriers of the United States mail;
2. Officers or guards of any state correctional institution;
3. [Repealed.]
4. Conservators of the peace, except that the following conservators of the peace shall not be permitted to carry a concealed handgun without obtaining a permit as provided in subsection D hereof: (a) notaries public; (b) registrars; (c) drivers, operators or other persons in charge of any motor vehicle carrier of passengers for hire; or (d) commissioners in chancery;

5. Noncustodial employees of the Department of Corrections designated to carry weapons by the Director of the Department of Corrections pursuant to ° 53.1-29;

6. Law-enforcement agents of the Armed Forces of the United States and federal agents who are otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;

7. Law-enforcement agents of the United States Naval Criminal Investigative Service; and

8. Harbormaster of the City of Hopewell.

D. Any person twenty-one years of age or older may apply in writing to the clerk of the circuit court of the county or city in which he resides for a five-year permit to carry a concealed handgun. Notwithstanding ° 15.2-915, a county or city may enact an ordinance which requires any applicant for a concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state or national criminal history record. The application shall be made under oath before a notary or other person qualified to take oaths and shall be made only on a form prescribed by the Department of State Police, in consultation with the Supreme Court, requiring only that information necessary to determine eligibility for the permit. The court shall consult with the law-enforcement authorities of the county or city and receive a report from the Central Criminal Records Exchange. As a condition for issuance of a concealed handgun permit, the applicant shall submit to fingerprinting if required by local ordinance in the county or city where the applicant resides and provide personal descriptive information to be forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant, and obtaining fingerprint identification information from federal records pursuant to criminal investigations by state and local law-enforcement agencies. Upon completion of the criminal history records check, the State Police shall return the fingerprint cards to the submitting local agency. The local agency shall then promptly notify the person that he has twenty-one days from the date of the notice to request return of the fingerprint cards. All fingerprint cards not claimed by the applicant within twenty-one days of notification by the local agency shall be destroyed. Fingerprints taken for the purposes described in this section shall not be copied, held or used for any other purposes. The court shall issue the permit within forty-five days of receipt of the completed application unless it is determined that the applicant is disqualified. An application is deemed complete when all information required to be furnished by the applicant is delivered to the clerk of court. If the applicant is later found by the court to be disqualified, the permit shall be revoked.

E. The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to ° 18.2-308.1:1, 18.2-308.1:2 or ° 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to ° 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to ° 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to ° 18.2-308.1:2 and whose competency or capacity was restored pursuant to former ° 37.1-134.1 or ° 37.1-134.16 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under ° 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by ° 18.2-308.1:4 from purchasing or transporting a firearm.

6. An individual who is prohibited by ° 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately

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preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana or any controlled substance.
 9. An individual who has been convicted of a violation of ° 18.2-266 or a substantially similar local ordinance or of public drunkenness within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to ° 4.1-333.
 10. An alien other than an alien lawfully admitted for permanent residence in the United States.
 11. An individual who has been discharged from the Armed Forces of the United States under dishonorable conditions.
 12. An individual who is a fugitive from justice.
 13. An individual who it is alleged, in a sworn written statement submitted to the court by the sheriff, chief of police or attorney for the Commonwealth in the opinion of such sheriff, chief of police or attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police or the attorney for the Commonwealth shall be based upon personal knowledge or upon the sworn written statement of a competent person having personal knowledge.
 14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of ° 18.2-280 or ° 18.2-286.1 or brandishing of a firearm in violation of ° 18.2-282 within the three-year period immediately preceding the application.
 15. An individual who has been convicted of stalking.
 16. An individual whose previous convictions or adjudications of delinquency were based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within sixteen years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions."
 17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.
 18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.
 19. An individual not otherwise ineligible pursuant to this section, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (° 18.2-247 et seq.) of Chapter 7 of this title or of a criminal offense of illegal possession or distribution of marijuana or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.
 20. An individual, not otherwise ineligible pursuant to this section, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (° 18.2-247 et seq.) of Chapter 7 of this title or upon a charge of illegal possession or distribution of marijuana or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to ° 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.
- F. The making of a materially false statement in an application under this section shall constitute perjury, punishable as provided in ° 18.2-434.

