

**CHAPTER 62.1-02
POSSESSION OF WEAPONS**

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

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.
2. For the purposes of this section, "conviction" means a determination that the person committed one of the above-mentioned crimes upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere even though:
 - a. The court suspended execution of sentence in accordance with subsection 3 of section 12.1-32-02;
 - b. The court deferred imposition of sentence in accordance with subsection 4 of section 12.1-32-02;
 - c. The court placed the person on probation;
 - d. The person's conviction has been reduced in accordance with subsection 9 of section 12.1-32-02 or section 12.1-32-07.1;
 - e. Sentence dispositions, sentence reductions, or offense determinations equivalent to this section were imposed or granted by a court, board, agency, or law of another state or the federal government; or
 - f. The person committed an offense equivalent to an offense described in subdivision a or b of subsection 1 when that person was subject to juvenile adjudication or proceedings and a determination of a court under chapter 27-20 or of a court of another state or the federal government was made that the person committed the delinquent act or offense.
3. A felon who is not sentenced under section 12.1-32-09.1 may possess a rifle that has a barrel sixteen inches [40.72 centimeters] or longer or a shotgun that has a barrel eighteen inches [45.72 centimeters] or longer and which is one of the following:

- a. A firearm, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, manufactured before 1899.
- b. A replica of any firearm described in subdivision a, if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.
- c. A muzzleloading rifle or muzzleloading shotgun designed to use black powder or a black powder substitute and which cannot use fixed ammunition.

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 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. 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. 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.

62.1-02-01.2. Mental disability and the possession of firearms.

1. A court shall make a finding as to whether the provisions of 18 U.S.C. 922(d)(4) and (g)(4) apply to the subject of a following proceeding in which the court:
 - a. Finds that a person, as a result of mental disease or defect, may not be held criminally responsible in any case pursuant to chapter 12.1-04 or 12.1-04.1;
 - b. Finds that a person is a mentally deficient individual;
 - c. Orders involuntary hospitalization or commitment to a treatment facility or involuntary treatment pursuant to chapter 25-03.1;
 - d. Orders involuntary commitment or involuntary treatment under chapter 25-03.3;
 - e. Appoints a guardian ad litem under section 28-03-04;
 - f. Appoints a guardian under chapter 30.1-28; or
 - g. Appoints a conservator under chapter 30.1-29.
2. If the court finds that the provisions apply, the clerk of the court shall forward the individual's name and nonclinical identifying information to the bureau of criminal investigation, which shall forward the information to the federal bureau of investigation, or its successor agency, for inclusion in the national instant criminal background check system database. The court also shall notify the individual of the prohibitions of 18 U.S.C. 922(d)(4) and (g)(4), and, if relevant, of subdivision c of subsection 1 of section 62.1-02-01.
3. If a court of this state has found an individual under subsection 1 to be subject to the provisions of 18 U.S.C. 922(d)(4) and (g)(4), that individual may petition the court that issued the finding or the district court of the county where the individual resides to remove that individual's firearms-related disabilities, as provided in Public Law

No. 110-180, 105(a). A copy of the petition for relief must be served on the director of the treatment facility that treated the individual pursuant to court order and the prosecuting attorney of the county in which the original finding, order, or appointment occurred. The director of the treatment facility that treated the individual pursuant to court order and the prosecuting attorney may appear, support, object to, and present evidence relevant to the relief sought by the petitioner. The court shall receive and consider evidence in a closed proceeding, including evidence offered by the petitioner, concerning:

- a. The circumstances of the original order, appointment, or finding;
 - b. The petitioner's mental health and criminal history records, if any;
 - c. The petitioner's reputation; and
 - d. Changes in the petitioner's condition or circumstances relevant to the relief sought.
4. The court shall grant the petition for relief if the court finds by a preponderance of the evidence that the petitioner likely will not act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest. A record must be kept of the proceedings. The record is confidential and may be disclosed only to a court in the event of an appeal. An individual may file a petition for relief under this section no more than once every two years.
 5. When a magistrate or court issues an order granting a petition for relief under subsection 3, the clerk of the court immediately shall forward a copy of the order to the bureau of criminal investigation in the format and medium specified by the bureau after consultation with the state court administrator. The bureau immediately shall forward a copy to the federal bureau of investigation, or its successor agency, for updating of the national instant criminal background check system database.

