CHAPTER 12

Offenses Involving Weapons

ARTICLE 1

Handguns

**SECTION 16‑23‑10.** Definitions.

 When used in this article:

 (1) “Handgun” means any firearm designed to expel a projectile and designed to be fired from the hand, but shall not include any firearm generally recognized or classified as an antique, curiosity, or collector’s item, or any that does not fire fixed cartridges.

 (2) “Dealer” means any person engaged in the business of selling firearms at retail or any person who is a pawnbroker.

 (3) “Crime of violence” means murder, manslaughter (except negligent manslaughter arising out of traffic accidents), rape, mayhem, kidnapping, burglary, robbery, housebreaking, assault with intent to kill, commit rape, or rob, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment for more than one year.

 (4) “Fugitive from justice” means any person who has fled from or is fleeing from any law enforcement officer to avoid prosecution or imprisonment for a crime of violence.

 (5) “Subversive organization” means any group, committee, club, league, society, association, or combination of individuals the purpose of which, or one of the purposes of which, is the establishment, control, conduct, seizure, or overthrow of the government of the United States or any state or political subdivision thereof, by the use of force, violence, espionage, sabotage, or threats or attempts of any of the foregoing.

 (6) “Conviction”‘ as used herein shall include pleas of guilty, pleas of nolo contendere, and forfeiture of bail.

 (7) “Division” means the State Law Enforcement Division.

 (8) “Purchase” or “sell” means to knowingly buy, offer to buy, receive, lease, rent, barter, exchange, pawn or accept in pawn.

 (9) “Person” means any individual, corporation, company, association, firm, partnership, society, or joint stock company.

 (10) “Luggage compartment” means the trunk of a motor vehicle which has a trunk; however, with respect to a motor vehicle which does not have a trunk, the term “luggage compartment” refers to the area of the motor vehicle in which the manufacturer designed that luggage be carried or to the area of the motor vehicle in which luggage is customarily carried. In a station wagon, van, hatchback vehicle, truck, or sport utility vehicle, the term “luggage compartment” refers to the area behind the rearmost seat.

**SECTION 16‑23‑20.** Unlawful carrying of handgun; exceptions.

 It is unlawful for anyone to carry about the person any handgun, whether concealed or not, except as follows, unless otherwise specifically prohibited by law:

 (1) regular, salaried law enforcement officers, and reserve police officers of a state agency, municipality, or county of the State, uncompensated Governor’s constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, and retired commissioned law enforcement officers employed as private detectives or private investigators;

 (2) members of the Armed Forces of the United States, the National Guard, organized reserves, or the State Militia when on duty;

 (3) members, or their invited guests, of organizations authorized by law to purchase or receive firearms from the United States or this State or regularly enrolled members, or their invited guests, of clubs organized for the purpose of target shooting or collecting modern and antique firearms while these members, or their invited guests, are at or going to or from their places of target practice or their shows and exhibits;

 (4) licensed hunters or fishermen who are engaged in hunting or fishing or going to or from their places of hunting or fishing while in a vehicle or on foot;

 (5) a person regularly engaged in the business of manufacturing, repairing, repossessing, or dealing in firearms, or the agent or representative of this person, while possessing, using, or carrying a handgun in the usual or ordinary course of the business;

 (6) guards authorized by law to possess handguns and engaged in protection of property of the United States or any agency of the United States;

 (7) members of authorized military or civil organizations while parading or when going to and from the places of meeting of their respective organizations;

 (8) a person in his home or upon his real property or a person who has the permission of the owner or the person in legal possession or the person in legal control of the home or real property;

 (9) a person in a vehicle if the handgun is:

 (a) secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle; however, this item is not violated if the glove compartment, console, or trunk is opened in the presence of a law enforcement officer for the sole purpose of retrieving a driver’s license, registration, or proof of insurance. If the person has been issued a concealed weapon permit pursuant to Article 4, Chapter 31, Title 23, then the person also may secure his weapon under a seat in a vehicle, or in any open or closed storage compartment within the vehicle’s passenger compartment; or

 (b) concealed on or about his person, and he has a valid concealed weapons permit pursuant to the provisions of Article 4, Chapter 31, Title 23;

 (10) a person carrying a handgun unloaded and in a secure wrapper from the place of purchase to his home or fixed place of business or while in the process of changing or moving one’s residence or changing or moving one’s fixed place of business;

 (11) a prison guard while engaged in his official duties;

 (12) a person who is granted a permit under provision of law by the State Law Enforcement Division to carry a handgun about his person, under conditions set forth in the permit, and while transferring the handgun between the permittee’s person and a location specified in item (9);

 (13) the owner or the person in legal possession or the person in legal control of a fixed place of business, while at the fixed place of business, and the employee of a fixed place of business, other than a business subject to Section 16‑23‑465, while at the place of business; however, the employee may exercise this privilege only after: (a) acquiring a permit pursuant to item (12), and (b) obtaining the permission of the owner or person in legal control or legal possession of the premises;

 (14) a person engaged in firearms‑related activities while on the premises of a fixed place of business which conducts, as a regular course of its business, activities related to sale, repair, pawn, firearms training, or use of firearms, unless the premises is posted with a sign limiting possession of firearms to holders of permits issued pursuant to item (12);

 (15) a person while transferring a handgun directly from or to a vehicle and a location specified in this section where one may legally possess the handgun.

 (16) Any person on a motorcycle when the pistol is secured in a closed saddlebag or other similar closed accessory container attached, whether permanently or temporarily, to the motorcycle.