G. The court may further require proof that the applicant has demonstrated competence with a handgun and the applicant may demonstrate such competence by one of the following:

1. Completing any hunter education or hunter safety course approved by the Department of Game and Inland Fisheries or a similar agency of another state;
2. Completing any National Rifle Association firearms safety or training course;
3. Completing any firearms safety or training course or class available to the general public offered by a law-enforcement agency, junior college, college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or the Department of Criminal Justice Services;
4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;
5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition or current military service or proof of an honorable discharge from any branch of the armed services;
6. Obtaining or previously having held a license to carry a firearm in this Commonwealth or a locality thereof, unless such license has been revoked for cause;
7. Completing any firearms training or safety course or class conducted by a state-certified or National Rifle Association-certified firearms instructor; or
8. Completing any other firearms training which the court deems adequate.

A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the instructor, school, club, organization, or group that conducted or taught such course or class attesting to the completion of the course or class by the applicant; or a copy of any document which shows completion of the course or class or evidences participation in firearms competition shall constitute evidence of qualification under this subsection.

H. The permit to carry a concealed handgun shall specify only the following information: name, address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee; the signature of the judge issuing the permit, or of the clerk of court who has been authorized to sign such permits by the issuing judge; the date of issuance; and the expiration date. The person issued the permit shall have such permit on his person at all times during which he is carrying a concealed handgun and must display the permit and a photo-identification issued by a government agency of the Commonwealth or by the United States Department of Defense or United States State Department (passport) upon demand by a law-enforcement officer.

I. Persons who previously have held a concealed handgun permit shall be issued, upon application as provided in subsection D, a new five-year permit unless there is good cause shown for refusing to reissue a permit. If the circuit court denies the permit, the specific reasons for the denial shall be stated in the order of the court denying the permit. Upon denial of the application, the clerk shall provide the person with notice, in writing, of his right to an ore tenus hearing. Upon request of the applicant made within twenty-one days, the court shall place the matter on the docket for an ore tenus hearing. The applicant may be represented by counsel, but counsel shall not be appointed, and the rules of evidence shall apply. The final order of the court shall include the court's findings of fact and conclusions of law.

J. Any person convicted of an offense that would disqualify that person from obtaining a permit under subsection E or who violates subsection F shall forfeit his permit for a concealed handgun to the court. Upon receipt by the Central Criminal Records Exchange of a record of the arrest, conviction or occurrence of any other event which would disqualify a person from obtaining a concealed handgun permit under subsection E, the Central Criminal Records Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction or other event.

J1. Any person permitted to carry a concealed handgun, who is under the influence of alcohol or illegal drugs

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while carrying such handgun in a public place, shall be guilty of a Class 1 misdemeanor. Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the person is "under the influence" for purposes of this section: manslaughter in violation of ° 18.2-36.1, maiming in violation of ° 18.2-51.4, driving while intoxicated in violation of ° 18.2-266, public intoxication in violation of ° 18.2-388, or driving while intoxicated in violation of ° 46.2-341.24. Upon such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply for a concealed handgun permit for a period of five years.

J2. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision E 14 or E 15, holding a permit for a concealed handgun, may have the permit suspended by the court before which such charge is pending or by the court which issued the permit.

J3. No person shall carry a concealed handgun onto the premises of any restaurant or club as defined in ° 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia; however, nothing herein shall prohibit any sworn law-enforcement officer from carrying a concealed handgun on the premises of such restaurant or club or any owner or event sponsor or his employees from carrying a concealed handgun while on duty at such restaurant or club if such person has a concealed handgun permit.

J4. Any individual for whom it would be unlawful to purchase, possess or transport a firearm under ° 18.2-308.1:2 or ° 18.2-308.1:3, who holds a concealed handgun permit, may have the permit suspended by the court which issued the permit during the period of incompetency, incapacity or disability.

