

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 and subsection 3 of section 62.1-04-03 of the North Dakota
4 Century Code, relating to possession of firearms in this state and confidential records; to
5 provide ~~for application~~ an appropriation; ~~and~~ to provide ~~for retroactive application~~ a contingent
6 effective date; and to declare an emergency.

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

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

10 **25-03.1-43. Confidential records.**

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

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

21 **62.1-02-01. Persons who are not to possess firearms - Penalty.**

22 1. a. A person who has been convicted anywhere of a felony offense involving
23 violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an
24 equivalent felony offense of another state or the federal government is prohibited

1 from owning a firearm or having one in possession or under control from the date
2 of conviction and continuing for a period of ten years after the date of conviction
3 or the date of release from incarceration, parole, or probation, whichever is latest.

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

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

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

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

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

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

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

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

- 1 f. Appoints a guardian under chapter 30.1-28; or
2 g. Appoints a conservator under chapter 30.1-29.
- 3 2. If the court finds that the provisions apply, the clerk of the court shall forward the
4 individual's name and nonclinical identifying information to the bureau of criminal
5 investigation, which shall forward the information to the federal bureau of investigation,
6 or its successor agency, for inclusion in the national instant criminal background check
7 system database. The court also shall notify the individual of the prohibitions of
8 18 U.S.C. 922(d)(4) and (g)(4), and, if relevant, of subdivision c of subsection 1 of
9 section 62.1-02-01.
- 10 3. If a court of this state has found an individual under subsection 1 to be subject to the
11 provisions of 18 U.S.C. 922(d)(4) and (g)(4), that individual may petition the court that
12 issued the finding or the district court of the county where the individual resides to
13 remove that individual's firearms-related disabilities, as provided in Public Law
14 110-180, section 105(a). A copy of the petition for relief must be served on the director
15 of the treatment facility that treated the individual pursuant to court order and the
16 prosecuting attorney of the county in which the original finding, order, or appointment
17 occurred. The director of the treatment facility that treated the individual pursuant to
18 court order and the prosecuting attorney may appear, support, object to, and present
19 evidence relevant to the relief sought by the petitioner. The court shall receive and
20 consider evidence in a closed proceeding, including evidence offered by the petitioner,
21 concerning:
- 22 a. The circumstances of the original order, appointment, or finding;
23 b. The petitioner's mental health and criminal history records, if any;
24 c. The petitioner's reputation; and
25 d. Changes in the petitioner's condition or circumstances relevant to the relief
26 sought.
- 27 4. The court shall grant the petition for relief if the court finds by a preponderance of the
28 evidence that the petitioner likely will not act in a manner dangerous to public safety
29 and that the granting of the relief would not be contrary to the public interest. A record
30 must be kept of the proceedings. The record is confidential and may be disclosed only
31 to a court in the event of an appeal. ~~The petitioner may appeal a denial of the~~

1 ~~requested relief, and review on appeal is de novo.~~ An individual may file a petition for
2 relief under this section no more than once every two years.

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

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

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

16 **SECTION 4. AMENDMENT.** Subsection 3 of section 62.1-04-03 of the North Dakota
17 Century Code is amended and reenacted as follows:

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

25 **SECTION 5. APPROPRIATION.** There is appropriated the sum of \$585,859, or
26 so much of the sum as may become available from a grant under the Act of Congress
27 entitled NICS Improvement Act of 2007 [Pub. L. 110-180; 121 Stat. 2559] or other
28 funds, to the attorney general for the purpose of implementing software and
29 administering the system, for the biennium beginning July 1, 2011, and ending June 30, 2013.
30 This appropriation includes funding for one and one-half full-time equivalent positions to

1 administer the provisions of the Act, which must be terminated when grant funding is no longer
2 available.

3 **SECTION 6. CONTINGENT EFFECTIVE DATE.** Subsections 2 and 5 of
4 section 3 of this Act become effective when the attorney general certifies to the
5 secretary of state, the office of management and budget, and the legislative council
6 that the state has received the grant under section 5 of this Act and has implemented
7 the software and system to carry out the provisions of subsections 2 and 5 of section 3
8 of this Act.

9 **SECTION 7. EMERGENCY.** Section 4 of this Act is declared to be an emergency measure.