62.1-02-02. Sale of handgun regulated - Penalty.

No person may transfer a handgun to any person who the transferor knows or has reasonable cause to believe is a person prohibited by section 62.1-02-01 from possessing a firearm. Any person who violates this section is guilty of a class A misdemeanor.

62.1-02-03. Possession or sale of short-barreled rifle or shotgun - Penalty - Application.

A person who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun is guilty of a class C felony. This section does not apply to a law enforcement officer who possesses, obtains, receives, sells, or uses a short-barreled rifle or a short-barreled shotgun in the course of or in connection with the officer's official duties, to a member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations who possesses or uses a short-barreled rifle or short-barreled shotgun issued to the member by that organization and while on official duty, or to any person who complies with the National Firearms Act [26 U.S.C. 5801-5872].

62.1-02-04. Possession of firearm or dangerous weapon in liquor establishment prohibited - Penalty - Exceptions.

1. An individual who enters or remains in that part of the establishment set aside for the retail sale of alcoholic beverages and the consumption of purchased alcoholic beverages or used as a gaming site at which bingo is the primary gaming activity while that individual knowingly possesses a firearm or dangerous weapon is guilty of an infraction. In addition, an individual is guilty of an offense under this section for the knowing possession of a device that uses a projectile and voltage or a device that uses a projectile and may be used to apply multiple applications of voltage during a single incident in the part of an establishment set aside for the retail sale and consumption of alcoholic beverages.
2. This section does not apply to:
 - a. A law enforcement officer.

- b. The proprietor.
- c. The proprietor's employee.
- d. A designee of the proprietor when the designee is displaying an unloaded firearm or dangerous weapon as a prize or sale item in a raffle or auction.
- e. Private security personnel while on duty for the purpose of delivering or receiving moneys used at the liquor establishment or at the gaming site at which bingo is the primary gaming activity.
- f. The restaurant part of an establishment if an individual under twenty-one years of age is not prohibited in that part of the establishment.

62.1-02-05. Possession of a firearm or dangerous weapon at a public gathering - Penalty - Application.

- 1. An individual who knowingly possesses a firearm or dangerous weapon at a public gathering is guilty of an infraction. For the purpose of this section, "public gathering" means an athletic or sporting event, a school, a church or other place of worship, and a publicly owned or operated building.
- 2. This section does not apply to:
 - a. A law enforcement officer, or a correctional officer employed by the department of corrections and rehabilitation or by a correctional facility governed by chapter 12-44.1. A correctional officer employed by the department of corrections and rehabilitation may carry a firearm only as authorized in section 12-47-34. A correctional officer employed by a correctional facility governed by chapter 12-44.1 may carry a firearm or dangerous weapon only as authorized in section 12-44.1-30;
 - b. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations, when on duty;
 - c. A competitor participating in an organized sport shooting event;
 - d. A gun or antique show;
 - e. A participant using a blank cartridge firearm at a sporting or theatrical event;
 - f. A firearm or dangerous weapon carried in a temporary residence or motor vehicle;
 - g. A student and an instructor at a hunter safety class;
 - h. Private and public security personnel while on duty;
 - i. A state or federal park;
 - j. An instructor, a test administrator, an official, or a participant in educational, training, cultural, or competitive events involving the authorized use of a dangerous weapon if the event occurs with permission of the person or entity with authority over the function or premises in question;
 - k. An individual in a publicly owned or operated rest area or restroom;
 - l. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 authorizing the individual to carry a firearm or dangerous weapon concealed if the individual is in a church building or other place of worship and has the approval to carry in the church building or other place of worship by a primary religious leader of the church or other place of worship or the governing body of the church or other place of worship;
 - m. A state, federal, or municipal court judge, a district court magistrate judge or judicial referee, and a staff member of the office of attorney general if the individual maintains the same level of firearms proficiency as is required by the peace officer standards and training board for law enforcement officers. A local law enforcement agency shall issue a certificate of compliance under this section to an individual who is proficient;
 - n. An individual's storage of a firearm or dangerous weapon in a building that is owned or managed by the state or a political subdivision, provided:
 - (1) The individual resides in the building;
 - (2) The storage is inside the individual's assigned residential unit; and