**SECTION 16‑23‑30.** Sale or delivery of handgun to and possession by certain persons unlawful; stolen handguns.

 (A) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State any handgun to:

 (1) a person who has been convicted of a crime of violence in any court of the United States, the several states, commonwealths, territories, possessions, or the District of Columbia or who is a fugitive from justice or a habitual drunkard or a drug addict or who has been adjudicated mentally incompetent;

 (2) a person who is a member of a subversive organization;

 (3) a person under the age of eighteen, but this shall not apply to the issue of handguns to members of the Armed Forces of the United States, active or reserve, National Guard, State Militia, or R. O. T. C., when on duty or training or the temporary loan of handguns for instructions under the immediate supervision of a parent or adult instructor; or

 (4) a person who by order of a circuit judge or county court judge of this State has been adjudged unfit to carry or possess a firearm, such adjudication to be made upon application by any police officer, or by any prosecuting officer of this State, or sua sponte, by the court, but a person who is the subject of such an application is entitled to reasonable notice and a proper hearing prior to any such adjudication.

 (B) It is unlawful for a person enumerated in subsection (A) to possess or acquire handguns within this State.

 (C) A person shall not knowingly buy, sell, transport, pawn, receive, or possess any stolen handgun or one from which the original serial number has been removed or obliterated.

**SECTION 16‑23‑50.** Penalties; disposition of fines; forfeiture and disposition of handguns.

 (A)(1) A person, including a dealer, who violates the provisions of this article, except Section 16‑23‑20, is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

 (2) A person violating the provisions of Section 16‑23‑20 is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

 (B) In addition to the penalty provided in this section, the handgun involved in the violation of this article must be confiscated. The handgun must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated handgun may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell handguns in this State for a handgun or any other equipment approved by the agency, or destroy it. A weapon must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the handgun, the division may keep the handgun for use by its forensic laboratory. Records must be kept of all confiscated handguns received by the law enforcement agencies under the provisions of this article.

**SECTION 16‑23‑55.** Procedure for returning found handgun.

 (A) A handgun that is found and turned over to a law enforcement agency must be held for a period of ninety days. During that period, the agency shall make a diligent effort to determine:

 (1) if the handgun is stolen;

 (2) if the handgun has been used in the commission of a crime; and (3) the true owner of the handgun.

 (B) At least twice during the ninety‑day holding period, the agency shall advertise the handgun with its full description in a newspaper having general circulation in the county where the handgun was found.

 (C) After the ninety days have elapsed from publication of the first advertisement, and upon request of the individual who found and turned over the handgun, the agency shall return the handgun to this person if the individual fully completes the application process as described in Section 23‑31‑140 and in federal law, and pays all advertising and other costs incidental to returning the handgun. No handgun may be returned until the individual fully completes the application.

 (D) Upon proper completion of the application, the law enforcement agency shall provide copies of the application in compliance with Section 23‑31‑140.

**SECTION 16‑23‑60.** Construction.

 Provisions of this article must not be construed to grant any additional police powers not authorized by law, and do not in any manner affect the powers of constables commissioned by the Governor.

ARTICLE 3

Machine Guns, Sawed‑off Shotguns and Rifles

**SECTION 16‑23‑210.** Definitions.

 When used in this article:

 (a) “Machine gun” applies to and includes any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any combination or parts designed and intended for use in converting a weapon into a machine gun, and any combination of parts from which a machine gun can be assembled if such parts are in the possession or under the control of a person.

 (b) “Sawed‑off shotgun” means a shotgun having a barrel or barrels of less than eighteen inches in length or a weapon made from a shotgun which as modified has an overall length of less than twenty‑six inches or a barrel or barrels of less than eighteen inches in length.

 (c) “Shotgun” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed shotgun shell but does not include an antique firearm as defined in this section.

 (d) “Sawed‑off rifle” means a rifle having a barrel or barrels of less than sixteen inches in length or a weapon made from a rifle which as modified has an overall length of less than twenty‑six inches or a barrel or barrels of less than sixteen inches in length.

 (e) “Rifle” means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger. The term includes any such weapon which may be readily restored to fire a fixed cartridge but does not include an antique firearm as described in this section.

 (f) “Antique firearm” means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

 (g) “Military firearm” means any military weapon, firearm, or destructive device, other than a machine gun, that is manufactured for military use by a firm licensed by the federal government pursuant to a contract with the federal government and does not include a pistol, rifle, or shotgun which fires only one shot for each pull of the trigger.

**SECTION 16‑23‑220.** Unlawful transportation of machine gun, military firearm, or sawed‑off shotgun or rifle within State.

 It is unlawful for a person to transport from one place to another in this State or for any railroad company, express company, or other common carrier or any officer, agent, or employee of any of them or other person acting in their behalf knowingly to ship or to transport from one place to another in this State a machine gun or firearm commonly known as a machine gun, military firearm, sawed‑off shotgun, or sawed‑off rifle, except as provided in Sections 16‑23‑250 and 23‑31‑330.

 A person who violates the provisions of this section, upon conviction, must be punished pursuant to Section 16‑23‑260.

**SECTION 16‑23‑230.** Unlawful storing, keeping, or possessing of machine gun, military firearm, or sawed‑off shotgun or rifle.

 It is unlawful for a person to store, keep, possess, or have in possession or permit another to store, keep, possess, or have in possession a machine gun or firearm commonly known as a machine gun, military firearm, sawed‑off shotgun, or sawed‑off rifle, except as provided in Sections 16‑23‑250 and 23‑31‑330.