K. No fee shall be charged for the issuance of such permit to a person who has retired from service (i) as a magistrate in the Commonwealth; (ii) as a law-enforcement officer with the Department of State Police or with a sheriff or police department, bureau or force of any political subdivision of the Commonwealth of Virginia, after completing twenty years' service or after reaching age fifty-five; or (iii) to any person who has retired after completing twenty years' service or after reaching age fifty-five from service as a law-enforcement officer with the United States Federal Bureau of Investigation, Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration, Immigration and Naturalization Service, Customs Service, Department of State Diplomatic Security Service or Naval Criminal Investigative Service. The clerk shall charge a fee of ten dollars for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed thirty-five dollars to cover the cost of conducting an investigation pursuant to this section. The thirty-five-dollar fee shall include any amount assessed by the Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the Federal Bureau of Investigation to the State Police with the fingerprints taken from the applicant. The State Police may charge a fee not to exceed five dollars to cover their costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed fifty dollars, with such fees to be paid in one sum to the person who accepts the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is accepted by the court as a complete application. The order issuing such permit shall be provided to the State Police and the law-enforcement agencies of the county or city. The State Police shall enter the permittee's name and description in the Virginia Criminal Information Network so that the permit's existence and current status will be made known to law-enforcement personnel accessing the Network for investigative purposes.

L. Any person denied a permit to carry a concealed handgun under the provisions of this section may present a petition for review to the Court of Appeals. The petition for review shall be filed within sixty days of the expiration of the time for requesting an ore tenus hearing pursuant to subsection I, or if an ore tenus hearing is requested, within sixty days of the entry of the final order of the circuit court following the hearing. The petition shall be accompanied by a copy of the original papers filed in the circuit court, including a copy of the order of the circuit court denying the permit. Subject to the provisions of ° 17.1-410 B, the decision of the Court of Appeals or judge shall be final. Notwithstanding any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs incurred by the person shall be paid by the Commonwealth.

M. For purposes of this section:

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"Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed, made and intended to fire a projectile by means of an explosion from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

N. As used in this article:

"Spring stick" means a spring-loaded metal stick activated by pushing a button which rapidly and forcefully telescopes the weapon to several times its original length.

"Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated mechanism.

O. The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.

P. A valid concealed handgun permit or license issued by another state shall be valid in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible twenty-four hours a day, (ii) the requirements and qualifications of that state's law are substantially similar to or exceed the provisions of this section, and (iii) a state meeting the requirements and qualifications of this section grants the same privilege to residents of the Commonwealth who have valid concealed handgun permits in their possession while carrying concealed weapons in that state. The Superintendent of State Police shall (a) in consultation with the Office of the Attorney General determine which states meet the requirements and qualifications of this section, (b) maintain a registry of such states on the Virginia Criminal Information Network (VCIN), and (c) make the registry available to law-enforcement officers for investigative purposes.

Q. The provisions of this statute or the application thereof to any person or circumstances which are held invalid shall not affect the validity of other provisions or applications of this statute which can be given effect without the invalid provisions or applications. This subsection is to reiterate ^o 1-17.1 and is not meant to add to or delete from that provision. (Code 1950, ^o 18.1-269; 1960, c. 358; 1964, c. 130; 1975, cc. 14, 15, 594; 1976, c. 302; 1978, c. 715; 1979, c. 642; 1980, c. 238; 1981, c. 376; 1982, cc. 71, 553; 1983, c. 529; 1984, cc. 360, 720; 1985, c. 427; 1986, cc. 57, 451, 625, 641; 1987, cc. 592, 707; 1988, cc. 359, 793; 1989, cc. 538, 542; 1990, cc. 640, 648, 825; 1991, c. 637; 1992, cc. 510, 705; 1993, cc. 748, 861; 1994, cc. 375, 697; 1995, c. 829; 1997, cc. 916, 921, 922; 1998, cc. 662, 670, 846, 847; 1999, cc. 628, 666, 679.)