- (3) The storage has been consented to by the state, the governing board, or a designee; and
 - o. An individual authorized to carry a concealed weapon on school property under section 62.1-02-14.
3. This section does not prevent any political subdivision from enacting an ordinance that is less restrictive than this section relating to the possession of firearms or dangerous weapons at a public gathering. An enacted ordinance supersedes this section within the jurisdiction of the political subdivision.
4. Notwithstanding any other provision of law, a church or place of worship may not be held liable for any injury or death or damage to property caused by an individual permitted to carry a dangerous weapon concealed under this section.
5. This section does not prevent the governing body of a school or the entity exercising control over a publicly owned or operated building or property from authorizing the use of a less than lethal weapon as part of the security plan for the school, building, or property.

62.1-02-06. Discharge of firearm within city - Penalty - Application.

A person who discharges a firearm within a city is guilty of a class B misdemeanor. This section does not apply to the lawful discharge of firearms by law enforcement officers, by citizens in defense of person or property, or by participants in lawful activities in which discharge of firearms is a recognized part of the activity, including shooting galleries and ranges.

62.1-02-07. Use of firearm by certain minors prohibited - Penalty.

Any parent, guardian, or other person authorized by the parent or guardian of any minor under fifteen years of age who permits that minor to carry or use any firearm of any description loaded with powder and projectile in public, is guilty of a class B misdemeanor. This section does not apply if the minor is under the direct supervision of the parent, guardian, or other person authorized by the parent or guardian.

62.1-02-08. Illegal firearms, ammunition, or explosive materials business.

1. A person is guilty of an offense if the person supplies a firearm, ammunition, or explosive material to, or procures or receives a firearm, ammunition, or explosive material for, a person prohibited by this title from receiving it if the transferor knows or has reasonable cause to believe that such person is prohibited by section 62.1-02-01 from receiving or possessing it.
2. The offense is a class C felony if the actor:
 - a. Was not licensed or otherwise authorized by law to handle, transfer, or engage in transactions with respect to the firearm, destructive device, or explosive material; or
 - b. Engaged in the forbidden transaction under circumstances manifesting the actor's readiness to supply or procure on other occasions in disregard of lawful restrictions.

Otherwise the offense is a class A misdemeanor.

62.1-02-09. Possession of explosive and destructive device in government building - Penalty.

A person, except for a law enforcement officer while on official business, is guilty of a class C felony if the person possesses an explosive or destructive device in a government building without the written consent of the government agency or person responsible for the management of the building.

62.1-02-10. Carrying loaded firearm in certain vehicles prohibited - Penalty - Exceptions.

An individual may not keep or carry a loaded firearm in or on any motor vehicle, including an off-highway vehicle or snowmobile in this state. An individual violating this section is guilty of an infraction. This prohibition does not apply to:

1. A member of the armed forces of the United States or national guard, organized reserves, state defense forces, or state guard organizations while possessing the firearm issued to the member by the organization and while on official duty.
2. A law enforcement officer.
3. An individual possessing a valid concealed weapons license from this state or who has reciprocity under section 62.1-04-03.1 with a handgun, or with a rifle or shotgun if not in the field hunting or trapping.
4. An individual in the field engaged in lawful hunting or trapping of nongame species or fur-bearing animals.
5. A security guard or private investigator properly licensed to carry firearms.
6. An individual possessing a valid special permit issued pursuant to section 20.1-02-05.
7. An individual who is not otherwise precluded from possessing a class 2 firearm and dangerous weapon license under chapter 62.1-04 and who has possessed for at least one year a valid driver's license or nondriver identification card issued by the department of transportation.

62.1-02-10.1. Carrying a loaded firearm in vehicle while hunting - Penalty.

An individual who is in the field engaged in the lawful hunting of big game or small game and who violates section 62.1-02-10 is not subject to a criminal penalty but is guilty of a class 2 noncriminal offense under chapter 20.1-01.

