



RESTORING THE RIGHT TO POSSESS FIREARMS

An Informational Guide to a North Dakota Civil Court Process

The North Dakota Legal Self Help Center provides resources to people who represent themselves in civil matters in the North Dakota courts. The information provided in this Informational Guide is not intended for legal advice but only as a general guide to a civil court process.

Carefully read this information and any instructions, laws, or court rules to which you are referred. If you are unsure if this information suits your circumstances, consult a lawyer.

You may go to court without a lawyer, but you must abide by the state or federal laws that apply to your case, the appropriate court rules, including North Dakota Rules of Civil Procedure, North Dakota Rules of Court, North Dakota Administrative Rules and Orders, and any local court rules. Links to the rules and state laws can be found at www.ndcourts.gov.

A glossary with definitions of legal terms is available at www.ndcourts.gov/ndlshc.

This information is not a complete statement of the law. This covers basic information about the process of petitioning a North Dakota District Court to restore the right to possess firearms under North Dakota law. The Center is not responsible for any consequences that may result from the information provided. The information cannot replace the advice of competent legal counsel licensed in the state.

It is strongly recommended that you consult a lawyer and carefully consider all of your options before you represent yourself in a petition to restore your right to possess firearms.

When you represent yourself, you are held to same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures.

This Informational Guide gives the basics of the process. If you decide to represent yourself, you will need to do additional research to prepare.

This Informational Guide to restoring the right to possess firearms in North Dakota is made up of two sections:

The first section gives general information about restoring the right to possess firearms. (Pages 2 - 8)

The second section gives information about the basic process of petitioning a North Dakota District Court restore the right to possess firearms from beginning to end. (Pages 9 - 14)

SECTION ONE: INFORMATION ABOUT RESTORING THE RIGHT TO POSSESS FIREARMS IN NORTH DAKOTA

WHAT IS RESTORING THE RIGHT TO POSSESS FIREARMS?

North Dakota law prevents a person convicted of a felony, convicted of certain types of misdemeanors, or found mentally deficient from possessing firearms. However, North Dakota law allows for the restoration of the right to possess firearms when certain requirements are met.

WHO CANNOT POSSESS FIREARMS IN NORTH DAKOTA?

A person who has been convicted anywhere of a felony offense involving violence or intimidation.

- The person cannot possess or have control of a firearm for a period of ten years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.

A person who has been convicted anywhere of a felony offense or a Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon.

- The person cannot own, possess or have control of a firearm for a period of five years after the date of conviction or the date of release from incarceration, parole, or probation, whichever is latest.
- The individual may petition a North Dakota district court for restoration of the individual's firearm rights.

A person who is or has ever been diagnosed and confined or committed to a hospital or other institution due to mental deficiency.

- The person cannot purchase, possess or have control of a firearm, unless the person has not suffered from the disability for the previous three years.
- The person may petition a North Dakota restoration of the individual's firearm rights.

If you are unsure whether your firearm rights have been revoked it may be helpful to look at your previous criminal judgments that would state your loss of rights. You may also wish to consult a lawyer who can advise you of your rights and responsibilities.

If you are unsure whether you are required to petition a North Dakota district court to restore your firearm rights, consult a lawyer who can advise you of your rights and responsibilities.

WHAT ARE THE REQUIREMENTS FOR RESTORING THE RIGHT TO POSSESS FIREARMS?

Rights lost due to felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon:

The petitioner must prove by clear and convincing evidence that:

- Paid all fines imposed for the violation which resulted in loss of rights.
- Served all terms of imprisonment for the violation.
- Successfully completed all conditions of probation or parole imposed for the violation.
- Personal record and reputation are such that the individual is not likely to act in a manner dangerous to the safety of others.

Rights lost due to mental deficiency:

The court will receive and consider evidence concerning:

- The circumstances of the original order, appointment, or finding.
- The individual's mental health and criminal history records, if any;
- The individual's reputation; and
- Changes in the individual's condition or circumstances relevant to the relief sought.

The petitioner must prove by a preponderance of the evidence that:

- The individual likely will not act in a manner dangerous to public safety; and
- Granting of the relief would not be contrary to the public interest.