 A person who violates the provisions of this section, upon conviction, must be punished pursuant to Section 16‑23‑260.

**SECTION 16‑23‑240.** Unlawful sale, rental, or giving away of machine gun, military firearm, or sawed‑off shotgun or rifle; exceptions.

 It is unlawful for a person to sell, rent, give away, or participate in any manner, directly or indirectly, in the sale, renting, giving away, or otherwise disposing of a machine gun, or firearm commonly known as a machine gun, military firearm, sawed‑off shotgun, or sawed‑off rifle, except as provided in Sections 16‑23‑250 and 23‑31‑330.

 A person who violates the provisions of this section, upon conviction, must be punished pursuant to Section 16‑23‑260.

**SECTION 16‑23‑250.** Exceptions to application of article.

 The provisions of this article do not apply to the Army, Navy, or Air Force of the United States, the National Guard, and organizations authorized by law to purchase or receive machine guns, military firearms, or sawed‑off shotguns or sawed‑off rifles, from the United States or from this State and the members of these organizations. Any peace officer of the State or of a county or other political subdivision, state constable, member of the highway patrol, railway policeman or warden, superintendent, head keeper or deputy of a state prison, correction facility, workhouse, county jail, city jail, or other institution for the detention of persons convicted or accused of crime or held as witnesses in criminal cases or persons on duty in the postal service of the United States or a common carrier while transporting direct to a police department, military, or naval organization or person authorized by law to possess or use a machine gun, or sawed‑off shotgun, or sawed‑off rifle, may possess machine guns, or sawed‑off shotguns, or sawed‑off rifles, when required in the performance of their duties. The provisions of this section must not be construed to apply to machine guns, or sawed‑off shotguns, or sawed‑off rifles kept for display as relics and which are rendered harmless and not usable.

 The provisions of this article do not apply to any manufacturer of machine guns or military firearms licensed pursuant to the provisions of 18 U. S. C. Section 921 et seq., any person authorized to possess these weapons by the United States Department of the Treasury, the Bureau of Alcohol, Tobacco and Firearms, or any other federal agency empowered to grant this authorization, any common or contract carrier transporting or shipping any machine gun or military firearm to or from the manufacturer if the transportation or shipment is not prohibited by federal law, or persons licensed pursuant to Section 23‑31‑370.

**SECTION 16‑23‑260.** Penalties.

 A person violating the provisions of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

**SECTION 16‑23‑270.** Article not applicable to antique firearms.

 The provisions of this article shall not apply to antique firearms.

**SECTION 16‑23‑280.** Manufacture and sale of machine guns by licensed manufacturer.

 Notwithstanding the provisions of this article, machine guns or military firearms manufactured by a firm licensed by the federal government and subject to the Federal Gun Control Act may be legally manufactured, transported, possessed, and sold within the State by the manufacturer thereof.

ARTICLE 5

Miscellaneous Offenses

**SECTION 16‑23‑405.** Definition of “weapon”; confiscation and disposition of weapons used in commission or in furtherance of crime.

 (A) Except for the provisions relating to rifles and shotguns in Section 16‑23‑460, as used in this chapter, “weapon” means firearm (rifle, shotgun, pistol, or similar device that propels a projectile through the energy of an explosive), a blackjack, a metal pipe or pole, or any other type of device, or object which may be used to inflict bodily injury or death.

 (B) A person convicted of a crime, in addition to a penalty, shall have a weapon used in the commission or in furtherance of the crime confiscated. Each weapon must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated weapon may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell pistols in this State for a pistol or other equipment approved by the agency, or destroy it. A weapon may not be disposed of until the results of all legal proceedings in which it may be involved are finally determined. A firearm seized by the State Law Enforcement Division may be kept by the division for use by its forensic laboratory.

**SECTION 16‑23‑410.** Pointing firearm at another person.

 It is unlawful for a person to present or point at another person a loaded or unloaded firearm.

 A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years. This section must not be construed to abridge the right of self‑defense or to apply to theatricals or like performances.

**SECTION 16‑23‑415.** Taking firearm or other weapon from law enforcement officer.

 An individual who takes a firearm, stun gun, or taser device from the person of a law enforcement officer or a corrections officer is guilty of a felony and, upon conviction, must be imprisoned for not more than five years, or fined not more than five thousand dollars, or both, if all of the following circumstances exist at the time the firearm is taken:

 (1) the individual knows or has reason to believe the person from whom the weapon is taken is a law enforcement officer or a corrections officer;

 (2) the law enforcement officer or corrections officer is performing his duties as a law enforcement officer or a corrections officer, or the individual’s taking of the weapon is directly related to the law enforcement officer’s or corrections officer’s professional responsibilities;

 (3) the individual takes the weapon without consent of the law enforcement officer or corrections officer;

 (4) the law enforcement officer is authorized by his employer to carry the weapon in the line of duty; and

 (5) the law enforcement officer or corrections officer is authorized by his employer to carry the weapon while off duty and has identified himself as a law enforcement officer.

**SECTION 16‑23‑420.** Possession of firearm on school property; concealed weapons.

 (A) It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post‑secondary institution, or in any publicly owned building, without the express permission of the authorities in charge of the premises or property. The provisions of this subsection related to any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post‑secondary institution, do not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

 (B) It is unlawful for a person to enter the premises or property described in subsection (A) and to display, brandish, or threaten others with a firearm.

 (C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than five years, or both.

