

# Firearms Industry Consulting Group<sup>®</sup>

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## PA Firearms Law Course Materials

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# **Pennsylvania Firearms Law 101**

Presented by Joshua Prince, Esq. and Dillon Harris Esq.

## Online Resources

**Pennsylvania's Unofficial Statutes:** <http://government.westlaw.com/linkedslice/default.asp?SP=pac-1000>.

Navigation to PA's Uniform Firearm Act:

Title 18 PA.C.S.A. Crimes and Offenses

Part II. Definition of Specific Offenses.

Article G. Miscellaneous Offenses

Chapter 61. Firearms and Other Dangerous Articles

Subchapter A. Uniform Firearms Act

**United States Unofficial Code:** <http://www.law.cornell.edu/uscode/>

Navigation to the US Firearms Laws

Title 18 U.S.C.

Part I. - Crimes

Chapter 44 – Firearms

Title 26 U.S.C. - Internal Revenue Code

Subtitle 26 - Alcohol, Tobacco, and Certain Other Excise Taxes

Chapter 53 – Machine Guns, Destructive Devices, and

Certain other Firearms

## **Acronyms:**

1. **ATF or BATFE**: Bureau of Alcohol, Tobacco, Firearms and Explosives
2. **CLEO**: Chief Law Enforcement Officer
3. **UFA**: Uniform Firearms Act, which PA has adopted; 18 PA.C.S. § 6101, et seq.
4. **LTCF**: License to Carry Firearms, typically and incorrectly referred to as a Concealed Weapons Permit
5. **FFL**: Federal Firearms Licensee
6. **NFA**: National Firearms Act; 26 U.S.C. § 5801-5872; 73 P. L. No. 474; 48 Stat, 1236, as amended by the Gun Control Act (GCA) and Firearm Owners Protection Act (FOPA).
  - a. **AOW**: Any Other Weapon
  - b. **DD**: Destructive Device
  - c. **SBR**: Short-Barreled Rifle
  - d. **SBS**: Short-Barreled Shotgun
7. **NFRTR**: National Firearms Registration and Transfer Record

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## Definitions:

1. **NFA Firearms**: The National Firearms Act covers Machine Guns, Silencers, Short-Barreled Rifles and Shotguns, Destructive Devices, and Any Other Weapons.
  - a. **Machine Gun**: “[A]ny 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.” [26 U.S.C. § 5845\(b\)](#); [18 U.S.C. § 921\(a\)\(24\)](#)
  - b. **Silencer**: A silencer (sometimes referred to as a suppressor) is “[A]ny device for silencing, muffling, or diminishing the report of a portable firearm, including any combination of parts, designed or redesigned, and intended for use in assembling or fabricating a firearm silencer or firearm muffler, and any part intended only for use in such assembly or fabrication.” [18 U.S.C. § 921\(a\)\(24\)](#); [26 U.S.C. § 5845\(a\)\(7\)](#)
  - c. **Short-Barreled Rifle**: “[A] rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle (whether by alteration, modification, or otherwise) if such weapon, as modified, has an overall length of less than twenty-six inches.” [18 U.S.C. § 921\(a\)\(6\)](#); [26 U.S.C. § 5845\(a\)\(3\)-\(4\)](#).
    - i. Hence, there are two different categories:
      1. A rifle having a barrel less than sixteen inches in length; and
      2. A weapon made from a rifle, which has an overall length of less than twenty-six inches.
  - d. **Short-Barreled Shotgun**: “[A] shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun (whether by alteration, modification or otherwise) if such a weapon as modified has an overall length of less than twenty-six inches.” [18 U.S.C. § 921\(a\)\(8\)](#); [26 U.S.C. § 5845\(a\)\(1\)-\(2\)](#).
    - i. Hence, there are two different categories:
      1. A shotgun having a barrel less than eighteen inches in length; and
      2. A weapon made from a shotgun, which has an overall length of less than twenty-six inches.
  - e. **Any Other Weapon**: “[A]ny weapon or device capable of being concealed on the person from which a shot can be discharged through the energy of an explosive, a pistol or revolver having a barrel with a smooth bore designed or redesigned to fire a fixed shotgun shell, weapons with combination shotgun and rifle barrels 12 inches or more, less than 18

inches in length, from which only a single discharge can be made from either barrel without manual reloading, and shall include any such weapon which may be readily restored to fire. Such term shall not include a pistol or a revolver having a rifled bore, or rifled bores, or weapons designed, made, or intended to be fired from the shoulder and not capable of firing fixed ammunition.” [26 U.S.C. § 5845\(e\)](#).