2. CARRYING FIREARMS IN PUBLIC WITHOUT PERMITS PROHIBITED: EXCEPTIONS

18.2-287.4. Carrying loaded firearms in public areas prohibited; penalty. -- It shall be unlawful for any person to carry a loaded firearm on or about his person on any public street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever nature that is open to the public (i) in any city with a population of 160,000 or more or (ii) in any county having an urban county executive form of government or any county or city surrounded thereby or adjacent thereto or in any county having a county manager form of government. The provisions of this section shall not apply to law-enforcement officers, licensed security guards, military personnel in the performance of their lawful duties, or any person having a valid permit to carry such firearm or to any person actually engaged in lawful hunting or lawful recreational shooting activities at an established shooting range or shooting contest. Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.

For purposes of this section, "firearm" means any (i) semi-automatic center-fire rifle or pistol which expels a projectile by action of an explosion and is equipped at the time of the offense with a magazine which will hold more than twenty rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (ii) shotgun with a magazine which will hold more than seven rounds of the longest ammunition for which it is chambered.

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Any firearm carried in violation of this section may be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310

3. FIREARMS PROHIBITED ON SCHOOL PROPERTY: EXCEPTIONS

NOTE THAT SUBSECTION B, WITH ITS NEW MANDATORY 5 YEAR SENTENCE, IS ONE PART OF VIRGINIA'S "PROJECT EXILE" PROGRAM

18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited. --

A. If any person possesses any (i) stun weapon or taser as defined in this section, (ii) knife having a metal blade of three inches or longer, or (iii) weapon, other than a firearm, designated in subsection A of § 18.2-308 upon (i) the property of any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person possesses any firearm designed or intended to propel a missile of any kind while such person is upon (i) any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public used for school-sponsored functions or extracurricular activities while such functions or activities are taking place, or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony; however, if the person possesses any firearm within a public, private or parochial elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall not be eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part and which shall be served consecutively with any other sentence.

The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities, (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose, (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises, (iv) any law-enforcement officer while engaged in his duties as such, (v) any person who possesses a knife or blade which he uses customarily in his trade, or (vi) a person who possesses an unloaded firearm which is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer.

As used in this section:

"Stun weapon" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five milliamp sixty hertz shock and (ii) used for the purpose of temporarily incapacitating a person; and

"Taser" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile and (ii) used for the purpose of temporarily incapacitating a person. (1979, c. 467; 1988, c. 493; 1990, cc. 635, 744; 1991, c. 579; 1992, cc. 727, 735; 1995, c. 511; 1999, cc. 587, 829, 846.)

4. POSSESSION OF FIREARM BY A FELON

NOTE: THIS SECTION, WITH ITS NEW MANDATORY 2 AND 5 YEAR SENTENCES, IS ANOTHER PART OF VIRGINIA'S "PROJECT EXILE" PROGRAM.

18.2-308.2. Possession or transportation of firearms or concealed weapons by convicted felons; penalties; petition for permit; when issued. --

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of twenty-nine who was found guilty as a juvenile fourteen years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, whether such conviction or adjudication occurred under the laws of this Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in § 18.2-308 A. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of two years. The minimum, mandatory terms of imprisonment prescribed for violations of this section shall not be suspended in whole or in part and shall be served consecutively with any other sentence. Any firearm or any concealed weapon possessed, transported or carried in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or other weapon while carrying out his duties as a member of the armed forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm; however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section shall not apply to any person who has been granted a permit pursuant to this subsection. (1979, c. 474; 1982, c. 515; 1983, c. 233; 1986, cc. 409, 641; 1987, c. 108; 1988, c. 237; 1989, cc. 514, 531; 1993, cc. 468, 926; 1994, cc. 859, 949; 1999, cc. 829, 846.) The 1999 amendments substituted "Any person who violates this section shall be guilty of a" for "A violation of this section shall be punishable as a" in the second sentence and added the present third through fifth sentences in subsection A.