WHAT ARE THE DEFINITIONS OF SOME OF THE COMMONLY USED TERMS IN A PETITION TO RESTORE THE RIGHT TO POSSESS FIREARMS?

Clear and Convincing Evidence – the burden of proof, by which the petitioner must prove the requirements of restoring their right to possess firearms, which were lost due to a felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon. The clear and convincing burden of proof is more than a preponderance of evidence, but less than beyond a reasonable doubt.

Conviction – is a determination that the person committed one of the crimes in [North Dakota Century Code Section 62.1-02-01](#) upon a verdict of guilt, a plea of guilty, or a plea of nolo contendere.

Dangerous Weapon – means, but is not limited to, any switchblade or gravity knife, machete, scimitar, stiletto, sword, or dagger; any billy, blackjack, sap, bludgeon, cudgel, metal knuckles, or sand club; any slungshot; any bow and arrow, crossbow, or spear; any weapon which will expel, or is readily capable of expelling, a projectile by the action of a spring, compressed air, or compressed gas including any such weapon, loaded or unloaded, commonly referred to as a BB gun, air rifle, or CO2 gun; and any projector of a bomb or any object containing or capable of producing and emitting any noxious liquid, gas, or substance.

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

Handgun – means any firearm that is not designed to be fired from the shoulder, which has a barrel less than sixteen inches [40.64 centimeters] long, and which is capable of firing, by the energy of an explosive in a fixed metallic cartridge, an exposed projectile through a rifled bore. The term includes all firearms that are designed to be readily modified between rifle and pistol forms, if in compliance with the National Firearms Act [26 U.S.C. 5801-5872].

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

Preponderance of the Evidence – the burden of proof, by which the petitioner must prove the requirements of restoring their right to possess firearms, which were lost due to a finding of mental deficiency. The preponderance of evidence burden of proof is less than clear and convincing and less than beyond a reasonable doubt.

Venue - the location (county court) in which the North Dakota district court will hear the petition to restore the right to possess firearms.

WHAT ARE NORTH DAKOTA LAWS AND RULES RELATED TO RESTORING THE RIGHT TO POSSESS FIREARMS?

Chapter 62.1-01 of the North Dakota Century Code <http://www.legis.nd.gov/cencode/t62-1c01.html> contains definitions and general provisions related to weapons.

Chapter 62.1-02 of the North Dakota Century Code <http://www.legis.nd.gov/cencode/t62-1c02.html> governs possession of weapons.

- See Section 62.1-02-01 for laws related to individuals who cannot possess firearms.
- See Section 62.1-02-01.1 for laws related to restoring the right to possess firearms due to a felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon.
- See Section 62.1-02-01.2 for laws related to mental disability and restoring the right to possess firearms.

Rule 5.4 of the North Dakota Rules of Court

<http://www.ndcourts.gov/court/rules/NDROC/rule5.4.htm> governs where to file a petition for restoration of the right to possess firearms.

The North Dakota Rules of Civil Procedure apply to civil matters in North Dakota district courts. The rules are found at www.ndcourts.gov/rules. Click on the “Civil Procedure, North Dakota Rules of” link.

The North Dakota Rules of Court apply to civil matters in North Dakota district courts. The rules are found at www.ndcourts.gov/rules. Click on the “Rules of Court, North Dakota” link.

The North Dakota Rules of Evidence apply to civil matters in North Dakota district courts. The rules are found at www.ndcourts.gov/rules. Click on the “Evidence, North Dakota Rules of” link.

North Dakota case law is useful for interpreting what the law means for your individual circumstances. When the decision of a case is appealed from a North Dakota District Court to the North Dakota Supreme Court, the Supreme Court writes their opinion to explain how and why they interpreted the laws or rules to decide the appeal the way they did. The opinions are case law and are followed by North Dakota courts deciding later cases with similar facts and issues.