- i. Traditionally, AOWs included gadget devices, Nazi belt buckle firearms, and glove firearms. Today, AOWs also include cane, cell phone, crutch, and pen guns, pistols with a vertical/forward grip, and other disguised firearms. Currently, the BATFE asserts that a pistol in a leather wallet holster, which permits the firing of the pistol, while still in the leather holster, is an AOW. Stephen Halbrook, FIREARMS LAW DESKBOOK, 458 (Thomson/West 2007).
- f. **Destructive Device**: “(1) any explosive, incendiary, or poison gas (A) bomb, (B) grenade, (C) rocket having a propellant charge of more than four ounces, (D) missile having an explosive or incendiary charge of more than one-quarter ounce, (E) mine, or (F) similar device; (2) any type of weapon by whatever name known which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, the barrel or barrels of which have a bore of more than one-half inch in diameter, except a shotgun or shotgun shell which the Secretary finds is generally recognized as particularly suitable for sporting purposes; and (3) any combination of parts either designed or intended for use in converting any device into a destructive device as defined in subparagraphs (1) and (2) and from which a destructive device may be readily assembled.” [18 U.S.C. § 921\(a\)\(4\)](#); [26 U.S.C. § 5845\(f\)](#)
  - i. HOWEVER, “The term 'destructive device' shall not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684 (2), 4685, or 4686 of title 10; or any other device which the Attorney General finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting, recreational or cultural purposes.” [18 U.S.C. § 921\(a\)\(4\)](#)
2. **Antique Firearm**: Firearms defined by the NFA as “antique firearms” are not subject to any controls under the NFA. The NFA defines antique firearms based on their date of manufacture and the type of ignition system used to fire a projectile. Any firearm manufactured in or before 1898 that is not designed or redesigned for using rimfire or conventional center fire ignition with fixed

ammunition is an antique firearm. Additionally, any firearm using a matchlock, flintlock, percussion cap or similar type ignition system, irrespective of the actual date of manufacture of the firearm, is also an antique firearm. [26 U.S.C. § 5845](#).

3. **Firearms in General:**

a. Federal Definition: “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.” [18 U.S.C. § 921\(a\)\(3\)](#)

b. Pennsylvania's Definition of a Firearm: “Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable” [18 PA.C.S. § 6102](#)

i. Hence, in Pennsylvania, a firearm, generally, refers to a handgun or NFA firearm and not to your typical rifle or shotgun, UNLESS, you are a prohibited person.

ii. However, there are at least five different definitions of “firearm” in PA's Uniform Firearms Act (UFA), depending on which subsection you are reviewing. Thus, it is extremely important to check whether firearm is being defined differently for that subsection.

1. E.g. The definition of a firearm, when for purposes of a prohibited person: “shall include any weapons which are designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.” [18 PA.C.S. 6105](#).

iii. Neither a BB gun nor a Pellet gun is a firearm in the Commonwealth – Commonwealth v. Schilling, 288 Pa. Super. 359, 363; 431 A.2d 1088, 1090 (Pa. Super. 1981)

4. **Loaded:**

a. HB40, known as PA's Castle Doctrine, has modified PA UFA's definition of “loaded.” Loaded is now defined as, “If the magazine is inserted into a pouch, holder, holster or other protective device that provides for a complete and secure enclosure of the ammunition, then the pouch, holder, holster or other protective device shall be deemed to be a separate compartment.” The reason this is important is that individuals have been stopped and arrested for having a loaded firearm, when the firearm was in

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a soft case, unloaded, but there were loaded magazines on the outside pouch of the soft case. This now makes it clear that having a loaded magazine in a complete and secure pouch, on the outside of a soft case, does NOT constitute the firearm being loaded.

## Types of Firearms that Can Be Owned in PA

1. **Title I Firearms**: Handguns, Rifles, Shotguns –
  - a. Pennsylvania's definition of a **firearm**: “Any pistol or revolver with a barrel length less than 15 inches, any shotgun with a barrel length less than 18 inches or any rifle with a barrel length less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.” [18 PA.C.S. 6102](#).
2. **Title II Firearms**: National Firearms Act (NFA) Firearms: Short barreled Shotguns/Rifles, Machineguns, Any Other Weapons, Suppressors
  - a. These are considered Prohibited Offensive Weapons, but, if they are registered under the National Firearms Act, it is a *defense* that must be proven by a preponderance of the evidence. [18 PA.C.S. 908](#).
  - b. What we CANNOT own in the Commonwealth, although Federal law would allow it, are explosives, unless the individual obtains special licensing to possess and use explosives. So, no grenades, flashbangs...etc.

## Prohibited Persons

1. **Federal Prohibitions** – [18 U.S.C. 922\(g\)](#).
  - a. General Prohibition:
    - i. A fugitive from justice – [18 U.S.C. 922\(g\)\(2\)](#);
    - ii. An unlawful user of or addicted to any controlled substance – [18 U.S.C. 922\(g\)\(3\)](#);
    - iii. Being an alien – (A) is illegally or unlawfully in the United States; or (B) has been admitted to the United States under a nonimmigrant visa – [18 U.S.C. 922\(g\)\(5\)](#);
    - iv. Has been discharged from the Armed Forces under dishonorable conditions – [18 U.S.C. 922\(g\)\(6\)](#);
    - v. Having been a citizen of the United States, has renounced his citizenship – [18 U.S.C. 922\(7\)](#);