 (D) This section does not apply to a guard, law enforcement officer, or member of the armed forces, or student of military science. A married student residing in an apartment provided by the private or public school whose presence with a weapon in or around a particular building is authorized by persons legally responsible for the security of the buildings is also exempted from the provisions of this section.

 (E) For purposes of this section, the terms “premises” and “property” do not include state or locally owned or maintained roads, streets, or rights‑of‑way of them, running through or adjacent to premises or property owned, operated, or controlled by a private or public school, college, university, technical college, or other post‑secondary institution, which are open full time to public vehicular traffic.

 (F) This section does not apply to a person who is authorized to carry concealed weapons pursuant to Article 4, Chapter 31 of Title 23 when upon any premises, property, or building that is part of an interstate highway rest area facility.

**SECTION 16‑23‑430.** Carrying weapon on school property; concealed weapons.

 (A) It shall be unlawful for any person, except state, county, or municipal law enforcement officers or personnel authorized by school officials, to carry on his person, while on any elementary or secondary school property, a knife, with a blade over two inches long, a blackjack, a metal pipe or pole, firearms, or any other type of weapon, device, or object which may be used to inflict bodily injury or death.

 (B) This section does not apply to a person who is authorized to carry a concealed weapon pursuant to Article 4, Chapter 31, Title 23 when the weapon remains inside an attended or locked motor vehicle and is secured in a closed glove compartment, closed console, closed trunk, or in a closed container secured by an integral fastener and transported in the luggage compartment of the vehicle.

 (C) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than five years, or both. Any weapon or object used in violation of this section may be confiscated by the law enforcement division making the arrest.

**SECTION 16‑23‑440.** Discharging firearms at or into dwellings, structures, enclosures, vehicles or equipment; penalties.

 (A) It is unlawful for a person to discharge or cause to be discharged unlawfully firearms at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than ten years, or both.

 (B) It is unlawful for a person to discharge or cause to be discharged unlawfully firearms at or into any vehicle, aircraft, watercraft, or other conveyance, device, or equipment while it is occupied. A person who violates the provisions of this subsection is guilty of a felony and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than ten years, or both.

**SECTION 16‑23‑450.** Placing loaded trap gun, spring gun or like device.

 It shall be unlawful for any person to construct, set or place a loaded trap gun, spring gun or any like device in any manner in any building or in any place within this State, and any violation of the provisions of this section shall constitute a misdemeanor and be punished by a fine of not less than one hundred dollars nor more than five hundred dollars or by imprisonment of not less than thirty days nor more than one year or by both fine and imprisonment, in the discretion of the court.

**SECTION 16‑23‑460.** Carrying concealed weapons; forfeiture of weapons.

 (A) A person carrying a deadly weapon usually used for the infliction of personal injury concealed about his person is guilty of a misdemeanor, must forfeit to the county, or, if convicted in a municipal court, to the municipality, the concealed weapon, and must be fined not less than two hundred dollars nor more than five hundred dollars or imprisoned not less than thirty days nor more than ninety days.

 (B) The provisions of this section do not apply to:

 (1) A person carrying a concealed weapon upon his own premises or pursuant to and in compliance with Article 4, Chapter 31 of Title 23; or

 (2) peace officers in the actual discharge of their duties.

 (C) The provisions of this section also do not apply to rifles, shotguns, dirks, slingshots, metal knuckles, knives, or razors unless they are used with the intent to commit a crime or in furtherance of a crime.

**SECTION 16‑23‑465.** Additional penalty for unlawfully carrying pistol or firearm onto premises of business selling alcoholic liquor, beer or wine for on‑premises consumption; exceptions.

 (A) In addition to the penalties provided for by Sections 16‑11‑330, 16‑11‑620, 16‑23‑460, 23‑31‑220, and Article 1, Chapter 23, Title 16, a person convicted of carrying a firearm into a business which sells alcoholic liquor, beer, or wine for consumption on the premises is guilty of a misdemeanor, and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

 In addition to the penalties described above, a person who violates this section while carrying a concealable weapon pursuant to Article 4, Chapter 31, Title 23 must have his concealed weapon permit revoked for a period of five years.

 (B)(1) This section does not apply to a person carrying a concealable weapon pursuant to and in compliance with Article 4, Chapter 31, Title 23; however, the person shall not consume alcoholic liquor, beer, or wine while carrying the concealable weapon on the business’ premises. A person who violates this item may be charged with a violation of subsection (A).

 (2) A property owner, holder of a lease interest, or operator of a business may prohibit the carrying of concealable weapons into the business by posting a “NO CONCEALABLE WEAPONS ALLOWED” sign in compliance with Section 23‑31‑235. A person who carries a concealable weapon into a business with a sign posted in compliance with Section 23‑31‑235 may be charged with a violation of subsection (A).

 (3) A property owner, holder of a lease interest, or operator of a business may request that a person carrying a concealable weapon leave the business’ premises, or any portion of the premises, or request that a person carrying a concealable weapon remove the concealable weapon from the business’ premises, or any portion of the premises. A person carrying a concealable weapon who refuses to leave a business’ premises or portion of the premises when requested or refuses to remove the concealable weapon from a business’ premises or portion of the premises when requested may be charged with a violation of subsection (A).