One way to research case law related to restoring the right to possess firearms, is to use the print version of the North Dakota Century Code to find the short summaries of case law after each Section of the Century Code. The case law summaries are located directly following the

text of the Century Code Section. To view the full text of the opinion, go to www.ndcourts.gov, click on the “Opinions” link and enter the case name or case citation.

Laws constantly change through legislation, administrative rulings and case law (court decisions). To determine how a law applies to your situation, review the applicable law or laws, administrative rules and rulings, and case law (court decisions). Notes of case law (court decisions) related to North Dakota law can be found in the print editions of the North Dakota Century Code. Print editions of the North Dakota Century Code are found in many North Dakota public and academic libraries.

Only a lawyer licensed to practice in North Dakota who has agreed to represent you can give you legal advice. Legal advice includes interpreting how the laws and rules apply to your situation.

WHO ARE THE PARTIES IN A PETITION TO RESTORE THE RIGHT TO POSSESS FIREARMS?

Petitioner –The individual who is petitioning a North Dakota District Court to restore the right to possess firearms.

Respondent – Rights lost due to felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon

The States Attorney in the county where the petition is being filed.

Respondents – Rights lost due to mental deficiency

The director of the treatment facility and the prosecuting attorney of the county in which the original case was filed.

WHERE IS A PETITION TO RESTORE THE RIGHT TO FIREARMS FILED (VENUE)?

State Felony Conviction- An individual who is prohibited from possessing a firearm due to a felony conviction in this state may submit a petition for restoration of firearms rights to the district court in the county where the offense occurs.

Out-of-State or Federal Conviction- An individual who is prohibited from possessing a firearm due to a felony conviction in another state or in a federal court may submit a petition for restoration of firearms rights to the district court in the country where the petitioner resides.

Mental Disability- An individual who is prohibited from possessing a firearm due to a mental disability may submit a petition for restoration of firearms to the district court that issued the finding of disability or the district court in the county where the petitioner resides.

DOES THE ND LEGAL SELF HELP CENTER HAVE FORMS TO PETITION TO RESTORE THE RIGHT TO POSSESS FIREARMS?

No, the ND Legal Self Help Center does not have a packet of forms to petition a North Dakota District Court to restore the right to possess firearms. If you decide to represent yourself, you will need to create and prepare your own legal documents. **Names and descriptions of the documents you will need to create and prepare are found throughout this guide.**

Although the ND Legal Self Help Center does not have forms or instructions for petitioning to restore the right to possess firearms in North Dakota district court, a variety of General-Use forms are available in the Guide to a Civil Action. You may find the General-Use forms of interest as a starting point for creating your own legal documents.

The Guide to a Civil Action is available at www.ndcourts.gov/ndlshc by clicking on the "Guide to Civil Action" link. Links to the General-Use forms are located at the **end** of the Guide. You must scroll to the end of the Guide to find the active links to the forms.

IS THERE HELP AVAILABLE FOR CREATING LEGAL DOCUMENTS?

If you would like assistance creating your legal documents, consult a lawyer licensed to practice in North Dakota. Ask the lawyer about Limited Legal Representation. Lawyers licensed to practice in North Dakota may agree to help you with part of your civil action, such as preparing legal documents, while you handle the rest of your civil action. You and the lawyer must agree in writing to Limited Legal Representation.

LAWYER RESOURCES AND LIMITED LEGAL REPRESENTATION

You are not required to hire a lawyer to bring a civil action in North Dakota District Court. If you decide to represent yourself, you must follow all of the rules, laws and procedures that a lawyer is required to follow.

Lawyer Resources

If you decide to find a lawyer to represent you, you may find the following options of interest. Legal Services of North Dakota is a non-profit organization, providing free legal assistance to North Dakota residents in a variety of matters based on income. Legal Services of North Dakota can also determine whether an applicant meets the income requirements for the Volunteer Lawyers program that offers low-cost legal assistance based on income. The phone number is (800) 634-5263 and the website is www.legalassist.org.

The State Bar Association of North Dakota provides a lawyer referral service to match paying clients in need of legal services with lawyers. The phone number is (866) 450-9579 and the website is www.sband.org. The cost is \$30.00 for a 30 minute consultation with a lawyer.