- b. General Misdemeanor/Felony Prohibitions – [18 U.S.C. 922\(g\)\(1\)](#):
- i. It shall be unlawful for any person who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce. [18 U.S.C. 922\(g\)\(1\)](#).
  - ii. BUT
    - A. The term “crime punishable by imprisonment for a term exceeding one year” does not include any State offense classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of two years or less. [18 U.S.C. 921\(a\)\(20\)](#).
  - iii. What does this mean?
    - A. If the individual was convicted of any federal crime or state crime of a felony nature, so long as the crime *could have been punished by more than* one year in jail, regardless of any actual time spent in jail, the individual would be prohibited.
    - B. If the individual was convicted of a state law crime of a misdemeanor nature, so long as the crime *could have been punished by more than* two years in jail, regardless of any actual time spent in jail, the individual would be prohibited.
      1. It is important to note that in both of the above statements, the proper analysis does NOT take into consideration the actual term of imprisonment, if any, that was imposed; but rather, the maximum sentence that is permitted by law at the time of conviction. Further, in both, it must be more than the amount of time specified. Hence, in Pennsylvania, a misdemeanor of the 2<sup>nd</sup> degree is not prohibiting because the maximum sentence allowed by law is two years. [18 PA.C.S. 106](#). It cannot be punished by *more than* two years.
  - iv. Therefore, in Pennsylvania, generally speaking (unless you have a misdemeanor conviction for domestic violence), one will only become federally prohibited after being convicted of a Misdemeanor of the 1<sup>st</sup> degree.
- a. Domestic Violence – [18 U.S.C. 922\(g\)\(8\) and \(9\)](#):
- i. Domestic Violence Misdemeanor Conviction - Lautenberg

Amendment – [18 U.S.C. § 922\(g\)\(9\)](#):

- A. An individual who has been convicted in any court of a misdemeanor crime of domestic violence is prohibited.
- B. *Even a conviction for Disorderly Conduct, which is only a misdemeanor of the 3<sup>rd</sup> degree, where it involves a spouse or someone similarly situated, can become a prohibiting offense - Pennsylvania State Police v. McPherson, 831 A.2d 800 (Pa. Cmwlth. 2003)*

ii. Protection from Abuse Orders – [18 U.S.C. 922\(g\)\(8\)](#):

A. State/Federal Prohibitions:

- Federally: subject to a court order that restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person. [18 U.S.C. 922\(g\)\(8\)](#). *However, it is only triggered if the PFA “was issued after a hearing of which such person received actual notice, and at which such person had the opportunity to participate.” [18 U.S.C. 922\(g\)\(8\)\(b\)](#). Therefore, an Emergency PFA, pursuant to [23 PA.C.S. 6110](#), and a Temporary PFA, pursuant to [23 PA.C.S. 6107\(b\)](#), cannot trigger the federal prohibition, as they are issued *ex parte*.*
- Pennsylvania: if the PFA Order calls for the relinquishment of firearms, the individual is prohibited until the Order expires. [23 PA.C.S. 6108](#). However, an Emergency PFA issued pursuant to [23 PA.C.S. 6110](#) cannot require the relinquishment of firearms. But, a temporary PFA issued pursuant to [23 PA.C.S. 6107](#) can require the relinquishment of firearms.
- Where does that leave us? An Emergency PFA will never cause the relinquishment of firearms, pursuant to state or federal law. A Temporary PFA may cause the relinquishment of firearms but only under state law, if the PFA Order so designates. A Final PFA will prohibit under federal law, regardless of whether the court has required relinquishment of the firearms. A state court cannot overrule the federal prohibition.



- REMEMBER: If an individual is prohibited at either level, he is prohibited from possessing a firearm and ammunition!

## B. Options

- Thirdparty Safekeeping Permits are no longer available under the law.
- One can relinquish to his/her attorney or a “commercial armory”, pursuant to [23 PA.C.S. 6108.3](#). What constitutes a “commercial armory” is not exactly clear and there are numerous concerns over the 2018 amendments via [HB 2060](#). You can find out more here - <https://blog.princelaw.com/2018/10/04/the-truth-about-hb-2060-that-your-representatives-dont-want-you-to-know>. Per [23 PA.C.S. 6107\(b\)\(4\)](#), the defendant shall determine the manner of relinquishment.

## b. Mental Health Commitments

- Pursuant to [18 U.S.C. 922\(g\)\(4\)](#), an individual “who has been adjudicated as a mental defective or who has been committed to a mental institution” is prohibited.
- Pursuant to [18 PA.C.S. 6105\(c\)\(4\)](#), “A person who has been adjudicated as an incompetent or who has been involuntarily committed to a mental institution for inpatient care and treatment under section 302, 303 or 304 of the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the Mental Health Procedures Act (MHPA).”
- It is currently questionable whether a Section 302 commitment triggers the federal disability, since there is no due process. A 302 commitment is perfected based on the signature of a doctor without any right of the individual to have right to an attorney, cross-examine witnesses, submit evidence, and have a neutral arbiter – <http://www.post-gazette.com/state/2013/01/19/Pa-sends-mental-health-data-for-gun-checks/stories/201301190192>. Also, it is questionable of whether Section 302 of the MHPA is constitutional under the state and federal constitutions. However, the PSP and ATF currently maintain that a 302 commitment is prohibiting.
- UPDATE:** On December 21, 2017, Judge Kim Gibson in *Franklin v. Sessions, et al.* held that a 302 commitment does not trigger a federal disability under [18 U.S.C. 922\(g\)\(4\)](#). See, <https://blog.princelaw.com/2017/12/21/monumental-decision->