**SECTION 16‑23‑470.** Illegal possession of tear‑gas gun or ammunition.

 (A) It is unlawful for anyone except an authorized law enforcement officer to possess, use, transport, sell, or buy a tear‑gas machine or gun, or its parts, or any ammunition, shells, or equipment that may be used in a tear‑gas gun or machine. It is lawful for a person for self‑defense purposes only to possess, use, transport, sell, or buy a tear‑gas machine or gun, or its parts, or ammunition, shells, or equipment for a tear‑gas machine or gun, but the capacity of a tear‑gas cartridge, shell, or container shall not exceed fifty cubic centimeters nor shall a tear‑gas machine or gun have the capability of shooting a cartridge, shell, or container of more than fifty cubic centimeters.

 (B) A person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction, must be imprisoned not more than three years or fined not more than five thousand dollars, or both.

 (C) Except as permitted above, nothing in this section prohibits the purchase, sale, transportation, or use of tear gas for the destruction of insects or rodents if tear gas is not in containers or shells suitable for use in a tear‑gas gun, equipment, or machine and if the purchaser has written authority for the purchase and use of tear gas from the county agent of the county in which he resides.

**SECTION 16‑23‑480.** Manufacture or possession of article designed to cause damage by fire or other means.

 It is unlawful for a person to manufacture, cause to be manufactured, or possess any object or article which is designed to cause damage by fire or any other means to person or property either by ignition, detonation, or other means. It is unlawful for a person to possess any object or article solely for the purpose of causing damage by fire or other means to person or property either by ignition, detonation, or other means.

 A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both.

**SECTION 16‑23‑490.** Additional punishment for possession of firearm or knife during commission of, or attempt to commit, violent crime.

 (A) If a person is in possession of a firearm or visibly displays what appears to be a firearm or visibly displays a knife during the commission of a violent crime and is convicted of committing or attempting to commit a violent crime as defined in Section 16‑1‑60, he must be imprisoned five years, in addition to the punishment provided for the principal crime. This five‑year sentence does not apply in cases where the death penalty or a life sentence without parole is imposed for the violent crime.

 (B) Service of the five‑year sentence is mandatory unless a longer mandatory minimum term of imprisonment is provided by law for the violent crime. The court may impose this mandatory five‑year sentence to run consecutively or concurrently.

 (C) Except as provided in this subsection, the person sentenced under this section is not eligible during this five‑year period for parole, work release, or extended work release. The five years may not be suspended and the person may not complete his term of imprisonment in less than five years pursuant to good‑time credits or work credits, but may earn credits during this period. The person is eligible for work release, if the person is sentenced for voluntary manslaughter (Section 16‑3‑50), kidnapping (Section 16‑3‑910), carjacking (Section 16‑3‑1075), burglary in the second degree (Section 16‑11‑312(B)), armed robbery (Section 16‑11‑330(A)), or attempted armed robbery (Section 16‑11‑330(B)), the crime did not involve any criminal sexual conduct or an additional violent crime as defined in Section 16‑1‑60, and the person is within three years of release from imprisonment.

 (D) As used in this section, “firearm” means any machine gun, automatic rifle, revolver, pistol, or any weapon which will, or is designed to, or may readily be converted to expel a projectile; “knife” means an instrument or tool consisting of a sharp cutting blade whether or not fastened to a handle which is capable of being used to inflict a cut, slash, or wound.

 (E) The additional punishment may not be imposed unless the indictment alleged as a separate count that the person was in possession of a firearm or visibly displayed what appeared to be a firearm or visibly displays a knife during the commission of the violent crime and conviction was had upon this count in the indictment. The penalties prescribed in this section may not be imposed unless the person convicted was at the same time indicted and convicted of a violent crime as defined in Section 16‑1‑60.

**SECTION 16‑23‑500.** Unlawful possession of a firearm by a person convicted of violent offense; confiscation; return of firearm to innocent owner.

 (A) It is unlawful for a person who has been convicted of a violent crime, as defined by Section 16‑1‑60, that is classified as a felony offense, to possess a firearm or ammunition within this State.

 (B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than five years, or both.

 (C)(1) In addition to the penalty provided in this section, the firearm or ammunition involved in the violation of this section must be confiscated. The firearm or ammunition must be delivered to the chief of police of the municipality or to the sheriff of the county if the violation occurred outside the corporate limits of a municipality. The law enforcement agency that receives the confiscated firearm or ammunition may use it within the agency, transfer it to another law enforcement agency for the lawful use of that agency, trade it with a retail dealer licensed to sell firearms or ammunition in this State for a firearm, ammunition, or any other equipment approved by the agency, or destroy it. A firearm or ammunition must not be disposed of in any manner until the results of any legal proceeding in which it may be involved are finally determined. If the State Law Enforcement Division seized the firearm or ammunition, the division may keep the firearm or ammunition for use by its forensic laboratory. Records must be kept of all confiscated firearms or ammunition received by the law enforcement agencies under the provisions of this section.

 (2) A law enforcement agency that receives a firearm or ammunition pursuant to this section shall administratively release the firearm or ammunition to an innocent owner. The firearm or ammunition must not be released to the innocent owner until the results of any legal proceedings in which the firearm or ammunition may be involved are finally determined. Before the firearm or ammunition may be released, the innocent owner shall provide the law enforcement agency with proof of ownership and shall certify that the innocent owner will not release the firearm or ammunition to the person who has been charged with a violation of this section which resulted in the confiscation of the firearm or ammunition. The law enforcement agency shall notify the innocent owner when the firearm or ammunition is available for release. If the innocent owner fails to recover the firearm or ammunition within thirty days after notification of the release, the law enforcement agency may maintain or dispose of the firearm or ammunition as otherwise provided in this section.