For a list of all lawyers who are licensed to practice in North Dakota, go to the North Dakota Supreme Court website at www.ndcourts.gov/Lawyers. You can narrow your search by city by clicking on "Cities" in the blue NAVIGATION box in the upper left of the webpage.

Limited Legal Representation

Lawyers licensed to practice in North Dakota may provide Limited Legal Representation in civil actions. Limited Legal Representation (sometimes called “unbundling”) is a way that a lawyer can help you with part of your case while you do the rest of your case. You pay for the part of the case the lawyer handled. For example:

- You may want a lawyer to give you an expert opinion about your options, or your legal rights and responsibilities;
- You can consult with a lawyer to prepare or review your legal documents, but attend hearings yourself;
- You can represent yourself through the whole case, and periodically consult with a lawyer who can coach you on the law, procedures and strategy;
- You can do the preparation yourself and hire a lawyer just to make court appearances for you.

You and the lawyer must agree in writing to Limited Legal Representation.

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SECTION TWO: THE PETITION PROCESS IN NORTH DAKOTA

PART ONE: GATHER YOUR DOCUMENTATION

Gather your documentation to include as exhibits to your petition.

You must prove that you have met all of the requirements specified by North Dakota Century Code Chapter 62.1-02. (A link North Dakota Century Code Chapter 62.1-02 is found on page 5 of this Informational Guide.)

You make all the decisions on what documentation fulfills the North Dakota Century Code Chapter 62.1-02 requirements for restoration of firearms. The list below is not a complete summary and meant only for example. Include documentation that you believe helps your specific case. If you need assistance, consult with a lawyer licensed to practice in North Dakota who can agree to represent you.

Rights lost due to felony conviction_or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon:

- Affidavit(s) in support of the petition.
- Proof of payment for all fines; receipts/bank account statement.
- Other supporting documentation.

Rights lost due to mental deficiency:

- Affidavit(s) in support of the petition.
- Supporting statements from medical professionals.
- Other supporting documentation.

Make a copy of your documentation and type or write an exhibit identifier on each copy. For example, Exhibit A, Exhibit B, Exhibit C. When you refer to your documentation in your petition, include the name you gave the Exhibit.

Make copies of your marked exhibits to serve on each Respondent in Part Three.

PART TWO: CREATE AND PREPARE YOUR LEGAL DOCUMENTS

Determine the Respondent(s):

Rights lost due to felony conviction or Class A misdemeanor offense involving violence or intimidation and the use of a dangerous weapon:

- The States Attorney in the county where the petition is being filed.

Rights lost due to mental deficiency:

- The director of the treatment facility; and
- The prosecuting attorney of the county in which the original case was filed.

Determine the Case Number for the Petition:

If you are prohibited from possessing a firearm due to a North Dakota criminal conviction you may submit your petition in the existing North Dakota criminal case. The case number for your summons and petition will be the same as the case number of the existing North Dakota criminal case.

If are prohibited from possessing a firearm due to an out-of-state or federal criminal conviction you must submit your petition as a new case. Leave the case number blank on your summons and petition. A case number will be assigned by the clerk of district court in Part Four, if your petition is accepted for filing.

If you are prohibited from possessing a firearm due to a mental disability you may submit your petition to the district court that issued the finding of disability or the district court in the county where you reside.

- If you submit your petition in the existing North Dakota case, the case number will be the same as the case number of the existing case.
- If you submit your petition as a new case, leave the case number blank on your summons and petition. A case number will be assigned by the clerk of district court in Part Four, if your petition is accepted for filing.

Prepare the Summons:

- An example of a summons is found at the end of this Informational Guide. General instructions for preparing a summons are included with the example.

