

Sixty-eighth
Legislative Assembly
of North Dakota

ENGROSSED 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 of the North Dakota Century Code, relating to criminal code
3 definitions, weapons definitions, mandatory prison terms for armed offenders, and persons who
4 are not to possess firearms; and to provide a penalty.

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

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

8 **12.1-01-04. General definitions.**

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

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

- 1 7. "Destructive device" means any explosive, incendiary or poison gas bomb, grenade,
2 mine, rocket, missile, or similar device.
- 3 8. "Explosive" means gunpowders, powders used for blasting, all forms of high
4 explosives, blasting materials, fuses (other than electric circuit breakers), detonators
5 and other detonating agents, smokeless powders, and any chemical compounds,
6 mechanical mixture, or other ingredients in such proportions, quantities, or packing
7 that ignition by fire, by friction, by concussion, by percussion, or by detonation of the
8 compound, or material, or any part thereof may cause an explosion.
- 9 9. "Firearm" means any weapon that will expel, or is readily capable of expelling, a
10 projectile by the action of an explosive and includes any such weapon, loaded or
11 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
12 bazooka, or cannon.
- 13 10. "Force" means physical action.
- 14 11. "Government" means:
- 15 a. The government of this state or any political subdivision of this state;
- 16 b. Any agency, subdivision, or department of the state or any political subdivision of
17 the state, including the executive, legislative, and judicial branches;
- 18 c. Any corporation or other entity established by law to carry on any governmental
19 function; and
- 20 d. Any commission, corporation, or agency established by statute, compact, or
21 contract between or among governments for the execution of intergovernmental
22 programs.
- 23 12. "Governmental function" includes any activity that one or more public servants are
24 legally authorized to undertake on behalf of government.
- 25 13. "Harm" means loss, disadvantage, or injury to the person affected, and includes loss,
26 disadvantage, or injury to any other person in whose welfare the person affected is
27 interested.
- 28 14. "Included offense" means an offense:
- 29 a. That is established by proof of the same or less than all the facts required to
30 establish commission of the offense charged;

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

- 1 a. Direct physical control of something on or around the individual's person; or
2 b. The power and intention to exercise control over something accessible to but not
3 on or around the individual's person.

4 26. "Public servant" as used in this title and in any statute outside this title which defines
5 an offense means any officer or employee of government, including law enforcement
6 officers, whether elected or appointed, and any person participating in the
7 performance of a governmental function. The term does not include witnesses.

8 ~~26-27.~~ "Risk assessment" means an initial phase with a secondary process approved by the
9 department of health and human services for the evaluation of the likelihood a person
10 that committed an offense will commit another similar offense. The initial phase is an
11 assessment tool that is administered by a trained probation and parole officer. A
12 predetermined score on the initial phase initiates the secondary process that includes
13 a clinical interview, psychological testing, and verification through collateral information
14 or psychophysiological testing, or both. The department of health and human services
15 shall perform the secondary process of the risk assessment.

16 ~~27-28.~~ "Serious bodily injury" means bodily injury that creates a substantial risk of death or
17 which causes serious permanent disfigurement, unconsciousness, extreme pain,
18 permanent loss or impairment of the function of any bodily member or organ, a bone
19 fracture, or impediment of air flow or blood flow to the brain or lungs.

20 ~~28-29.~~ "Signature" includes any name, mark, or sign written or affixed with intent to
21 authenticate any instrument or writing.

22 ~~29-30.~~ "Substantial bodily injury" means a substantial temporary disfigurement, loss, or
23 impairment of the function of any bodily member or organ.

24 ~~30-31.~~ "Thing of value" or "thing of pecuniary value" means a thing of value in the form of
25 money, tangible or intangible property, commercial interests, or anything else the
26 primary significance of which is economic gain to the recipient.

27 ~~31-32.~~ "Tier 1 mental health professional" has the same meaning as provided under section
28 25-01-01.

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

1 **12.1-32-02.1. Mandatory prison terms for armed offenders.**

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

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

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

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

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

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

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

20 4. This section applies even if the offender is prosecuted for a violation of section
21 62.1-02-01 for the same conduct.

