

28-1204.04. Unlawful possession of a firearm at a school; penalty; exceptions; confiscation of certain firearms; disposition.

(1) Any person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is guilty of the offense of unlawful possession of a firearm at a school. Unlawful possession of a firearm at a school is a Class IV felony.

(2) Subsection (1) of this section does not apply to:

(a) The issuance of firearms to or possession by members of the armed forces of the United States, active or reserve, National Guard of this state, or Reserve Officers' Training Corps or peace officers or other duly authorized law enforcement officers when on duty or training;

(b) The possession of firearms by peace officers or other duly authorized law enforcement officers;

(c) The carrying of firearms by qualified law enforcement officers or qualified retired law enforcement officers carrying pursuant to 18 U.S.C. 926B or 926C, respectively, as such sections existed on January 1, 2023;

(d) Possession of a firearm by a person who is employed or contracted by a school to provide school security or school event control services pursuant to a written policy adopted by such school that complies with subdivision (3)(a) of this section. This subdivision does not apply to a public elementary or secondary school in a Class III, IV, or V school district as defined in section 79-102;

(e) Firearms which may lawfully be possessed by the person receiving instruction, for instruction under the immediate supervision of an adult instructor;

(f) Firearms which may lawfully be possessed by a member of a college or university firearm team, to include rifle, pistol, and shotgun disciplines, within the scope of such person's duties as a member of the team;

(g) Firearms which may lawfully be possessed by a person employed by a college or university in this state as part of an agriculture or a natural resources program of such college or university, within the scope of such person's employment;

(h) Firearms contained within a private vehicle operated by a nonstudent adult which are not loaded and (i) are enclosed in a case or (ii) are in a locked firearm rack that is on a motor vehicle;

(i) Firearms which may lawfully be possessed by a person for the purpose of using them, with the approval of the school, in a historical reenactment, in a hunter education program, or as part of an honor guard; or

(j) A handgun carried as a concealed handgun by a person other than a minor or prohibited person in a vehicle or on his or her person while riding in or on a vehicle into or onto any parking area, which is open to the public and used by a school if, prior to exiting the vehicle, the handgun is locked inside the glove box, trunk, or other compartment of the vehicle, a storage box securely attached to the vehicle, or, if the vehicle is a motorcycle, other than an autocycle, a hardened compartment securely attached to the motorcycle while the vehicle is in or on such parking area.

(3)(a) A school board or other governing body of a school or school district may authorize the carrying of firearms by authorized security personnel in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event by adopting a written policy governing such conduct. Such written policy shall, at a minimum, include requirements for personal qualifications, training, appropriate firearms and ammunition, and appropriate use of force. This subdivision does not apply to a public elementary or secondary school in a Class III, IV, or V school district as defined in section 79-102.

(b) The State Board of Education shall, in consultation with the Nebraska State Patrol, develop a model policy relating to the authorization of the carrying of firearms by authorized security personnel as described in subdivision (3)(a) of this section. The policy shall include, but need not be limited to, the appropriate number of training hours required of such security personnel.

(4) Any firearm possessed in violation of subsection (1) of this section shall be confiscated without warrant by a peace officer or may be confiscated without warrant by school administrative or teaching personnel. Any firearm confiscated by school administrative or teaching personnel shall be delivered to a peace officer as soon as practicable.

(5) Any firearm confiscated by or given to a peace officer pursuant to subsection (4) of this section shall be declared a common nuisance and shall be held by the peace officer prior to his or her delivery of the firearm to the property division of the law enforcement agency which employs the peace officer. The property division of such law enforcement agency shall hold such firearm for as long as the firearm is needed as evidence. After the firearm is no longer needed as evidence, it shall be destroyed in such manner as the court may direct.

(6)(a) Whenever a firearm is confiscated and held pursuant to this section or section 28-1204.02, the peace officer who received such firearm shall cause to be filed within ten days after the confiscation a petition for destruction of such

firearm. The petition shall be filed in the district court of the county in which the confiscation is made. The petition shall describe the firearm held, state the name of the owner, if known, allege the essential elements of the violation which caused the confiscation, and conclude with a prayer for disposition and destruction in such manner as the court may direct.

(b) At any time after the confiscation of the firearm and prior to court disposition, the owner of the firearm seized may petition the district court of the county in which the confiscation was made for possession of the firearm. The court shall release the firearm to such owner only if the claim of ownership can reasonably be shown to be true and either:

(i) The owner of the firearm can show that the firearm was taken from his or her property or place of business unlawfully or without the knowledge and consent of the owner and that such property or place of business is different from that of the person from whom the firearm was confiscated; or

(ii) The owner of the firearm is acquitted of the charge of unlawful possession of a handgun in violation of section 28-1204, unlawful transfer of a firearm to a juvenile, or unlawful possession of a firearm at a school.

(c) No firearm having significant antique value or historical significance as determined by the Nebraska State Historical Society shall be destroyed. If a firearm has significant antique value or historical significance, it shall be sold at auction and the proceeds shall be remitted to the State Treasurer for distribution in accordance with Article VII, section 5, of the Constitution of Nebraska.

Source: Laws 1994, LB 988, § 6; Laws 2002, LB 82, § 8; Laws 2009, LB63, § 13; Laws 2009, LB430, § 8; Laws 2011, LB512, § 1; Laws 2014, LB390, § 1; Laws 2018, LB321, § 1; Laws 2018, LB909, § 1; Laws 2024, LB1329, § 3.

Effective Date: July 19, 2024

Cross References

Concealed Handgun Permit Act, see section 69-2427.