Create the Petition to Restore the Right to Possess Firearms:

At minimum the petition must include the following:

- Statements of subject matter jurisdiction of the North Dakota district court and personal jurisdiction of the North Dakota district court over the persons named in the petition.
 - Subject matter jurisdiction: The specific law(s) that relate to the subject of the petition that give the district court authority to hear and determine the petition.
 - Personal jurisdiction: How the district court has authority over each of the persons named in the petition. (See [Rule 4 of the North Dakota Rules of Civil Procedure](#).)
- Statement of why the North Dakota county is the proper venue for the petition.
 - (See page 6 of this Informational Guide for information on where to file the petition.)
- Statements of the reasons why you are bringing the petition, the steps you took to meet the North Dakota Century Code Chapter 62.1-02 requirements for firearm restoration and why the North Dakota district court should award you the right again.
 - Include references to your documentation by using the exhibit letters you assigned when you marked your exhibits in Part One.
- Requests for relief, also called demands of relief.
 - Tell the court what you want the court to do.
- Dated and signed by you, the Petitioner.
 - Directly following your signature, write or type your printed name, address and phone number.
- Your verification of the correctness, truth or authenticity of the petition.
 - Your notarized verification statement comes after the date and signature block on the petition.

You may find two general-use forms useful as a starting point for creating your petition. The general-use forms are found under the “Guide to Civil Action” link at www.ndcourts.gov/ndlshc/.

- Caption and Signature (Petition) Form
- Verification (Petition) Form

Make Copies of the Completed Documents:

Make a copy of the completed summons and petition for each Respondent you listed in the summons and petition. You will serve the copy of the summons and petition on each Respondent in Part Three.

Make a copy of the completed summons and petition for your records.

PART THREE: SERVE COPIES OF THE PETITION DOCUMENTS ON EACH RESPONDENT

Service of Petition for Rights Lost Due to Felony Conviction or Class A Misdemeanor Offense Involving Violence or Intimidation and the Use of a Dangerous Weapon:

The Respondent must be served with one copy of the following completed documents:

- Summons
- Petition
- Exhibits (if any)

You must provide proof of service on the Respondent to the North Dakota district court.

A completed, signed and notarized affidavit of service from the person who served the documents is your proof of service. If you do not provide proof of service to the district court, the court will not act on your petition. (You will file proof of service in Part Four.)

For information about the requirements and process for serving a summons and petition to start a civil action, including blank affidavit of service forms, click on the “service” link at www.ndcourts.gov/ndlshc/. Carefully review the information in the “Service After a Civil Action Has Started” section of the webpage.

Service of Petition for Rights Lost Due to Mental Deficiency:

****For individuals petitioning to restore their rights lost due to mental deficiency, you must serve both the prosecuting attorney and the treatment facility director.****

The Respondents must be served with one copy of the following completed documents:

- Summons
- Petition
- Exhibits (if any)

You must provide proof of service on each Respondent to the district court.

A completed, signed and notarized affidavit of service from the person who served the documents is your proof of service. If you do not provide proof of service to the district court, the court will not act on your petition. (You will file proof of service in Part Four.)

For information about the requirements and process for serving a summons and petition to start a civil action, including blank affidavit of service forms, click on the “Service” link at www.ndcourts.gov/ndlshc/.

Each Respondent Has 20 Days from Service to Respond to the Petition:

Each Respondent has 20 days from the date they were served the copy of the summons, petition and exhibits (if any) to respond or “answer” the petition. An answer is a written response by a Respondent to your petition to restore your right to possess firearms.

PART FOUR: FILE THE ORIGINAL PETITION DOCUMENTS WITH THE CLERK OF COURT; FILE PROOF OF SERVICE ON EACH RESPONDENT

After serving each respondent, file the originals of the following completed documents with the clerk of district court:

- Summons
- Petition
- Exhibits (if any)
- Proof of Service on Each Respondent

If the clerk of the district court accepts your documents for filing, and you are not filing your petition in an existing case, the clerk will assign a case number.

You will be required to pay an \$80.00 filing fee. Confirm the amount with the clerk of court. Contact information for clerks of court by county may be found at:

<http://www.ndcourts.gov/court/email/frclerks.htm>.

Forms and instructions for asking the court to waive the \$80.090 filing fee can be found at:

<http://www.ndcourts.gov/ndlshc/OtherForms/WaiverFees/WaiverofFees.aspx>.

