

Sixty-eighth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1350

Introduced by

Representatives Koppelman, Christensen, Kasper, Rios, Roers Jones, Vetter

Senators Luick, Paulson

1 A BILL for an Act to amend and reenact sections 12.1-01-04, 12.1-32-02.1, and 62.1-01-01, and
2 subsection 1 of section 62.1-02-01, ~~and section 62.1-02-01.1~~ of the North Dakota Century
3 Code, relating to criminal code definitions, weapons definitions, mandatory prison terms for
4 armed offenders, and persons who are not to possess firearms, ~~and restoration of rights to~~
5 ~~possess a firearm~~; and to provide a penalty.

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

7 **SECTION 1. AMENDMENT.** Section 12.1-01-04 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **12.1-01-04. General definitions.**

10 As used in this title, unless a different meaning plainly is required:

- 11 1. "Act" or "action" means a bodily movement, whether voluntary or involuntary.
- 12 2. "Acted", "acts", and "actions" include, where relevant, "omitted to act" and "omissions
13 to act".
- 14 3. "Actor" includes, where relevant, a person guilty of an omission.
- 15 4. "Bodily injury" means any impairment of physical condition, including physical pain.
- 16 5. "Court" means any of the following courts: the supreme court, a district court, and
17 where relevant, a municipal court.
- 18 6. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
19 stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles,
20 or sand club; any slingshot; any bow and arrow, crossbow, or spear; any weapon that
21 will expel, or is readily capable of expelling, a projectile by the action of a spring,
22 compressed air, or compressed gas including any such weapon, loaded or unloaded,
23 commonly referred to as a BB gun, air rifle, or CO₂ gun; and any projector of a bomb

1 or any object containing or capable of producing and emitting any noxious liquid, gas,
2 or substance.

3 7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
4 mine, rocket, missile, or similar device.

5 8. "Explosive" means gunpowders, powders used for blasting, all forms of high
6 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
7 and other detonating agents, smokeless powders, and any chemical compounds,
8 mechanical mixture, or other ingredients in such proportions, quantities, or packing
9 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
10 compound, or material, or any part thereof may cause an explosion.

11 9. "Firearm" means any weapon that will expel, or is readily capable of expelling, a
12 projectile by the action of an explosive and includes any such weapon, loaded or
13 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
14 bazooka, or cannon.

15 10. "Force" means physical action.

16 11. "Government" means:

- 17 a. The government of this state or any political subdivision of this state;
18 b. Any agency, subdivision, or department of the state or any political subdivision of
19 the state, including the executive, legislative, and judicial branches;
20 c. Any corporation or other entity established by law to carry on any governmental
21 function; and
22 d. Any commission, corporation, or agency established by statute, compact, or
23 contract between or among governments for the execution of intergovernmental
24 programs.

25 12. "Governmental function" includes any activity that one or more public servants are
26 legally authorized to undertake on behalf of government.

27 13. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
28 disadvantage, or injury to any other person in whose welfare the person affected is
29 interested.

30 14. "Included offense" means an offense:

- 1 a. That is established by proof of the same or less than all the facts required to
- 2 establish commission of the offense charged;
- 3 b. That consists of criminal facilitation of or an attempt or solicitation to commit the
- 4 offense charged; or
- 5 c. That differed from the offense charged only in that it constitutes a less serious
- 6 harm or risk of harm to the same person, property, or public interest, or because
- 7 a lesser degree of culpability suffices to establish its commission.
- 8 15. "Includes" should be read as if the phrase "but is not limited to" were also set forth.
- 9 16. "Law enforcement officer" or "peace officer" means a public servant authorized by law
- 10 or by a government agency or branch to enforce the law and to conduct or engage in
- 11 investigations or prosecutions for violations of law.
- 12 17. "Local" means of or pertaining to any political subdivision of the state.
- 13 18. "Manifest injustice" means a specific finding by the court that the imposition of
- 14 sentence is unreasonably harsh or shocking to the conscience of a reasonable
- 15 individual, with due consideration of the totality of circumstances.
- 16 19. "Offense" means conduct for which a term of imprisonment or a fine is authorized by
- 17 statute after conviction.
- 18 20. "Official action" includes a decision, opinion, recommendation, vote, or other exercise
- 19 of discretion by any government agency.
- 20 21. "Official proceeding" means a proceeding heard or which may be heard before any
- 21 government agency or branch or public servant authorized to take evidence under
- 22 oath, including any referee, hearing examiner, commissioner, notary, or other person
- 23 taking testimony or a deposition in connection with any such proceeding.
- 24 22. "Omission" means a failure to act.
- 25 23. As used in this title and in sections outside this title which define offenses, "person"
- 26 includes, where relevant, a corporation, limited liability company, partnership,
- 27 unincorporated association, or other legal entity. When used to designate a party
- 28 whose property may be the subject of action constituting an offense, the word "person"
- 29 includes a government that may lawfully own property in this state.