62.1-02-11. Possessing explosive prohibited - Exception - Penalty.

No person may have in custody, possession, or control any nitroglycerin, dynamite, or any other dangerous or violent explosive, unless the explosive is carried in the prosecution of or to effect a lawful and legitimate purpose. Any person violating this section is guilty of a class C felony.

62.1-02-12. Resident may purchase rifle or shotgun in contiguous state - Application - Definitions.

Repealed by S.L. 2005, ch. 598, § 2.

62.1-02-13. Possession of secured firearm - Prohibition by employer prohibited.

1. A public or private employer may not:
 - a. Prohibit any customer, employee, or invitee from possessing any legally owned firearm, if the firearm is lawfully possessed and locked inside or locked to a private motor vehicle in a parking lot and if the customer, employee, or invitee is lawfully in the area.
 - b. Make a verbal or written inquiry regarding the presence of a firearm inside or locked to a private motor vehicle in a parking lot or make an actual search of a private motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle. In addition, a public or private employer may not take any action against a customer, employee, or invitee based upon verbal or written statements of any party concerning possession of a firearm stored inside a private motor vehicle in a parking lot for lawful purposes. A search of a private motor vehicle in the parking lot of a public or private employer to ascertain the presence of a firearm within the vehicle may only be conducted by an on-duty law enforcement officer.
 - c. Condition employment upon the fact that an employee or prospective employee holds or does not hold a concealed weapons license or any agreement by an employee or a prospective employee that prohibits an employee from keeping a

- legal firearm locked inside or locked to a private motor vehicle in a parking lot, if the firearm is kept for lawful purposes.
- d. Prohibit or attempt to prevent any customer, employee, or invitee from entering the parking lot or the employer's place of business because the customer's, employee's, or invitee's private motor vehicle contains a legal firearm being carried for lawful purposes, that is out of sight within the customer's, employee's, or invitee's private motor vehicle.
 - e. Terminate the employment of or otherwise discriminate against an employee, or expel a customer or invitee for exercising the constitutional right to keep and bear arms or for exercising the right of self-defense as long as a firearm is never exhibited on company property for any reason other than lawful defensive purposes.
2. A public or private employer has no duty of care related to the actions prohibited under this section.
 3. A public or private employer is not liable in a criminal or civil action based on actions or inactions taken in compliance with this section. The immunity provided in this subsection does not apply to civil actions based on actions or inactions of public or private employers that are unrelated to compliance with this section.
 4. This section does not expand any existing duty, or create any additional duty, on the part of a public or private employer, property owner, or property owner's agent.
 5. A person aggrieved under this section may bring a civil action for violation of rights protected under this section. In any successful action brought by a customer, employee, or invitee aggrieved under this section, the court shall award all reasonable personal costs and losses suffered by the aggrieved person as a result of the violation of rights under this section. In any action brought under this section, the court shall award all court costs and attorney's fees to the prevailing party.
 6. The prohibitions in subsection 1 do not apply to:
 - a. Any public or nonpublic elementary school, middle school, or high school property, except as otherwise provided in subsection 2 of section 62.1-02-05.
 - b. Any correctional facility or institution.
 - c. Property owned or leased by a public or private employer or the landlord of a public or private employer upon which are conducted substantial activities involving national defense, aerospace, or homeland security.
 - d. Property owned or leased by a public or private employer or the landlord of a public or private employer upon which the primary business conducted is the manufacture, use, storage, or transportation of combustible or explosive materials regulated under state or federal law, or property owned or leased by an employer who has obtained a permit required under 18 U.S.C. 842 to engage in the business of importing, manufacturing, or dealing in explosive materials on the property.
 - e. A motor vehicle owned, leased, or rented by a public or private employer or the landlord of a public or private employer.
 - f. Any other property owned or leased by a public or private employer or the landlord of a public or private employer upon which possession of a firearm or other legal product by a customer, employee, or invitee is prohibited under any federal law, contract with a federal governmental entity, or other law of this state.
 - g. The state hospital.

62.1-02-14. Armed first responder in schools - Possession of a concealed weapon - Liability.