 (D) The judge that hears the case involving the violent offense, as defined by Section 16‑1‑60, that is classified as a felony offense, shall make a specific finding on the record that the offense is a violent offense, as defined by Section 16‑1‑60, and is classified as a felony offense. A judge’s failure to make a specific finding on the record does not bar or otherwise affect prosecution pursuant to this subsection and does not constitute a defense to prosecution pursuant to this subsection.

**SECTION 16‑23‑520.** Use, transportation, manufacture, possession, purchase, or sale of teflon‑coated ammunition.

 It is unlawful for a person to use, transport, manufacture, possess, distribute, sell, or buy any ammunition or shells that are coated with polytetrafluoroethylene (teflon).

 A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be imprisoned not more than five years or fined not more than five thousand dollars, or both.

**SECTION 16‑23‑530.** Firearms; possession by or sale to unlawful alien; penalties.

 (A) It is unlawful for an alien unlawfully present in the United States to possess, purchase, offer to purchase, sell, lease, rent, barter, exchange, or transport into this State a firearm.

 (B) It is unlawful for a person to knowingly sell, offer to sell, deliver, lease, rent, barter, exchange, or transport for sale into this State a firearm to a person knowing that such person is not lawfully present in the United States.

 (C) A person violating the provisions of subsection (A) of this section is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

 (D) A person violating the provisions of subsection (B) of this section is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand dollars or imprisoned not more than three years, or both.

ARTICLE 7

Bombs, Destructive Devices, and Weapons of Mass Destruction

**SECTION 16‑23‑710.** Definitions.

 For purposes of this article:

 (1) “Bacteriological weapon” and “biological weapon” mean devices which are designed in a manner as to permit the intentional release into the population or environment of microbiological or other biological materials, toxins, or agents, whatever their origin or method of production, in a manner not authorized by law, or any device, the development, production, or stockpiling of which is prohibited pursuant to the “Convention of the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and their Destruction”, 26 U.S.T. 583, TIAS 8063.

 (2) “Bomb” includes a destructive device capable of being detonated, triggered, or set off to release any substance or material that is destructive, irritating, odoriferous, or otherwise harmful to one or more organisms including, but not limited to, human beings, livestock, animals, crops or vegetation, or to earth, air, water, or any other material or substance necessary or required to sustain human or any other individual form of life, or to real or personal property.

 (3) “Bomb technician”, “explosive ordnance technician”, or “EOD technician” means either:

 (a) a law enforcement officer, fire official, emergency management official, or an employee of the State, its political subdivisions, or an authority of the State or a political subdivision, whose job title includes the designation of bomb technician, explosive ordnance disposal technician, or EOD technician and whose assigned duties include the rendering‑safe of improvised explosive devices, destructive devices, old or abandoned explosives, war relics, or souvenirs while acting in the performance of his official duties; or

 (b) an official or employee of the United States including, but not limited to, a member of the Armed Forces of the United States, who is qualified as an explosive ordnance disposal technician under the federal, state, or local laws or regulations while acting in the performance of his duty.

 (4) “Building” means any structure, vehicle, watercraft, or aircraft:

 (a) where any person lodges or lives; or

 (b) where people assemble for purposes of business, government, education, religion, entertainment, public transportation, or public use or where goods are stored. Where a building consists of two or more units separately occupied or secured, each unit is considered both a separate building in itself and a part of the main building.

 (5) “Device” means an object, contrivance, instrument, technique, or any thing that is designed, manufactured, assembled, or capable of serving any purpose in a bomb, destructive device, explosive, incendiary, or weapon of mass destruction.

 (6) “Detonate” means to explode or cause to explode.

 (7) “Destructive device” means:

 (a) a bomb, incendiary device, or any thing that can detonate, explode, be released, or burn by mechanical, chemical, or nuclear means, or that contains an explosive, incendiary, poisonous gas, or toxic substance (chemical, biological, or nuclear materials) including, but not limited to, an incendiary or over‑pressure device, or any other device capable of causing damage, injury, or death;

 (b) a bacteriological weapon or biological weapon; or

 (c) a combination of any parts, components, chemical compounds, or other substances, either designed or intended for use in converting any device into a destructive device which has been or can be assembled to cause damage, injury, or death.

 (8) “Detonator” means a device containing a detonating charge used to initiate detonation in an explosive or any device capable of triggering or setting off an explosion or explosive charge including, but not limited to, impact or an impact device, a timing mechanism, electricity, a primer, primer or detonating cord, a detonating cap or device of any kind, detonating waves, electric blasting caps, blasting caps for use with safety fuses, shock tube initiator, and detonating cord delay connectors, or any other device capable of detonating or exploding a bomb, weapon of mass destruction, or destructive device.

 (9) “Distribute” means the actual or constructive delivery or the attempted transfer from one person to another.

 (10) “Explosive” means a chemical compound or other substance or a mechanical system intended for the purpose of producing an explosion capable of causing injury, death, or damage to property or an explosive containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonation may produce an explosion capable of causing injury, death, or damage to property. Explosives include, but are not limited to, the list of explosive materials published and periodically updated by the Bureau of Alcohol, Tobacco and Firearms.

 (11) “Hoax device” or “replica” means a device or object which has the appearance of a destructive device.

 (12) “Incendiary” means any material that:

 (a) causes, or is capable of causing, fire when it is lit or ignited; and

 (b) is used to ignite a flammable liquid or compound in an unlawful manner.

