

Sixty-second
Legislative Assembly
of North Dakota

REENGROSSED HOUSE BILL NO. 1269

Introduced by

Representatives Karls, Devlin, Klemin, Porter, Weisz

Senator Lyson

1 A BILL for an Act to create and enact a new section to chapter 62.1-02 of the North Dakota
2 Century Code, relating to mental disability and firearm possession; to amend and reenact
3 sections 25-03.1-43 and 62.1-02-01 of the North Dakota Century Code, relating to possession
4 of firearms in this state and confidential records; to provide ~~for application~~ an appropriation; and
5 to provide ~~for retroactive application~~ a contingent effective date.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

7 **SECTION 1. AMENDMENT.** Section 25-03.1-43 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **25-03.1-43. Confidential records.**

10 All information and records obtained in the course of an investigation, an evaluation, an
11 examination, or treatment under this chapter and the presence or past presence of a patient in
12 a treatment facility are confidential, but the information and records may be disclosed to and be
13 used by a court as required to carry out the purposes of this chapter, and as authorized under
14 title 45, Code of Federal Regulations, part 164. Courts also may release nonclinical identifying
15 information of persons subject to proceedings under this chapter for the purposes of section 3
16 of this Act. Any information disclosed to a court remains confidential information, except as
17 provided in section 3 of this Act.

18 **SECTION 2. AMENDMENT.** Section 62.1-02-01 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **62.1-02-01. Persons who are not to possess firearms - Penalty.**

21 1. a. A person who has been convicted anywhere of a felony offense involving
22 violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an
23 equivalent felony offense of another state or the federal government is prohibited
24 from owning a firearm or having one in possession or under control from the date

1 of conviction and continuing for a period of ten years after the date of conviction
2 or the date of release from incarceration, parole, or probation, whichever is latest.

3 b. A person who has been convicted anywhere of a felony offense of this or another
4 state or the federal government not provided for in subdivision a or who has been
5 convicted of a class A misdemeanor offense involving violence or intimidation in
6 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another
7 state or the federal government and the offense was committed while using or
8 possessing a firearm, a dangerous weapon, or, as defined in subsections 7 and 8
9 of section 12.1-01-04, a destructive device or an explosive, is prohibited from
10 owning a firearm or having one in possession or under control from the date of
11 conviction and continuing for a period of five years after the date of conviction or
12 the date of release from incarceration, parole, or probation, whichever is latest.

13 c. A person who is or has ever been diagnosed and confined or committed to a
14 hospital or other institution in this state or elsewhere by a court of competent
15 jurisdiction, other than a person who has had the petition that provided the basis
16 for the diagnosis, confinement, or commitment dismissed under section
17 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another
18 jurisdiction, as a ~~mentally ill~~ person requiring treatment as defined in section
19 25-03.1-02, or as a mentally deficient person as defined in section 25-01-01, is
20 prohibited from purchasing a firearm or having one in possession or under
21 control. This limitation does not apply to a person who has not suffered from the
22 disability for the previous three years or who has successfully petitioned for relief
23 under section 3 of this Act.

24 d. A person under the age of eighteen years may not possess a handgun except
25 that such a person, while under the direct supervision of an adult, may possess a
26 handgun for the purposes of firearm safety training, target shooting, or hunting.

27 A person who violates subdivision a or b is guilty of a class C felony, and a person who
28 violates subdivision c or d is guilty of a class A misdemeanor.

29 2. For the purposes of this section, "conviction" means a determination that the person
30 committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty,
31 or a plea of nolo contendere even though:

- 1 a. The court suspended execution of sentence in accordance with subsection 3 of
- 2 section 12.1-32-02;
- 3 b. The court deferred imposition of sentence in accordance with subsection 4 of
- 4 section 12.1-32-02;
- 5 c. The court placed the person on probation;
- 6 d. The person's conviction has been reduced in accordance with subsection 9 of
- 7 section 12.1-32-02 or section 12.1-32-07.1;
- 8 e. Sentence dispositions, sentence reductions, or offense determinations equivalent
- 9 to this section were imposed or granted by a court, board, agency, or law of
- 10 another state or the federal government; or
- 11 f. The person committed an offense equivalent to an offense described in
- 12 subdivision a or b of subsection 1 when that person was subject to juvenile
- 13 adjudication or proceedings and a determination of a court under chapter 27-20
- 14 or of a court of another state or the federal government was made that the
- 15 person committed the delinquent act or offense.