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

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

27 **62.1-01-01. General definitions.**

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

29 1. "Dangerous weapon" includes any switchblade or gravity knife, machete, scimitar,
30 stiletto, sword, dagger, or knife with a blade of five inches [12.7 centimeters] or more;
31 any throwing star, nunchaku, or other martial arts weapon; any billy, blackjack, sap,

- 1 bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow,
2 crossbow, or spear; any weapon that will expel, or is readily capable of expelling, a
3 projectile by the action of a spring, compressed air, or compressed gas, including any
4 such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2
5 gun; and any projector of a bomb or any object containing or capable of producing and
6 emitting any noxious liquid, gas, or substance. "Dangerous weapon" does not include
7 a spray or aerosol containing CS, also known as ortho-chlorobenzamalonitrile; CN,
8 also known as alpha-chloroacetophenone; or other irritating agent intended for use in
9 the defense of an individual, nor does the term include a device that uses voltage for
10 the defense of an individual, unless the device uses a projectile and voltage or the
11 device uses a projectile and may be used to apply multiple applications of voltage
12 during a single incident, then the term includes the device for an individual who is
13 prohibited from possessing a firearm under this title.
- 14 2. "Direct supervision of an adult" means that an adult is present in such close proximity
15 so as to be capable of observing and directing the actions of the individual supervised.
- 16 3. "Firearm" or "weapon" means any device that expels or is readily capable of expelling
17 a projectile by the action of an explosive and includes any such device, loaded or
18 unloaded, commonly referred to as a pistol, revolver, rifle, gun, machine gun, shotgun,
19 bazooka, or cannon.
- 20 4. "Gaming site" means any room or premises licensed by the attorney general or by a
21 city or county governing body to conduct legal gaming operations.
- 22 5. "Government building" means a building which is owned, possessed, or used by or
23 leased to the state of North Dakota, or any of its political subdivisions.
- 24 6. "Handgun" means any firearm that is not designed to be fired from the shoulder, which
25 has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of
26 firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile
27 through a rifled bore. The term includes all firearms that are designed to be readily
28 modified between rifle and pistol forms, if in compliance with the National Firearms Act
29 [26 U.S.C. 5801-5872].
- 30 7. "Law enforcement officer" means:

- 1 a. A public servant authorized by law or by a government agency or branch to
2 enforce the law and to conduct or engage in investigations or prosecutions for
3 violations of law; or
- 4 b. A retired public servant in good standing who:
- 5 (1) Was authorized by law or by a government agency or branch for at least ten
6 years to enforce the law and to conduct or engage in investigations or
7 prosecutions for violations of law or who was separated from service due to
8 a service-related physical disability;
- 9 (2) Maintains the same level of firearms proficiency as is required by the peace
10 officers standards and training board for law enforcement officers, maintains
11 the standards for qualifications in firearms training for active law
12 enforcement officers as determined by the former agency of the individual in
13 the state in which the individual resides, or maintains the standards used by
14 a certified firearms instructor qualified to conduct a firearms qualification test
15 for active duty officers in the state in which the individual resides;
- 16 (3) Has a photo identification card issued by a local law enforcement agency
17 which identifies the individual as having been employed by a government
18 agency or branch as a law enforcement officer and indicates the individual
19 has passed the firearms proficiency test within twelve months from the date
20 of issue; and
- 21 (4) Has not been found by a qualified medical professional to be unqualified for
22 reasons relating to mental health or entered an agreement with a
23 government agency or branch in which the public servant acknowledges a
24 lack of qualifications for reasons relating to the mental health of the public
25 servant.
- 26 8. "Machine gun, submachine gun, or fully automatic rifle" means a firearm, mechanism,
27 or instrument not requiring that the trigger be pressed for each shot, and having a
28 reservoir, belt, or other means of storing and carrying ammunition which can be loaded
29 into the firearm, mechanism, or instrument and fired therefrom at a rate of five or more
30 shots to the second. The term does not include a binary trigger that fires one round
31 upon the pull of the trigger and one round upon release of the trigger.