Filing a document is not the same as serving a document. Filing does not meet the requirements of service. Proof of service of the document(s) must be filed with the court. (See Part Three.)

PART FIVE: AFTER THE PETITION IS FILED

After the petition is filed, the case is assigned to a judge. The judge reviews the documents filed in the case and makes decisions.

You May be Required to Provide Additional Information to the Court:

After reviewing the documents you filed, the judge may require you to provide additional information before the court will act on your petition. It is up to you to follow up on anything the court requires you to do.

The Judge May Decide your Petition Based Only on the Documents Filed:

After reviewing the documents you and any Respondents filed, the judge may grant or deny your petition without holding an in-person hearing.

The Judge May Decide to Hold an In-Person Hearing:

After reviewing the documents you and any Respondents filed, the judge may decide to hold an in-person hearing before deciding whether to grant or deny your petition.

If the judge decides to hold a hearing, the court notifies you in writing of the date, time and location of the hearing.

At the hearing, you, the Petitioner, must prove the information you provided in your petition. Each Respondent may present evidence to disprove the information you provided in your petition.

Caution! Preparing for a hearing is often a complex and confusing process. You are held to the same requirements and responsibilities as a lawyer, even if you don't understand the rules or procedures. You will need to conduct additional research to prepare.

At minimum, review and research the laws and rules listed throughout this Informational Guide. You will use the North Dakota Rules of Evidence, in particular, to present your evidence and object to each Respondent's evidence.

Review pre-trial and trial guidebooks for self-represented litigants and lawyers. Your local public or academic library may have resources available.

If Your Petition is Dismissed:

Review the order dismissing your petition.

If your petition is dismissed with prejudice, you cannot re-file the petition.

If your petition is dismissed without prejudice, you may re-file the petition at a later date.

(An example of a summons for a petition and instructions for preparing a summons are found on the next two pages of this Informational Guide.)

This North Dakota Legal Self Help Center resource was created by Mallory Block, as part of the University of North Dakota School of Law Externship Program, Summer 2017.

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF _____

_____ JUDICIAL DISTRICT

_____)
(Petitioner))

PETITIONER,)

Vs)

Case No. _____

SUMMONS

_____)
(Respondent(s)))

RESPONDENT.)

THE STATE OF NORTH DAKOTA TO THE ABOVE NAMED RESPONDENT(S):

YOU ARE HEREBY SUMMONED and required to appear and defend against the Petition in this action, which is herewith served upon you, by serving upon the undersigned an Answer or other proper response within twenty (20) days after the service of this Summons and Petition upon you, exclusive of the day of service.

If you fail to do so, judgment by default will be taken against you for the relief demanded in the Petition.

Dated this _____ day of _____, 20____

_____, Petitioner
(Signature of Petitioner)

(Printed Name of Petitioner)

(Address)

City of _____, North Dakota _____

Phone Number: _____

INSTRUCTIONS FOR SUMMONS (PETITION) – CIVIL ACTION

ND Legal Self Help Center Staff and Court employees cannot help you fill out forms. If you are unsure how to proceed, you should consult a lawyer.

There is no guarantee that all judges and courts will accept forms available through the ND Legal Self Help Center.

Do not include this instruction sheet when you serve or file the completed form.

THE “SUMMONS” SECTION OF THE [GUIDE TO A CIVIL ACTION](#) on the ND Legal Self Help Center website has additional information and resources.

A summons directs the Respondent to answer the petition within a certain amount of time. The summons notifies the Respondent that a default judgment may be taken against them if the Respondent does not answer.

- Fill in the name of the County in North Dakota where the Petitioner intends to file the civil action.
- Fill in the name of the Judicial District in North Dakota where the Petitioner intends to file the civil action. (The County is within the Judicial District.) County and Judicial District information and maps are available at www.ndcourts.gov.
- The case number is left blank.
- Fill in the full, legal name of the Petitioner on the Petitioner line.
- Fill in each Respondent’s full, legal name on the Respondent line. There can be more than one Respondent.
- Sign and date the summons.
- A copy of the petition must be served with the summons.

Do not include this instruction sheet when you serve or file the completed form.

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