16 **SECTION 3.** A new section to chapter 62.1-02 of the North Dakota Century Code is created
17 and enacted as follows:

18 **Mental disability and the possession of firearms.**

- 19 1. A court shall make a finding as to whether the provisions of 18 U.S.C. 922(d)(4) and
- 20 (g)(4) apply to the subject of a following proceeding in which the court:
 - 21 a. Finds that a person, as a result of mental disease or defect, may not be held
 - 22 criminally responsible in any case pursuant to chapter 12.1-04 or 12.1-04.1;
 - 23 b. Finds that a person is a "mentally deficient person", as defined in subsection 3 of
 - 24 section 25-01-01;
 - 25 c. Orders involuntary hospitalization or commitment to a treatment facility or
 - 26 involuntary treatment pursuant to chapter 25-03.1;
 - 27 d. Orders involuntary commitment or involuntary treatment under chapter 25-03.3;
 - 28 e. Appoints a guardian ad litem under section 28-03-04;
 - 29 f. Appoints a guardian under chapter 30.1-28; or
 - 30 g. Appoints a conservator under chapter 30.1-29.

- 1 2. If the court finds that the provisions apply, the clerk of the court shall forward the
2 individual's name and nonclinical identifying information to the bureau of criminal
3 investigation, which shall forward the information to the federal bureau of investigation,
4 or its successor agency, for inclusion in the national instant criminal background check
5 system database. The court also shall notify the individual of the prohibitions of
6 18 U.S.C. 922(d)(4) and (g)(4), and, if relevant, of subdivision c of subsection 1 of
7 section 62.1-02-01.
- 8 3. If a court of this state has found an individual under subsection 1 to be subject to the
9 provisions of 18 U.S.C. 922(d)(4) and (g)(4), that individual may petition the court that
10 issued the finding or the district court of the county where the individual resides to
11 remove that individual's firearms-related disabilities, as provided in Public Law
12 110-180, section 105(a). A copy of the petition for relief must be served on the director
13 of the treatment facility that treated the individual pursuant to court order and the
14 prosecuting attorney of the county in which the original finding, order, or appointment
15 occurred. The director of the treatment facility that treated the individual pursuant to
16 court order and the prosecuting attorney may appear, support, object to, and present
17 evidence relevant to the relief sought by the petitioner. The court shall receive and
18 consider evidence in a closed proceeding, including evidence offered by the petitioner,
19 concerning:
- 20 a. The circumstances of the original order, appointment, or finding;
21 b. The petitioner's mental health and criminal history records, if any;
22 c. The petitioner's reputation; and
23 d. Changes in the petitioner's condition or circumstances relevant to the relief
24 sought.
- 25 4. The court shall grant the petition for relief if the court finds by a preponderance of the
26 evidence that the petitioner likely will not act in a manner dangerous to public safety
27 and that the granting of the relief would not be contrary to the public interest. A record
28 must be kept of the proceedings. The record is confidential and may be disclosed only
29 to a court in the event of an appeal. ~~The petitioner may appeal a denial of the~~
30 ~~requested relief, and review on appeal is de novo.~~ An individual may file a petition for
31 relief under this section no more than once every two years.

1 5. When a magistrate or court issues an order granting a petition for relief under
2 subsection 3, the clerk of the court immediately shall forward a copy of the order to the
3 bureau of criminal investigation in the format and medium specified by the bureau after
4 consultation with the state court administrator. The bureau immediately shall forward a
5 copy to the federal bureau of investigation, or its successor agency, for updating of the
6 national instant criminal background check system database.

7 ~~— **SECTION 4. APPLICATION.** Notwithstanding any other section of this Act, the attorney~~
8 ~~general is not required to comply with this Act unless the attorney general begins to implement~~
9 ~~and administer this Act within the limits of the budget of the attorney general. The attorney~~
10 ~~general may not add any full-time equivalent positions to assist with the implementation or~~
11 ~~administration of this Act.~~

12 **SECTION 4. APPROPRIATION.** There is appropriated the sum of \$585,859, or so much of
13 the sum as may become available from a grant under the Act of Congress entitled NICS
14 Improvement Act of 2007 [Pub. L. 110-180, 121 Stat. 2559] or other funds, to the attorney
15 general for the purpose of implementing software and administering the system, for the
16 biennium beginning July 1, 2011, and ending June 30, 2013.

17 ~~— **SECTION 5. RETROACTIVE APPLICATION.** This Act applies retroactively to cases under~~
18 ~~chapter 25-03.1 which arise after December 31, 2007.~~

19 **SECTION 5. CONTINGENT EFFECTIVE DATE.** Subsections 2 and 5 of section 3 of this
20 Act become effective when the attorney general certifies to the secretary of state, the office of
21 management and budget, and the legislative council that the state has received the grant under
22 section 4 of this Act and has implemented the software and system to carry out the provisions of
23 subsections 2 and 5 of section 3 of this Act.