[federal-court-rules-a-pennsylvania-302-mental-health-commitment-insufficient-to-trigger-a-disability-under-section-922g4/](#)

2. **Enumerated PA Crimes** – [18 PA.C.S. 6105](#).

- a. Generally, it is rare that an individual will become prohibited under Section 6105, without becoming prohibited under federal law.
  - i. Exceptions:
    - A. If the individual was convicted of impersonating a public servant, if the person impersonated a law enforcement officer;
    - B. If the individual is convicted of DUI on three or more separate occasions within a five-year period and manages to come out without a misdemeanor of the 1<sup>st</sup> degree conviction or higher, he/she is only prohibited from purchasing and obtaining new firearms but may possess and use the firearms already owned;

3. **Can an Individual be Prohibited under One and not the Other?**

- a. Yes. As an example, if an individual was convicted in PA for Possession of an Instrument of Crime ([18 PA.C.S. 907](#)), the statute states that it is a Misdemeanor of the 1<sup>st</sup> degree, which means that it is punishable by more than 2 years, yet, per [18 PA.C.S. 6105](#), he/she is not a prohibited person.
  - i. Thus, the individual would be unable to purchase or possess a firearm because of the federal prohibition.
- b. On the other hand, if the individual was convicted in PA of driving under the influence on three or more separate occasions within a five-year period and somehow managed to come out without a misdemeanor of the 1<sup>st</sup> degree conviction or higher (it can happen), the individual would be prohibited pursuant to [18 PA.C.S. 6105\(c\)\(3\)](#) from purchasing or receiving any new firearms, but would not have to relinquish the firearms he/she currently owns nor would he/she be prohibited under federal law.

4. **Restoration of Rights**

- a. Federal
  - i. Under [18 U.S.C. 925](#), the legislature originally installed a mechanism for relief from a federal disability. However, every year in the Bureau of Alcohol, Tobacco, Firearms, and Explosives appropriations, there is a line that is added that says that none of the money can be used for federal disability relief determinations.

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Thus, there is no way to currently obtain relief from the federal level.

A. If you are federally prohibited, I highly recommend contacting your federal representatives and asking them whether they will support removing this restriction. Be prepared for them to respond that although they support removing the restriction, due to the budget shortcomings and deficit, they are in a position, which precludes doing such. You should be prepared to respond that you would respectfully request that they then seek to have the language modified to include that although none of the appropriated money may be used for federal firearms relief determinations, “nothing shall preclude a person from funding his/her own federal firearms relief determination and the ATF shall not charge a fee in excess of \$500.00.”

b. State

i. Expungements

A. Pennsylvania greatly restricts what convictions can be expunged. Unless you are 70 years old, dead for 3 years, the crime was underage drinking or it was a summary conviction, you cannot get the conviction expunged.

ii. Pardons

A. If you are prohibited either federally or pursuant to State laws, or both, your only option is a Pardon.

## Registries of Firearms

1. Under both Federal and Pennsylvania law, the keeping and maintaining of any registry of firearms is illegal.
  - a. Pursuant to [18 U.S.C. 926](#), “No such rule or regulation prescribed after the date of the enactment of the Firearms Owners' Protection Act may require that records required to be maintained under this chapter or any portion of the contents of such records, be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or any political subdivision thereof, nor that any system of registration of firearms, firearms owners, or firearms transactions or dispositions be established. Nothing in this section expands or restricts the Secretary's authority to inquire into the disposition of any firearm in the course of a criminal investigation.”

i. Exception:

- A. Pursuant to [26 U.S.C. 5841](#), a limited registry is maintained of National Firearms Act (NFA) firearms and that registry is referred to as the National Firearms Registration and Transfer Record.
- b. Pursuant to [18 PA.C.S. 6111.4](#), “Notwithstanding any section of this chapter to the contrary, nothing in this chapter shall be construed to allow any government or law enforcement agency or any agent thereof to create, maintain or operate any registry of firearm ownership within this Commonwealth. For the purposes of this section only, the term ‘firearm’ shall include any weapon that is designed to or may readily be converted to expel any projectile by the action of an explosive or the frame or receiver of any such weapon.
- c. A violation of Section 6111.4 is a misdemeanor of the 1<sup>st</sup> degree – [18 PA.C.S. 6119](#).
- d. Although a quasi-sales database of handguns is maintained by the PSP, the PA Supreme Court has declared that it is not a registry and cannot be used to determine ownership – Allegheny Cnty. Sportsmen's League v. Rendell, 580 Pa. 149, 168, 860 A.2d 10, 21-22 (2004).
- e. Accordingly, there is no registry of firearms in the Commonwealth and the sales database cannot be utilized to determine the ownership of a firearm.