- 1 24. "Political subdivision" as used in this title and in any statute outside this title which
2 defines an offense means a county, city, school district, township, and any other local
3 governmental entity created by law.
- 4 25. "Possesses" means an individual has:
5 a. Direct physical control of something on or around the individual's person; or
6 b. The power and intention to exercise control over something accessible to but not
7 on or around the individual's person.
- 8 26. "Public servant" as used in this title and in any statute outside this title which defines
9 an offense means any officer or employee of government, including law enforcement
10 officers, whether elected or appointed, and any person participating in the
11 performance of a governmental function. The term does not include witnesses.
- 12 ~~26-27.~~ "Risk assessment" means an initial phase with a secondary process approved by the
13 department of health and human services for the evaluation of the likelihood a person
14 that committed an offense will commit another similar offense. The initial phase is an
15 assessment tool that is administered by a trained probation and parole officer. A
16 predetermined score on the initial phase initiates the secondary process that includes
17 a clinical interview, psychological testing, and verification through collateral information
18 or psychophysiological testing, or both. The department of health and human services
19 shall perform the secondary process of the risk assessment.
- 20 ~~27-28.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
21 which causes serious permanent disfigurement, unconsciousness, extreme pain,
22 permanent loss or impairment of the function of any bodily member or organ, a bone
23 fracture, or impediment of air flow or blood flow to the brain or lungs.
- 24 ~~28-29.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
25 authenticate any instrument or writing.
- 26 ~~29-30.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or
27 impairment of the function of any bodily member or organ.
- 28 ~~30-31.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of
29 money, tangible or intangible property, commercial interests, or anything else the
30 primary significance of which is economic gain to the recipient.

31-32. "Tier 1 mental health professional" has the same meaning as provided under section 25-01-01.

SECTION 2. AMENDMENT. Section 12.1-32-02.1 of the North Dakota Century Code is amended and reenacted as follows:

12.1-32-02.1. Mandatory prison terms for armed offenders.

1. Notwithstanding any other provision of this title, a term of imprisonment must be imposed upon an offender and served without benefit of parole when:

a. In the course of committing an offense, the offender inflicts or attempts to inflict bodily injury upon another, threatens or menaces another with imminent bodily injury with a dangerous weapon, explosive, destructive device, or firearm; or

b. ~~The~~An offender prohibited from possessing a firearm under section 62.1-02-01 possesses or has within immediate reach and control a dangerous weapon, explosive, destructive device, or firearm while in the course of committing any felony offense under subsection 1, 3, or 7 of section 19-03.1-23.

2. This requirement applies only when possession of a dangerous weapon, explosive, destructive device, or firearm has been charged and admitted or found to be true in the manner provided by law, and must be imposed as follows:

a. If the offense for which the offender is convicted is a class AA, class A, or class B felony, the court shall impose a minimum sentence of four years' imprisonment.

b. If the offense for which the offender is convicted is a class C felony, the court shall impose a minimum sentence of two years' imprisonment.