 (13) “Incendiary device” means a destructive device, however possessed or delivered, and by whatever name called, containing or holding a flammable liquid or compound, which is capable of being ignited by any means possible. Incendiary device includes, but is not limited to, any form of explosive, explosive bomb, grenade, missile, or similar device, whether capable of being carried or thrown by a person acting alone or with one or more persons, but does not include a device manufactured or produced for the primary purpose of illumination or for marking detours, obstructions, defective paving, or other hazards on streets, roads, highways, or bridges, when used in a lawful manner.

 (14) “Over‑pressure device” means a container filled with an explosive gas or expanding gas or liquid which is designed or constructed so as to cause the container to break, fracture, or rupture in a manner capable of causing death, injury, or property damage, and includes, but is not limited to, a chemical reaction bomb, an acid bomb, a caustic bomb, or a dry ice bomb.

 (15) “Parts” mean a combination of parts, components, chemical compounds, or other substances, designed or intended for use in converting any device into a destructive device.

 (16) “Poisonous gases” mean a toxic chemical or its precursors that through its chemical action or properties on life processes, causes death or injury to human beings or other living organisms. However, the term does not include:

 (a) riot control agents, smoke and obscuration materials, or medical products which are manufactured, possessed, transported, or used in accordance with the laws of this State or the United States;

 (b) tear gas devices designed to be carried on or about the person which contain not more than fifty cubic centimeters of the chemical; or

 (c) pesticides, as used in agriculture and household products.

 (17) “Property” means real or personal property of any kind including money, choses in action, and other similar interest in property.

 (18) “Terrorism” includes activities that:

 (a) involve acts dangerous to human life that are a violation of the criminal laws of this State;

 (b) appear to be intended to:

 (i) intimidate or coerce a civilian population;

 (ii) influence the policy of a government by intimidation or coercion; or

 (iii) affect the conduct of a government by mass destruction, assassination, or kidnapping; and

 (c) occur primarily within the territorial jurisdiction of this State.

 (19) “Weapon of mass destruction” means:

 (a) any destructive device as defined in item (7);

 (b) any weapon that is designed or intended to cause death or serious bodily injury through the release, dissemination, or impact of toxic or poisonous chemicals, or their precursors;

 (c) any weapon involving a disease organism; or

 (d) any weapon that is designed to release radiation or radioactivity at a level dangerous to human life.

**SECTION 16‑23‑715.** Possession, threatened or attempted use of weapon of mass destruction for act of terrorism; penalty.

 A person who, without lawful authority, possesses, uses, threatens, or attempts or conspires to possess or use a weapon of mass destruction in furtherance of an act of terrorism is guilty of a felony and upon conviction:

 (1) in cases resulting in the death of another person, must be punished by death or by imprisonment for life; or

 (2) in cases which do not result in the death of another person, must be punished by imprisonment for not less than twenty‑five years nor more than life.

**SECTION 16‑23‑720.** Use, counseling or soliciting others to use, possessing, or threatening to use destructive device; harboring terrorist.

 (A) It is unlawful for a person intentionally to use a destructive device or cause an explosion, or intentionally to aid, counsel, solicit another, or procure the use of a destructive device. A person who violates this subsection is guilty of a felony and, upon conviction:

 (1) in cases resulting in the death of another person where there was malice aforethought, must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years;

 (2) in cases resulting in the death of another person where there was not malice aforethought, must be imprisoned not less than ten years nor more than thirty years; and

 (3) in cases resulting in injury to a person, must be imprisoned for not less than ten years nor more than twenty‑five years.

 (B) A person who intentionally causes an explosion by means of a destructive device or aids, counsels, solicits another, or procures an explosion by means of a destructive device, which results in damage to a building or other real or personal property, or a person who attempts to injure another or damage or destroy a building or other real or personal property by means of a destructive device, is guilty of a felony and, upon conviction, must be imprisoned for not less than ten years nor more than twenty‑five years.

 (C) A person who knowingly possesses, manufactures, transports, distributes, or possesses with the intent to distribute a destructive device or any explosive, incendiary device, or over‑pressure device or toxic substance or material which has been configured to cause damage, injury, or death, or a person who possesses parts, components, or materials which when assembled constitute a destructive device is guilty of a felony and, upon conviction, must be imprisoned for not less than two years nor more than fifteen years.

 (D) A person who threatens, solicits another to threaten, or conspires to threaten to cause damage, injury, or death or to cause damage to or destroy a building or other real or personal property by means of destructive device is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

 (E) A person who knowingly protects, harbors, or conceals another who is known by the person to have planned, executed, or committed any violation of the provisions of this article is guilty of a felony and, upon conviction, must be imprisoned for not more than fifteen years.

**SECTION 16‑23‑730.** Hoax device or replica of destructive device or detonator; manufacture, possession or transport; threat to use; penalties.

 A person who knowingly manufactures, possesses, transports, distributes, uses or aids, or counsels, solicits another, or conspires with another in the use of a hoax device or replica of a destructive device or detonator which causes any person reasonably to believe that the hoax device or replica is a destructive device or detonator is guilty of a misdemeanor and, upon conviction, must be imprisoned for not more than one year or fined not more than ten thousand dollars, or both. A person who communicates or transmits to another person that a hoax device or replica is a destructive device or detonator with the intent to intimidate or threaten injury, to obtain property of another, or to interfere with the ability of another person to conduct or carry on his life, business, trade, education, religious worship, or to interfere with the operations and functions of any government entity is guilty of a felony and, upon conviction, must be imprisoned for not less than two years nor more than fifteen years.