### **Mandatory Return of Firearms Unless Evidence of a Crime**

1. Pursuant to [18 PA.C.S. 6111.1\(b\)\(4\)](#), all law enforcement agencies have an obligation to return a firearm to the known owner; provided that, the firearm is not evidence in a crime and the individual is not prohibited from possessing firearms. If the law enforcement agency fails to return the firearm(s) and it requires court intervention, the court is *directed* to award attorney fees for the return of the firearm(s).
  - a. “The Pennsylvania State Police and any local law enforcement agency shall make all reasonable efforts to determine the lawful owner of any firearm confiscated or recovered by the Pennsylvania State Police or any local law enforcement agency and return said firearm to its lawful owner if the owner is not otherwise prohibited from possessing the firearm. When a court of law has determined that the Pennsylvania State Police or any local law enforcement agency have failed to exercise the duty under this subsection, reasonable attorney fees shall be awarded to any lawful owner of said firearm who has sought judicial enforcement of this subsection.” [18 PA.C.S. 6111.1\(b\)\(4\)](#).

## Open and Concealed Carry in Pennsylvania

### 1. Open Carrying

- a. Open carrying refers to carrying a firearm on one's person, where it is openly or visibly displayed for everyone to see.
- b. It is lawful for an individual to openly carry a loaded firearm in the Commonwealth, in conformance with the transport laws of [18 PA.C.S. 6106](#), except for in cities of the first class (only Philadelphia) – [18 PA.C.S. 6108](#).
  - i. An individual can only openly carry a firearm in Philadelphia if he/she has a License to Carry Firearms
    - A. However, an officer in Philadelphia does not have reasonable suspicion that a crime is occurring simply based upon seeing an individual open carrying in the City. [Commonwealth v. Hawkins](#), 547 Pa. 652, 657, 692 A.2d 1068, 1071 (1997).
  - ii. Further, an individual cannot carry a rifle or shotgun on the public streets or upon any public property of the City of Philadelphia, unless he/she has a license to carry firearms or falls under an exception under [18 PA.C.S. 6106\(b\)](#).
- c. However, as soon as an individual conceal carries a loaded firearm or carries the loaded firearm in a vehicle, the individual must have a License to Carry Firearms (LTCF) – [18 PA.C.S. 6106](#).
  - i. REMEMBER, a “firearm” generally only constitutes a handgun. Since the definition of a firearm is not modified for purposes of Section 6106, we are ONLY speaking about firearms, as defined in Section 6102 (aka handguns). Thus, it is lawful for an individual to conceal carry, without an LTCF, except in Philadelphia, a loaded rifle or shotgun. However, it is illegal for an individual to carry a loaded rifle or shotgun in a vehicle, per [18 PA.C.S. 6106.1](#) and [18 PA.C.S. 6108](#).

### 2. Concealed Carrying – License to Carry Firearms

- a. Concealed carry refers to carrying a loaded firearm on one's person, where it is not openly or visibly displayed for everyone to see.
- b. To conceal carry, an individual must acquire a License to Carry Firearms (LTCF) – [18 PA.C.S. 6109](#).

- i. A single conviction, even for a minor amount of marijuana, will forever preclude an individual from obtaining an LTCF. [18 PA.C.S. 6109\(e\)\(1\)\(ii\)](#)
- c. It is not reasonable suspicion for an officer to stop an individual because he/she sees a bulge that looks like a firearm or sees an actual firearm, since it is lawful to carry, both openly and concealed, firearms in the Commonwealth, pursuant to an LTCF. *Commonwealth v. Hawkins*, 547 Pa. 652, 657, 692 A.2d 1068, 1071 (1997). The Court even went on to say, “Unnecessary police intervention [by stopping an individual merely because he/she has or is believed to have a firearm], by definition, produces the possibility of conflict where none need exist.” More recently, in *Commonwealth v. Hicks*, 208 A.3d 916 (Pa. 2019) the Pennsylvania Supreme Court held that the mere open or concealed carrying of a firearm does not constitute reasonable suspicion of a crime. <https://blog.princelaw.com/2019/05/31/monumental-decision-from-the-pennsylvania-supreme-court-regarding-whether-the-open-carrying-of-a-firearm-is-reasonable-suspicion-of-a-crime>
- d. It is lawful to conceal carry a rifle or shotgun, without a LTCF, except in Philadelphia, because the restriction on conceal carrying only relates to firearms as defined in Section 6102 (aka handguns) - [18 PA.C.S. 6106](#) and [18 PA.C.S. 6108](#).
  - i. However, it is unlawful for an individual to carry a loaded rifle or shotgun in a vehicle, per [18 PA.C.S. 6106.1](#). However, it is only a summary offense.