3. This section applies even when being armed is an element of the offense for which the offender is convicted.

4. This section applies even if the offender is prosecuted for a violation of section 62.1-02-01 for the same conduct.

5. An offender serving a sentence subject to this section may be eligible to participate in a release program under section 12-48.1-02 during the last six months of the offender's sentence.

SECTION 3. AMENDMENT. Section 62.1-01-01 of the North Dakota Century Code is amended and reenacted as follows:

1 **62.1-01-01. General definitions.**

2 As used in this title, unless the context otherwise requires:

- 3 1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
4 stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more;
5 any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap,
6 bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow,
7 crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a
8 projectile by the action of a spring, compressed air, or compressed gas, including any
9 such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2
10 gun; and any projector of a bomb or any object containing or capable of producing and
11 emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include
12 a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN,
13 also known as alpha-chloroacetophenone; or other irritating agent intended for use in
14 the defense of an individual, nor does the term include a device that uses voltage for
15 the defense of an individual, unless the device uses a projectile and voltage or the
16 device uses a projectile and may be used to apply multiple applications of voltage
17 during a single incident, then the term includes the device for an individual who is
18 prohibited from possessing a firearm under this title.
- 19 2. "Direct supervision of an adult" means that an adult is present in such close proximity
20 so as to be capable of observing and directing the actions of the individual supervised.
- 21 3. "Firearm" or "weapon" means any device that expels or is readily capable of expelling
22 a projectile by the action of an explosive and includes any such device, loaded or
23 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
24 bazooka, or cannon.
- 25 4. "Gaming site" means any room or premises licensed by the attorney general or by a
26 city or county governing body to conduct legal gaming operations.
- 27 5. "Government building" means a building which is owned, possessed, or used by or
28 leased to the state of North Dakota, or any of its political subdivisions.
- 29 6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which
30 has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of
31 firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile

1 through a rifled bore. The term includes all firearms that are designed to be readily
2 modified between rifle and pistol forms, if in compliance with the National Firearms Act
3 [26 U.S.C. 5801-5872].

4 7. "Law enforcement officer" means:

5 a. A public servant authorized by law or by a government agency or branch to
6 enforce the law and to conduct or engage in investigations or prosecutions for
7 violations of law; or

8 b. A retired public servant in good standing who:

9 (1) Was authorized by law or by a government agency or branch for at least ten
10 years to enforce the law and to conduct or engage in investigations or
11 prosecutions for violations of law or who was separated from service due to
12 a service-related physical disability;

13 (2) Maintains the same level of firearms proficiency as is required by the peace
14 officers standards and training board for law enforcement officers, maintains
15 the standards for qualifications in firearms training for active law
16 enforcement officers as determined by the former agency of the individual in
17 the state in which the individual resides, or maintains the standards used by
18 a certified firearms instructor qualified to conduct a firearms qualification test
19 for active duty officers in the state in which the individual resides;

20 (3) Has a photo identification card issued by a local law enforcement agency
21 which identifies the individual as having been employed by a government
22 agency or branch as a law enforcement officer and indicates the individual
23 has passed the firearms proficiency test within twelve months from the date
24 of issue; and

25 (4) Has not been found by a qualified medical professional to be unqualified for
26 reasons relating to mental health or entered an agreement with a
27 government agency or branch in which the public servant acknowledges a
28 lack of qualifications for reasons relating to the mental health of the public
29 servant.

30 8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism,
31 or instrument not requiring that the trigger be pressed for each shot, and having a

reservoir, belt, or other means of storing and carrying ammunition which can be loaded into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more shots to the second. The term does not include a binary trigger that fires one round upon the pull of the trigger and one round upon release of the trigger.

9. "Mentally deficient individual" means any individual, minor or adult other than a mentally ill individual, who is so mentally defective as to be incapable of managing that individual's affairs and to require supervision, control, and care for that individual's own or the public welfare.

10. "Plain view" means the handgun is placed in such a location or carried in such a position as to be easily discernible by the ordinary observation of a passerby. In a motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as long as the handgun is not covered or is in any other way concealed from view.