**SECTION 16‑23‑740.** Hindering explosive ordinance technician or law enforcement official while detecting or disarming destructive device; penalty.

 A person who knowingly and wilfully hinders or obstructs an explosive ordnance technician, bomb technician, law enforcement officer, fire official, emergency management official, public safety officer, animal trained to detect destructive devices, or any robot or mechanical device designed for or utilized by a law enforcement officer, fire official, emergency management official, public safety officer, or bomb technician of this State or of the United States while in the detection, disarming, or destruction of a destructive device is guilty of a felony and, upon conviction, must be imprisoned for not less than one year nor more than five years.

**SECTION 16‑23‑750.** Conveying false information regarding attempted use of a destructive device; aiding or conspiring; penalty.

 A person who conveys or causes to be conveyed false information, knowing the information to be false, concerning an attempt or alleged attempt being made or to be made to kill, injure, or intimidate any person or to damage or destroy any building or other real or personal property by means of an explosive, incendiary, or destructive device or who aids, employs, or conspires with any person to do or cause to be done any of the acts in this section, is guilty of a felony and, upon conviction, for a first offense must be imprisoned for not less than one year nor more than ten years. For a second or subsequent offense, the person must be imprisoned for not less than five years nor more than fifteen years. A sentence imposed for a violation of this section must not be suspended and probation must not be granted.

**SECTION 16‑23‑760.** Admissibility of photographic evidence of destructive devices; custody of inert devices introduced into evidence.

 (A) Unless otherwise ordered by a court of competent jurisdiction, photographs, electronic imaging, video tapes, or other identification or analysis of a destructive device, explosive, incendiary, poisonous gas, toxic substance, whether chemical, biological, or nuclear material, or detonator identified by a qualified bomb technician or person qualified as a forensic expert in the field of destructive devices is admissible in any civil or criminal trial in lieu of production of the actual destructive device or detonator. Evidence transferred to the clerk of court by a qualified bomb technician for safekeeping must not be destroyed except pursuant to a court order issued by a court of competent jurisdiction.

 (B) If a destructive device, explosive, incendiary, poisonous gas, toxic substance, whether chemical, biological, or nuclear material, or detonator that has been rendered inert and safe is introduced into evidence in any criminal or civil trial, the clerk of court may retain custody or transfer custody of the destructive device or detonator to a qualified bomb technician for safekeeping only after the destructive device has been preserved as evidence by photograph, videotape, or other suitable means of identification.

**SECTION 16‑23‑770.** Forfeiture of property used or intended for use in violation of article; storage and destruction; exceptions.

 (A) All property used or intended for use in violation of this article and all proceeds derived from, realized from, or traced back to property used or intended for use in violation of this article is contraband and subject to forfeiture. Property subject to forfeiture must be seized by a law enforcement agency and forfeited to the State, a political subdivision of the State, or the seizing law enforcement agency.

 (B) On application of a seizing law enforcement agency, the circuit court may order the agency to destroy or transfer the seized device to any agency of this State or of the United States that can safely store or render harmless a destructive device, explosive, poisonous gas, or detonator if the court finds that it is impractical or unsafe for the seizing law enforcement agency to store the destructive device, explosive, poisonous gas, or detonator. Notwithstanding Section 16‑23‑760, the application for destruction of a destructive device may be made at anytime after seizure. Any destruction ordered pursuant to this subsection must be done in the presence of at least one credible witness or recorded on film, videotape, or other electronic imaging method. The court also may order the seizing agency or the agency to which the device, explosive, poisonous gas, or detonator is transferred to make a report of the destruction, take samples before the destruction, or both.

 (C) Nothing in subsection (A) or (B) prohibits a bomb technician, law enforcement officer, or fire official from taking action that will render an explosive, destructive device, poisonous gas, or detonator, or other object which is suspected of being an explosive, destructive device, poisonous gas, or detonator safe without prior approval of a court when the action is in the performance of his duties and is intended to protect lives or property which are in imminent danger.

 (D) The provisions of this article do not apply to the lawful use of:

 (1) fertilizers, propellant activated devices, or propellant activated industrial tools manufactured, imported, distributed, or used for their intended purposes;

 (2) pesticides which are manufactured, stored, transported, distributed, possessed, or used in accordance with Chapter 7, Title 2, the federal Insecticide, Fungicide, and Rodenticide Act and the Environmental Pesticide Control Act of 1972;

 (3) explosives, blasting agents, detonators, and other objects regulated and controlled by the Explosives Control Act;

 (4) ammunition for small arms and firearms;

 (5) components of ammunition for small arms and firearms;

 (6) ammunition reloading equipment;

 (7) the use of small arms propellant when used in war reenactments;

 (8) firearms, as defined in Section 16‑8‑10; or

 (9) fireworks and explosives which are permitted to be sold, possessed, or used under Chapter 35 of Title 23.

 (E) The provisions of this article do not apply to the military or naval forces of the United States, to the duly organized military force of a state or territory, or to police or fire departments in this State when they are acting within their official capacities and in performance of their duties.

**SECTION 16‑23‑780.** Reporting existence and location of destructive device or weapon of mass destruction.

 All state, county, and municipal law enforcement officers who encounter a known or suspected destructive device, biological or bacteriological weapon or a nuclear, biological, or chemical weapon of mass destruction in the course of their employment must immediately report the existence and location of the device or weapon to the State Law Enforcement Division for purposes of disseminating the information to law enforcement agencies, and to the appropriate state and local public health officials for purposes of enabling public health officials to assess the nature and extent of the threat of the device or weapon to public health.