### **3. Other Lawful Places to Open and Conceal Carry (Debunking Myths):**

#### **a. While Voting:**

- i. It is lawful to conceal or open carry while voting; provided that, if the polling location is located in a court facility lockers are made available to store the firearm, per [18 PA.C.S. 913](#). See, *Gregory Rotz v. Sheriff of Franklin County*, Court of Common Pleas of Franklin County, Docket No. 2007 – 4202 and October 29, 2010 letter from Commissioner Chet Harhut, Pennsylvania Department of State to All County Polling Contacts. See also, [http://www.northamptoncounty.org/northampton/cwp/view.asp?a=1533&Q=621057&northamptonNav=|34800|&northamptonNav\\_GID=1988](http://www.northamptoncounty.org/northampton/cwp/view.asp?a=1533&Q=621057&northamptonNav=|34800|&northamptonNav_GID=1988), declaring, “The Pennsylvania Uniform Firearms Act, 18 Pa.C.S.A. Sections 6101 et seq., permits any person permitted to possess a firearm to openly carry or, with a license to carry firearm, to conceal carry the firearm in Northampton County with the exception of elementary schools, secondary schools, or court facilities. No individual shall be precluded from entering a polling

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location while lawfully carrying a firearm, whether openly or concealed, unless such polling location constitutes an elementary school, secondary school, or court facility. No individual shall be precluded from voting while lawfully carrying a firearm, whether openly or concealed, unless such polling location constitutes an elementary school, secondary school, or court facility. No sign shall be drafted, written, erected, placed, or visibly available at any polling location precluding an individual from entering a polling location or voting while in lawful possession of a firearm.” However, it is questionable, as is discussed below, as to whether it is unlawful to carry a firearm on school property.

- b. National Parks:
  - i. Pursuant to Public Law 111-24 512(b), since February 22, 2010, an individual can carry a firearm, open or concealed, in National Parks (excluding federal buildings within the National Parks), provided the individual complies with all state and federal laws. For more info, see – <http://www.nps.gov/nero/firearms/PA/index.htm>. For more information relating to open carry in National Parks, see below section on Questionable Places.
- c. While at an establishment that serves alcohol:
  - i. There is nothing within the law that prohibits an individual from open or conceal carrying a firearm, while in an establishment that serves alcohol or while imbibing in libation.
- d. Open Carrying After Obtaining an LTCF:
  - i. There is no preclusion or limitation on an individual openly carrying, after obtaining an LTCF.

#### **4. Prohibited Places (with exceptions) to Open and Conceal Carry:**

- a. Court Facility – 18 PA.C.S. 913
  - i. *However*, it must be posted in the court facility and the court facility must make lockers available for the checking of firearms
- b. Within 1000ft of a school, unless you have a LTCF – 18 U.S.C. 922(q)
- c. Detention facilities, correctional institutions or mental hospitals – 18 PA.C.S. 5122; 61 PA.C.S. 5902
- d. Open Carry without a License to Carry Firearms in Philadelphia – 18 PA.C.S. 6108
- e. Conceal Carry without a License to Carry Firearms – 18 PA.C.S. 6108

- f. Loaded Long Gun in a Vehicle – [18 PA.C.S. 6106.1](#)
  - i. A long gun is a rifle with a barrel of over 16” and a shotgun with a barrel of over 18”, both of which must have an overall length of over 26”. However, it is only a summary offense.
- g. Long Gun on the streets or public property in Philadelphia, unless the individual has an LTCF – [18 PA.C.S. 6108](#)
- h. Private Property Owners where the individual is notified, either orally or in writing, that he/she is not permitted on the property with a firearm – [18 PA.C.S. 3503](#)
- i. Veteran Affairs (VA) Facilities, except for official purposes. This would include National Cemeteries run by the VA – [38 C.F.R. 1.218](#) and <http://www.cem.va.gov>

## 5. Questionable Places:

- a. Possession of a Firearm on School Property with a License to Carry Firearms – [18 PA.C.S. 912](#)
  - i. While Section 912 makes it unlawful to possess a firearm on school property, the statute includes a defense of, “It shall be a defense that the weapon is possessed and used in conjunction with a lawful supervised school activity or course or is possessed for other lawful purpose.”
  - ii. Is a License to Carry Firearms an “other lawful purpose?” Recently, the Superior Court, *en banc*, held that the other lawful purpose defense is not limited to other lawful activities related to school activities. Rather, as long as the individual *lawfully* possesses a weapon on school grounds where it is possessed for a *lawful purpose* (e.g. self-defense), the individual is entitled to the defense. It is important to understand that since it is a defense, you can be charged with violating the law and forced to argue the defense under Section 912(c). For more info, *see* - <https://blog.princelaw.com/2017/02/16/the-goslin-decisions-impact-on-possessing-weapons-on-school-property/>
- b. Certain Department of State Buildings – [49 PA Code § 61.3](#)
  - i. While this regulation would seemingly prohibit the carrying of firearms in certain Department of State buildings, the General Assembly later enacted [18 Pa.C.S. 6109\(m.3\)](#), which prohibits any Commonwealth Agency from regulating the possession of firearms inconsistent with the UFA.