The 1998 amendments by Chapter 810, which became effective when reenacted by the 1999 General Assembly, added language in the first sentence of subsection C as follows:

C. "Any person prohibited from possessing, transporting or carrying a firearm under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm; *however, no person who has been convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. . . .*"

5. POSSESSION OF FIREARM WHILE IN POSSESSION OF CERTAIN DRUGS

NOTE: THIS SECTION, WITH ITS NEW MANDATORY 5 YEAR SENTENCE, IS YET ANOTHER PART OF VIRGINIA'S "PROJECT EXILE" PROGRAM. SCHEDULE I OR II DRUGS INCLUDE HEROINE, LSD, AND COCAINE, BUT EXCLUDE MARIJUANA.

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18.2-308.4. Possession of firearms while in possession of certain controlled substances. --

A. It shall be unlawful for any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (° 54.1-3400 et seq.) of Title 54.1 to simultaneously with knowledge and intent possess any firearm.

B. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (° 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana.

Violation of this section shall constitute a separate and distinct felony and any person convicted thereof shall be guilty of a Class 6 felony, shall not be eligible for probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

C. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of ° 18.2-310. (1987, c. 285; 1990, c. 625; 1992, c. 707; 1993, c. 831; 1999, cc. 829, 846.)

6. "SAWED-OFF" SHOTGUN AND RIFLE DEFINED

18.2-299. Definitions. -- When used in this article:

"Sawed-off" shotgun" applies to any weapon, loaded or unloaded, originally designed as a shoulder weapon, utilizing a self-contained cartridge from which a number of ball shot pellets or projectiles may be fired simultaneously from a smooth or rifled bore by a single function of the firing device and which has a barrel length of less than eighteen inches for smooth bore weapons and sixteen inches for rifled weapons. Weapons of less than .225 caliber shall not be included.

"Sawed-off" rifle" means a rifle of any caliber, loaded or unloaded, which expels a projectile by action of an explosion and is designed as a shoulder weapon with a barrel or barrels length of less than sixteen inches or which has been modified to an overall length of less than twenty-six inches.

7. PUNISHMENT FOR POSSESSION OR USE OF "SAWED-OFF" SHOTGUN OR RIFLE

18.2-300. Possession or use of "sawed-off" shotgun or rifle.

A. Possession or use of a "sawed-off" shotgun or "sawed-off" rifle in the perpetration or attempted perpetration of a crime of violence is a Class 2 felony.

B. Possession or use of a "sawed-off" shotgun or "sawed-off" rifle for any other purpose, except as permitted by this article and official use by those persons permitted possession by ° 18.2-303 [ie. military and police personnel] , is a Class 4 felony. (Code 1950, ° 18.1-268.2; 1968, c. 661; 1975, cc. 14, 15; 1978, c. 710; 1992, c. 580.

8. PUNISHMENTS FOR CLASSES OF FELONIES AND MISDEMEANORS LISTED IN THESE STATUTES

NOTE THAT VIRGINIA HAS ABOLISHED PAROLE, AND CONVICTED FELONS NOW SERVE A MINIMUM OF 85% OF THEIR TERM IF SENTENCED TO A PENITENTIARY SENTENCE (MORE THAN ONE YEAR IMPRISONMENT)

A CLASS 2 FELONY is punished as follows: not less than 20 years nor more than life imprisonment, and a fine of up to \$100,000.00.

A CLASS 4 FELONY is punished as follows: not less than 2 years nor more than 10 years imprisonment, and a fine of up to \$100,000.00.

A CLASS 5 FELONY is punished as follows: not less than 1 year nor more than 10 years imprisonment, or up to 12 months in jail, or a fine of up to \$2,500.00, or both jail of up to 12 months and a fine of up to \$2,500.00.

A CLASS 6 FELONY is punished as follows: not less than 1 nor more than 5 years imprisonment, or up to 12 months in jail, or a fine of up to \$2,500.00, or both jail of up to 12 months and a fine of up to \$2,500.00.

A CLASS 1 MISDEMEANOR is punished as follows: up to 12 months in jail, or a fine of up to \$2,500.00, or both jail of up to 12 months and a fine of up to \$2,500.00.