- 1 9. "Mentally deficient individual" means any individual, minor or adult other than a
2 mentally ill individual, who is so mentally defective as to be incapable of managing that
3 individual's affairs and to require supervision, control, and care for that individual's own
4 or the public welfare.
- 5 10. "Plain view" means the handgun is placed in such a location or carried in such a
6 position as to be easily discernible by the ordinary observation of a passerby. In a
7 motor vehicle, this includes being placed on the seat, dashboard, or in a gunrack as
8 long as the handgun is not covered or is in any other way concealed from view.
- 9 11. "Possession" means an individual has:
10 a. Direct physical control of something on or around the individual's person; or
11 b. The power and intention to exercise control over something accessible to but not
12 on or around the individual's person.
- 13 12. "Rifle" means any firearm designed or redesigned, made or remade, and intended to
14 be fired from the shoulder and using the energy of the explosive in a fixed metallic
15 cartridge to fire only a single projectile through a rifled bore for each pull of the trigger.
- 16 ~~12.~~13. "Secured" means the firearm is closed into the trunk or nonpassenger part of the
17 vehicle; placed into a closed and secure carrying device; rendered inoperative by the
18 use of a trigger, hammer, cylinder, slide, or barrel-locking device that renders the
19 firearm incapable of firing until the device is unlocked and removed; or so
20 disassembled or disabled as to be rendered incapable of firing.
- 21 ~~13.~~14. "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches
22 [40.64 centimeters] in length and any firearm made from a rifle, whether by alteration,
23 modification, or otherwise, if the firearm, as modified, has an overall length of less than
24 twenty-six inches [66.04 centimeters].
- 25 ~~14.~~15. "Short-barreled shotgun" means a shotgun having one or more barrels less than
26 eighteen inches [45.72 centimeters] in length and any firearm made from a shotgun,
27 whether by alteration, modification, or otherwise, if the firearm, as modified, has an
28 overall length of less than twenty-six inches [66.04 centimeters].
- 29 ~~15.~~16. "Shotgun" means a firearm designed or redesigned, made or remade, and intended to
30 be fired with one hand below or behind and one hand in front of the breach, which
31 uses the energy of the explosive in a fixed shotgun shell to fire through a smooth or a

1 rifled bore either a number of ball shot or a single projectile for each single pull of the
2 trigger.

3 ~~16.17.~~ "Silencer" means any device for or attached to any firearm which will silence or
4 deaden the sound or natural report of the firearm when it is discharged.

5 ~~17.18.~~ "Unloaded" means the chamber of the firearm does not contain a loaded shell. If the
6 firearm is a revolver, then none of the chambers in the cylinder may contain a loaded
7 shell.

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

- 10 1. a. A person who has been convicted anywhere of a felony offense involving
11 violence or intimidation in violation of chapters 12.1-16 through 12.1-25 or an
12 equivalent felony offense of another state or the federal government is prohibited
13 from owning a firearm or having one in possession ~~or under control~~ from the date
14 of conviction and continuing for a ~~period of~~ ten years after the date of conviction
15 or the date of release from incarceration, parole, or probation, whichever is latest.
- 16 b. A person who has been convicted anywhere of a felony offense of this or another
17 state or the federal government not provided for in subdivision a or who has been
18 convicted of a class A misdemeanor offense involving violence or intimidation in
19 violation of chapters 12.1-16 through 12.1-25 or an equivalent offense of another
20 state or the federal government and the offense was committed while using or
21 possessing a firearm, a dangerous weapon, or, as defined in section 12.1-01-04,
22 a destructive device or an explosive, is prohibited from owning a firearm or
23 having one in possession ~~or under control~~ from the date of conviction and
24 continuing for a ~~period of~~ five years after the date of conviction or the date of
25 release from incarceration, parole, or probation, whichever is latest.
- 26 c. A person who is or has ever been diagnosed and confined or committed to a
27 hospital or other institution in this state or elsewhere by a court of competent
28 jurisdiction, other than a person who has had the petition that provided the basis
29 for the diagnosis, confinement, or commitment dismissed under section
30 25-03.1-17, 25-03.1-18, or 25-03.1-19, or equivalent statutes of another
31 jurisdiction, as a person requiring treatment as defined in section 25-03.1-02, or

1 as a mentally deficient individual, is prohibited from purchasing a firearm or
2 having one in possession ~~or under control~~. This limitation does not apply to a
3 person who has not suffered from the disability for the previous three years or
4 who has successfully petitioned for relief under section 62.1-02-01.2.

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

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