c. Casinos

- i. While the Pennsylvania Gaming Control Board previously enacted a regulation prohibiting the carrying of firearms in casinos – [58 PA Code § 465a.13](#) – after I challenged the regulation, Attorney General Kathleen Kane confirmed that the regulation violated [18 Pa.C.S. 6109\(m.3\)](#). A copy of AG Kane’s determination can be found here - [https://www.attorneygeneral.gov/uploadedFiles/MainSite/Content/TheOffice/OfficialAttorneyGeneralOpinions/PA\\_Gaming\\_Control\\_Advice\\_Guns\\_Casino-signed.pdf](https://www.attorneygeneral.gov/uploadedFiles/MainSite/Content/TheOffice/OfficialAttorneyGeneralOpinions/PA_Gaming_Control_Advice_Guns_Casino-signed.pdf)
- ii. Accordingly, while the Gaming Control Board cannot regulate possession of firearms in casinos, since casinos are privately owned, it would suggest that the casino owner can regulate possession within the casino.

d. On a Snowmobile or ATV – [75 PA.C.S. 7727](#)

- i. While Section 7727 makes it unlawful to have a loaded firearm or strung bow and arrow while operating an ATV or snowmobile, there is an exception if such is permitted under Title 34, the Game Code. 34 PA.C.S. 2525 provides that it is lawful for “any person who possesses a valid license to carry a firearm issued under 18 Pa.C.S. § 6109 (relating to licenses) to be in possession of a loaded or unloaded firearm while engaged in any activity regulated by this title.”
- ii. Therefore, it would be lawful to have a loaded firearm (aka handgun; see definition in Section 6102) while on an ATV or snowmobile, if the individual has a valid LTCF and is involved in hunting. However, it is questionable if such would apply, where the individual is not hunting. Nevertheless, I believe it would be extremely difficult for a court to justify allowing individuals with a valid LTCF to have a loaded firearm on ATVs/snowmobiles, while hunting, but precluding them when not involved in hunting.

**6. Why Everyone Should obtain an LTCF**

- a. If you go to the range with your firearm, meet your buddy, and then decide to go have lunch, you just violated [18 PA.C.S. 6106\(a\)](#), because the exception that allows you to take the firearm to the range only permits, “Any persons engaged in target shooting with a firearm, if such persons are at or are going to or from their places of assembly or target practice and if, while going to or from their places of assembly or target practice, the firearm is not loaded.”

## 7. An Officer Cannot Merely Confiscate an LTCF unless Evidence of a Crime:

- a. In Caba v. Weaknecht, 318 C.D. 2012, on February 4, 2013, the Commonwealth Court for the first time held that an individual has both a Property and Liberty Interest in an issued LTCF. In so holding, the Court specifically overruled Potts v. City of Philadelphia, 224 F. Supp. 2d 919 (E.D. Pa. 2002), which had previously held that an individual didn't have a property interest, for purposes of a Section 1983 action against a law enforcement officer for merely taking his LTCF.

## Estate Planning Considerations

### 1. Listing Firearms in your Will

- a. A will goes through probate, which means that it is filed with the court and becomes a public document.

### 2. Gun/NFA Trusts

- a. A trust does not go through probate, so it is a private document.
- b. In the NFA context, there are other benefits when purchasing a NFA firearm:
  - i. No annual fees and
  - ii. Multiple people can possess
- c. However, since the institution of ATF-41F, anyone that can control the trust or possess and use the firearms must be listed as a Responsible Person and submit fingerprints, photographs, and Chief Law Enforcement Officer notice.

## Use of Force

### 1. Castle Doctrine (includes One's Vehicle) – [18 PA.C.S. 505\(b\)\(2.1\)](#)

- a. With the enactment of HB 40, a presumption now applies in one's home and occupied vehicle – [HB 40](#)
  - i. In enacting HB 40, the Congress found
    - A. “It is proper for law-abiding people to protect themselves, their families and others from intruders and attackers without fear of prosecution or civil action for acting in defense of themselves and others;” and

B. Not only residents but also visitors “have a right to remain unmolested within their homes or vehicles”

b. Definitions – [18 PA.C.S. 501](#)

i. **Dwelling:** Any building or structure, *including any attached porch, deck or patio*, though movable or temporary, or a portion thereof, which is for the time being the home or place of lodging of the actor.