1. The superintendent of public instruction, in consultation with the department of emergency services and the attorney general, shall adopt rules to administer this section and develop criteria for approval of plans under this section.
2. The superintendent of public instruction may accept a proposal from a public school, upon approval by the school board or governing board, indicating the intention by the school to participate in an armed first responder program.

3. Within ninety days of informing the superintendent of public instruction of the intent to participate in the program, the school shall:
 - a. Identify the individual selected by the school to participate in the program and attend training to become the school's armed first responder;
 - b. Submit a plan to the superintendent of public instruction specifying how the school will implement the program; and
 - c. Participate in a comprehensive emergency operations assessment for the purpose of identifying school crisis and emergency threats and risks.
4. The plan submitted by the school to the superintendent of public instruction is a security system plan as defined in section 44-04-24 and a public health and security plan as defined in section 44-04-25. The plan continues to be an exempt record after the required disclosures of the plan under this section.
5. The plan submitted by the school to the superintendent of public instruction must show response time from law enforcement.
6. The plan submitted by the school to the superintendent of public instruction must be approved by local law enforcement and the department of homeland security.
7. The plan submitted by the school to the superintendent of public instruction must require the selected individual to complete training equivalent to the South Dakota school sentinel program as established on August 1, 2019, or complete the course established by the private investigative and security board.
8. An individual selected to become an armed first responder for a school participating in the program:
 - a. Must be a retired law enforcement officer or meet the requirements of subsection 7;
 - b. Must be a citizen of the United States;
 - c. Must be at least twenty-one years old;
 - d. Shall complete a criminal background check successfully and be approved by the local law enforcement agencies with jurisdiction over the school premises where the individual will be an armed first responder;
 - e. Must be a high school graduate or meet equivalency standards;
 - f. Shall complete successfully a physical performed by a physician or an advanced practice registered nurse and a mental evaluation by a qualified mental health provider who certifies the individual is capable of performing the duties of an armed first responder;
 - g. Shall complete successfully a faculty and administrator safety training and emergency response program in addition to the requirements under subsection 7;
 - h. Must be approved by the school board or governing board to carry a firearm concealed on school property;
 - i. Shall possess a valid class 1 firearm license from this state; and
 - j. May not be directly responsible for the supervision of children while serving as an armed first responder.
9. An individual selected to become an armed first responder at a school participating in the program shall cooperate in training with local law enforcement for school emergencies to provide a coordinated response to building lockdown and active killer events. The individual shall attend annual training and recertification courses consisting of a minimum of ten hours of instruction and a skills evaluation assessment.
10. The school board or governing board of any school participating in the program shall inform local law enforcement, in writing, of the name of the individual authorized by the school to participate in the program.
11. The school board or governing board of any school participating in the program shall ensure the district participates in annual active shooter training.
12. An individual selected as an armed first responder may not carry a firearm concealed or a dangerous weapon on school premises unless:
 - a. The individual has been approved by the school board or governing board under subsection 8;

- b. The individual has completed the armed first responder curriculum requirements under subsections 7 and 8; and
 - c. The individual completes the armed first responder recertification course requirements every twelve months.
13. A firearm or dangerous weapon carried by an armed first responder on school premises must remain concealed and under the direct control of the certified armed first responder or stored in a lockbox accessible only by the armed first responder.
 14. The school board or governing board shall approve a posttraumatic stress disorder treatment program for armed first responders.
 15. The school board or governing board may withdraw a school from participation in the program at any time.
 16. A school participating in the program shall provide program evaluation data to the superintendent of public instruction at the time and in the manner requested by the superintendent of public instruction.
 17. The board of a school district or the governing body of a nonpublic school may establish a program for providing a plan to establish a school first responder which includes authorizing an individual to conceal and carry a weapon if the individual has received education and training in accordance with this section.
 18. A staff member may choose not to function in the capacity of a school first responder.
 19. An individual authorized to work as a first responder under subsection 17, a school district, the board of a school district, or the governing body of a nonpublic school that establishes a first responder program is not civilly or criminally liable for any act or omission of the first responder if the first responder is acting in good faith while providing protection to a student or the school, except if the first responder's conduct amounts to gross negligence.