11. "Possession" means an individual has:

a. Direct physical control of something on or around the individual's person; or

b. The power and intention to exercise control over something accessible to but not on or around the individual's person.

12. "Rifle" means any firearm designed or redesigned, made or remade, and intended to be fired from the shoulder and using the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.

~~12-13.~~ "Secured" means the firearm is closed into the trunk or nonpassenger part of the vehicle; placed into a closed and secure carrying device; rendered inoperative by the use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the firearm incapable of firing until the device is unlocked and removed; or so disassembled or disabled as to be rendered incapable of firing.

~~13-14.~~ "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].

~~14-15.~~ "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun,

whether by alteration, modification, or otherwise, if the firearm, as modified, has an overall length of less than twenty-six inches [66.04 centimeters].

~~45.16.~~ "Shotgun" means a firearm designed or redesigned, made or remade, and intended to be fired with one hand below or behind and one hand in front of the breach, which uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a rifled bore either a number of ball shot or a single projectile for each single pull of the trigger.

~~46.17.~~ "Silencer" means any device for or attached to any firearm which will silence or deaden the sound or natural report of the firearm when it is discharged.

~~47.18.~~ "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the firearm is a revolver, then none of the chambers in the cylinder may contain a loaded shell.

SECTION 4. AMENDMENT. Subsection 1 of section 62.1-02-01 of the North Dakota Century Code is amended and reenacted as follows:

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

c. A person who is or has ever been diagnosed and confined or committed to a hospital or other institution in this state or elsewhere by a court of competent jurisdiction, other than a person who has had the petition that provided the basis for the diagnosis, confinement, or commitment dismissed under section 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or as a mentally deficient individual, is prohibited from purchasing a firearm or having one in possession ~~or under control~~. This limitation does not apply to a person who has not suffered from the disability for the previous three years or who has successfully petitioned for relief under section 62.1-02-01.2.

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

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

~~**SECTION 5. AMENDMENT.** Section 62.1-02-01.1 of the North Dakota Century Code is amended and reenacted as follows:~~

~~**62.1-02-01.1. Restoration of right to possess firearm.**~~

~~1. An individual prohibited from possessing a firearm due to a conviction of a felony occurring in this state and designated under subdivision b of subsection 1 of section 62.1-02-01 may petition the district court for restoration of the individual's firearm rights. If the felony offense was committed in this state, the petition must be filed with the district court in the county where the offense occurred. If the offense was a felony of another state or the federal government, the petition must be filed in the venue where the rights of the individual were revoked as provided by Rule 5.4 of the North Dakota Rules of Court. A copy of the petition must be served on the state's attorney's office in the county where the petition is filed in accordance with Rule 5 of the North Dakota Rules of Civil Procedure. The state's attorney's office has twenty days to file a written response to the petition with the district court.~~

~~2. An individual prohibited from possessing a firearm under 18 U.S.C. 922(g) due to a conviction of a misdemeanor crime of domestic violence occurring in this state may~~

~~petition the district court for restoration of the individual's firearm rights. The petition
must be filed and served as provided in subsection 1.~~

~~3. The district court may restore the right of an individual to possess a firearm if the court
determines, by clear and convincing evidence, that all of the following circumstances
exist:~~

~~a. The individual has paid all fines imposed for the violation resulting in the
prohibition;~~

~~b. The individual has served all terms of imprisonment imposed for the violation
resulting in the prohibition;~~

~~c. The individual has successfully completed all conditions of probation or parole
imposed for the violation resulting in the prohibition; and~~

~~d. The individual's record and reputation are such that the individual is not likely to
act in a manner dangerous to the safety of others.~~

~~4. In addition to supporting factual findings and legal conclusions, a restoration order
under subsection 2 must state:~~

~~a. The petitioner's loss of civil rights for the underlying offense are restored;~~

~~b. The order only affects the petitioner's right to possess a firearm within this state;
and~~

~~c. The petitioner is cautioned to make proper legal inquiry before attempting
to purchase or possess a firearm in another state, as the law of the other state
may preclude the petitioner's firearm possession irrespective of the restoration
order.~~