A. It is important to note that HB 40 modified the definition of dwelling by including an attached porch, deck and patio as part of the dwelling.

ii. **Vehicle:** “A conveyance of any kind, whether or not motorized, that is designed to transport people or property.”

c. An individual is to be *presumed* to be acting reasonable in the use of deadly force if

i. “the person against whom the force is used is in the process of unlawfully and forcefully entering, or has unlawfully and forcefully entered and is present within, a dwelling, residence or occupied vehicle; or the person against whom force is used is or is attempting to unlawfully and forcefully remove another against that other's will from the dwelling, residence or occupied vehicle;” and

ii. the person using deadly force “knows or has reason to believe that the unlawful and forceful entry or act is occurring or has occurred.” [18 PA.C.S. 505\(b\)\(2.1\)](#)

d. Exceptions to Presumption – [18 PA.C.S. 505\(b\)\(2.2\)](#)

i. “The person against whom the force is used has the right to be in or is a lawful resident of the dwelling, residence or vehicle, such as an owner or lessee;”

ii. “The person sought to be removed is a child or grandchild or is otherwise in the lawful custody or under the lawful guardianship of the person against whom the protective force is used;”

iii. “The actor is engaged in a criminal activity or is using the dwelling, residence or occupied vehicle to further a criminal activity;” or

iv. “The person against whom the force is used is a peace officer acting in the performance of his official duties and the actor using force knew or reasonably should have known that the person was a peace officer.”

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e. Things to Note:

- i. There is no definition for what constitutes a patio.
- ii. With the new broad definition of a vehicle, as an example, an individual who is on his/her bicycle is entitled to the presumption and right to use lethal force if he/she is being unlawfully and forcibly removed off of his/her bicycle. Another example is that an individual riding a bus would be entitled to the presumption and right to use lethal force against someone who is forcibly and unlawfully trying to enter the bus.

2. **Stand Your Ground (other than in One's Dwelling and Vehicle) – 18 PA.C.S. 505(b)(2.3)**

- a. An individual has no duty to retreat in public and has the ability to use deadly force, provided that:
  - i. The actor is not engaged in criminal activity;
  - ii. The actor is not in illegal possession of a firearm;
  - iii. The actor is attacked where Pennsylvania would have previously required them to retreat;
  - iv. The actor had a right to be in the place where attacked;
  - v. The actor believes it immediately necessary to protect him/herself against death, serious bodily injury, kidnapping or sexual intercourse by force or threat; and
  - vi. The person against whom force is used uses or displays a firearm, or replica thereof, or any other weapon readily or apparently capable of lethal use.
- b. **Right to Use Force to Protect Third Parties – 18 PA.C.S. 506**
  - i. An individual has no duty to retreat in public and has the ability to use deadly force to protect another person, provided that:
    - A. The actor would be justified under Section 505 in using such force to protect himself against the injury he believes to be threatened to the person whom he seeks to protect;
    - B. Under the circumstances as the actor believes them to be, the person whom he seeks to protect would be justified in using such protective force; and
    - C. The actor believes that his intervention is necessary for the protection of such other person.

### 3. **Civil Immunity For Use of Force** – [42 PA.C.S. 8340.2](#)

- a. An individual who has lawfully used force pursuant to Sections 505 or 506 is entitled to civil immunity.
- b. If a lawsuit is brought by the perpetrator and dismissed, “the court shall award reasonable expenses to the actor. Reasonable expenses shall include, but not be limited to, attorney fees, expert witness fees, court costs and compensation for loss of income.”

### 4. **Use of Force Against Dogs:**

- a. Under [3 P.S. 459-501](#), Killing dogs, dogs as nuisances, Pennsylvania law authorizes any individual to kill a dog which that individual sees in the act of “pursuing or wounding or killing any domestic animal, wounding or killing other dogs, cats or household pets, or pursuing, wounding, or attacking human beings, whether or not such a dog bears the license tag required by the provisions of this act.” Furthermore, the statute grants immunity from liability to any person that acts within this scope.
- b. However, there is an exception to the law. Specifically, “Licensed dogs, when accompanied by their owner or handler, shall not be included under the provisions of this section unless caught in the act of pursuing, wounding or killing any domestic animal, wounding or killing any dogs, cats or household pets, or pursuing, wounding or attacking human beings.” [3 P.S. 459-501\(c\)](#)

## **Hunter Harassment Act**

1. Pennsylvania law protects hunters from obstruction or interference by third parties, while hunting – [34 PA.C.S. 2302](#)
2. This includes where a third party knowingly and intentionally:
  - a. “Drives or disturbs wildlife for the purpose of disrupting the lawful taking of wildlife where another person is engaged in the process of lawfully taking wildlife or other permitted activities;”
  - b. “Blocks, impedes or otherwise harasses another person who is engaged in the process of lawfully taking wildlife or other permitted activities;”
  - c. “Uses natural or artificial visual, aural, olfactory or physical stimuli to affect wildlife behavior in order to hinder or prevent the lawful taking of wildlife or other permitted activities;”

- d. “Creates or erects barriers with the intent to deny ingress or egress to areas where the lawful taking of wildlife or other permitted activities may occur;”
  - e. “Interjects himself into the line of fire;”
  - f. “Affects the condition or placement of personal or public property intended for use in the lawful taking of wildlife or other permitted activities in order to impair its usefulness or prevent its use;”
  - g. “Enters or remains upon public lands or upon private lands without permission of the owner or their agent, with intent to violate this section; or”
  - h. “Fails to obey the order of any officer whose duty it is to enforce any of the laws of this Commonwealth where such officer observes any conduct which violates this section or has reasonable grounds to believe that any person intends to engage in such conduct.”
3. A violation is a summary of the second degree.